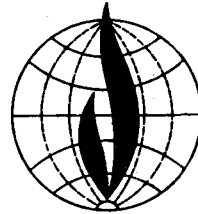


For the Rule of Law

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THE REVIEW



INTERNATIONAL COMMISSION OF JURISTS

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Human Rights in the World

Benin

While everything seemed to be pointing to the imminent demise of Mathieu Kérékou's regime, in power since the wake of a coup d'état in 1972, history tipped in favour of a democratic rebirth in February 1990.

For nine days, a national Conference assembling 500 leaders of Benin, coming from the most varied horizons and summoned by President Kérékou, made a scathing report of the situation. The national Conference also adopted important decisions in order to establish in Benin a State ruled by law and respectful of human rights. It was no coincidence that the first motion adopted by the national Conference concerned human rights and that it was followed, *inter alia*, by the founding of the Benin Commission on Human Rights in May 1989 (by Law 89-004). Other motions dealt with:

- prompting a democratic renewal by peaceful means;
- moralizing public life;
- removing the following institutions set up by the "Loi fondamentale" including: the judicial reform, the Revolutionary National Assembly and the National Executive Council;
- the release of all political detainees.

On the issue of human rights, it was decided to set up a National Committee to Combat Torture and Corporal Punishment. This body has the task of:

- investigating cases of torture, corporal punishment and murders perpetrated by certain government agents in the course of their duties;
- identifying the victims of these abuses and working out, together with the Ministry of Finance and other competent departments, the means of making amends for injustices they have suffered;
- identifying the government agents responsible for these acts of torture, corporal punishment or murders and the superior officials responsible for these criminal orders, when appropriate, and applying appropriate disciplinary sanctions in conjunction with the responsible departments without prejudice to the judicial penalties handed down by the appropriate authorities;
- pinpointing exactly the places used for torture in the country, and dismantling them with the help of the competent authorities;
- undertaking all other useful measures to prevent and discourage torture, corporal punishment, summary executions and other criminal abuses of power once and for all, under the supervision of the High Council of the Republic and in conjunction with non-governmental organisations and the proper authorities.

By placing special emphasis on the

campaign against torture, the national Conference has taken into account the disturbing frequency of arbitrary arrests, summary executions, acts of torture, corporal punishment and other abuses of power committed at various levels by the political and administrative authorities and certain police departments.

In this respect, the International Commission of Jurists (ICJ) expressed its grave concern in December 1989 to President Kérékou on the human rights situation and encouraged him to grant high priority to the rule of law. The ICJ had demanded in particular the release of Mr. Bocou Gounou Joseph, who had been arrested in February 1973, released 4 August 1984, then re-arrested 8 August 1984 without being charged or sentenced. Yet, the Constitution of Benin states that "no-one can be arrested or detained without a decision of a people's court or of the judiciary".

Unfortunately the situation in real life was radically different in that the fate of political prisoners was left to the discretion of the Permanent National Investigating Commission for State Security. Under the direction of a senior officer, the Commission had the power to make recommendations to President Kérékou on the release or prolonged detention of suspects.

In the course of their interrogation, the suspects were tortured or mistreated. There is a variety of testimony on the methods of torture used: some detainees were beaten and whipped, sometimes until they fainted. Others underwent the torture of the "barrel": the victim was enclosed in a barrel holding stones and shards of glass, which was then rolled along. Amnesty International described another method, termed the "rodeo": detainees were forced to crawl or to run barefoot over sharp

stones while they were beaten with sticks or bats.

In this repressive atmosphere, the people of Benin, nonetheless, continued to demand respect of their rights while at the same time non-governmental organisations denounced violations by Benin. Since that time, glimmers of hope have appeared. On 12 May 1989 a law established the Benin Commission for Human Rights. This Commission has just recently been set up at the express request of the national Conference.

On 30 August 1989, President Kérékou promulgated Law 89-010 granting amnesty "in a desire to install a climate of moderation, pacification and harmony". In spite of the amnesty law, a number of political detainees have been held in police headquarters and other places of detention. Their release was obtained during the national Conference, which considered that the acts ascribed to them (including to exiles) were a result of the system of monopoly power, which makes it impossible to carry out the desired non-violent changes of power.

The national Conference of the leaders of Benin stands for the fight "for a genuine State of Law". The General Report of the Conference provides the key to what the transition to democracy in Benin will be. There is hope. All political detainees have been freed. The military have returned to their barracks. The Army decided on its own to withdraw from the helm of public affairs, by choosing democratic channels. A new Constitution will be submitted to a public Referendum on 13 August 1990. Legislative and presidential elections are scheduled for January and February 1991, but, in the meantime, transitional machinery has been put into operation. It is called the High Council of the Republic and is

headed by the Archbishop Coadjutor of Cotonou. Its many tasks include, *inter alia*:

- to superintend the follow-up of the decisions made by the national Conference;
- to supervise the legislative and presidential elections and the settlement of electoral disputes;
- to defend and promote human rights, enshrined and guaranteed in the African Charter on Human and Peoples' Rights.

On the order of President Kérékou, a government has been set up, headed by a Prime Minister unanimously designated by the Conference (Mr. Nicéphore Soglo). Several political parties have been created. Freedom of opinion and speech has come into being, in addition to freedom of association and assembly.

Certainly, it was President Kérékou who called the national Conference of the leaders of Benin. However, it is im-

portant to recall that it was striking workers, who went for months without wages, the student demonstrators deprived of scholarships, determined citizens, who could no longer stand by helplessly while their rights were being eroded, and State bankruptcy, which led the President to take such an initiative whose significance has extended beyond the borders of Benin.

Although it is true that the Benin experience of transition towards democracy has not yet taken root in other countries, it is in the process of being restored in Gabon, Zaire and the Ivory Coast, to cite but a few. In other corners of the continent, notably in Zambia and Tanzania, the debate on multi-partyism has begun, while in Zimbabwe, the discussion paradoxically centres around setting up one-party rule. In Senegal, with its 17 political parties, the democratic experience perseveres with its ups and downs.

El Salvador

On 11 November 1989, the Farabundo Marti National Liberation Front (FMLN) launched the greatest offensive in its ten year insurgency against the Salvadorean government. The stated intent was "to pressure the Armed Forces to stop its opposition to negotiations"¹. For the first time the FMLN managed to occupy large

sections of the capital city, including Escalon, a wealthy quarter where many ranking military reside, as well as slum districts to the North and East of the capital.

Violations of the laws of war during the offensive causing direct or collateral civilian casualties were reported on both

1. Washington Office on Latin America, "El Salvador - Is Peace Possible?" p.7 (1990)

sides². While human rights violations must be analyzed against the backdrop of the internal armed conflict, the resurgence of arbitrary arrests, torture, disappearances and summary executions cannot be said to result from a general confusion of the ongoing conflict and the November offensive.

The Special Representative for El Salvador appointed by the United Nations Commission on Human Rights, Professor Pastor-Ridruejo, reported at the Commission's 1990 session "disturbing information regarding politically motivated summary executions of non-combatants". He emphasizes that the activities carried out by the death squads are not mistakes of war, and must be characterized as 'common crimes'³. He also notes, although the statistics vary as to the number of persons disappeared and detained for political reasons, there was clearly an increase of these violations during the first ten months of 1989 and a sharper increase after the November offensive⁴.

Even the most notorious of these violations have gone unpunished despite international pressure for impartial investigations and governmental promises

to prosecute and punish those responsible.

On 31 October 1989, a bomb exploded in the National Trade Union Federation (FENASTRAS) headquarters in San Salvador⁵. The explosive was detonated in the union's soup kitchen at 12.30 p.m. just as union members and their families were gathering to eat. Ten people were killed and 38 others, including several children were wounded. As has occurred in other bombing and kidnapping cases, ARENA party leader, Roberto D'Aubuisson and military leaders publicly attributed the act to the FMLN, but in fact, the October bombing was not the first time in 1989 that FENASTRAS had been singled out for violence. On 22 February and again on 5 September, the union headquarters were surrounded and occupied by the military. On 18 September, a FENASTRAS demonstration was violently disrupted by the military, which detained over 60 persons most of whom were subsequently released. On the same day the fatal FENASTRAS bombing occurred, the office of the Committee of Mothers of the Disappeared (COMADRES) in San Salvador was also bombed.

2. Violations of International Humanitarian Law by the FMLN have been reported by America's Watch, Amnesty International, the Red Cross and the United Nations High Commissioner for Refugees. These include, *inter-alia*, summary executions. The FMLN has "tried and executed" people believed to be government informers or collaborators. The organisation of and lack of procedural guarantees of the FMLN ad-hoc courts violate non-derogable provision (d) of Common Article 3 to the Geneva Conventions: "The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples," as well as Article 6 (penal prosecutions) of Protocol 2 Additional to the Geneva Conventions Relating to Armed Conflicts of a Non-International Character: use of civilians and civilian structures as shields, and forced recruitment, in particular of minors between the ages 15-18 or younger.
3. Report to the United Nations Commission on Human Rights on the Human Rights Situation in El Salvador, by Professor José Pastor Ridruejo, (article 12 of the procedures) per resolution 1989/68 of the Commission, 46th Session, 22 January 1990, p.11, para 48.
4. Id p.14 para.63.
5. The bombing of FENASTRAS (which violated the terms of the peace talks) provoked the FMLN to suspend their participation in the peace talks and to launch the November offensive, which they named, "Febe Elizabeth Lives" after Febe Elizabeth Velasquez, President of FENASTRAS who was killed in the bombing.

After the bombings, President Cristiani promised an investigation by a government-appointed Commission of Inquiry. Amnesty International has reported that despite assurances by the government that the killings would be investigated, to Amnesty's knowledge there has been no progress in the investigation and those responsible have not been brought to justice.

Competent Salvadorean authorities have presented charges to the U.N. Special Representative, that acts of insurgency are hidden behind normal FENASTRAS activities. Independent confidential sources explained to the Representative that in varying degrees, the activities of certain Union members are not entirely independent of the FMLN, but not in terms of military or armed activities, rather in the sense that their political objectives coincide. In his report, the Special Representative characterizes the FENASTRAS bombing as "mass summary executions" and reminds the Salvadorean authorities that despite the political leanings of some members, the union's activities are protected by the Salvadorean Constitution as well as by International Human Rights Law.

The assassination of the six Jesuit priests, their cook and her daughter in the Central American University (UCA) on 16 November 1989, was the culmination of more than ten years of threats and attacks. Father Segundo Montes, one of the priests killed, testified in January 1987 in a federal court in Los Angeles, California on another matter. "In 1977 ... they gave us one month ... to leave the

country or be murdered. And you could see slogans throughout the city saying 'promote the country, kill a priest'". He added, "At the university they have set bombs on us more than 12 times... There are lists of people who can be eliminated and we're on those lists, several of us, and I am personally"⁶.

On 11 November, just five days before the assassinations, ARENA leader Roberto D'Aubuisson spoke on the government-run radio station and accused the Jesuits of being the organizers and brains behind the FMLN offensive. Archbishop Rivera-and-Damas reported that on the night of the killings, a military truck drove by his residence with a mega-phone blaring, "Ignacio Ellacuria and Martin Baro (two of the Jesuits who died that night) have been killed. We will continue to kill the communists"⁷. The Archbishop continues to receive death threats.

After the killings, a government Commission of Inquiry was set up and President Cristiani promised that "If there are people involved who turn out to be members of the armed forces, then the weight of the law must fall upon them"⁸. On 14 January 1990, President Cristiani publicly announced the results of the investigation. The order of the examining magistrate states that the operation was conducted by the "Atlatcatl" battalion under the command of Colonel Guillermo Benavides, Director of the military academy and former chief of the intelligence service of the Armed Forces; two lieutenants, one sub-lieutenant and three soldiers. Members of the commando tes-

6. "Carnage Again: Preliminary Report on Violations of the Laws of War by Both Sides in the November 1989 Offensive in El Salvador", 24 November 1989, An Americas Watch Report, pp. 22,23.
7. "BRECHA", Commission for the Defence of Human Rights in Central America, (CODEHUCA), Nov.-Dec., 1989, No.5, pp. 10-11.
8. Americas Watch, op. cit., p. 18.

tified they were ordered to eliminate the priests (intellectual heads of the guerrilla) and to disguise the murders through simulated fire-fight. The cook and her daughter were killed because the Colonel ordered no witnesses.

The United States Senate has conditioned renewal of military aid to El Salvador on the successful investigation, prosecution and sentencing of all those responsible for the Jesuit deaths. The Salvadorean government claims that the alleged perpetrators are in the hands of justice and admits that this case is a test of its judicial system. In May it was announced that the case would go to trial within 90 days, but court sources indicate the prosecution will be ready "by the end of the year...if there are no problems"⁹. None of the High Command has been charged and two members who have received subpoena orders to hear the evidence against Benavides and the others have ignored them. On 15 November, just hours before the murders, the High Command held a meeting to discuss strategy for the offensive. Given the High Command practice of taking decisions by consensus, it is possible that all of the High Command was informed, or that most of them soon knew who had given the orders and who carried them out. This information was withheld from the Commission of Inquiry. On 2 May 1990, three transfers of the High Command to posts as military attachés in other countries were announced.

Key evidence in the case, including the battalion log book which evidences all military signing in and out on the night of the murders has disappeared, allegedly burned at the orders of the Sub-

Director of the Military Academy, Major Carlos Hernandez¹⁰. Four of the cadets charged in the case are "training" outside the country. When pressed to explain why they were allowed out of the country, President Cristiani replied, "What's the difference if they come from Suchitoto or the U.S. to testify"¹¹.

The accusations of three co-defendants have been declared inadmissible in court and may be withdrawn. Furthermore, Salvadorean law makes it extremely difficult to obtain a conviction for conspiracy, and a bill is now pending in the National Assembly to pardon military personnel accused or convicted of human rights violations. This bill, if passed, may exculpate the murderers of the Jesuits and would decrease, if not eliminate, future military accountability for human rights violations.

The December 1989 disappearances of six farm cooperative members in San Cayetano, Ahuachapan have gone without investigation or punishment. The day before the disappearances, 200 soldiers had ransacked cooperative headquarters and the homes of cooperative leaders. Family members witnessed the disappearance of brothers Juan Antonio and Julio Cesar Vasquez by the Seventh Military Detachment, but the Detachment Commander, Colonel Roberto Staben, denies holding the men. On 12 February 1990, residents of Canton Los Magueyes reported seeing a truck pass containing uniformed soldiers along with two of the other disappeared, Gerardo Saldana Salazar and Leonardo Perez Nunez. On 26 February, family members of the disappeared attempted holding a press conference, but it was broken up

9. "EL RESCATE", El Rescate Legal Services, 'Report from El Salvador', 7 to 14 May 1990, p 1.

10. "EL PAIS", 6 June 1990, p.2

11. "EL RESCATE", op. cit., p 1.

by the military.

Humanitarian organisations have reported that their ability to provide aid has been severely restricted before the offensive and that threats and detentions of humanitarian personnel continue now, nearly eight months after the offensive. Ultimately, however, humanitarian organisations are convinced that a negotiated political settlement is the only way to truly improve the human rights situation.

The November offensive has demonstrated that an outright military victory on either side is unlikely. Negotiations, held from 19 to 25 June 1990 between government representatives and the FMLN together with the participation of the United Nations, reflected a willingness to undertake direct talks. The

FMLN demanded: reform of the armed forces implying a purge, the separation of the three security forces (the National Guard, the Treasury Police and the National Police) and the establishment of a single civilian police force; democratisation, and; economic and social reforms. The government seemed willing to negotiate on the issue of the reform of the army but proved unyielding with regard to FMLN demands to sanction the major perpetrators of past human rights violations. This would antagonize sectors of the army and the party in power, ARENA, which have the power to block the negotiations.

The negotiations led to no agreements but the Salvadorean government and the FMLN decided to resume talks in Costa Rica in a couple of months.

