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Articles

The Law on Aliens Controversy in the Baltic States

Dagmara Vallens*

Introduction

I promised to write a report on this topic for the *Review of the International Commission of Jurists* more than a year ago. It seemed to be an easy enough task when I started: just look up the data and do it. Only then did I begin to be fully aware of the tumultuous circumstances in which laws in the Baltic countries are being created; that the definitions used there sometimes take up a 'loaded' meaning, especially for outsiders; that the interpretation tends to be either too superficial or too deep. Finally, the laws themselves - the actual words, lines, and paragraphs therein - keep changing.

For a while I was waiting for the laws that I was concerned with to solidify; but they kept on acquiring amendments, going through twists and turns. Then I realized that in order to really understand a law, it is important to understand the process leading to it. I

could describe them without reaching a final conclusion. At the time of writing (August 1995), the Laws on Aliens, as well as the closely related Citizenship Laws, Laws on Immigration, and Laws on Language in Estonia, Latvia, and Lithuania, were in the various stages of being supplemented, changed, or finished. Therefore, this report will be more like a snapshot in time than a conclusive review of the subject.

The subject is an involved one; dealing with various groups of people to whom too much has happened in too short a time. A real injustice can be done to every one of these groups by making quick and superficial decisions.¹ At times, it appears that international human rights authorities are more interested in having peace and quiet than in justice. Aware that the three Baltic States desperately seek admittance to Western alliances in order to have some security from Russia - their unstable and

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1 International human rights authorities, instead of paying attention only to the Laws on Aliens and Citizenship Laws, should also inspect recent studies on involuntary population transfer.

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often aggressive neighbour to the East -, international agencies with the power to influence world opinion press the Balts to pass legislation that is not necessarily in anyone's long-term interest. The unruly neighbour to the East, in turn, knows how to manipulate facts and opinions to a point where the plaintiff becomes the defendant. The politicians in power in the Baltic States can thus find themselves in a situation where they cannot do much more than procrastinate. In this context, implementation of laws in the Baltic States seems to be the weakest part of the process of returning to normalcy.

Historical Background

Before even attempting to begin, it should be stressed that the area in question has suffered several tremendous shocks over the last 50 years. In 1940, Estonia, Latvia and Lithuania, - three independent and relatively prosperous States by the Baltic Sea - were occupied by the Soviet Union as a result of a secret Nazi-Soviet agreement - the Molotov-Ribbentrop Pact of 1939. In one year most of their statesmen, intellectual leaders, successful businessmen, rich farmers, famous artists, higher army officers, and people who showed any type of resistance were eliminated, shot, or deported to concentration camps. During the Nazi occupation years (1941-1945), another great population loss occurred through war action, involuntary conscription into the German army, and Nazi actions against political opponents - as well as the elimination of whole population groups: Jews, Gypsies and the mentally ill. As World War II ended, Soviet power returned with more

killings, more deportations, and a guerilla war that lasted for almost a decade. In addition, about 10 percent of the inhabitants fled to the West.

At that point, in Estonia and Latvia, only 50 to 60 percent of the indigenous population was alive and living in the area of their original homes. And yet their culture, their outlook on life, their language and songs survived and in some ways even influenced the newcomers. For it is a very old culture: Estonians, Latvians and Lithuanians have lived in their land for more than 4000 years. Their ancient wisdom on how to live in harmony with nature is highly regarded by modern ecologists. Allowed to thrive, they would be able to contribute their part to the Family of Nations. But they need their land, the only place in which they can raise their children according to their own traditions and live their own life.

That was not to be for 50 long years. After reoccupying the land during World War II, the Soviets confiscated all private property and combined the individual farms into huge State enterprises. They started to bring in large numbers of people from other Soviet republics, mostly Russia. The newcomers constituted the bulk of the ruling circle (called "Nomenklatura") during the Soviet era. As the Soviet Union disintegrated and Estonia, Latvia and Lithuania declared restoration of their independence, certain of the newcomers (typically the "Nomenklatura") resented the loss of their privileged status and hoped to regain it - if not in the previous "Socialist" form then perhaps in the form of a revanchist Russian Empire.

The more I think about it, the more I have to admit that it is a tremendous achievement of the three Baltic nations even to attempt to return their countries to a society based upon the Rule of Law. For fifty years the law was something to fear and hardly to rely on. For example, one could be sentenced to 10 years in Siberia for nothing (for a genuine cause one could get a 25 year sentence). The written law was supplanted daily by secretive telephone calls from "above." People were accustomed to a life where government pretends to pay them and they pretend to work. The real success depended on "blat," a mafia type of networking. Only the Party bosses and government higher-ups could quote law to you; if you tried to quote law to them, you were bound to get in trouble. Often it was enough to belong to the wrong social class - the peasant, the bourgeoisie, the intellectual - to stop one from ever succeeding in any meaningful way. The anti-Jewish repressions in Stalin's time are well documented; less known is the fact that one could be sentenced to long years of slave labour and internal exile for just being a Latvian.² There was a strong Moscow-led Russification drive in all Soviet republics with the goal of marginalizing and eventually eradicating all other languages in the Soviet Union "for the sake of efficiency." This was the time when Soviet diplomats could happily sign all kinds of international agreements without batting an eye - while never intending to abide by them.

This was the situation in the mid-1980's when President Mikhail

Gorbachov launched "Glasnost" and "Perestroika" - eventually resulting in the total breakdown of the Soviet Union. As the process spun out of control, the Baltic nations seized the opportunity to announce the renewal of their independence (March-May 1990). In August 1991, events came to a head and the Balts officially declared the reinstatement of their independence. They could not wait and settle all the inevitable complications with Russia first, for fear of losing the rare moment in history when the breakaway was possible. Within three weeks, more than 100 governments had recognized *de jure* and *de facto* the restoration of the independence of Estonia, Latvia and Lithuania. On 17 September 1991, they became members of the United Nations.