Guatemala

At the end of 1985, after 16 years of military dictatorship, the Guatemalan people elected a civilian government and a new Constitution was ratified. Thus, in early 1987, the United Nations Commission on Human Rights moved Guatemala out of agenda item 12, dealing with gross and persistent violations of human rights, into its Advisory Services Programme, and named a Special Expert "to assist the Government of Guatemala, by means of direct contact, in the adoption of measures necessary for the restoration of human rights" (Res.1987/53). These measures have consisted of advisory services and other assistance offered to the Government of Guatemala by the United Nations Centre for Human Rights with a view towards advancing democ-

racy and strengthening respect for human rights.

Since early 1986, a number of official organisations and institutions have been created in Guatemala to promote and protect human rights. These include a Constitutional Court, a new Supreme Court, a Congressional Human Rights Commission and a Human Rights Attorney. Nevertheless, as the Special Expert Hector Gros-Espiell notes in his 1990 report to the UN Commission on Human Rights: "It is not enough that the Government does not directly infringe human rights; it must prevent them from being infringed; it must use all the constitutional power at its command to prevent such violations and to have in hand the capability needed to guarantee

peace and security in practice. And it has not managed to do this".

On 11 May 1988, and again on 9 May 1989, the two most serious coup attempts against the constitutionally elected Presidency of Vinicio Cerezo Arévalo took place. After each attempt, the level of violence increased. Hard-line extremists overpowered moderate government and military elements who favour negotiation with political opposition and dissident movements. In addition to attacks on community organizers, political activists, random civilian targets and indigenous communities, prominent individuals including foreign citizens have been detained, tortured or assassinated¹. Evidence points directly to military involvement in many of the reported cases; however, an apparent fear of military reprisal² has resulted in a complete lack of administration of justice³. The government has shown little willingness to conduct or cooperate with serious investigations, and has in some instances refused to respond to inquiries or to meet with international investigative delegations such as that sent by Americas Watch in April 1989. The following cases exemplify the alleged military involvement:

- in the early 1980's, Eleodoro Ordón Camey and his family left the San Martín Jilotepeque area because of harassment and threats. On 1 November 1988, the Camey family returned to San Martín to visit a family grave. They were told they needed military permission to enter the town, and according to testimony, Camey was detained and interrogated by a military commissioner who took him to the Chimaltenango military base. He was released on condition that he return directly to Guatemala City where he worked. According to his employer, telephone harassment by the military continued for two weeks, until on 16 November 1988 Camey was kidnapped by men who witnesses described as, "armed, wearing black jackets and army boots". His body was found in a plantation ten days later, reportedly bearing torture marks and bullet wounds;
- on 15 August 1989, 23 year old María Rumalda-Camey, sister of Eleodoro (see above) and a member of the Mutual Support Group (GAM), was kidnapped from her home by armed men in civilian dress. Shots were fired into the home and members of the family were reportedly threatened. GAM took Rumalda-Camey's two young children to its headquarters for safety, but that same day an explosive device severely damaged GAM headquarters. Her husband and children took refuge at the Guatemalan Red Cross and subsequently went into exile⁴. Rumalda-Camey remains disappeared;
- Eulalio Ambrosio, Secretary-General of the Social Democratic Party (PSD) affiliate in San Marcos, was reportedly kidnapped in front of eight witnesses, including his son, on 16 June 1989 by six men carrying machine

1. Americas Watch, *Messengers of Death: Human Rights in Guatemala - November 1988-February 1989*, March 1990, p. 8.

2. See Washington Office on Latin America, *The Administration of Injustice: Military Accountability in Guatemala*, December 1989.

3. The one exception to this is the trial and conviction of a police chief and five police officers in the October 1987 murders of two agronomists associated with the Western University Centre (CUNOC).

4. Americas Watch, Central American Report, 5 October 1989.

guns and rifles. His son followed the kidnappers as they passed uninterrupted by the National Police Headquarters and on to an access road which leads directly into Military Base No. 18. Ambrosio's family made inquiries the following day at the National Police Headquarters; the PSD sent telegrammes to the Guatemalan President, Congress and Attorney General, and submitted a petition of *Habeas Corpus*, all to no avail. A letter dated 25 August 1989 from the Vice Minister of Defence claims an investigation concluded that "delinquent terrorists who ... have used uniforms and equipment similar to that used by the armed forces" were responsible. In a July 1989 interview with an investigatory mission, President Cerezo apparently claimed that Ambrosio was involved in marijuana cultivation. Cerezo also promised, but failed, to report the findings of an official investigation to the PSD.

While indigenous communities have no real participation in the life of the country, they have been forced by the military to participate in "civil patrols" in such areas as San Andrés and Quiché where the guerrillas maintain a stronghold. In 1981 a massacre took place when young men from this indigenous community refused to patrol. Reliable reports indicate ongoing threats by the military that this 1981 massacre will be repeated if civil patrolling is not acquiesced to. Similar events have also been reported in the departments of Alta Verapaz. In addition, indigenous people have been forcibly relocated from the mountains, where contact with the military had previously been avoided, to military-controlled lowland villages. The military maintains absolute control of the

relocation villages and restricts the right to leave and return.

Human rights cases are now most often investigated by the Citizens Protection System (SIPROCI) which is set up to "combat crime" and is a combined effort of the National Treasury and Mobile Military Police. SIPROCI has no permanent barracks, no established order of command and, therefore, little accountability.

While human rights abuses are pervasive and the lack of proper administration of justice forecloses recourse for victims as well as establishment of accountability of those responsible for the abuses, these concerns are the consequences and symptoms of the underlying root causes. As the Special Expert notes in his 1990 report: "The serious shortcoming in the enjoyment of economic, social and cultural rights produces situations conducive to violations of the civil and political rights of the Guatemalan people. The situation in Guatemala is shaped by the convulsions within society originating in the underdevelopment that keeps the country in an unjust social and economic structure..."

As the Special Expert continues: "In addition to this problem, there are the shortcomings in education, health and housing (the infant mortality and illiteracy rate are the highest in Central America and life expectancy is one of the lowest)... . A human rights policy needs to be implemented that rejects any form of discrimination on account of ethnic origin, because until this discrimination is eliminated, human rights cannot be applied fully. At the same time, the democratic process needs to continue in order to secure respect for human rights, since there can be no enjoyment of human rights without democracy, but neither can there be democracy without human rights".

Honduras

As reported in ICJ Review No. 41, the first contested case in the Inter-American system was heard in the Inter-American Court of Human Rights of the Organisation of American States on 29 July 1988. The Court ruled that Honduras was responsible for the forced disappearance of Angel Manfredo Velásquez Rodríguez in 1981. On 20 January 1989, it ruled that Honduras was also responsible for the 1982 forced disappearance of Saúl Godínez. The Court held that these crimes fall "within the framework of a practice of disappearances carried out or tolerated by Honduran officials ... between 1981 and 1984"¹.

These cases marked an important step forward in the international control of human rights abuses, nevertheless, certain points should be noted. First, Honduras claims it does not have sufficient funds to compensate the victims' families². Furthermore, when asked to respond to more recent violations such as the approximately 105 disappearances or killings in 1989 alone³, the government reportedly replied that the Inter-American cases resolved the issue, and as far as it is concerned, these cases are collectively closed.

During the trials themselves, several

grave violations occurred in connection with the subject matter of the trials. On 5 January 1988 Sergeant José Isaías Vilorio who had been summoned by the Court to appear as a witness on 18 January 1988 and whose testimony was expected to implicate the armed forces in the Rodríguez disappearance, was assassinated on a public thoroughfare in Tegucigalpa. On 14 January 1988, Miguel Angel Pavón, Director of the San Pedro Committee for the Protection of Human Rights, who had testified as a witness against Honduras in the Rodríguez case on 30 September 1987, was assassinated in front of his home. His companion, Moisés Landaverde also died in the attack. Threats against other witnesses, Ramón Custodio López and Milton Jiménez Puerto from the Committee for the Protection of Human Rights were also duly noted by the Court during the proceedings.

After the Pavón/Landaverde murders, the Court adopted under Article 63.2 of the Convention, certain "provisional measures" justified "in cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons". It ordered *inter alia* "That the Government of Honduras inform the

1. Inter-American Court of Human Rights, Velásquez Rodríguez Case, Judgement of 29 July 1988, *Annual Report of the Inter-American Court of Human Rights 1988*, p.65.
2. In April 1990, during a public question-answer session in Vermont, USA, Honduran President Rafael Callejas stated that he would "Personally see that the families of the victims receive compensation".
3. *Report on the Human Rights situation in Honduras*, Committee for the Defence of Human Rights in Honduras (CODEH), Jan.-Nov. 1989, pp. 2-9. For 1989 there were reported: 42 extra-judicial executions among them 25 of "common criminals", five political assassinations and 12 'others'. A distorting factor is that possible political activity of 'common criminals' is deleted. Of these, 14 were committed by unknown authors, five directly attributed to the military, five to Nicaraguan Contras in Honduras, 11 to the Investigations Unit, seven to the Police (who are trained and are under command of the military) and three by dissident army groups. There were 33 'suspicious deaths' and 116 reported cases of torture.

Court, within 15 days, of the specific measures it has adopted to protect the physical integrity of witnesses who testified before the Court as well as those persons in any way involved in these proceedings, such as representatives of human rights organisations" and to report "... on the judicial investigations of the assassinations of José Isaías Vilorio, Miguel Angel Pavón and Moisés Landaverde". The Court later felt compelled to issue additional provisional measures, ordering *inter alia* "That the Government of Honduras...inform this Court", as to the "actions that are proposed to be taken within the judicial system of Honduras to punish those responsible" and that it " ... adopt concrete measures to make clear that the appearance of an individual before the Inter-American Commission or Court of Human Rights, ... is a right enjoyed by every individual and is recognised as such by Honduras as a party to the Convention"⁴.

According to Americas Watch, credible sources have linked the Pavón/Landaverde murders to the 3-16 Battalion which is strongly believed to be the military unit responsible for most of the forced disappearances and other grave violations committed between 1981 and 1984. In a December 1988 letter to President José Azcona Hoyo, Americas Watch asked the Honduran government to respond to these accusations regarding the Pavón/Landaverde murders, and to investigate any leads produced, but the letter was met by threats of a law suit by the military and the government never responded⁵. The government claims that the 3-16 battalion was disbanded in

1987; nevertheless, evidence suggests that its members have been reorganised into the "intelligence" and "counter-terrorism" units where they continue to carry-out their para-military activities.

The attacks on witnesses during the trials show that the Government is either unable or unwilling to prevent violations of human rights of those under its jurisdiction even during a highly publicized Inter-American case, and there has been no indication during or since the trial that the Government is able or willing to redress the violations of these rights. At the onset of the trial, the Government claimed there had not been exhaustion of local remedies in the Rodríguez case and set out for the Court all the ordinary and extraordinary remedies available under Honduran law to redress violations of citizens' rights including disappearances.

The Court, however, ruled that the "formal existence of remedies" is not enough and that the remedies must be "adequate and effective". "Adequate remedies are those which are suitable to address an infringement of a legal right"⁶.

International protection of human rights is not designed to punish individuals guilty of human rights violations in a criminal procedure, but rather to reinforce or complement domestic jurisdiction and to protect the victims. If this is no longer possible, then it must provide for the reparation of damages resulting from the acts of the State responsible. In contrast, domestic protection of human rights entails the "adequate and effective" use of a State's criminal justice sys-

4. Inter-American Court of Human Rights, Velásquez Rodríguez Case, p. 45.

5. *Honduras Without the Will*, an Americas Watch report, Americas Watch Committee, July 1989, p.11.

6. Inter-American Court of Human Rights, Velásquez Rodríguez Case, p. 49.

tem. And, it is the State that controls the means to verify acts occurring within its territory⁷.

Honduran governmental and judicial authorities have not followed-up any of the recent violations. They have not carried through a single judicial investigation to seek or punish those responsible. International human rights monitors are not aware of any action taken against members of security forces or the military for human rights abuses. Furthermore, members of human rights groups have increasingly been singled out for harassment and threats. In March 1989, posters and graffiti began appearing defaming Dr. Ramón Custodio of the Committee for the Defence of Human Rights, as a "communist", "subversive" and "terrorist". He has received several death threats, one attempt has been made on his life, and several death threats have been received by his colleague, Milton Jimenez. "The Anti-Communist Youth of Honduras" has allegedly claimed responsibility, but the existence of such a group cannot be confirmed. On 19 March 1990, Dr. Roberto Zelaya, student leader of the University Reform Front (FRU) was seriously injured in an attack in Tegucigalpa. The perpetrators of the attack also threatened him by saying: "Tell Ramón Custodio (and others) that they are next"; "We are killing you

little by little"⁸. Prior to this, FRU leader, Edgar Herrera was assassinated and Eduardo Lanza remains disappeared.

Although the technical return to a properly elected civilian government took place in 1984, the security forces, police units, criminal investigative bodies, migratory control agencies, customs and the National Commission for Refugees are all controlled and staffed by the military. All sources of communication including telephone, telegraph, telefax, and radio are run directly by the military. Civilian courts, claiming non-competency, often refuse to hear cases and defer to military tribunals which then refuse to act. Even when there may exist the will to adjudicate properly, threats have limited the possibility of independent judicial decisions.

Recently, the Government has shown a willingness to invite the Special Rapporteur from the United Nations Commission on Human Rights on Summary and Arbitrary Executions to Honduras and has vowed to allow full and free access to information. (Honduras invited the Special Rapporteur on Torture in 1989). The Government has also agreed to cooperate with the United Nations Centre for Human Rights in establishing a human rights training programme for their security forces. These are positive signs which it is hoped will bear results.

7. Id., p. 61.

8. *Urgent Action*, Commission for the Defence of Human Rights in Central America (CODEHUCA) Case: 90-44/H2, 22 March 1990.

Tibet

On 5 March 1989, Lhasa witnessed violent demonstrations when thousands of Tibetans flocked to the streets protesting against Chinese occupation of Tibet. Martial law which was imposed in Lhasa at midnight on 7 March 1989 was lifted on 1 May 1990 allegedly in view of the decision to be taken by the United States to renew China's 'most favoured nation' status¹.

Under martial law orders, all demonstrations, public gatherings and strikes were banned, all residents were required to carry identity papers, police checkpoints were established and access to the Lhasa city centre was restricted. Further, Chinese security forces were empowered to take "all necessary measures to put down disturbances". After the lifting of martial law, new restrictions have been imposed. In a decree broadcast on local television on 5 May 1990, the Lhasa City Police told citizens that prior permission was required for any kind of assembly, and that "forceful measures" would be used to put down any disturbances. The decree authorised the Police to "resolutely crackdown on activities that oppose the socialist system or are aimed at dividing the motherland.

Foreign tourists ordered to leave Lhasa by 9 March 1989, reported seeing Tibetans, including children, being dragged from their homes and driven away in police trucks. According to official sources, the death toll was 16 and hundreds of people were arrested. However, other Tibetan sources estimated that over 60 persons died in the pro-independence demonstrations, more than

200 were injured and over 1,000 persons were arrested.

The rioting of 5 March started after police attempted to break up a demonstration by a small group of Tibetan monks and nuns calling for Tibet's independence. This was only five days before 10 March, the anniversary of the 1959 Lhasa uprising against Chinese occupation of Tibet during which 87,000 Tibetans are alleged to have been killed in the clampdown by Chinese forces. The Dalai Lama, Tibet's spiritual and temporal leader was consequently forced to flee to India where he now resides with the Tibetan government in exile.

In 1949 the Chinese defeated the small Tibetan army, and in May 1951 imposed on the Tibetan government the "17 Point Agreement for the Peaceful Liberation of Tibet". The agreement which lacks validity under international law since it was signed under duress, authorised the entry into Tibet of Chinese forces and incorporated Tibet into the People's Republic of China.

The Dalai Lama, at his first press conference after his flight to India in 1959 stated that "The agreement which followed the invasion was thrust upon its people and government by the threat of arms. It was never accepted by them of their own free will. The consent of the government was secured under duress and at the point of the bayonet ... While I and my government did not voluntarily accept the agreement, we were obliged to acquiesce in it and decided to abide by the terms and conditions in order to save my people and country from the

1. On 25 May 1990, China's most-favoured-nation status was renewed.

danger of total destruction"².

In the 1980's Tibetans began to see a new, insidious threat to the survival of their culture and identity in the form of population transfer of Chinese into Tibet. Reportedly, China is offering incentives to its citizens to settle in Tibet and Tibetans have already been reduced to a minority in many parts of their traditional homeland.

Under China's national birth control policy, Tibetan women are allowed to have two children and the woman must be married and be between the ages of 25 and 35. A Tibetan woman desiring a second child must wait four years before becoming pregnant again. Women who do not observe these rules must have an abortion and/or be sterilised, or face severe social and economic sanctions.

According to Tibetan physicians and nurses who worked in Lhasa, Amdo and Kham, two types of birth control teams operate in Tibet. These include: birth control units in Chinese hospitals which implement birth control policy for Tibetans living near a hospital and; mobile birth control teams implementing birth control for Tibetans living in small villages and nomadic areas. Both teams appear to have a monetary incentive to undertake abortions and sterilisations on as many women as possible. The more names the doctors collect, the more money they get from the government, and from the women who are charged for the operation.

Two monks from Amdo in north-eastern Tibet said that during the two weeks the birth control tent stood in their village all pregnant women had abortions followed by sterilisation and every

woman of childbearing age was sterilised. "The birth control teams were initiated in 1982", the monks continued, "but since 1987 there has been a tremendous increase in the number and frequency of the teams that move from town to town, and to nomadic areas. Tibetans are outraged that the Chinese are trying to wipe out the Tibetan race. At the same time, Tibetans are helpless to prevent this"³.

Following demonstrations for independence which took place in September-October 1987, March 1988 and March 1989, thousands of Tibetans have been arrested because of their involvement in or advocacy of Tibetan independence from China or their proclamation of allegiance to the Dalai Lama. Tibetans have been arrested for putting up posters, setting up "counter-revolutionary" groups, writing "revolutionary" songs, encouraging rioters or collaborating with foreign reactionary elements. Some have received administrative sentences of "reeducation through labour" for participating in demonstrations. Detention orders for "reeducation through labour" are issued outside the judicial process by Public Security (police) officers, and those punished under these orders cannot question the grounds for their detention or appeal against it in a court of law.

Most political prisoners are detained without charge or trial and are held incommunicado and in solitary confinement for months or even years. In practice many prisoners are denied the right to a public hearing and are not allowed to communicate with family members or legal representatives.

Although China has ratified the United Nations Convention Against Tor-

2. Statement issued by the Dalai Lama at his first press conference held in Mussoorie, India, on 20 June 1959.

3. *Tibet: Refugee accounts of human rights violations in Tibet* Dr. Blake Kerr. IWGIA, International Work Group for Indigenous Affairs, Newsletter, December 1989, pp.98-100.

ture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 1988, cases of torture in prison have been frequently reported. The United Nations Special Rapporteur on Torture, P. Kooijmans in his report to the 46th session of the UN Commission on Human Rights in 1990⁴, states that he had addressed letters to the Government of China regarding cases of alleged torture of Tibetans who were convicted for involvement in demonstrations. Methods of torture include beatings with electric batons, cattle prods and rifle butts during interrogation, hanging of prisoners by their thumbs, ankles or wrists, and suspension from the ceiling or prison bars. Many prisoners testified that they were either doused with ice water or held down in tubs of cold water in winter in Lhasa when temperatures are very low. Tibetan monks and nuns have been treated particularly harshly in prison.

Authorities have sometimes charged friends and relatives a "collection fee" for the bodies of those killed in demonstrations or police custody.

The United Nations Committee Against Torture at its fourth session in Geneva held in April-May 1990 requested China to provide more details on measures undertaken to stamp out torture and submit an additional report by the end of the year.

The fact that torture practices occur in China has been publicly admitted by a statement of the Chinese Deputy Chief Procurator, Liang Guoqing, admitting that in the first quarter of 1990 his department investigated 2,900 cases of "perverting justice for bribes, extorting confessions by torture, illegal detention and neglect of duty". Of these more than 490 were "major cases, involving deaths

and injuries, as well as serious economic losses".

In April 1990 the Dalai Lama was invited to Brussels to address the Political Affairs Committee of the European Parliament on 'Human Rights in Tibet'. China's Chargé d'Affaires in Brussels in a letter to the President of the Parliament demanded that the President "immediately cancel the hearing and the invitation to the Dalai Lama". The Chinese failed to attend the hearing at which evidence of extensive human rights abuses in Tibet was presented by eight witnesses and experts, including three Tibetans. Details were provided of the imprisonment and torture of political prisoners, environmental destruction and of the transfer of Chinese settlers into Tibet. One expert submitted a secretly printed version of the Universal Declaration of Human Rights in Tibetan produced by some monks in Lhasa. In response, the government allegedly sentenced the monks to 19 years in prison in November 1989. On 23 May 1990, the Political Affairs Committee of the European Parliament decided to appoint a Rapporteur to travel to Tibet, India and Nepal to compile information on the human rights situation in Tibet. The decision has yet to be approved by the President's enlarged Bureau.

The Dalai Lama, when accepting the 1989 Nobel Peace Prize on 10 December, said "Because violence breeds more violence and suffering, our struggle must continue non-violently and without hatred. We shall try and put an end to our people's suffering, not to make others suffer. Ruthless politics is against human nature. I feel that the humanistic perspective is about to gain the upper hand".

4. Report of the Special Rapporteur on Torture, P.Kooijmans, Document E/CN 4/1990/17.

COMMENTARIES

UN Commission on Human Rights (1990)

The forty-sixth session of the United Nations Commission on Human Rights met from 29 January to 9 March 1990. It was the first meeting of the Commission following the democratic changes in Eastern Europe, the suppression of the pro-democracy movement in China and the U.S. invasion of Panama. The Commission also met after the General Assembly had called for an enlargement of its membership to remedy the under-representation of third world countries, while asking the Commission to study ways of making its work more effective.

The Commission adopted 81 resolutions and 13 decisions, of which 60 resolutions and ten decisions were adopted by consensus. Among the principal results of the session, which was marked by a growing north-south split, were strong resolutions on El Salvador, Guatemala, Haiti and Myanmar (Burma) and resolutions criticizing Cuba and the U.S. invasion of Panama. The Commission failed to act, however, on resolutions regarding China and Iraq or to break new ground on thematic issues. It also failed to come to any decision on enhancing its working methods - a decision later taken by the Economic and Social Council (ECOSOC).

The outgoing Chairman, Marc Bosuyt of Belgium, began the session with a minute of silence to remember the late Andrei Sakharov as well as all those, struggling for human rights, who died during the year. Under-Secretary General Jan Mårtenson noted that the past year

had seen the adoption by the General Assembly of the Convention on the Rights of the Child and the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty. In addition, he noted, a Draft Convention on the Protection of the Rights of All Migrant Workers and Their Families is in the final stage of elaboration by the General Assembly. Curiously, he did not refer to the important International Convention against the Recruitment, Use, Financing and Training of Mercenaries which was also adopted by the General Assembly.

Purificacion V. Quisumbing (Philippines) was elected Chairwoman of the session. Tordov Ditchhev (Bulgaria), Kongit Sinegiorgis (Ethiopia) and Zelmira Reggazzoli (Argentina) were elected Vice-Chairpersons and Ross Hines (Canada) was elected as Rapporteur, giving the Bureau the welcome presence of three women. During the session, the Commission heard speeches by the President of Poland, Mr. Wojciech Jaruzelski as well as the Vice-President of the Sudan and the Foreign Ministers of Ireland (representing the 12 EC countries), Austria, Cyprus and Guatemala, the deputy Foreign Ministers of Hungary, the Philippines, the U.K., and the U.S.S.R., and the U.N. High Commissioner for Refugees.

The Commission also witnessed a radical shift in the positions of the eastern European countries. Bulgaria and

Hungary voted for scrutiny of China, Cuba and Iraq. While the U.S.S.R. voted against the first two resolutions and abstained on the third, it put forth strong proposals to enhance Commission scrutiny in the future. The Hungarian Secretary of State for Foreign Affairs even proposed the creation of a Special Rapporteur to review the situation of those imprisoned for their political beliefs as well as of a commission which the Secretary-General could dispatch in emergency situations to carry out on-site inquiries. (Interestingly, Yugoslavia, formerly the "liberal" of the bloc, now became the most hard-line in its position as chair of the non-aligned group). At the same time, abstentions by most Latin American countries resulted in the failure of the resolutions on China and Iraq.

Before and during the session, drafting groups continued work on draft declarations on the rights of human rights defenders, the rights of mentally ill persons and the rights of minorities.

The ICJ intervened on: 1. the situation of human rights in the territories occupied by Israel; 2. the illegality of the U.S. invasion of Panama; 3. the Working Group on Enforced or Involuntary Disappearances, the draft declaration on disappearances being prepared by the Sub-Commission and the Sub-Commission's study on the independence of judges and lawyers; 4. the situation of human rights in China, Iraq, Myanmar and Peru; and 5. the Advisory Services Programme, with special reference to the situation in Guatemala and Haiti.

Enlargement and "Enhancement"

The present composition of the Commission is 11 members from African

states, 10 from the "Western Europe and Others Group" (WEO), eight from Latin America and the Caribbean, nine from Asia and five from Eastern Europe. It is clear that the developing countries are currently under-represented - half the western and eastern European states are represented on the Commission, for instance, while fewer than one quarter of African and Asian countries have seats.

This imbalance has received greater attention as the Commission has become increasingly politicized and polarized. As described in last year's article (see Review no. 42), regional blocs have, over the years, taken on increased importance. In the developing countries, these blocs are able to prevent or control measures sought to be taken against one of the region's governments. This problem has long prevented public Commission initiatives in Africa (outside southern Africa). The disproportionate scrutiny of Latin countries in the 1980s, combined with the highly-political U.S. campaign to condemn Cuba from 1987 to the present, has caused the Latin American bloc to consolidate. The "Group of 8" now effectively determines the limits of resolutions on Chile, El Salvador and Guatemala and would prevent initiatives on Colombia and Peru. The Asian group had long been divided by a diversity of cultures, languages, and forms of government. Nevertheless, the Asian group combined in 1989 to limit substantially a French initiative on Burma. In 1990, the non-aligned movement's Group of 77 (G-77) began, for the first time, to meet regularly and to exert its weight at the Commission. At the same time, the WEO group votes as a bloc in favour of all country resolutions except those on South Africa and the Occupied Territories and against most initiatives from the developing countries on issues of devel-

opment, economic, social and cultural rights and mercenarism. The eastern European countries, as a result of the changes sweeping that region, are coming to ally themselves increasingly with WEO positions, thus setting the stage for an increased north-south confrontation and fueling the move by developing countries to change the Commission's composition to ensure equitable representation.

Added impetus to this movement came when in 1989 the Sub-Commission adopted a resolution critical of China, which has since been lobbying heavily within the G-77 to curtail the powers of the U.N. in regard to human rights on the ground of non-interference in the internal affairs of states.

At its 44th Session in 1989, the General Assembly (GA) adopted a resolution recommending an expansion in the size of the Commission on the basis of "equitable geographic distribution." In the same resolution, as a compromise to gain WEO and eastern European support, the GA requested the Commission "to examine ways and means of making its work more effective".

The Commission therefore created an open-ended working group which met during the session to consider means of "enhancing" the Commission's work. It soon became clear, however, that the countries of the north - WEO and eastern Europe - and the developing countries grouped in the G-77 had radically different ideas about the meaning of this term.

Among the WEO proposals for enhancement were:

- to create a permanent mechanism, through the Bureau or the Geneva Permanent Missions, to allow the Commission to respond to urgent

situations between sessions. With the Beijing crackdown on everyone's mind, this proposal ran into strong opposition from the G-77;

- to strengthen the Commission's theme mechanisms - the special rapporteurs and the Working Group on disappearances - by giving them longer mandates (three, four or even five years). This security of tenure, it was felt, might enable them to become more activist and creative in pursuing their mandates and more critical of violating countries. It would also strengthen their hand in dealing with the many governments (including members of the Commission) which do not respond to requests for information, which respond with unsatisfactory denials or which give misleading or inaccurate responses.

The G-77, however, led by India and Pakistan, and without real debate or input from other regions, rapidly adopted a position paper with several radical counter-proposals. These included:

- replacing the thematic rapporteurs with geographically-balanced working groups composed of staff of the Geneva Permanent Missions;
- requiring that all allegations of human rights violations brought by individuals be channeled through the "1503" procedure rather than the rapporteurs and the working groups; and
- reducing the Sub-Commission to the role of standard-setting and producing studies.

The position paper also suggested that NGO oral statements be submitted 24 hours in advance and that a Commission working group monitor complaints against NGOs.

The position paper called for a de-politicization of the Commission's work and an end to "aspects of the functioning of the Commission which accentuate judgmental, selective or inquisitorial approaches, or which would establish an unequal treatment for one category of human rights as compared to the treatment of other categories". It sought to ensure priority consideration of *apartheid* and fair treatment of economic, social and cultural rights.

The diametrically-opposed proposals left little room for common ground. The northern countries seemed unwilling to recognize that the Commission has largely followed an agenda weighted towards its concerns (violations of civil and political rights), while many of the G-77 proposals seemed aimed at eviscerating serious Commission scrutiny of violations. On the very last day, the closing of the Commission's session was held up for eight hours as the two groups sought in vain to achieve consensus, at least on how to continue the process.

In May, however, a global agreement was reached at ECOSOC. A resolution, passed over the sole dissent of the U.S.:

- enlarged the Commission to 53 members (with four new seats going to Africa, three to Asia and three to Latin America and the Caribbean), with the new members elected in 1991 to sit at the 1992 Commission;
- authorized the Commission to meet exceptionally between sessions provided a majority of members so agree;
- recommended that the mandates of the thematic rapporteurs and working groups be of three years duration; and
- decided that the Commission's Bureau would meet in the week following each session to make suggestions

as to the organisation of the Commission.

Country Situations

Afghanistan

The Special Rapporteur Felix Ermacora (Austria) reported that despite the Soviet withdrawal, the human rights situation remained grave, with conditions of detention, land-mines and refugee resettlement issues of particular concern. In a consensus resolution on the human rights situation, the Commission called upon all parties concerned to work for the urgent achievement of a comprehensive political solution and the creation of the necessary conditions of peace and normalcy which would enable the Afghan refugees to return voluntarily to their homeland in safety and honour. Another resolution, under the item of self-determination, was adopted without a vote despite Soviet misgivings that such action was rendered superfluous by its withdrawal of forces.

Albania

By 27 in favour, 3 against (China, Cuba, Pakistan) and 12 abstentions, the Government was called upon to provide information on the concrete manner in which constitutional and legal measures comply with the provisions of the Universal Declaration of Human Rights, and to respond to the specific allegations transmitted to the Commission by its Special Rapporteur on the implementation of the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief.

Cambodia

The Commission met for the first time following the Vietnamese withdrawal from Cambodia, a fact hardly even referred to in the ASEAN-sponsored resolution on self-determination adopted by 31 - 5 (Cuba, Ethiopia, India, Ukraine, USSR) - 6 (Belgium, Canada, Hungary, Iraq, Madagascar, Sweden). Bulgaria did not participate in the vote. The resolution again condemned the "persistent occurrence of gross and flagrant violations of human rights" by the Vietnamese-backed government while, in the face of the growing threat from the Khmer Rouge, it again made only a passing and unidentified reference to the importance of a "non-return to the universally condemned policies and practices of a recent past".

Chile

During the initial adoption of the agenda, the special agenda item on Chile was suppressed, given the recent democratic elections in that country. Chile's Government-elect let it be known that it wished all scrutiny to end, a position not contested by those Chilean NGOs in Geneva. A consensus resolution requested the Government-elect to report, at a special meeting at the next session, on the follow-up to the recommendations adopted by the United Nations up to 11 March 1990 in connection with the restoration in Chile of the human rights and fundamental freedoms with which it has been able to deal.