At the beginning, Russian President Boris Yeltsin and his government seemed to be friendly towards the Baltic States, but this mood soon changed. The old and deeply ingrained wish of most Russians - to restore the Czarist Empire - took over in the Russian leadership, leaving the fledgling strivings for democracy far behind. For their vehicle, they chose the 25 million Russians living in the former Soviet republics. Now independent States, which they labelled the "near abroad." This strategy was most eloquently spelled out by Mr. S. A. Karaganov, Deputy Director of the European Institute, at a seminar in Moscow. He said that Russian-speaking minorities in the "Near Abroad" were a "powerful asset" needed to "preserve our leverage in order to have influence

2 This information is now emerging in Riga, during the trial of Alfons Noviks, the NKVD (later KGB) chief for Latvia from 1940 to 1953. The trial started on June 19, 1995, and is expected to last several months (*Baltic Observer*, June 22-28, 1995).

in the future" - a strategy explicitly endangered by Estonia and Latvia's "breaking of the 'zero-option' citizenship rule."³ The author stressed the "need to start from political leverage points as is being done in Latvia and Estonia." A related goal is to "become the owners" of Baltic enterprises in order to "form a powerful political and economic enclave." Mr. Karaganov added that "force can solve a great deal" but "we need legitimacy ... We need to prepare public opinion and international organizations so that they would acknowledge the need for the limited use of force within a legal framework."

One can possibly see how this plan is being implemented by looking at the banking crisis in Latvia; a financial catastrophe for many depositors that has its roots in inexplicable securities transactions with banks in Moscow. Popular sentiment has it that ex-KGB bankers (who helped themselves to State funds immediately after the coup) now raise havoc in the Baltic financial markets. Certainly, Russian government officials are said to have boasted of having broken the Baltija Bank.⁴

For the last five years, Moscow has treated the Baltic States with various approaches: intimidation, economic boycott, military threat, and several attempts to provoke civil unrest. So far, the most successful have been, firstly, Moscow's skills in "negotiating" without ever coming to a settlement, and secondly, Moscow's ceaseless allegations of

"massive human rights violations" in the Baltic countries at international forums, quite often in connection with the Citizenship Laws and Laws on Aliens that are the subject of this paper.

It has not been easy to draft these laws because of serious internal problems (for reasons that will be explained below). Balts have been very thankful for the help and advice extended to them by international experts in this regard. Lately, no matter how many review commissions have inspected these documents, they have been found to be in compliance with international standards and in line with existing laws in other democratic countries. Nevertheless, the complaints and accusations by Russian representatives have not ceased but rather have become nastier, often intentionally mixing up the situation in the Baltic States with events in the Balkans, darkly mentioning "ethnic cleansing" in this connection. For people not familiar with the situation in Europe, the words "Baltic" (in northern Europe) and "Balkan" (in southern Europe) sound sufficiently alike. At the present time there may be junior diplomats from other continents who are convinced that "ethnic cleansing" (a term applied to the catastrophic events in the Balkans) is taking place in the Baltic States as well.

In reality, it has taken a great deal of determination and gnashing of teeth but the Balts have not been pulled into physical confrontation with supporters of the Russian line. After visiting Latvia

3 *Diplomaticheski Vestnik* 21/22, 1992.

4 See "Parex's Swiss Role" (*The Economist*, 28 May 1994); Also *Baltic Observer* May/June/July 1995 regarding the collapse of the biggest Latvian Bank, "Banka Baltija" and its chairman, Aleksandrs Lavents.

five times for prolonged periods, I think I know why: they seem to be able to distinguish between theory and practice. If I ask Latvians about Russians they would become quite agitated: their face would redden, they would clench their fists and declare that the Russian treatment of the Baltic States was wrong, all wrong. But if I asked the same person about the Russian living next door he would say: "Oh, that's Mischa our neighbour, we have known him for years." Russians, in turn, would complain that Latvians did not know what was good for them, otherwise they would return to the fold of "Mother Russia" and everybody would live happily ever after. Asked about his Latvian neighbour, he would say: "We help each other out in an emergency." I am sure that left alone, without provocation from Moscow, they would all find a way to integrate or coexist.

All of Eastern Europe has experienced rapid change, leaving people totally confused. No wonder the rest of the world often misunderstands the situation. For the post-Soviet peoples, seemingly straightforward words can carry strong connotations. The term "Russian" to a Balt does not mean a nation but rather 50 years of injustice and suffering, lost lives and defeated dreams. He cannot be expected to forgive and forget in four short years, even in the best of circumstances - especially not now, with Moscow applying continual pressure on the Baltic governments. The term "Baltic independence" to a Russian living in the Baltic countries means suddenly finding oneself in a foreign country, losing one's privileges, and fearing for one's future. Likewise the terms "Law on Citizenship" and "Law on Aliens" are understood differently by those two groups, and they react to them

in their own way. They carry with them their experience of the last 50 years - the good and the warped, the bad and the redeeming. It is called *post-Colonial syndrome* and one might presume that the World by now had learned how to deal with it; but perhaps it has not occurred to the World leaders to apply it to Eastern Europe.

For the world at large, the term "Baltic States" has a fairly unifying connotation. Indeed, the major events in Estonia, Latvia, and Lithuania have coincided over the last century. Since the Middle Ages, the area has been conquered by the Crusaders from the Holy See, Germans, Danes, Swedes, Poles and finally by the Russian Empire in the 18th century. Nevertheless, the predominant foreign culture in Estonia and Latvia was German and Protestant, in Lithuania Polish and Catholic - in all three acquired from aristocratic landlords who were entrusted to administer the area in Czarist times. Linguistically, Lithuanians and Latvians belong to the Baltic language group and Estonians to the Finno-Ugric language group. Therefore, Moscow's claims that Russia has a common history and common culture with the Balts are false. The Russian Czar's attempt to Russify the Baltic area at the beginning of this century resulted in violent uprisings during the 1905 revolution. With regard to "common culture," Balts have always felt closer to other nations around the Baltic Sea than to Russia, thus proving the old adage that "seas unify, but rivers divide."