China

In 1989, the Sub-Commission had requested the Secretary-General "to trans-

mit to the Commission on Human Rights information provided by the Government of China and by other reliable sources". The official response of the government of China deserves to be reproduced in full because of the brazenness of its attack on the principle that human rights are of universal concern:

"Last June, there occurred in Beijing a rebellion which was supported by hostile forces abroad and constituted an attempt to overthrow the legitimate Government of the People's Republic of China and subvert the socialist system set forth in the Constitution through violent means. The Chinese Government took resolute measures to quell the rebellion in the interests of the overwhelming majority of the Chinese people. This is entirely China's internal affairs and is a matter different in nature from the question of human rights. However, with the plotting and encouragement of some Western members, the Sub-Commission on Prevention of Discrimination and Protection of Minorities adopted resolution 1989/5 at its forty-first session. This is a brutal interference in China's internal affairs while hurting the feeling of the Chinese people. The Spokesman of the Foreign Ministry of the People's Republic of China issued a statement on 2 September 1989, solemnly declaring the firm objection of the Chinese Government to the resolution and deeming it to be illegal and null and void."

The Secretary-General's bold report of 33 pages, after printing the above official Chinese response, summarized the well-documented reports of Amnesty International, the International League for Human Rights and the International Commission of Health Professionals. The debate on China followed the same lines as that which took place in the Sub-Commission (see Review no. 43). The Chi-

nese delegation attempted to block the student leader Wuer Kaixi from addressing the Commission on behalf of the Federation Internationale des Droits de l'Homme, only succeeding thereby in calling further attention to the intervention. With Australia leading the way, it seemed that a mild resolution co-sponsored by Japan and 17 western countries (members and observers) had a good chance of passage, despite unusually strong lobbying by Beijing. Nevertheless, no country came forward to introduce formally the resolution and when Pakistan moved to take no action on the resolution, its motion carried 17-15-11. Voting for the motion were Bangladesh, China, Cuba, Cyprus, Ethiopia, Ghana, India, Iraq, Madagascar, Nigeria, Pakistan, Sao Tome, Somalia, Sri Lanka, Ukraine, the U.S.S.R. and Yugoslavia. Voting against were the 12 WEO countries, Bulgaria, Hungary, Japan, Panama and Swaziland. Abstaining were Argentina, Botswana, Brazil, Colombia, Gambia, Mexico, Morocco, Peru, Philippines, Senegal and Venezuela. The resolution's defeat came as several countries inexplicably voted differently on the motion to take no action than they had indicated they would on the substance of the resolution. India, for example, was expected to abstain on the resolution but voted in favour of the motion to take no action.

Cuba

The U.S. continued its highly political four-year campaign to censor Cuba, introducing a resolution aimed at the reprisals which the Cuban authorities allegedly took against witnesses who testified before the Commission's working group which visited Cuba in 1988. According to an intercepted communiqué from Secretary of State James Baker re-

leased by the Cuban delegation, the U.S. prepared "a high-level lobbying campaign tailored to individual countries". The provision or withholding of U.S. aid was a key factor, with several U.S. congressmen visiting the Commission to impress upon third world delegations the importance of their vote on Cuba. The geopolitical changes which had occurred over the previous year, combined with a hardening of the Cuban position and its increasing isolation, made the U.S.'s task much simpler than in previous years. Bulgaria and Hungary voted with the U.S., while Czechoslovakia and Poland as observers co-sponsored the U.S. resolution which passed by the comfortable margin of 19-12-12. It expressed "concern" over the reports of reprisals, called on Cuba to respond to these reports, and asked the Secretary-General to report to the next session on his contacts with the Cuban government.

El Salvador

Once again, the Latin group presented a draft text as a *fait accompli*, to the traditional European co-sponsors. Nevertheless, they did accept several amendments before the vote to take into account the deteriorating human rights situation, including the rise in summary executions, as evidenced by the murder of six Jesuit priests in November 1989 by elements of the armed forces. The final resolution is more critical than in the past, both of the government and the FMLN, whose offensive on San Salvador cost it diplomatic points. The Commission expressed its serious concern over the increase in the number of grave, politically motivated violations of human rights such as summary executions, torture and abductions, and the persistence of enforced disappearances. It strongly

appealed to the Government of El Salvador and the Frente Farabundo Martí para la Liberación Nacional to use the good offices of the U.N. Secretary-General to endeavour to achieve a negotiated political solution to the armed conflict that will encourage the existence and strengthening of a democratic, pluralist and participatory process involving the promotion and respect of the human rights of the Salvadorian people.

Guatemala

One of the most hard-fought battles at the Commission concerned Guatemala which had, since the accession of a civilian government, been receiving Advisory Services. In the past year there had been an alarming escalation in political violence in Guatemala accompanied by a continuation of a longstanding pattern of severe human rights violations. Meanwhile, the government has failed to assert its authority over military and paramilitary groups, to protect those who attempt to exercise their democratic rights, or to investigate and prosecute those in the military and police forces who are responsible for abuses. Four different reports by U.N. bodies submitted to the Commission including those on torture and disappearances evidenced this worsening situation.

This degradation of the situation again raised the question: When and under what conditions should the U.N. provide a government with advisory services? During the debate, the New York-based Lawyers Committee for Human Rights issued a report on the Advisory Services Programme in Guatemala which concluded that the programme has had no effect on Guatemala's dismal human rights situation and urged the Commission on Human Rights to renew

its commitment to monitor the ongoing human rights abuses occurring in Guatemala through appointment of a Special Rapporteur. The report of Hector Gros Espiell, the Advisory Services expert criticized in the past for his gentle treatment of the government, was this year overtly pessimistic.

The WEO countries, led by Sweden, introduced a resolution calling for the appointment of a Special Rapporteur. Several Latin countries, on the other hand, prepared a resolution keeping Guatemala under the Advisory Services Programme. The stakes were raised when, a few days before the vote, a Guatemalan guard at the Swedish embassy in Guatemala was brutally murdered in what was seen as a reprisal against Sweden for its role in the resolution. The Guatemalan Foreign Minister, who spoke to the Commission the next day, avoided any reference to the incident. While several European countries wished to hold on to Latin goodwill for the crucial China vote, Sweden stood firm even as the Foreign Minister toured European capitals. In the end, a compromise was reached. Raising the level of scrutiny one-half notch by inventing a new hybrid, the Commission requested the Secretary-General to appoint an independent expert as his representative to examine the human rights situation in that country and, at the same time, to supervise the provision of the advisory services. The resolution even left open the agenda item ("violations" or "advisory services") under which it would consider this matter at its next session.

Haiti

Like Guatemala, Haiti represented, in the eyes of many, an abuse of the Advisory Services Programme. In this case,

however, the abuse consisted in the absence of a demand for or use of advisory services. The excellent report by the Expert Philippe Texier (France) demonstrated how the military government of Haiti had used the formal existence of the programme to avoid proper scrutiny. The pessimistic, but realistic, conclusions of Expert Texier, for the second year running, together with the state of siege declared on the island just as the Commission session began caused the Commission finally to put an end to the offer of advisory services to the government of Haiti. Some Latin delegations, who were apparently upset by the strong language used in Texier's report (as well as his visit to the French and American embassies in Port-au-Prince, but not to the Venezuelan) balked, however, at up-grading his mandate to that of a "Special Rapporteur." Finally, the Chairman was requested to appoint an "independent expert" to examine developments in the human rights situation in this country, and to report back to the Commission under item 12 ("violations") (thus giving the mandate the content but not the name of a Special Rapporteur). The Latin delegations agreed after the session to the appointment of Texier for one year as the independent expert.

Iraq

At the Sub-Commission, an Iraqi government-sponsored NGO had invited individual experts to visit Iraq to judge the human rights situation. Several observers believed, however, that if U.N. action on the preoccupying human rights situation in that country was to be deferred as a result of such an invitation, it would be necessary to ensure that the visit took place in accordance with standard U.N. fact-finding procedure. Several western

countries therefore proposed a draft decision welcoming the invitation, asking the Chairman of the Sub-Commission to consult the experts on the visit, requesting the members to report on the visit to the Sub-Commission at its next session, requesting the Secretary-General to facilitate the visit in accordance with U.N. practice and requesting the Sub-Commission to report to the Commission the results of the visit. Iraq let it be known, however, that it opposed this formalization of the visit through a resolution which could be interpreted as a rebuke or result in item 12 treatment. Voting on the resolution was held up as the two sides sought, in vain, to achieve a compromise. Iraq then moved to take no action on the draft decision. Its motion carried 18-14-9. Once again, the abstentions of Latin American democracies Brazil, Colombia, Peru and Venezuela provided the margin, while Argentina even voted in favour of the motion to take no action.

Iran

The Commission's Special Representative Galindo Pohl (El Salvador) was finally able to visit Iran, shortly before the session began. Although there were rumours that witnesses with whom he met were subsequently harassed, his report was unexpectedly mild. Several observers believed this prudence came in exchange for the promise of a second visit. The Commission's consensus resolution, also mild, welcomed the decision of the Government to invite Pohl and encouraged the Government to comply with international instruments on human rights. It expressed concern over testimony gathered by Pohl about unlawful executions, torture, substitute prisoners and unfair trials while "recognizing that testimony was also gathered represent-

ing the opposite, and thus two different kinds of personal experience and view were received". It also unusually "recognizes that the Special Rapporteur rules out allegations that political prisoners had been executed on false charges of drug trafficking".

Israeli-Occupied Territories

For the first time in many years, the 12 states of the EC proposed a resolution on the Israeli-Occupied Territories. The resolution affirmed that "the settling of Israeli civilians in the Occupied Territories is illegal and contravenes the relevant provisions of the Fourth Geneva Convention"; and called upon the Government of Israel to refrain from settling immigrants in the Occupied Territories. It passed unanimously, save the U.S.'s abstention. Another resolution condemned the ill-treatment and torture of Palestinian detainees and Israel's refusal to apply the protections of the Fourth Geneva Convention. A third resolution condemned abuses in occupied Syrian territory.

Lebanon

The Commission, 41-1 (U.S.)-1 (Swaziland), condemned the continued Israeli violations of human rights in southern Lebanon. It called upon Israel to put an immediate end to such practices and to implement the relevant resolutions of the Security Council which require the immediate, total and unconditional withdrawal of Israel from all Lebanese territory and respect for the sovereignty, independence and territorial integrity of Lebanon. During the session, the Chairman appealed for a cease-fire in East Beirut.

Myanmar (Burma)

Under the confidential 1503 procedure, a French-sponsored resolution was reportedly adopted by consensus requesting the Chairman to appoint an independent expert "to establish direct contacts with the government ... on developments relating to the human rights situation in Myanmar and to report thereon to the Commission at its next session".

Panama

The International Commission of Jurists intervened to refute the U.S.'s purported justifications, under international law, of its December 1989 invasion of Panama. The U.S. sought to avoid Commission debate on its military action, arguing that to do so would "politicize" the Commission with an issue already discussed (and censured) by the General Assembly. Mexico pointed out, however, that the Soviet invasion of Afghanistan had regularly been condemned by the Commission. Finally, a Cuban-sponsored resolution to condemn the invasion as a violation of the Panamanian people's right to self-determination was adopted by 14-8-17. Notable were the abstentions by several WEO states (Belgium, France, Spain, Sweden) as well as several Latin states, and the vote of all five eastern European member countries in favour of the resolution. Counter-proposals submitted by the United States and Panama (represented at the Commission by the authorities installed in the invasion) were withdrawn before they could be voted on.

Romania

The Special Rapporteur on Romania appointed in 1989, Mr. Joseph Voyame

(Switzerland), who was denied entry into Romania before the fall of the Ceausescu government, was able, at the invitation of the new government, to visit that country during the Commission's session and reported back on the important changes which had occurred. With the agreement of the new authorities, the Commission, noting "the considerable improvement in respect for human rights that has taken place in Romania" renewed the Special Rapporteur's mandate for a further year. This was seen as an important precedent. In 1987, when dictatorships fell in Guatemala and Haiti, the Commission rapidly terminated the mandate of the Special Rapporteurs, only to find that the human rights situation did not improve. The same criticism was made in some corners this year of the end of the Chile rapporteurship.

South Africa

Commission debate reflected the changing situation in South Africa and the liberation of Nelson Mandela, which occurred during the session. The Commission heard reports from the Group of Experts on southern Africa and the Group of Three set up under the apartheid convention as well as that prepared by Sub-Commission expert Khalifa (Egypt) on transnational corporations doing business in South Africa. A resolution was adopted by consensus on the detention and torture of children. By 31 - 10 (all WEO states save Sweden, and Japan) - 2 (Hungary and Swaziland) the Commission called for mandatory and comprehensive sanctions against South Africa.

Western Sahara

Following the consensus reached at the General Assembly, reflecting the

talks underway between the King of Morocco and the Polisario, the Commission for the first time adopted a resolution on self-determination for the people of Western Sahara without a vote.

Confidential "1503" Procedure

The Commission had before it allegations of gross violations involving Brunei, Haiti, Paraguay, Myanmar and Somalia. It dropped consideration of Brunei, where the long-term prisoners in question had been released, transferred Haiti to public scrutiny (see above) and suggested that Paraguay apply for advisory services. Somalia was left pending, while a special rapporteur, as described above, was appointed for Myanmar.

The Commission once again failed even to consider action regarding some of the worst situations. Abundant evidence, including that gathered by the Commission's own mechanisms, pointed to Colombia, Peru, the Philippines and Sri Lanka as situations of mass violations. The genocide against the Yanomami Indians in Brazil was ignored by all but a few NGOs, as were the troubling situations in Ethiopia, Liberia, Sudan and Zaïre.

Theme Mechanisms

The theme mechanisms, established by the Commission to examine specific types of human rights violations across the world, have proved in the ten years since the creation of the Working Group on Enforced or Involuntary Disappearances to be the most effective and objective monitoring bodies of the international community. As noted above, the mandate of these mechanisms became

one of the stakes of the "enhancement" debate. The draft resolutions on torture, executions and disappearances, prepared by WEO countries, would have extended their mandates for longer than the current two years. The G-77 countries countered by threatening to have them reduced to one year. In the end, all the mandates were again extended for two years, although the agreement reached at ECOSOC will mean three year mandates in the future.

Disappearances

In the past ten years, the Working Group on disappearances has transmitted some 19,000 qualifying cases to governments in all parts of the world. In 1989 alone, it dealt with 721 new cases, described as "an alarming increase" over 1988's figure of 400. Once again, Peru topped the list, with 404 cases reported to have occurred in 1989, followed by Iran (121), Guatemala (40), the Philippines (36), El Salvador (34) and Sri Lanka (33).

Since its establishment ten years ago, the Working Group has been the most effective of the Commission's theme mechanisms. It has been the cornerstone of international efforts to help relatives in their search for the victims of disappearances and in working to prevent future disappearances. Its methods of work, including its urgent action procedure, its practice of providing feed-back to the sources of information, and its reporting on the substance of cases transmitted, have served as a model for the other thematic procedures. Of the theme mechanisms, only the Working Group invites the authors of complaints to comment upon the official responses of governments so as to help it judge the veracity of the response.

In its Concluding Observations, the Working Group looked back on its first decade. It reiterated the view that disappearances "constitute the most comprehensive denial of human rights in our time" violating "practically all basic human rights of a disappeared person". It reviewed the relationship between states of emergency and disappearances. The group identified impunity as "perhaps the single most important factor contributing to the phenomenon of disappearances," confirming the "age-old adage that impunity breeds contempt for the law". Among the factors leading to impunity, according to the group, are the use of military courts, institutional paralysis of the judicial system, and the lack of implementation of *habeas corpus*.

The United States shocked a closed WEO meeting with a proposal to abolish the working group, on the ground that it was set up in answer to Argentina's dirty war tactics and as such had outlived its usefulness. It proposed to consolidate the group with the special rapporteur on executions in one mandate, on the rationale that most of the disappeared are eventually killed. The idea met with unanimous rejection by the rest of the WEO group, and dismay from the NGO community, but is apparently part of a larger plan, not fully announced yet, which calls for the eventual termination of all theme mechanisms except for rapporteurs on political killings and disappearances (combined), torture, and religious intolerance as well as a future rapporteur on free elections.