After World War I, taking advantage of the rare moment when both neighbouring European superpowers -

Germany and Russia - were weak, Estonia, Latvia, and Lithuania declared independence in 1918. While the Soviet Union struggled with its dismal experiment, the Baltic States enjoyed prosperity, civil peace, membership in the League of Nations, and praise from other governments on their liberal laws on minorities. Not much in common in either history or culture was shared until 1940, when the Soviet Union - after secretly dividing Eastern Europe with Nazi Germany under the terms of the Molotov-Ribbentrop Pact - invaded the Baltic States. It is important to remember that most Western democracies never recognized the Soviet annexation of the Baltic States *de jure*. That helped the Baltic States to regain their independence in 1991. This is the reason why many present-day laws in Estonia, Latvia, and Lithuania - starting with the Constitution - are based on laws adopted during the pre-war period. In 1920, peace treaties were signed with Soviet Russia, settling the borders "for ever and ever, and for all times to come." But President Boris Yeltsin's Russia does not want to recognize these peace treaties now and return to Estonia and Latvia areas annexed by the Russian Soviet Federated Socialist Republic (RSFSR) during Stalin's times.

This was a quick background look into the common Baltic history, in order to understand the topic at hand. The Baltic States now aspire to promote the unifying concept by cooperating on various levels. But if we want to look deeper

we'll have to review each Baltic country separately for they each took a different path to arrive at their own Law on Aliens.

Lithuania

Lithuania was the first of the Baltic States to adopt a Law on Aliens on 4 September 1991. Their Law on Citizenship was signed on 5 December 1991 and entered into force on 11 December 1991. It is based on a previous citizenship law enacted on 3 November 1989. For Lithuania, it did not create as much controversy as the same legislation in Estonia and Latvia.⁵ Lithuania largely escaped Soviet-style industrialization - the main purposes of which seemed not to be efficient production but overriding political goals: Russification and forcible economic integration with the USSR. Professor Aleksandras Stomas, who as a Jewish orphan was adopted by the Lithuanian Communist Party chief Antanas Snieckus, offers an interesting theory that could explain the differences between the population changes in the three Baltic States.⁶ Whereas the First Secretaries of the Communist Party in Estonia and Latvia had been mere figureheads or born and raised in the USSR, Mr. Snieckus was a native-born communist. Although loyal to Moscow, he knew how to take care of his people. He claimed that Lithuania was a backward country, not yet ready for large scale

5 Of Lithuania's 3.8 million inhabitants 80% are ethnic Lithuanians, 10% are of various indigenous minorities and 10% arrived in Lithuania from other republics (mostly Russia) during the Soviet occupation.

6 Author's interview with Dr. A. Stomas.

industrialization. While Estonia and Latvia groaned under heavy demands for food and manufactured goods to be sent to Moscow, Lithuania received occasional subsidies, was allowed to build better looking housing in order to urbanize the "backward locals," and was spared massive immigration from other Soviet republics. Mr. Snieckus died in 1974; by that time, the Soviet economy was already slowing down and could not afford projects of great magnitude anymore.

Therefore, Lithuania could accommodate Russian demands and adopt the inclusive citizenship concept known as the "zero option." The *quid pro quo* was an early withdrawal of the relatively small and comparatively insignificant Soviet garrison in Lithuania - as compared to the tortuous negotiating process leading to the withdrawal of the larger and strategically more significant garrisons in Estonia and Latvia.

The 1989 law made citizenship available to three categories of individuals:

- 1 those who were citizens or residents of Lithuania prior to Soviet annexation (15 July 1940) and their descendants;
- 2 permanent residents who were not citizens of another State and were born in Lithuania, or who have a parent or grandparent who was;
- 3 anyone who was a permanent resident with a legal source of income when the first version of the citizenship law took effect in November 1989. According to the law, those not qualifying for automatic citizen-

ship who wished to naturalize must reside in Lithuania for 10 years, have a legal source of income; have knowledge of the Lithuanian language and Constitution; and take an oath of loyalty.

The 1991 document on citizenship retains the same basic points but is more elaborate. It has six chapters and 36 articles, plus a resolution on the procedure for implementing the citizenship law. The law is written along conventional lines, sets the rules for complicated cases of spouses, children, etc.; decides ways of acquiring citizenship (including naturalization); lists five usual reasons precluding the granting of citizenship; deals with retention of the right to citizenship, restoration of Lithuanian citizenship, loss of citizenship, and reclamation of citizenship after its loss or forfeiture; describes procedure for resolving issues concerning citizenship; and finally states that if an international agreement to which the Republic of Lithuania is a party prescribes rules other than those established by the Law, the provisions of the international agreement shall prevail.

One paragraph of the implementation resolution deals with the registration of foreigners who are not entitled to "zero-option" citizenship due to having arrived after the specified deadline, but who wish to become permanent residents of Lithuania, and who have passports of the USSR. They must apply to agencies of the Ministry of Internal Affairs of the Republic of Lithuania for residency permits, not later than July 1992. The permits must be issued within one month of the day of application. Said persons must have their internal

passports of the USSR exchanged for foreign passports of their respective States by 1 July 1992.

On 4 September 1991, the Lithuanian law on immigration was also passed, establishing procedures for the entry of foreigners into the Republic of Lithuania for permanent residence. Foreigners may apply for residence permits only if they have an invitation from a citizen of the Republic of Lithuania. The law lists 10 reasons impeding immigration: if the foreigner is afflicted with a dangerous disease; if he is mentally retarded or mentally ill; addicted to drugs, intoxicants, or alcohol; has no legal source of subsistence in the State from which he wants to emigrate; has no permanent place of residence in the State from which he wants to emigrate; during the last five years has deliberately committed a serious crime; is engaged in activities directed against the Republic of Lithuania; during the last five years has been deported from the Republic of Lithuania under this law; seeks to procure the permit for residence in the Republic of Lithuania by deliberate misrepresentation or fraud; or possesses no documents of identification.