The ICJ, together with other NGOs, suggested that the Commission could enhance the role of the Working Group by giving more attention to the recommendations in its report when adopting resolutions. This concerns both general recommendations as well those appeals

addressed to specific countries which have either not cooperated with the Group or have failed to carry out the recommendations addressed to them as a result of country visits. The Netherlands remarked that the Commission "has thus far been rather meek in insisting on feedback" from governments on country-specific recommendations. As a result of the ICJ's lobbying, the resolution adopted by the Commission emphasized for the first time two important suggestions of the Working Group: the need for governments to ensure prompt and impartial investigations of alleged disappearances and the importance of maintaining *habeas corpus* even during states of emergency. The Commission also called on the Sub-Commission to complete its work on the draft declaration on disappearances which the ICJ had been promoting.

Summary or Arbitrary Executions

The Special Rapporteur on Summary or Arbitrary Executions, ICJ Commission member Amos Wako (Kenya), reported more than 1,500 alleged cases of extrajudicial executions in 48 countries. He noted a rise in death threats, in particular against judges, lawyers, human rights activists, public office-holders, trade unionists, educators, journalists, witnesses to crimes and opposition leaders. Citing the report of the ICJ's Centre for the Independence of Judges and Lawyers on the "Harassment and Persecution of Judges and Lawyers", he also looked at the phenomenon of human rights defenders as victims of summary or arbitrary executions. On a positive note, he considered the 1989 adoption by the Economic and Social Council of the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary

and Summary Executions to be a "milestone" for his mandate and annexed the Principles to his report.

In pursuing his mandate, he visited Colombia and Suriname. His report on Colombia detailed assassinations committed over the past four years against union leaders (259), teachers (129) and members of the left-wing Union Patriótica (567). It also listed 73 "massacres" of more than 4 persons in 1988 and 21 between January and August 1989. As with last year's report on Colombia by the Working Group on Disappearances, the Commission took no action on the Colombia report, failing even to mention it in the resolution extending the Special Rapporteur's mandate.

Torture

The Special Rapporteur on Torture, Mr. Kooijmans, for the first time, adopted the practice of summarizing his communications with governments concerning cases of alleged torture reported to him. This practice, already used by the Special Rapporteur on executions and the Working Group on Disappearances, provides a much more vivid picture of the practices alleged to take place in particular countries and places a much greater burden on the countries in question to respond adequately to the allegations. The Special Rapporteur noted that torture "still remains a common phenomenon in today's world" and pointed to the recently adopted Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment as a "check-list", compliance with which "would make torture during detention or imprisonment virtually impossible". He made a number of recommendations, most of which were contained in his earlier reports. Among these were that "in-

communicado detention should be prohibited" and that detainees should be given access to legal counsel no later than 24 hours after arrest.

During the year, the Special Rapporteur sent 51 urgent appeals to 26 countries (receiving replies from only 13) and carried out missions to Guatemala, Honduras and Zaire in response to invitations by those governments. Before his visit to Guatemala, he visited exiles in Costa Rica to discuss the situation with them. Importantly, he also made public the responses from South Korea and Turkey to recommendations he made after visits to those countries last year.

Several countries stressed that roles of the Special Rapporteur and the Committee against Torture were complementary and that the exchange of information between the two should be increased further. Switzerland also suggested that the Special Rapporteur use country visits to encourage ratification of the Convention.

Mercenaries

The Special Rapporteur on mercenaries, Enrique Bernales Ballesteros of Peru, presented a report on the existence of mercenary activity against Angola, Colombia, Comoros, Maldives and Nicaragua. As a result of visits to Nicaragua and the U.S., he was able to provide great detail, particularly in his report to the General Assembly, on the use of mercenaries in the U.S.-sponsored aggression against Nicaragua. He also looked at the collusion between mercenaries and drug traffickers, as in the case of Colombia, and the vulnerability of small island states, such as Comoros and Maldives, to mercenary activity.

At its 1989 session, the General Assembly adopted the Convention against

Mercenaries. As the Convention contains no monitoring mechanism, the Commission requested the Special Rapporteur to include in his future reports information on the state of ratifications and the mode of application of the Convention.

Sub-Commission Elections

In keeping with the new four-year mandates of Sub-Commission members, half the experts stood for re-election. One of the most closely watched elections was in the western European Group, where China had lobbied strongly against Louis Joinet (France) as architect of the Sub-Commission's resolution criticizing the suppression of the pro-democracy movement. Joinet was easily elected, however, as were the two other incumbents, Daes (Greece) and Palley (U.K.), defeating a challenge by a Spanish candidate.

In Eastern Europe, Stanislav Cher-nichenko (U.S.S.R.) was re-elected unopposed. In Africa, where 11 candidates sought three positions, Attah (Nigeria) and Ksentini (Algeria) were re-elected together with Mr. El Hadji Guissé (Senegal) while incumbent Agboyibo (Togo) was defeated. Asian experts Tian Jin (China) and Al-Khasawne (Jordan) were re-elected together with Rajindar Sachar (India) who was nominated in the place of Bhandare after the defeat of the Congress party with which he was closely connected. In Latin America, Leandro Despouy (Argentina), who was renominated despite a change of governments after strong pressure from human rights activists, was re-elected together with new members Claude Heller (Mexico) and Gilberto Vergne Saboia (Brazil), while incumbent Varela-Quiros (Costa-Rica) was defeated.

Other Developments

– *Armed Opposition Groups:* Peru and Colombia proposed a draft resolution which would have set up a working group to study violations of human rights by armed opposition groups and drug traffickers. The ICJ and other human rights groups, together with several delegations, reacted strongly both to the concept of human rights violations by non-governmental entities as well as to having the Commission dedicate its energy to studying and reporting on these groups rather than on government actions. However, a revised resolution was presented, calling on Special Rapporteurs to “pay particular attention to the activities of irregular armed groups and drug traffickers” in their reports and requesting the Secretary-General to collect information on these questions.

In its introduction to the resolution, Peru made clear that it was not aimed at national liberation movements but at irregular bands seeking to submit democratically-elected governments, and that it did not intend to diminish state responsibility for protecting human rights. On a roll-call vote, the resolution was adopted with only Cuba and Sweden abstaining. Mexico criticized the ambiguity of the term “irregular armed groups” stating that there was no clear difference between these groups and national liberation movements, and noted that the word “irregular” has no precise meaning. It also criticized the magnitude of the request to the Secretary-General;

– *Cooperation with U.N. Rapporteurs:* Responding to allegations that individuals meeting with the Special Rapporteur on Iran and the group visiting Cuba in 1988 suffered reprisals, and to a draft law in El Salvador which would penalize

giving harmful information to U.N. bodies, the Commission called on governments to “allow unhampered contacts between private individuals” and U.N. representatives, and on the Secretary-General to submit information to its next session “on reprisals against witnesses or victims of human rights violations”;

– *Minorities:* The Commission provisionally adopted a draft declaration prepared by an open-ended working group, on the rights of persons belonging to national, ethnic, religious and linguistic minorities. The Centre for Human Rights will prepare a technical review of the text for next year’s second reading;

– *Independence of judges and lawyers:* The Commission declared itself “disturbed at the continued harassment and persecution of judges and lawyers in many countries”, endorsed the Sub-Commission’s decision to entrust Mr. Louis Joinet to prepare a working paper on means by which the Sub-Commission could monitor the implementation of the Basic Principles on the Independence of the Judiciary and the protection of practising lawyers, and recommended that the Eighth Crime Congress consider adoption of the Draft Basic Principles on the Role of Lawyers; and

– *Advisory Services:* Responding to widespread concerns, the Secretary General’s report on the Advisory Services Programme gave a clearer definition of the programme’s priorities. The ICJ still called for criteria to be developed for assessing which projects to support. The ICJ welcomed the closer collaboration between the Advisory Services Programme and international human rights NGOs, including the ICJ, and suggested that this collaboration should also extend to national NGOs.

In a 1989 joint statement by the ICJ and 20 other NGOs, it was asserted that "the promotional work of the Advisory Services Programme must not be allowed to replace or undermine the monitoring programme of this Commission." This year, the Commission recognised the mistake it made in 1987 by returning Haiti to item 12, and leaving that possibility open for Guatemala. The Under-Secretary General also made it clear that U.N. assistance is not a "free ticket" from scrutiny.

In other actions, the Commission:

- placed the question of implementation of the Convention on Rights of the Child on next year's agenda and endorsed the appointment of a Special Rapporteur on the sale of children, child prostitution and child pornography;
- adopted the guidelines on computerized personal files prepared by Sub-Commission expert Joinet and transmitted them to the General Assembly for final adoption;
- called on States to make known and implement U.N. guidelines on the use of force by law enforcement officials; and
- over the opposition of the U.S. and Japan, retained an agenda item on the impact of debt-induced structural adjustment policies on the enjoyment of human rights.

Conclusions

The Commission was marked by a growing north-south division, both on substantive issues and on the future of the Commission itself. On two key votes on human rights violations, China and

Iraq, the northern countries stood alone. The abstentions by Latin American countries came as major disappointments. For years, the Latin countries have complained, justifiably, that the Commission had been selective in its condemnation of abuses - taking up those in Latin America while ignoring those on other continents. Now, when the chance came to remedy that imbalance, the Latins inexplicably abstained. (Interestingly, the Latin countries, which have traditionally shown little interest in Haiti, adopted it as one of their own to bolster their selectivity argument).

The resolutions on Guatemala and Haiti, which increased scrutiny of both countries by only a half-notch, despite horrendous human rights situations, illustrated just how hard it is to appoint new special rapporteurs. Nevertheless, by creating new forms of mandates short of the traditional special rapporteurs, the Commission perhaps made the process more flexible by opening the possibility of a middle-level form of scrutiny.

The increased voice which will rightly be given to developing countries underscores the long-term need for the human rights movement to develop constituencies in those countries which will force governments to take pro-human rights stands on international issues. For the first time this year, as one eastern diplomat noted, east bloc governments had to explain to their people their votes on issues such as human rights in China. Yet democratic, pluralistic countries such as Argentina faced no such pressure. Did any of the active human rights groups in Buenos Aires know their government had voted with Saddam Hussein to prevent real scrutiny? The vigorous Argentine press certainly did not report it. Similarly, in countries such as Pakistan and India where new governments have

shown themselves responsive to the demands of social action groups at the domestic level, no change was seen in their positions at the Commission. Again, did the Indian press or public - or the human rights activists appointed to

high government positions - know that its government had voted against U.N. criticism of the Tienanmen massacre? Making sure that the domestic constituency is there will be an important challenge for international NGOs.

UNESCO Meeting of Experts on the Rights of Peoples*

Recent developments in a number of the outlying republics of the Union of Soviet Socialist Republics, the emergence of new political movements in the States of Eastern Europe and renewed suggestions about German reunification call attention once again to the controversy in international law about the "rights of peoples".

The notion that a "people" existed and could have rights cognizable in international law, as distinct from the rights of States, organisations and individuals recognised by such law, has led to vigorous and sometimes heated debate.

Notwithstanding the controversy, successive meetings of UNESCO resolved to continue the study of the notion of peoples' rights. This decision was resisted by the United States of America and the United Kingdom, then members of UNESCO. When those States withdrew from UNESCO in 1984, one of the reasons given, at least by the United

States, was the attention being given within UNESCO to the "Rights of Peoples".

It was against the background of the practical illustrations of popular assertions of peoples' rights in Eastern Europe and the institutional controversy within UNESCO about peoples' rights that a meeting of experts was convened at UNESCO headquarters in Paris from 27 to 30 November 1989. The experts elected Justice Michael Kirby, President of the New South Wales Court of Appeal, as chairman of the meeting, and Charles Leben, Professor of International Relations at the University of Bourgogne, as rapporteur. The report and recommendations of the meeting were distributed by UNESCO in February 1990. This document is likely to be the more influential because:

- it sets the controversy about peoples' rights into the context of contemporaneous illustrations of the assertions of

* This paper is a shortened version of an article which was published in the May 1990 issue of the Australian Law Journal

peoples' rights as distinct from state rights in many parts of the world, especially Eastern Europe;

- it summarises the state of the international debate about peoples' rights and the earlier UNESCO contributions to that debate;
- it confronts directly the controversy about peoples' rights and the concerns, legitimate or otherwise, which have been expressed that the notion of peoples' rights might be used by States to derogate from individual human rights; and
- it addresses specifically the expressed concerns of the United States, by illustrating from its own constitutional and political history the influence in that country of the notion that peoples have rights, cognizable in international law, and distinct from those of the State of which they happen to be members or of the individuals who make up such peoples.

The experts unanimously concluded that peoples' rights, as such, are now represented in international law. The most familiar of such rights is that to self-determination. The expert report points out that the assertion of this right was the very foundation of the establishment of the United States of America itself. In familiar language the US Declaration of Independence begins "When in the course of human events it becomes necessary for one people to dissolve the political bonds which have connected them with another ...". It is also pointed out that Presidents Wilson and F. D. Roosevelt insisted that the self-determination of peoples should be included in the Allied war aims in both the First and Second World Wars. It was the insistence of the United States which led to the opening words of the United Nations

Charter being expressed: "We the peoples of the United Nations...". The authority of the Charter is thereby founded, by its terms, not upon the States which are parties but upon the peoples they represent. The second purpose of the United Nations set out in that Charter is "to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples". Similar priority and emphasis on peoples' rights exists in the human rights covenants.

Against this background it is not surprising that the experts concluded that peoples' rights exist in international law. The debate now, their report declares, is about the content of such rights. Upon that debate the experts acknowledge room for legitimate difference of opinion. But they urge that one forum for the exchange of ideas and opinions aimed to clarify the concept of peoples' rights was UNESCO. Participation in that forum, not opting out of the debate or erroneously rejecting the idea out of hand, is the way that progress about peoples' rights will be made.

In the current developments in Eastern Europe, the notion of a peoples' right to open, accountable and democratic government appears to lie behind the significant popular movements which have accompanied or led to recent changes. In the opinion of the experts, the assertion of group concerns and identity as a people represent enduring features of human history.

To meet the objection that "peoples' rights" is ill-defined, the experts offered a description of a "people" for the purpose of peoples' rights. They suggested that it should comprise a group of individual human beings who enjoy certain common features, such as historical tradition, cultural homogeneity or linguistic

unity. But there must also be a will to identification or consciousness as a people usually accompanied by institutional or other means for expressing common characteristics and the will for identity.

Whilst acknowledging the need for further clarification of the concept of peoples' rights and of the content of such rights and whilst urging respect for the diversity of viewpoints, the experts urged the need for pursuing debates on this topic. Without limiting the issues that should be studied, they singled out for particular attention:

- the implication of peoples' rights, including for rights to internal self-determination and democratic forms of

government;

- the implication of peoples' rights for a safe environment and for effective responses to disasters of transnational significance such as occurred at the Chernobyl nuclear power plant in the Soviet Union; and
- the implication of the suggested peoples' right to peace. See General Assembly Resolution 39/11, 12 November 1984.

The report of the expert meeting concludes with a substantial list of recommendations, for further work within UNESCO and its member States, designed to advance the understanding of the notion of peoples' rights.

Global Consultation on the Right to Development

On 6 March 1989, the Commission on Human Rights adopted without a vote resolution 1989/45 inviting the Secretary-General to organize a global consultation on the realization of the Right to Development. The Consultation which took place from 8 to 12 January 1990 brought together over 170 experts including representatives of the United Nations system, its specialised agencies, the World Bank, the International Monetary Fund, regional inter-governmental organisa-

tions and non-governmental organisations active in the field of development and human rights¹. The objective of the Consultation was to focus on the fundamental problems posed by the implementation of the Declaration on the Right to Development, the criteria which might be used to identify progress, and the mechanisms for evaluating and stimulating such progress.

As a result of the discussions, the participants agreed that:

1. It was disappointing that a number of inter-governmental bodies such as the FAO, the World Food Programme, UNICEF, UNESCO, WHO, UNEP and UNCTC, and many grass-roots development organisations were unable to attend.