The law further discusses the procedure for the consideration of applications for immigration (fees, time limits, grounds for revocation of a permit, leaving and deportation, repeated applications). Article 6 provides for setting up an immigration quota, to be established by the Parliament on the recommendation of the Government of the Republic of Lithuania. Article 13 discusses time

limits and procedures for entry. A foreigner who has been granted a permit to immigrate to Lithuania shall be issued the entrance visa in the manner prescribed by the Minister of Internal Affairs valid for a period of nine months. If a foreigner fails to enter Lithuania within this period, the matter of his immigration shall be reconsidered according to the procedures of this law. Upon arrival in the Republic of Lithuania, a foreigner must register his foreign passport (or an equivalent thereof) with the Ministry of Internal Affairs not later than within 7 days. Thereafter the Ministry of Internal Affairs shall issue the foreigner a document confirming his status as an immigrant.

This law, too, ends with the clause: if an international agreement, binding on the Republic of Lithuania prescribes measures other than those prescribed under this law, the measures prescribed under that agreement shall be applied. The Council of Europe officials who reported on the Lithuanian laws in January 1992 could "not find any indication that the rules in general do not meet international standards."⁷

The work of updating and amending Lithuanian legislation continues, generally with the advice and counsel of international experts. Periodically, the Lithuanian Parliament invites groups of experts to participate in special seminars. One such seminar, held in mid-April 1994, reviewed the entire body of Lithuanian legislation in light of international human rights conventions. Particular attention was devoted to

7 Rudolf Bernhardt and Henry Schermers "Lithuanian and Human Rights Standards" reprinted in *Human Rights Law Journal* vol.13, No.5-6, p.253.

article 138 of the Lithuanian Constitution, which deals with the relationship between international law and Lithuanian law. Some legal experts claimed that international conventions automatically become part of national law on ratification, while others insisted that a separate act of Parliament is required to convert the provisions of international instruments (such as human rights conventions) into valid Lithuanian law.

It was mentioned that the current law on the legal status of foreigners in Lithuania has a "reprisals" clause which is not acceptable under international law. It states that when another State "restricts or violates universally recognized norms of legal status of foreigners" for Lithuanian citizens in its territory, Lithuania can introduce "reciprocating restrictions of rights and freedoms" of citizens of that State living in Lithuania. A legal expert pointed out that this clause was identical to previous Soviet-era legislation which had found its way back into Lithuanian legislation after the restoration of independence.

Much time has been spent on discussions of minority rights, minority guarantees, and anti-discriminatory measures. Lithuania has made significant progress towards international standards in this field, but problems remain - particularly with regard to the restitution of property that had belonged to individuals prior to the Soviet annexation of Lithuania in 1940. The topic was raised at the international seminar as if only members of minority groups were having difficulty retrieving their property. It was pointed out, however, that virtually everyone has been subject to the same delays and difficulties. The reasons

are various. After a fifty-year lapse, many claimants cannot find or obtain all of the required documents, some of which may have been confiscated or destroyed during the war. The documents themselves have to be tested against forgery. The buildings themselves may have been destroyed, torn down, renovated at the expense of others, sold, or encumbered by leases. Some officials - accustomed to Soviet work standards - are unwilling to exert themselves in resolving difficult cases, or are working at an unacceptably slow pace in clearing up the backlog of restitution requests.

The UN experts welcomed the Parliament's approval of legislation creating Lithuania's first "Ombudsman" institution. These experts also urged Lithuania to sign the optional protocol to the International Covenant on Civil and Political Rights. This would make it possible for individuals in Lithuania to have their specific grievances heard by the UN Committee on Human Rights. At present, individuals do not have this option.

On 21 April 1995, Baltic Council Human Rights Commissioner Ole Espersen stated during a visit to Vilnius that the Baltic nations have made great strides on human rights issues, but that they must repeal the death penalty. He added that Lithuania's prisons continue to be overcrowded, and that brutal hazing of military conscripts must stop. Hazing - an inheritance from Soviet military practice - has proven to be a persistent problem in all three Baltic countries despite the efforts of senior commanders to root out the practice.

A representative of the UN High Commissioner for Refugees (UNHCR) emphasized the need for Lithuania to accede to the UN Refugee Convention of 1951, and welcomed Parliament's efforts to draft appropriate refugee legislation. Lithuania - along with Estonia and Latvia - has a refugee problem which has presented authorities with numerous economic, political, and procedural difficulties. Trucks, trains, ships, and containers full of refugees - many from Iran, Iraq, Afghanistan, and Turkey - have been apprehended in the Baltic countries on their way to Scandinavia after having started their journey somewhere in the Commonwealth of Independent States (CIS). Due to insufficiently well-guarded borders, their numbers have been increasing. Most appear to have paid large sums to the CIS-based post-Soviet organized crime groups locally known as "mafia," and virtually all refuse to return to their country of origin.

Faced with severe budgetary restraints, the Baltic countries have not set up an adequate mechanism to deal with the refugee problem. Many of the refugees are Kurdish, and have legitimate grounds for asylum. In March 1995, a controversy also surfaced concerning the presence of eight Chechnyan children in Lithuania. Two weeks later, two Russian Army soldiers sought political asylum in Lithuania after being informed that their unit was to leave Kaliningrad in order to take part in the Russian occupation of Chechnya. As Lithuania has not yet drafted any legislation regarding asylum, the two deserters were extradited on 4 April and handed over to Russian military officials at the Kaliningrad border. On 27 April, Baltic leaders met in Riga to draft an

agreement on inter-Baltic cooperation in handling illegal Mideastern refugees. Officials stated, however, that a meaningful regional policy towards illegal refugees could only begin to be effective if an agreement can be reached in this regard with Russia and Belarus. Not surprisingly, the CIS nations have been reluctant to accept the return of illegal aliens that have used their countries for transit purposes.