- development is a process of self-realization and cannot be reduced to a single formula or list of objectives;
- the right to development must be defined by people for themselves and its content will need to be dynamic so as to adapt to change and to different cultural contexts;
- the right to development is already clearly accepted as a principle of positive international law;
- the drafting of a convention on the right to development would contribute little to the current legal value of this right and by reopening a debate on the content of all the human rights norms which are incorporated in the right to development, could even prove counterproductive;
- special measures are required to protect the rights, and ensure the full participation of particularly vulnerable sectors of society, such as children, rural people and the very poor²;
- since the human being is the central subject of development, participation becomes both the means and end of the development process; and
- access to information, education and the means of communication is crucial in the achievement of material and economic objectives, and provides the necessary knowledge, critical awareness, analytical capability and creativity for the empowerment of individuals, groups and peoples.

Participants in the Global Consultation made a series of recommendations to be undertaken by States, the United Nations system and non-governmental organisations in the implementation and

further enhancement of the right to development³.

Action to be undertaken by States

All States should take immediate and concrete measures to implement the Declaration on the Right to Development. In particular, national policy and development plans should:

- contain explicit provisions on the right to development and the realization of all human rights, especially the strengthening of democracy, together with specific criteria for evaluation;
- identify the needs of groups which have experienced the greatest difficulties in access to basic resources and set specific goals for meeting their needs;
- establish mechanisms for ensuring participation in periodical assessments of local needs and opportunities; and
- identify obstacles requiring international assistance and cooperation.

All States should take the necessary steps to strengthen their judicial systems so as to provide access by all, on a non-discriminatory basis, to legal remedies. Particular attention should be paid to ensuring access to justice by the very poor and other vulnerable or disadvantaged groups.

All States which have not yet done so should ratify the principal instruments in the field of human rights.

2. This conclusion was drawn from the paper submitted by the ICJ on its programme of legal services in rural areas.

3. See UN Document E/CN.4/1990/9 (Part III).

In the provision of bilateral development assistance to other States, as well as the provision of development assistance within their own territories, States should pay greater attention to the quality, as opposed to the mere quantity of resources. This includes, in particular, aspects of democratic participation and control, and increased self-reliance.

Action to be undertaken by the United Nations system

Implementation of the Declaration on the Right to Development should be co-ordinated by the Centre for Human Rights, with at least one full-time specialist devoted to this task. Effective co-ordination should also include a full time liaison officer on the staff of the Director-General for Development and International Economic Cooperation in New York, regular discussions within the United Nations Conference on Trade and Development, the Administrative Committee for Coordination and the Committee for Development Planning, and the establishment of focal points for the right to development and human rights in each development-related United Nations programme and agency.

United Nations bodies and specialized agencies should be requested to review their mandates and identify those areas of their activity and responsibility which are related to the right to development and other human rights.

The Secretary-General should appoint a high level committee of experts from all regions of the world serving in their personal capacity with relevant experience in human rights and development. As suggested by the Four Directions Council "This would not be the first time a human rights declaration was implemented

through formal investigative machinery". It is well known that the Declaration on the Granting of Independence to Colonial Countries and Peoples has been implemented through the establishment of a permanent committee to review situations, make recommendations to States, and report annually to the General Assembly.

Action to be undertaken by Non-governmental organisations

NGOs in the field of human rights and development should make efforts to exchange information and coordinate their activities, in particular with regard to the elaboration, implementation and assessment of national development plans.

They should also play a leading role in the dissemination of information about human rights, including the right to development, and stimulate national level awareness and discussion in "developed" and "developing" countries alike.

The Global Consultation was more than an academic exercise, and it is hoped that the recommendations which have been made will be implemented without delay. The Commission on Human Rights which met in February 1990 endorsed the conclusions and recommendations of the Consultation in a resolution which "reiterates the need for a continuing evaluation mechanism so as to ensure the promotion, encouragement and reinforcement of the principles contained in the Declaration on the Right to Development; and requests the Office of the Director-General for Development and International Economic Cooperation and the Centre for Human Rights to continue to coordinate the various activities with regard to the implementation of the Declaration...".

ARTICLES

United Nations Convention on the Rights of the Child Introductory note

*Cynthia Price Cohen**

On 20 November 1989, the United Nations General Assembly adopted, without a vote, the Convention on the Rights of the Child¹. This act brought to fruition a sixty-five year push for formal international legal recognition of the human rights of children. The Convention on the Rights of the Child is a unique human rights treaty in that it not only protects the child's civil and political rights but also extends protection to the child's economic, social and cultural rights and humanitarian rights. The Convention has been open for signature since 26 January 1990. It will come into force after the twentieth instrument of ratification is deposited with the Secretary-General of the United Nations.

Background

While the Convention on the Rights of the Child is a direct outgrowth of the

1979 International Year of the Child, its roots can be traced to the Declaration of Geneva, which was the first international instrument recognizing that children are entitled to special care and protection. This Declaration stated that "mankind owes to the child the best that it has to give". It was drafted by the Save the Children International Union, a non-governmental organisation established by Eglantyne Jebb to respond to the needs of children during the aftermath of World War I. The Declaration was adopted by the League of Nations in 1924². While it is true that there were a few early treaties protecting children, such as those aimed at stamping out child labour and trafficking, the Declaration of Geneva was the first step toward protecting children's rights in the broadest sense.

In 1959 the United Nations gave official recognition to the human rights of children by adopting the Declaration of

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1. U.N. Doc. A/44/736 (1989).

2. For early history of the Convention on the Rights of the Child see: C.P. Cohen, "The Human Rights of Children", 12 *Capital University Law Review* (1983).

the Rights of the Child³, a ten principle document inspired by and expanding on the rights put forth in the 1924 Declaration. It was in commemoration of the twentieth anniversary of this United Nations Declaration that 1979 was designated the International Year of the Child (IYC). As part of this celebration a conference was organised in Warsaw, Poland, in January 1979 by the Polish Association of Jurists, the International Association of Democratic Lawyers and the International Commission of Jurists. The conference approved unanimously a statement of 21 principles on the legal protection of the Rights of the Child. These principles were submitted in February 1979 to the Working Group of the UN Commission on Human Rights which was preparing a draft Convention on the Rights of the Child. The Working Group established by the Commission in 1979 completed its first draft of the Convention in February of 1988⁴.

Meetings of the Working Group were held each year from 1979 to 1987 for one week just prior to the annual session of the Commission. In the hope that the Convention might be completed in time for the thirtieth anniversary of the Declaration (and the tenth anniversary of IYC), a loosely formed alliance of non-governmental organisations and various United Nations bodies began to push toward this goal under a plan designated as "Target 1989". As a consequence, the Working Group was granted a two week drafting session in 1988.

Following the completion of the first draft, known as the first reading, the Working Group requested that the Secre-

tary-General conduct a "technical review" of the Convention, which would then be distributed to delegations, prior to the second reading meetings of the Working Group⁵ which was held in the Autumn of 1988. The Convention on the Rights of the Child was adopted at the 1989 session of the Commission on Human Rights and by the UN General Assembly on 20 November 1989.

Interest in the Convention on the Rights of the Child did not develop quickly. Some Western nations, the United States in particular, viewed the Convention as an Eastern Bloc project focusing mostly on economic, social and cultural rights; rights which are considered by many governments as not being rights at all but merely "good social policy". However, beginning in 1983 these prejudices were modified to a large extent, primarily because the original Polish model convention was slowly being expanded by the Working Group to incorporate more and more civil and political rights. Simultaneously, the quality and detail of the Convention's text began to be subjected to the scrutiny of the newly formed NGO Ad Hoc Group on the Drafting of the Convention on the Rights of the Child (NGO Group). The NGO Group was an informal association of approximately thirty international non-governmental organisations having consultative status with the United Nations Economic and Social Council. Cooperation between this group and government delegations during the drafting of the Convention provides a unique model of international legislative drafting.

During their twice-yearly meetings at

3. 14 U.N. GAOR Supp. (No. 16), U.N. Doc. A/4059 (1959).

4. U.N. Doc. E/CN.4/1988/28 (1988) and U.N. Doc. E/CN.4/1989/WG.1/WP.1. (1988)

5. U.N. Doc. E/CN.4/1988/28 at Annex (1988). For text of technical review see: U.N. Doc. E/CN.4/1989/WG.1/CRP.1 (1988)

UNICEF headquarters in Geneva, members of the NGO Group analyzed the proposed text of various articles of the Convention, critiqued previously adopted articles and drafted models of articles protecting rights which the NGO Group felt had been wrongly omitted from the draft Convention⁶. NGO Group recommendations were distributed in printed form to delegations prior to the annual meetings of the Working Group. These recommendations were often utilized by delegations as a tool for diminishing political tensions within the Working Group. Some of the rights included in the Convention which can be directly traced to NGO Group activities are: protection against "traditional practices" (i.e. female circumcision⁷), and against sexual exploitation⁸, protection of rights of indigenous children⁹, standards for the administration of school discipline¹⁰ and rehabilitation for victims of various types of abuse and exploitation¹¹.

Controversial issues, omissions and new rights

From the outset there were those who argued against the drafting of a separate treaty protecting the rights of children¹². Most of the objections were supported

by the assertion that children were already protected by existing human rights treaties and that it was unnecessary, repetitive and harmful to the human rights treaty-making process to encourage the proliferation of a series of special constituency treaties. Counter arguments asserted that existing treaties were too general to protect adequately the special needs of children. The final product of the Working Group would appear to justify the claims of those supporting such a treaty.

While it is true that many of the rights protected by the Convention on the Rights of the Child are also protected by other human rights treaties, applicability of these rights to children was enhanced by their reiteration in the Convention. Rights which were previously protected only as general concepts were clearly spelled out as to their applicability to children. Among the issues addressed by the Convention on the Rights of the Child which have been given greater clarification are the juvenile justice standards¹³, the relationship between the individual child, the family and the state¹⁴, the child's right to privacy¹⁵ and the extent to which other civil and political rights belong to children¹⁶. Implementation of the entire Convention is to be governed by the theory of the "best interests of the child".

6. For background of NGO participation in the drafting of the Convention on the Rights of the Child", see C. P. Cohen, "Role of Non-Governmental Organisations in the Drafting of the Convention on the Rights of the Child", *Human Rights Quarterly*, Vol 12, No. 1, p. 137 (1990).

7. *Supra* note 1 at article 24(3).

8. *Id.* at articles 34, 35 and 36.

9. *Id. e.g.* at articles 17(d), 29(d) and 30.

10. *Id.* at article 28(2).

11. *Id.* at article 39.

12. *Supra* note 2.

13. *Supra* note 1 at articles 37 and 40.

14. See *e.g.*, *id.* at articles 5, 9, 10, 11, 18, 19, 20, and 21.

15. *Id.* at article 16.

16. See *e.g.*, *id.* at articles 2, 6, 12, 13, 14, 15, 25, 37 and 40.

During the second reading, four areas emerged as what might be called "hot topics" or highly controversial issues. These were the rights of the unborn child, the right to foster care and adoption, freedom of religion and the minimum age for participation in armed combat. The rights of the unborn child were an issue from the moment drafting began on the article 1 definition of the word "child" right through to the end of the second reading. There were delegations and NGOs which argued that the rights of the unborn were protected to some degree by the law of every State, regardless of its national laws relating to abortion, and that to ignore these protections by omitting reference to them in the Convention was patently disingenuous. The carefully worded compromise language of article 1 which defines a child simply as "every human being...", and leaves it to the States Parties to give their own meaning to the words "human being" according to their national legislation, was not specific enough to satisfy some delegations. A further compromise was finally hammered out during the second reading, when the Preamble to the Convention was expanded to include a paragraph quoting the 1959 Declaration which refers to "appropriate legal protection, before as well as after birth"¹⁷. At no time was the issue of abortion *per se* discussed by the Working Group, since the focus of the Convention is on the rights of the child, born or unborn, and not on the rights of the mother to choose whether to have a child. It would be wrong to characterize debates over the rights of the unborn child as centering around the issue of

abortion. While it is true that the fact that abortion is legal in many countries was a factor in arguing for the vague language of article 1, actual discussion of the rights of the unborn extended far beyond the narrow issue of abortion and included the right of the child to pre-natal maternal health care and to protection from fetal experimentation.

Objections to freedom of religion and foster care were launched by the Islamic delegations, which found the first reading versions of these articles to be in conflict with the Koran and with their national legislation. According to their view, it is not possible for a child to be able to choose a religion or to change his or her religious faith. This is a privilege available only to adults¹⁸. Similarly, the Islamic religion does not recognize the right to adoption. In part, this position is based on a concept of consanguinity and inheritance within the inter-related extended family, which cannot and should not be altered by or affected by the act of bringing an outsider into the family structure. Instead, the Islamic countries substitute the concept of *Kafala* as a method of caring for abandoned or orphaned children. Under *Kafala* a family may take a child to live with them on a permanent legal basis, but that child is not entitled to use the family's name or to inherit from the family. The practice of *Kafala* would seem to be somewhat akin to permanent foster care. The final text of the articles guaranteeing freedom of religion and the right to adoption and foster care are the result of very difficult and delicate negotiation¹⁹.

Finally, the one article which remained a bone of contention, even dur-

17. *Id.* at preambular paragraph 9.

18. *Id.* at article 14.

19. *Id.* at articles 20 and 21. *Also see: infra* note 20.

ing final discussions before the Economic and Social Council and the Third Committee of the General Assembly, was the article dealing with children in armed conflict. Paragraph two of that article defines the minimum age at which a child may participate in armed combat. The overwhelming majority of Working Group members supported raising this minimum age for combat to eighteen years from the fifteen year old minimum set forth in the 1977 Geneva Protocols. The United States, the lone dissenter, took the procedural position that this Working Group was not the proper forum in which to alter the existing standards of international humanitarian law²⁰. Since the drafting of the Convention was done on the basis of consensus rather than by vote, the United States' steadfast refusal to alter its position prevented consensus from being attained in support of the higher minimum age of eighteen years.

While the final text of the Convention on the Rights of the Child is generally considered to be a very good one, there are some rights which might have well been included, but for the rush to meet the deadline of "Target 1989". As mentioned earlier, interest in the Convention grew slowly, increasing with each passing year. As a consequence, some recommendations for possible rights protections were simply recognized too late in the drafting process for them to be adequately proposed and discussed before the Working Group. For example, al-

though the juvenile justice provisions were radically improved during the second reading, in order to bring them into line with the penal protections of the International Covenant on Civil and Political Rights, the Working Group still failed to include protection against double jeopardy²¹. Similarly omitted, as a result of the last minute rush, were human rights protections for alien children, protection for children who are victims of forced internal migration and protection against medical experimentation.

It should be noted that, in addition to some of the NGO Group initiatives mentioned above, the Convention contains a number of human rights which have never before been protected in an international treaty. Of these, perhaps the most unusual is the protection of the child's "identity". This Argentinian-sponsored article has its roots in that country's tragic experience with children who "disappeared" during a repressive political regime²².

Implementation

The implementation mechanism of the Convention on the Rights of the Child calls for States Parties to submit regular reports to the ten members Committee on the rights of the child. The first of these reports is due two years following entry into force for the State Party and every five years thereafter²³. Due to general dissatisfaction with the Torture

20. U.N. Doc. E/CN.4/1989/48 (1989)

21. See: C.P. Cohen, "Inadequacy of Criminal Justice Rights in the Convention: Article 19", in C.P. Cohen Ed., *United Nations Convention on the Rights of the Child: Independent Commentary* (1988) and C.P. Cohen, "Juvenile Justice Provisions of the Draft Convention on the Rights of the Child", *New York Law School Journal of Human Rights*, Volume 7, page 1 (1989). Also see: notes 4 and 20.

22. *Supra* note 1 at article 8. For background see: S. Cerda, "Draft Convention on the Rights of the Child: New Rights", pp. 115-119, *Human Rights Quarterly*, Vol. 12, No. 1. (1990).

23. *Supra* note 1 at article 44.

Convention model, which provides for the monitoring committee to be funded solely by States Parties, the General Assembly voted to fund the Committee on the Rights of the Child from the general United Nations budget²⁴.

While the implementation section of the Convention on the Rights of the Child follows a fairly straightforward standard reporting mechanism on a monitoring committee model, it does have minor innovations. First of all, the primary aim of the reporting procedure has been couched in terms of assisting States Parties with their treaty compliance, rather than penalizing or pressuring States Parties that fail to comply. To this end provision has been made for the monitoring committee to refer States Parties' requests for technical assistance to United Nations "specialized agencies, UNICEF and other competent bodies"²⁵. Other innovations have been the inclusion of a specific supporting role for UNICEF in the monitoring process and for participation by NGOs which are meant to be included within the meaning of the words "other competent bodies"²⁶.