In the area of national minorities, Lithuania does have some problems, though they are different from those facing Estonia and Latvia. For an explanation, we have to go back to the year 1385 when Lithuania's Grand Duke Jogaila married Jadwiga, the Queen of Poland, thus creating the Lithuanian-Polish Kingdom. During his son Vytautas' rule, the kingdom became one of the largest States in Europe - including present-day Belarus, most of Ukraine, and parts of Western Russia. Overshadowed and subsequently reduced by stronger neighbours, the kingdom came to an end in 1795, when the major part of Lithuania was annexed to the Russian empire. Culturally, Lithuania remained under strong Polish and Catholic influence until the emergence of the Lithuanian national movement in the early 19th century. Towards the end of the century, Lithuanians had to endure an oppressive Russification drive that included the banning of all publications in their native language.

During Czarist rule, the Vilnius region had become ethnically mixed and because of this became the subject of a major territorial dispute between the newly independent countries of Poland and Lithuania after World War I.

Lithuania claimed Vilnius as its capital on historical grounds, but Poland countered with the claim that the majority of Vilnius' residents were Polish (or at least non-Lithuanian). In 1922, Poland occupied the Vilnius region and Kaunas became Lithuania's inter-war capital. When the USSR occupied Lithuania and Eastern Poland at the outset of World War II under the terms of the Molotov-Ribbentrop Pact, Vilnius was returned to Lithuania while other ethnically mixed areas formerly under Polish administration were integrated to the Belarusian SSR and Ukrainian SSR. During Soviet rule, the city of Vilnius again acquired a Lithuanian majority, but was still surrounded by rural villages of mixed Polish and Belarusian origin speaking a local Slavic dialect. As the Lithuanian pro-independence movement "Sajudis" gained strength during the late 1980's, the inhabitants of this area were encouraged to form pro-Soviet groups purporting to represent oppressed Polish and Belarusian minorities. Poland and Polish political figures were generally careful not to get drawn into this dispute, but for a time Belarus declared that the Vilnius region belonged to them since pre-war Lithuania had not included Vilnius since 1923. Presumably, the Belarusian claim was also based on whatever "right of conquest" accrued to the USSR as a result of having invaded Eastern Poland. People familiar with the circumstances of this argument suspect that the claim was a political accommodation to Moscow's campaign against "Sajudis." Russian involvement in Lithuanian-Belarusian relations also resurfaced in 1994, when the Belarusian Parliament was incited to oppose extradition claims for persons accused of having participated in the attempted 1991 coup against the

Lithuanian Government. On this occasion, border talks between the two countries stopped, but resumed shortly thereafter and concluded with a significant friendship and cooperation agreement. The actual substance of the Lithuanian-Belarusian border dispute in 1994 revolved around purely local demarcation issues, such as the allocation of railroad sidings at a train station bisected by the border. Lithuania also signed an equally significant friendship and cooperation agreement with Poland in 1994, presumably putting the emotionally charged issue of Vilnius to rest once and for all.

In the area of the rights of minorities, Lithuania had a very liberal law prior to World War II and employed a special Minister to deal with minority issues. The largest groups - Poles, Russians, Belarusians, Jews, and Germans - had their own schools, press, theatres, and community organizations. With the Soviet annexation, all but the Polish and Russian schools were closed, as were virtually all minority organizations and institutions. With the restoration of independence, Lithuania has returned to a liberal law on minorities guaranteeing equal political, economic, and social rights and freedoms regardless of ethnic background. Discrimination with regard to race, nationality, language, and creed is prohibited and punishable. The State supports minority cultural and educational institutions. Minority schools, religious instruction, ethnic organizations, and an ethnic press in various languages are once again on the rise in Lithuania.

In some respects, the minority situation has changed. After the World War II, many Poles repatriated to Poland, decreasing the percentage from 15.3

percent in 1923 to 7.0 percent in 1989. Virtually the entire Jewish population (8.3 percent in 1923) perished or fled during the Nazi occupation, the 0.3 percent appearing in the 1989 statistical tables being mainly post-war newcomers.

However, since 1989, several Jewish schools have opened, accompanied by press and radio programmes - joining the Jewish cultural society established in 1988. Unfortunately, the notable cultural life of the pre-war Jewish community in Vilnius - with its prominent religious figures and schools, renowned authors, philosophers, and artists - has been irretrievably lost.

Lithuania also has State-supported schools for Russian and Belarusian children, and has been patiently conducting talks aimed at opening Lithuanian schools in Russia and Belarus - so far without success. Notwithstanding periodic fiery Russian speeches about human rights violations in Lithuania, the government is trying to maintain good relations with Russia. Russian accusations generally accompany negotiations on issues such as their demand for unlimited transit rights to the heavily militarized Russian enclave of Kaliningrad. On 22 March 1995, Lithuanian President Algirdas Brazauskas granted Lithuanian citizenship to opera singer Yelena Obraztsova and conductor Algis Ziuraitis of the Moscow Bolshoi

Theatre. It was the third celebrity couple with Russian or Soviet citizenship to be granted Lithuanian citizenship by special request.