To a certain extent "Target 1989" also

played a role in limiting possible innovations in the implementation mechanism of the Convention. Because of time pressure, novel suggestions for the establishment of an International Ombudsman on the Rights of the Child were never given serious contemplation, neither were proposals for establishment of national monitoring committees²⁷. Given the pressure to complete the Convention on schedule, delegates preferred to stick closely to language and formulas carrying the stamp of approval of previous human rights treaty drafters. While in some ways this is unfortunate, the final text and implementation of the Convention are sufficiently satisfactory to outweigh the desirability of any innovations which might also have required additional years of treaty drafting. The one major shortcoming of the Convention's implementation mechanism is its omission of a method for reviewing the individual complaints of children whose rights have been violated. It is possible that this will one day be rectified by an Optional Protocol or by the addition of an amendment to the Convention's present text²⁸.

24. Compare *supra* note 20 and *supra* note 1 at article 43. Also see: R. Clark and F. Gaer, "The Committee on the Rights of the Child: Who Pays?" in C.P. Cohen, Ed., *Independent Commentary: The United Nations Convention on the Rights of the Child* (1988).

25. *Supra* note 1 at article 45 (1)(a) and (b).

26. *Id.*

27. See: C.P. Cohen, "The Convention on the Rights of the Child: Non-Governmental Organisations and Implementation", Paper presented at *UNICEF and the Draft Convention on the Rights of the Child* (Conference), UNICEF Headquarters, New York, NY, November 25-27 (1985).

28. *Supra* note 1 at art. 50.

Child Sexual Exploitation in Developing Countries*

"Throughout history, in virtually every culture, children have worked. It is largely through work, usually in a family context, that children are socialized into many adult skills and responsibilities.... through work, they not only earn status as family and community members, but they acquire skills which promote their self-esteem and confidence as capable and independent human beings However, the burden of work may become too great, while its educational and social role is neglected ... it can become a threat to their health and development Few forms of exploitation approach the degradation of child prostitution and pornography".¹

Sexual exploitation has been defined as "... a situation in which children are sexually exploited by an adult, for some form or other of material reward, a reward which can be given directly to the child or to a middleman/woman or parents/relatives"².

Children have traditionally been excluded from certain rights, and shielded from the accompanying responsibilities. It has often been assumed that parents or guardians would naturally act in a child's best interest, but this is not always the case. Children have no political power, and their opinions carry very little weight. They are dependent upon adults

and the state to protect their rights, and when this is lacking they become prime targets of sexual exploitation.

Extent of the problem

Because it is illegal in virtually every country of the world, no exact figures exist regarding the prevalence of child prostitution. Although it is apparently most prevalent in South East Asia, evidence indicates that it is not limited to any one geographical area. According to police statistics, 1,200,000 minors under the age of 16 are kidnapped, bought, or in some other way forced into the sex market each year. The result is a profitable five billion dollar industry for go-betweens (agents, pimps, madams, etc.) and criminal organisations.

A gigantic international sex industry now exists as an integral part of the society, primarily in South East Asia. In Thailand, Sri Lanka, and the Philippines, both boys and girls are prostituted. Because of differing social and cultural practices, boys account for 90% of child prostitutes in Sri Lanka, while in Thailand, 90% are girls. In the Philippines, 60% of prostituted children are boys. There is conscious recruitment of young boys and girls from poor villages by pimps and

* This article is based on research undertaken by Bruce Richman and Ruth Severiens from the Geneva Programme of Kent State University, Kent, Ohio, USA.

A child is a person under 18 or such earlier age as applicable in the country concerned.

1. UNICEF: ECOSOC "Children in Especially Difficult Circumstances", Executive Board session, 28 February 1986.
2. Ove Narvesen, "The Sexual Exploitation of Children in Developing Countries", Redd Barna, Norwegian Save the Children, Oslo, September 1989, p. 10.

club agents from urban prostitution centres³.

Because of the profit realized from the booming sex-tourism business in Thailand, competition has become fierce among procurers. As a result, younger and younger children are being procured. In the Philippines, the Aquino government has declared the eradication of prostitution as a priority concern, but evidence points to an ever-increasing number of men, women, and children caught up in it. In Manila alone, there are at least 20,000 boys and girls under 18 years of age in some form of prostitution⁴.

In Sri Lanka, "prostitution" really means boy prostitution. That country has established an international reputation especially in Germany and Scandinavia as a resort for homosexuals. There are approximately 8,000 boy prostitutes in the coastal region between Negombo and Hikkaduwa. According to a study of child prostitution in Brazil, among the more than 30 million abandoned children in that country, girls become prostitutes at a very young age. "From the age of six or seven years, children become available for sexual relations with men. The little girls do not often reach the age of twenty".⁵

In India, it is claimed that there are between 1.5 and 2 million persons involved in prostitution, approximately 20% of these may be considered as minors*.

Most of the studies cited indicate that child prostitution is a growing problem,

largely because it has reached the proportions of a large and profitable industry for its operators. In that industry the younger the child, the more money she (he) earns for the adult manager involved. Children are bought, sold and traded for profits by adults. The child is indeed dehumanized to the status of property, in other words - enslaved.

Causes of the problem

The exploitation of the powerless by the powerful is at the heart of the problem: power of male over female, adult over child, devious over naïve, rich over poor, organised (e.g. sex tour operators) over unorganised (individuals). Children who are at greatest risk include those from the poorest families, where even basic life needs cannot be satisfied and those from unstable family environments (e.g. alcoholic parents, abusive family relationships, broken homes, mothers who are prostitutes). Children who come from such problematic backgrounds and/or deprived families lack the benefits of the structures which can provide them with adequate care, protection and encouragement.

Several factors influence a child's entry into prostitution from within the family framework. In some societies, older relatives have "ownership" rights over younger family members. This gives the adult the right not only to the fruits of the child's labour, but to the child her/himself. The effects of such a relation-

3. "Tourism and Child Prostitution 1989", report of a conference held in May/June 1989, Bangkok.

4. See UN Doc. E/CN/4/Sub.2/AC.2/1989/6.

5. Ove Narvesen "Sexual Exploitation of Children in Developing Countries" summary and recommendations of an international investigation, Oslo, June 1989.

* It must be noted that the figures quoted are rough estimates and concern only the form of sexual exploitation which is visible. It is probable that many more children are involved in prostitution, especially organised prostitution which takes place away from the streets, often underground.

ship are typical in child prostitution. Parents are the adult figures most often implicated either by their direct complicity in selling a child, by their indifference to a child's fate, by their extreme poverty, or by their misplaced hope that by sending the child away they will give the child a chance for a better life.

Adult duplicity in the spiral of child prostitution is not uncommon. A large proportion of children involved in prostitution have been subjected to sexual abuse within the family framework - in many cases by a person the child knew. The children being used in such a way frequently come from homes where "previous sexual abuse has taught them that their body is something that can be sold ... children who have been sexually abused also attempt to obtain love and care through sexual relations". Self-selling, for whatever purpose, is also a factor in the prostitution of both boys and girls. In the case of poor families, it is often the eldest daughter who will sacrifice herself in order to help support the family, so that there will be one less mouth to feed. In Sri Lanka boys as young as eight years old have left school in order to sell themselves to tourists. The motive in that case is quick money. In many of the cases, it was learned that the parents knew of the boys' activities, but did not care how the boys spent their time and were always anxious for the money they brought in.

Prostitution as a form of child labour is a product of poverty and debts. Money borrowed from local money lenders must

usually be paid back at very high interest rates. Desperately poor parents sell their children into various types of labour, including (knowingly or unwittingly) child prostitution. In India, "for as little as Rs. 2,000 or so (US\$ 150), parents are made to part with their daughters in fond hope that they would at least get two square meals a day ..."⁶. The most obvious connection is employment which borders on prostitution such as work in bars, massage parlours, or hotels. It is often expected that the children make themselves available when sexual services are demanded although they are not directly employed for this purpose. If they fail to comply to such demands they risk losing their jobs. In Kenya for example, girls as young as six or seven years are employed as housemaids and are often sexually exploited⁷.

For some children, home is a place of danger and disparagement rather than a haven of love and protection. Many of today's street children have left their homes where violence and neglect prevail. Families, finding it increasingly difficult to survive on what the land produces, are forced to move to the large cities in the hope of finding work. The result is often the disintegration of the family structure. "Young people 18 years and younger, thousands of them are thrown out from ruined family lives and wind up in ... the city with no life plan, and nothing of value except their bodies"⁸. The street children left completely to their own resources with very little contact with their families are those who

6. Bhalerao, V.R. *Profile of Sexually Transmitted Diseases in Child Prostitutes in the Red Light Areas of Bombay*, in Naudé, U.S and K. R. Kapadia (eds). *Child Labour and Health: Problems and prospects*, Bombay, 1985, pp. 201-210.
7. Ove Narvesen, *"The Sexual Exploitation of Children in Developing Countries"*, Redd Barna, Norwegian Save the Children, Oslo, September 1989, p. 10.
8. Pierce R.C. *"Child Pornography: A Hidden Dimension of Child Abuse"* in child abuse and neglect 1984;8, pp. 483-493.

are the most easily involved in prostitution. It has been noted that when survival is the key issue, the child's vulnerability increases. Unable to find work and fearful of returning to their intolerable homes, there is, or seems to be, nowhere else to go. Threats of exposure to the authorities, with its implicit outcome of either return to the family or placement in state care, puts young runaways at the mercy of the pimp or madam who "found" them.

Exploitation of children for purposes of child pornography is becoming a prevalent mode for a child's introduction into prostitution. A common method used by an adult who wishes to initiate sexual contact with a child is to show child pornography. In that way, the child is tricked into believing that sex between children and adults is normal and desirable.

Certain religious practices also throw children into prostitution. One of the most widespread practices is the devadasi system in India whereby a four to five year old girl is dedicated to the Goddess Yellema, as a devadasi. When she reaches puberty, she is offered to the highest bidder in the crowd during a temple ceremony. She is bought by rich men to be their concubine or mistress and is usually discarded after one or two years. Although officially banned, this practice continues unrestrained in some parts of India. In Karnataka's Belgaum district the system is still widely practiced. "There thousands of minor girls are initiated into the cult of the Goddess Yellema every year during Marg Pur-nima. They are conditioned to believe

that they are meant exclusively for the pleasure of men and have to live off prostitution"⁹. Its adherents believe that religious prostitutes differ from commercial prostitutes because the women are religious ministrants - devadasi meaning servant of the gods; 90% of the girls so conditioned (5,000 to 10,000 each year) end up as common prostitutes¹⁰.

There is a definite connection between tourism and prostitution especially when prostitution is intentionally used as part of a package tourist attraction. Sex tourism has assumed worldwide notoriety as an illicit backstreet industry of gigantic proportions and has been cited overwhelmingly as a major factor in the serious increase in the number of children kidnapped, lured and sold into prostitution. Men especially from Scandinavia, Germany, Japan and Australia as well as Arab countries, take advantage of planned tours, mostly bound for South-East Asia.

Effects of the problem

Child prostitutes carry psychological as well as physical scars, characterized by poor physical and mental health and developmental retardation.

Fear is the constant companion of young prostitutes: fear of physical harm due to violence and sadistic acts from clients; fear of beatings by pimps; fear of apprehension by authorities; fear of their future. Because they are constantly demeaned, they suffer from low self-esteem and lack of self-confidence. Their helplessness in changing their condition

9. *Nobody's Children*, India Today, 15 April 1989, p. 126.

10. Holter Harriet. *Sexual Abuse of Children in Norway*. Report prepared for the Institute of Psychology, University of Oslo, July 1989.

leads to feelings of hopelessness. The sexually naïve child who is forced to comply over a long period of time suffers the most psychological damage.

As a rule, the physical health of child prostitutes is very poor. They suffer from malnutrition, improperly treated wounds and infections, tuberculosis, a variety of sexually transmitted diseases, and AIDS. If they receive any treatment at all it is usually at the hand of quacks, or they are taken for medical care only when they are seriously or terminally ill. A physician who operates a VD clinic in Bombay reports that young prostitutes are not allowed to go out by themselves, are given very poor diets, and if they cannot earn enough money they are confined, beaten, starved, or punished in some equally severe way. Many die very young.

Their subjection to violent or perverted sexual acts leads to further degradation. They fall prey to the use of hard drugs or intoxicants (including inhalation of solvents of glue) in order to make their lives tolerable. As a means to support their need for drugs, they become pawns in a series of criminal activities. The result is further deterioration.

In the realm of developmental health, the child's ability to grow emotionally into well-adjusted adulthood is severely damaged, if not destroyed. On a societal scale, the child prostitute represents wasted potential. Because of lack of education or training, the child is unable to contribute positively as a member of the community. Thus, the child is lost, not only in terms of his/her own opportunities and capabilities but also in terms of contribution to society.

Why is it that society can be so cruel to its children, children who are so affected that they retain permanent scars on their minds and bodies?. How can society compel its children to assume adult roles and risks, thereby forgoing their childhood?. "The way society treats its children reflects not only its qualities of compassion and protective caring but also its sense of justice, its commitment to the future and its urge to enhance the human condition ... This is as indisputably true of the community of nations as it is of nations individually".¹¹

National legislation

Since it has become increasingly evident that parents or guardians do not always act in the best interests of the child, it is the state which has to protect their rights.

A number of countries have enacted legislation which sets standards and defines the limits of acceptable behaviour. The following national legislation has been promulgated: in Brazil, prostitution is legal only for women above the age of 18; in India, individual prostitution is permitted, however, earning of money from other people's prostitution is forbidden; in Kenya, children are protected from mistreatment or abuse but the law covers neither sexual abuse nor sexual exploitation specifically; in the Philippines, the law prohibits prostitution but there is little or no protection from sexual exploitation; in Sri Lanka, laws clearly prohibit the sexual exploitation of children and sexual relations with a child below the age of 12 is considered rape

11. United Nations Focus - *Convention on the Rights of the Child*, UN Dept. of Public Information, DPI/1016-41219, Dec. 1989.

regardless of whether the act was perpetrated with or without consent; in Thailand, all forms of prostitution are prohibited, the law covering both customers and those who organise prostitution. The penal code of 1956 as amended in 1982 deals particularly severely with procurers and profiteers of minors.¹²

Only very few developing countries have laws that explicitly prohibit sexual exploitation of children and these are often not enforced. Most governments demonstrate little political will in tackling the underlying causes contributing to the perpetuation of child sexual exploitation. Corruption on the part of officials renders such laws all the more meaningless. In Bombay, India, police corruption is systematized to the extent that the police department responsible for policing the town's night life takes bribes from every brothel. The owner must pay the police a larger sum for every minor they employ.¹³

Prostitution cases involving children are seldom reported since children fear reprisals, feel guilty or do not know where to turn to, who to approach, who to trust and many times do not realise the full implications of their activities.

The organisers of child prostitution are almost never brought to justice. In India for example, of the 784 prosecutions against organisers of prostitution in 1972, 782 were dismissed. It is very often the children, victims of sexual exploitation, who are being treated like criminals and imprisoned on charges such as vagrancy and petty crime while the exploiters go free.

UN Convention on the Rights of the Child

A number of international human rights instruments have been drafted to protect persons including children from discrimination, slavery and prostitution¹⁴.

The UN Convention on the Rights of the Child is the most promising instrument. It was adopted by the General Assembly on 20 November 1989 and will enter into force once 20 states have ratified it. The Convention supplements the 1959 Declaration on the Rights of the Child as well as the approximately 80 international instruments that concern in one way or another the situation of children. It is based on three major premises which are innovative: participation, protection and survival. It is the first international legally binding instrument which provides for wide protection to children from sexual exploitation. Article 34 provides that States Parties shall take all appropriate national, bilateral and multilateral measures to prevent:

- a) the inducement or coercion of a child to engage in any unlawful sexual activity;
- b) the exploitative use of children in prostitution or other unlawful sexual practices; and
- c) the exploitative use of children in pornographic performances and materials.