Estonia

The roots of the present Law on Aliens⁸ controversy in Estonia go back to the Soviet occupation in 1940 and to what followed: terror, mass killings, guerrilla war, and mass involuntary population transfers to arctic and desert regions of the USSR - accompanied by significant loss of life. By 1949, only 775,900 persons remained in Estonia out of a pre-war population of 1,134,000. Communist Party cadres and workers were imported from other Soviet republics - mainly Russia - to feed the needs of a newly developed military-industrial complex that ignored local needs and resources. The industrialization programme created a need for unskilled and semi-skilled labour that could not be met locally. Russia, however, had accumulated a vast reservoir of newly urbanized unskilled and semi-skilled workers after the collectivization of agriculture had depopulated and impoverished the relatively unproductive farming areas of the RSFSR. Through such means, the Estonian proportion of the civilian population (excluding the demographic impact of a significant permanent military garrison) was made to decline from 93 percent in 1939 to 62 percent today

8 The Law on Aliens controversy was very thoroughly documented in a 1 Jan. 1994, Study by UBA/BATUN (a New York based non-profit membership organization involved with Baltic human rights issues, founded 29 years ago). This chapter is more or less a summary, with updating, of the earlier work.

(based on post-war borders after the annexation of certain ethnically mixed territories to the RSFSR). Since the size of the military garrison at various times has never been officially disclosed, the total demographic situation over time can only be estimated.

During the 1987-91 struggle to restore independence, a mass organization called the Congress of Estonia worked to unite all those who had been citizens of the original Republic of Estonia, as well as their descendants. The Congress sought to preserve the *de jure* continuity of both the Republic and citizenship in the Republic. These concepts gained general acceptance and became the basis of subsequent legislation - notably the Law on Citizenship and the Law on Aliens.

In essence, these laws sought to find a humane, politically acceptable, and legally sound way to deal with the consequences of Soviet terror and involuntary population transfer. But these laws met with heavy criticism from several quarters. Estonian patriots wanted to restore Estonia as it was before World War II to the maximum extent possible, while newcomers from various Soviet republics protested the loss of privileges and advantages enjoyed during the Brezhnev era. Foreign advisers and States wished to avoid confronting the moral and legal implications of Russian/Soviet colonial rule, while Moscow attempted to preserve as much influence and involvement as possible in the "Baltic provinces" whose loss was lamented by a considerable portion of the post-Soviet Russian political spectrum.

In resolving the issue of citizenship, Russia favoured the "zero-option" plan, whereby all residents of the former USSR would automatically acquire citizenship in the country under whose jurisdiction they found themselves. In its most extreme form, "zero-option" included the millions of active-duty and retired Russian military personnel stationed outside Russia and was paired with the concept of dual citizenship for ethnic Russians or "Russian-speakers" outside Russia. By contrast, Estonian lawmakers felt that voluntary naturalization and single citizenship would be the most enduring way to guarantee stability and security - pointing to the chronic unrest in "zero-option" Moldova, Georgia, Armenia, Azerbaijan, Tadjikistan, and Ukraine. While a majority of ethnic Russians resident in Estonia may have found a "zero-option" plan far more convenient, the involuntary imposition of citizenship on a *jus soli* basis would have included as Estonian citizens a significant minority that rejects the very sovereignty and legitimacy of the Estonian State.

For hundreds of years, the Russian empire and the USSR followed the traditional concept of citizenship embraced by most European countries of *jus sanguinis*, or citizenship through parentage. Countries more oriented to immigration, such as the United States of America, followed the tradition of *jus soli*, or citizenship according to place of birth. With the passage of the Russian Federation Citizenship Law on 6 February 1992, Russia broke with its own legal tradition and embraced *jus soli*. Subsequently, Russia pressured the CIS nation States and the Baltic countries to accept the most extreme form of *jus soli*, and accept as citizens all those who

were present on their territory when the USSR ceased to exist. Of the Baltic countries, only Lithuania followed suit since the demographic situation of Lithuania had not been significantly altered by involuntary population transfer; Estonia and Latvia found this solution unacceptable.

Prior to consideration of the Law on Aliens, the citizenship and language laws had drawn loud protests from Moscow, but active opposition in Estonia appeared to be confined to ex-communist activist circles. Moderate groups representing non-citizens accepted the citizenship and language legislation while suggesting changes, the most radical of which was a call for official bilingualism by the Russian Assembly.

Domestic opposition to the Law on Aliens within Estonia was stimulated by prior passage of the Law on Elections. A legislation that required candidates for municipal office to be citizens, even though non-citizens with five years of residence had been granted the right to vote in municipal elections. Passage of this law antagonized office-holders in the Northeastern part of Estonia - an area subjected to ethnic cleansing after World War II and the site of a former atomic processing plant subsequently converted to other military-industrial uses. Fearing the loss of their fiefdoms, these officials worked with local ex-communist activists to oppose the provisions of the Law on Aliens, and had frequent contact with representatives of the Russian Government over the course of events. Due to the chronic Russian-language disinformation surrounding the consideration of the Law on Aliens, many local non-citizen residents became

alarmed that their human rights might be in danger, that they might lose their jobs, or that they might actually be deported. The Law on Elections had already directly threatened the power base and commercial interests of non-citizen elected office-holders in Narva and Sillamae. The city councils of both Narva and Sillamae were dominated by ex-nomenklatura elements who supported the 1991 coup against Mr. Gorbachov.

Non-citizens in the capital city of Tallinn, by contrast, appeared not to be as interested in the implications of the Law on Elections and the Law on Aliens as they were in economic issues. This is not surprising since Tallinn was at the forefront in privatization and new business formation. Narva and Sillamae lagged in this regard and this was at least partly due to a reluctance by the local leadership to endorse economic change.

On 26 February 1992, the Estonian Supreme Council had reconfirmed the validity of the 1938 Citizenship Law of the Republic of Estonia, recognizing the *de jure* continuity of Estonian citizenship. Estonian citizenship was thus reconfirmed for (as opposed to being granted to) those who were citizens on 16 June 1940, and for their descendants. Lenient naturalization standards were provided for non-citizens, with certain humanitarian exemptions for invalids and pensioners. Expedited citizenship was made possible for non-citizens that had been active in the independence movement.