Article 19 places an obligation on states to "... take all appropriate legisla-

12. Ove Narvesen, *Op. Cit.*, pp. 50-59.

13. *Ibid.*, p. 54.

14. These include the UN Convention on the Elimination of All Forms of Discrimination against Women, the Slavery Convention of 1926 and the Supplementary Convention on the Abolition of Slavery, and the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others.

tive, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse while in the care of parent(s), legal guardian(s) or any other person who has the care of the child" and provides for the provision of preventive and treatment programmes in this regard.

Article 39 provides for " ... physical and psychological recovery and social re-integration of a child victim of: any form of neglect, exploitation or abuse ...".

The implementation mechanism set up under the Convention establishes a Committee of ten independent experts of "high moral standing and recognised competence in the field" who serve in their personal capacity. Every State Party must undertake to report to the Committee within two years after ratification and thereafter every five years. Rather than punishing states for non-compliance, the Committee may undertake a dialogue with States Parties and will respond to any difficulties states may have in complying with the provisions. On the basis of information received from States Parties, international organisations and "other competent bodies" including NGOs, the Committee may "make suggestions and general recommendations".

The Committee is circumscribed by the fact that it can only make recommendations and lacks the authority to receive individual petitions alleging a violation under the Convention either from states parties or individuals. Nevertheless, the dialogue, encouragement and involvement of "other competent bodies" such as specialised agencies and NGOs, including those working with children, victims or potential victims of sexual exploitation, imply that the Convention can

act as a vehicle for cooperation between such groups and the Committee. Furthermore, it can serve an educating role and promises to be a milestone in a global strategy aimed at changing attitudes towards the need of children in the combat against child sexual exploitation.

Recommendations for action

Non-governmental organisations can be active in monitoring governments' compliance with the provisions of the Convention on the Rights of the Child. In particular, commissions and other groups can act as focal points on issues such as child sexual exploitation to disseminate information and foster appropriate responses to problems identified. Furthermore, such organisations can promote awareness of children's rights at local, national and international levels by encouraging training workshops, seminars and discussion groups.

As far as the suppression of child prostitution is concerned, the procurer, his auxiliaries and customers including sex tourists must be prosecuted. Measures need to be implemented to stop and punish those who encourage and make a profit on the sexual exploitation of children: such persons include dealers, brothel-owners, pornography producers and organisers of sex tours. Of particular importance is that children should not be the object of penal sanctions, as they all too often are.

Information has proved a useful tool in increasing awareness of the public and the authorities with regard to the extent, causes and effects of child sexual exploitation. Of particular importance is information disseminated to children, parents, professionals and occupational groups who deal with children such as

teachers, magistrates, health and social workers. The collection and gathering of information on the sexual exploitation of children should be encouraged, including the methods used by agents and procurers in luring youngsters into prostitution. Such information will prove invaluable in planning child-related projects, in monitoring children's rights and in determining which cases will call for external financial and other assistance.

The children themselves are one of the most important targets in the combat against child sexual exploitation. Children should be taught how to recognise, avoid and reject the types of unacceptable behaviour which may lead in one way or another to sexual exploitation. Furthermore, children need to be taught to talk about their experiences and told who they can turn to for assistance. Girls in particular should be encouraged to fight for their rights and learn that they have a right of determination over their own body.

Projects aimed at providing alternative education for children who are unable to attend school, who are needed at home or who are encouraged by their parents to seek work in order to supplement the family income should be further promoted. These will provide access to at least a minimum level of education which can be undertaken in conjunction with the child's other activities and within the child's social milieu. Projects which have been especially designed to respond to the needs of children in the slum areas of large cities and in the poorer rural areas have proved particularly successful.

The provision of employment other than prostitution needs to be further encouraged, especially in areas where children are most likely to fall prey to sexual exploitation. Such preventive measures will grant the children at least a minimum level of income, encourage individuals to take control of their own lives, and assist in dismantling what may appear as institutionalised behaviour which may be conducive to child sexual exploitation such as delinquency or drug dealing. Projects such as these are often most effective when workers or social assistants go out in search of children needing assistance rather than expecting the children to come to them.

Rehabilitative initiatives are primarily aimed at victims of sexual exploitation and provide a means to rebuild the child's self-esteem and worth. These may include psychological assistance and the provision of alternative means of employment or training. Crisis centres for street children provide a refuge for children who have been victims of sexual exploitation. The provision of food, medical treatment and counselling may in many cases be sufficient to avoid children reverting to their previous lifestyle.

The inhuman practice of child sexual exploitation merely exacerbates the already tragic situation of millions of impoverished children in the developing world. Pressure on governments, inter-governmental organisations, NGOs, public and private child welfare services will bring about greater respect for children and ensure that they receive the standards of care and protection to which they are entitled.

BASIC TEXT

The Convention on the Rights of the Child

**Adopted by the General Assembly of the United Nations
on 20 November 1989***

Preamble

The States Parties to the present Convention,

Considering that in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

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

Recognizing that the United Nations has, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, 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,

Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance,

Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity,

Bearing in mind that the need for extending particular care to the child has been stated in the Geneva Declaration on the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the United Nations in 1959 and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in its article 10) and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of children,

Bearing in mind that, as indicated in the Declaration of the Rights of the Child adopted by the General Assembly of the United Nations on 20 November 1959, "the child, by reason of his

* As of 18 June 1990, 92 states have signed the Convention and the following have ratified it: Belize, Ecuador, Ghana, Guatemala, the Holy See, Mongolia and Vietnam.

physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth,"

Recalling the provisions of the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally (General Assembly Resolution 41/85 of 3 December 1986); the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") (General Assembly Resolution 40/33 of 29 November 1985); and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict (General Assembly Resolution 3318 (XXIX) of 14 December 1974),

Recognizing that in all countries in the world there are children living in exceptionally difficult conditions, and that such children need special consideration,

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child,

Recognizing the importance of international cooperation for improving the living conditions of children in every country, in particular in the developing countries,

Have agreed as follows:

PART I

Article 1

For the purposes of the present Convention a child means every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier.

Article 2

1. The States Parties to the present Convention shall respect and ensure the rights set forth in this Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff as well as competent supervision.

Article 4

States Parties shall undertake all appropriate legislative, administrative, and other measures, for the implementation of the rights recognized in this Convention. In regard to eco-

conomic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

Article 5

States Parties shall respect the responsibilities, rights, and duties of parents or, where applicable, the members of the extended family or community as provided for by the local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

Article 6

1. States Parties recognize that every child has the inherent right to life.
2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

Article 7

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality, and, as far as possible, the right to know and be cared for by his or her parents.
2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

Article 8

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.
2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to speedily re-establishing his or her identity.

Article 9

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.
2. In any proceedings pursuant to paragraph 1, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.
3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.
4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of

the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

Article 10

1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.

2. A child whose parents reside in different States shall have the right to maintain on a regular basis save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 2, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (*ordre public*), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

Article 11

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.

2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 13

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.

2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- (a) for respect of the rights or reputations of others; or
- (b) for the protection of national security or of public order (*ordre public*), or of public health or morals.

Article 14

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.

2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.

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

Article 15

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.

2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 16

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.

2. The child has the right to the protection of the law against such interference or attacks.

Article 17

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health. To this end, States Parties shall:

- (a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;
- (b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;
- (c) Encourage the production and dissemination of children's books;
- (d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;
- (e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being bearing in mind the provisions of articles 13 and 18.

Article 18

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

2. For the purpose of guaranteeing and promoting the rights set forth in this Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child care services and facilities for which they are eligible.

Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment, and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 20

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

2. States Parties shall in accordance with their national laws ensure alternative care for such a child.

3. Such care could include, inter alia, foster placement, Kafala of Islamic law, adoption, or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

Article 21

States Parties which recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

- (a) ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;
- (b) recognize that intercountry adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;
- (c) ensure that the child concerned by intercountry adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;
- (d) take all appropriate measures to ensure that, in intercountry adoption, the placement does not result in improper financial gain for those involved in it;
- (e) promote, where appropriate, the objectives of this article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

Article 22

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the

enjoyment of applicable rights set forth in this Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

2. For this purpose, States Parties shall provide, as they consider appropriate, cooperation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

Article 23

1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance, and facilitate the child's active participation in the community.

2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.

3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.

4. States Parties shall promote in the spirit of international co-operation the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

Article 24

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:

- (a) to diminish infant and child mortality,
- (b) to ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care,
- (c) to combat disease and malnutrition including within the framework of primary health care, through *inter alia* the application of readily available technology and through the provision of adequate nutritious foods and clean drinking water, taking into consideration the dangers and risks of environmental pollution,
- (d) to ensure appropriate pre- and post-natal health care for mothers,
- (e) to ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of, basic knowledge

of child health and nutrition, the advantages of breast-feeding, hygiene and environmental sanitation and the prevention of accidents,

- (f) to develop preventive health care, guidance for parents, and family planning education and services.

3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in this article. In this regard, particular account shall be taken of the needs of developing countries.

Article 25

States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection, or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

Article 26

1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.

2. The benefits should, where appropriate, be granted taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

Article 27

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.

3. States Parties in accordance with national conditions and within their means shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements as well as the making of other appropriate arrangements.

Article 28

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

- (a) make primary education compulsory and available free to all;
- (b) encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;

- (c) make higher education accessible to all on the basis of capacity by every appropriate means;
- (d) make educational and vocational information and guidance available and accessible to all children;
- (e) take measures to encourage regular attendance at schools and the reduction of drop-out rates.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

3. States Parties shall promote and encourage international co-operation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Article 29

1. States Parties agree that the education of the child shall be directed to:

- (a) the development of the child's personality, talents and mental and physical abilities to their fullest potential;
- (b) the development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
- (c) the development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;
- (d) the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
- (e) the development of respect for the natural environment.

2. No part of this article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 30

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language.

Article 31

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

2. States Parties shall respect and promote the right of the child to fully participate in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

Article 32

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of this article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:

- (a) provide for a minimum age or minimum ages for admissions to employment;
- (b) provide for appropriate regulation of the hours and conditions of employment; and
- (c) provide for appropriate penalties or other sanctions to ensure the effective enforcement of this article.

Article 33

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

Article 34

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) the inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) the exploitative use of children in prostitution or other unlawful sexual practices;
- (c) the exploitative use of children in pornographic performances and materials.

Article 35

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction, the sale of or traffic in children for any purpose or in any form.

Article 36

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

Article 37

States Parties shall ensure that:

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below 18 years of age;
- (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
- (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of their age. In particular every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall

have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

- (d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority and to a prompt decision on any such action.

Article 38

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.

2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of 15 years do not take a direct part in hostilities.

3. States Parties shall refrain from recruiting any person who has not attained the age of 15 years into their armed forces. In recruiting among those persons who have attained the age of 15 years but who have not attained the age of 18 years, States Parties shall endeavour to give priority to those who are oldest.

4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social re-integration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and re-integration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Article 40

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's re-integration and the child's assuming a constructive role in society.

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

- (a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions which were not prohibited by national or international law at the time they were committed;
- (b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:
 - (i) to be presumed innocent until proven guilty according to law;
 - (ii) to be informed promptly and directly of the charges against him or her, and if appropriate through his or her parents or legal guardian, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;
 - (iii) to have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

- (iv) not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;
- (v) if considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;
- (vi) to have the free assistance of an interpreter if the child cannot understand or speak the language used;
- (vii) to have his or her privacy fully respected at all stages of the proceedings.

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and in particular:

- (a) the establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;
- (b) whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

Article 41

Nothing in this Convention shall affect any provisions that are more conducive to the realization of the rights of the child and that may be contained in:

- (a) the law of a State Party; or
- (b) international law in force for that State.

PART II

Article 42

States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

Article 43

1. For the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention, there shall be established a Committee on the Rights of the Child, which shall carry out the functions hereinafter provided.

2. The Committee shall consist of 10 experts of high moral standing and recognized competence in the field covered by this Convention. The members of the Committee shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution as well as to the principal legal systems.

3. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.

4. The initial election to the Committee shall be held no later than six months after the date of the entry into force of the present Convention and thereafter every second year. At

least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to States Parties inviting them to submit their nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating States Parties which have nominated them, and shall submit it to the States Parties to the present Convention.

5. The elections shall be held at meetings of States Parties convened by the Secretary-General at United Nations Headquarters. At those meetings, for which two-thirds of States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

6. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. The term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these five members shall be chosen by lot by the Chairman of the meeting.

7. If a member of the Committee dies or resigns or declares that for any other cause he or she can no longer perform the duties of the Committee, the State Party which nominated the member shall appoint another expert from among its nationals to serve for the remainder of the term, subject to the approval of the Committee.

8. The Committee shall establish its own rules of procedure.

9. The Committee shall elect its officers for a period of two years.

10. The meetings of the Committee shall normally be held at the United Nations Headquarters or at any other convenient place as determined by the Committee. The Committee shall normally meet annually. The duration of the meetings of the Committee shall be determined, and reviewed, if necessary, by a meeting of the States Parties to the present Convention, subject to the approval of the General Assembly.

11. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

12. With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emoluments from the United Nations resources on such terms and conditions as the Assembly may decide.

Article 44

1. States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights:

- (a) within two years of the entry into force of the Convention for the State Party concerned,
- (b) thereafter every five years.

2. Reports made under this article shall indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.

3. A State Party which has submitted a comprehensive initial report to the Committee need not in its subsequent reports submitted in accordance with paragraph 1(b) repeat basic information previously provided.

4. The Committee may request from States Parties further information relevant to the implementation of the Convention.

5. The Committee shall submit to the General Assembly of the United Nations through the Economic and Social Council, every two years, reports on its activities.

6. States Parties shall make their reports widely available to the public in their own countries.

Article 45

In order to foster the effective implementation of the Convention and to encourage international co-operation in the field covered by the Convention:

- (a) The specialized agencies, UNICEF and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies, UNICEF and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite the specialized agencies, UNICEF and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities.
- (b) the Committee shall transmit, as it may consider appropriate, to the specialized agencies, UNICEF and other competent bodies, any reports from States Parties that contain a request, or indicate a need, for technical advice or assistance along with the Committee's observations and suggestions, if any, on these requests or indications.
- (c) the Committee may recommend to the General Assembly to request the Secretary-General to undertake on its behalf studies on specific issues relating to the rights of the child.
- (d) the Committee may make suggestions and general recommendations based on information received pursuant to articles 44 and 45 of this Convention. Such suggestions and general recommendations shall be transmitted to any State Party concerned and reported to the General Assembly, together with comments, if any, from States Parties.

PART III

Article 46

The present Convention shall be open for signature by all States.

Article 47

The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 48

The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 49

1. The present Convention shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification or accession.

Article 50

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that within four months from the date of such communication at least one-third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. An amendment adopted in accordance with paragraph (1) of this article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.

3. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of this Convention and any earlier amendments which they have accepted.

Article 51

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.

2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.

3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General of the United Nations who shall then inform all States. Such notification shall take effect on the date on which it is received by the Secretary-General.

Article 52

A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

Article 53

The Secretary-General of the United Nations is designated as the depositary of the present Convention.

Article 54

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

In witness thereof the undersigned plenipotentiaries, being duly authorized thereto by their respective governments, have signed the present Convention.

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President, Bar Association of Sri Lanka

Former Member of Supreme Court of Peru

Member of Parliament and former Att.-Gen., Barbados

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Judge, Stockholm Court of Appeal, Sweden

Senior Lecturer in Law, University of Ghana

Supreme Court Judge, Mauritius; UN Human Rights Committee

Supreme Court Judge, Canada

Member of Constitutional Court, Austria

Advocate of the High Court, Tanzania

Director of Legislation, Ministry of Justice, Cameroon

Member of National Assembly, Vietnam

Former Supreme Court Judge, Pakistan

Former Ombudsman, New Zealand

Member, Council of State of France; former Minister of State

Pres., Criminal Law Institute; Minister, Uruguay Gov't

Advocate; Int'l Law Professor; Member of Irish Senate

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