Any non-citizen who had been resident in Estonia on 30 March 1990 and who had filed an application as soon as possible, would have been granted citi-

zanship by April 1993, on passage of the language test. In the interim, the Russian Federation had offered citizenship to former USSR citizens regardless of their place of residence. But relatively few resident non-citizens have actually applied for either Estonian or Russian citizenship. A poll taken in 1993 suggested that 56 percent of all resident non-citizens intended to apply for Estonian citizenship and 10 percent intended to apply for Russian citizenship.

Over time, amendments and clarifications have corrected certain ambiguities in the original language of the citizenship law that were subject to criticism or misunderstanding - in particular the concept of "steady income." On 7 May 1992, in a note to the Council of Europe, Russian Foreign Minister Andrei Kozyrev suggested that the language of the legislation would first deprive non-indigenous persons of their jobs, after which they would be denied citizenship, accusing Estonia of promoting "intolerance, aggressive nationalism, and xenophobia."

Subsequent legislation has made it clear that "income" may be of any sort, including unemployment and welfare payments. A more serious stumbling block is the denial of citizenship to former members of the KGB, active-duty military personnel, former military officers, and their families. The Russian Government claims that members of the occupation forces should enjoy automatic rights to citizenship (preferably dual citizenship), perpetual housing benefits,

and social privileges commensurate with their "honour and dignity." A certain number of the retired military and KGB officers present in the country were involved in operations against the post-war Estonian armed resistance movement.⁹ A number of other Soviet veterans took part in mass arrests, mass murder, torture and deportations, and could be accused of crimes against humanity. This was especially true in the case of Soviet KGB officers, virtually all of whom were actively involved in violating the most basic human rights standards. In order to ensure the security and stability of the State, Estonia did not find it appropriate to be forced to grant citizenship to persons whose whole professional life had been devoted to preventing the restoration of Baltic independence.

A most bitter controversy was created by the language requirement of the legislation. The law as passed was not criticized for the language test being too difficult but rather for the very idea that citizenship applicants must be able to speak the national language. A parallel law has set language requirements for various jobs - such as workplace managers, health care personnel, and the police - with fairly liberal multilayered deadlines that will probably be extended. Estonians deem it very important to have access to basic services in their own country in their native language. During the years of Soviet regime, it was not uncommon for Estonians to be insulted by Russians with the phrase "speak a human language," if they

9 The last known active member of the postwar Estonian armed resistance movement died in a gunfight with KGB operatives in the early 1970's.

attempted to speak Estonian in an official or commercial setting. The final version of the Language Law was passed on 10 February 1993, after considerable debate. The Estonian Government has been urged to increase the number of teachers of the Estonian language, and to defray the cost of instructional materials as a desirable gesture of good will toward all minorities.

In February 1995, the Estonian Parliament (formerly called the Supreme Council or "Ulemnoukogu," now called the "Riigikogu" - literally "State Council") adopted a bill making Estonian the sole official language and declaring other languages including Russian to be foreign. The bill allows Russian to be used along with Estonian in regions where ethnic Russians make up a majority of the population.

On 19 January 1995, the Estonian Parliament passed a new, strengthened citizenship law. The statute, harmonized with European Union norms, stipulates a five year residency requirement (previously the requirement was two years) before an application for Estonian citizenship may be made. The new law also imposes a requirement to pass a test on the Estonian Constitution, in addition to an Estonian language proficiency test.

Having explained these circumstances, let us turn to the initial version of the Estonian Law on Aliens that was passed on 21 June 1993. It defines the status of aliens, temporary residents, and permanent residents in Estonia. Residents who do not have citizenship are guaranteed all human and social rights on an equal footing with Estonian citizens. Non-citizens who were granted

residency after 1 July 1990, did so under valid Estonian legislation and are not subject to exceptions listed in the law. Non-citizens who received residency permits from the Estonian SSR before 1 July 1990, must apply for residency permits during a one year phase-in period. Those who do not apply have an additional year to leave the country. Most applicants for permanent residency will receive their permits automatically, and have them renewed automatically unless they have committed serious crimes or endangered national security.

Exceptions include active duty military personnel and retired officers from foreign military forces; persons who have been or are employed by a foreign intelligence or security service; felons and ex-felons; and certain persons who have endangered national security or worked against Estonian national interests.

The law establishes procedures for the issuance of Alien Passports and for the continued use of Soviet passports by certain persons. The acquisition of a foreign citizenship does not by itself have any impact either on residency rights or on social and economic benefits.

It is significant to note that the first protest against the law was lodged, not by the local residents affected by the law, but by the Russian Foreign Ministry, a few days before its passage. In a speech to the UN World Conference on Human Rights in Vienna in June 1993, Russian Foreign Minister Kozyrev included veiled references to the situation in Estonia, charging "ethnic cleansing in white gloves." On 18

June, Estonia was accused of "damaging inter-State relations, aggressive nationalism, territorial pretensions, pressure on Russian military, an unfriendly attitude toward Russia," and "the denial of employment, social benefits, and political rights to non-citizens." Similar statements followed almost every day until 24 June 1993, when in a statement issued in the name of Russian President Boris Yeltsin, it was claimed that Estonia had "forgotten about some geopolitical realities," but that Russia had the "possibilities to remind it of them."

Prior to the passage of the Law on Aliens, the Russian Federation had protested the re-adoption by Estonia of its 1938 Citizenship Law and the Language Law. Although citizenship matters are totally within the internal jurisdiction of a State, Russia has ignored this time honoured principle and raised this issue in the UN, and requested the Office on Democratic Institutions and Human Rights (ODIHR) in Warsaw to investigate the matter. Since the 1938 Estonian citizenship legislation is quite liberal in its requirements in comparison with the citizenship laws of many other States, Russian protests have not found many supporters.¹⁰

The hostile Russian statements were followed by an anti-government rally led by the Narva and Sillamae politicians, and a demonstration in Tallinn. Responding to suggestions by worried Western countries, Estonian President Lennart Meri refused to sign the Law on Aliens on 25 June, and proposed instead

to solicit expert advice from the Organization for Security and Cooperation in Europe (OSCE) and Council of Europe (COE). A "Roundtable" on ethnic issues was established as a mechanism for various minorities to express their concerns about Estonian legislation. Nonetheless, the Narva Council called for an autonomy referendum on 28 June. On 30 June, top Estonian officials went to Narva to explain the Law on Aliens and other legislation. The Chancellor of Justice asked the Narva City Council to withdraw the referendum since he had ruled that it was unconstitutional. An officially prescribed waiting period began which would lead to consideration of the legality of the referendum on 11 August 1993. On 4 July, Sillamae joined Narva in planning a referendum while Mayor Sobchak of Saint Petersburg accused Estonia of preparing to deport its Russian population.

On 1 July, the Russian Parliament voted 160-0 to call for sanctions against Estonia, asking Mr. Yeltsin to apply political and economic pressure, and continuing the existing suspension of troop withdrawals. Talks with Estonia and Latvia on the withdrawal of remaining ex-Soviet occupation troops - unpopular with the military - had already stalled. Constant talk of a linkage between troop withdrawal and what the Russians would refer to as "human rights violations" raised the question of whether citizenship and language issues were a smokescreen for maintaining a military presence as long as possible. In any case, the continued existence of Russian garrisons - outnumbering the

10 On 9 July 1993 the European Community released a "Declaration on Estonia". Also see Swedish PM Carl Bildt's article in the 27 July issue of the *International Herald Tribune*.

small and underequipped Estonian and Latvian armies - increased the risk of intervention, as well as the perception of an external threat.

Both the OSCE and COE responded quickly to President Meri's request to review the law. The OSCE replied on 1 July, and the COE on 2 July. After digesting their advice, President Meri called the Estonian Parliament into special session. On 8 July, the Parliament passed a revised Law on Aliens. A total of 19 separate changes were made. The substance of the Law on Aliens remained unchanged, but the bill now contained clarifications and additional language that non-citizens were expected to find reassuring. The new wording was more explicit. The right to appeal was mentioned more frequently, and there was more emphasis on the right to receive residence permits without much change in the actual requirements. The law continued to reflect the desire of most Estonians to see the complete departure of the Russian military and other persons closely associated with the ex-Soviet occupation forces. On this point, legislators were unwilling to enact more liberal provisions despite OSCE and COE suggestions, although active duty and retired officers and their families would be able to apply for individual exemptions if they wished to become permanent residents.

Substantive changes included the elimination of the requirement to renew permanent residency permits every five years. Grounds for refusal to grant residency permits were more rigorously defined - primarily as endangerment of national security. Explicit provision was made in the law for ex-felons considered to be rehabilitated.

On 9 July, the European Union issued its "Declaration on Estonia" praising the revised Law on Aliens. OSCE Staff Report (September 1993) carried this evaluation (in part):

"Whether the Russian community finds its place in a future Estonia with a reasonable degree of tranquillity, or Estonia becomes another area of ethnic tensions in Europe depends on several factors ... [one of those being] the attitude of the Russians and Estonians themselves. Russians must come to grips with the fact that they live in an independent nation, neighbouring, but not part of Russia. They will have to make major changes in their lives, unfamiliar territory for many people used to having decisions made for them.

Russians also need to understand why many Estonians find it so difficult to accept their presence in Estonia: that while they personally may have been innocent of repression, they or their forbears were used by the communist regime to suppress a nation and a people; and that every time Estonians were forced to switch to a foreign language to speak to someone in their own country, it was another reminder of the suppression.

Regardless of concessions by Tallinn [whatever the issue], those elements unreconciled to the loss of the Baltic States will use every opportunity, valid or

otherwise, to level charges of human rights violations in Estonia. For this reason, it is essential that the international community ... condemn shrill rhetoric or actions inconsistent with the principles of the Helsinki Final Act and CSCE commitments on both sides."

Although Russian allegations of discrimination have been refuted on numerous occasions by the UN, the OSCE (the then CSCE), and various European bodies, it is always good to have yet another body of experts reach the same conclusion, effectively thwarting Russia's apparent desire to exercise influence over Estonian internal policy through third parties. Also, alarmist Russian predictions of impending civil strife once again turned out to be either politically motivated exaggerations or - in the darkest interpretation of events - a failed attempt to create conditions that would lead to the dismemberment of Estonia. Ominously, Russia had some success in fomenting such strife in the Transdnestr region of independent Moldova and in the Abkhaz region of independent Georgia, and to a much lesser extent in the Crimean region of independent Ukraine. If Estonians implement the Law on Aliens fairly, it will undercut the Russian Federation's ability to extract political concessions in the future by continuing to level charges of human rights violations - unless it wishes to lose any more credibility on the issue.

International approval of the Law on Aliens, however, had not defused the

issue of permanent residency as a source of controversy. In the context of the stalled troop withdrawal negotiations, certain provisions of the Law on Aliens regarding the status of Russian and ex-Soviet military retirees and their dependants continued to be disputed by Russian negotiators. During subsequent talks on the removal of the Russian garrison from Estonia, Russia rescinded its previous commitments several times, insisting on unconditional permanent residency for all Soviet military retirees demobilized in Estonia. While the Estonian Government explicitly signalled a readiness to consider residency on a case-by-case basis (especially for those born before 1939), Russian negotiators treated their demands as non-negotiable preconditions for withdrawal. After several high-level meetings and various fiery statements, Estonian President Lennart Meri and Russian President Boris Yeltsin signed the agreement (26 July) calling for the withdrawal of virtually all remaining members of the Russian armed forces from Estonia by 31 August 1994. At the same time, they signed an agreement regularizing the continued residence of some 10,000 Russian military retirees living in Estonia. Estonia retained the right to establish a commission to review residency applications by Russian military retirees on a case-by-case basis, and reserved the right to expel retirees whose behaviour may be deemed harmful to Estonia's society.¹¹

The actual implementation of the Law on Aliens has run into some difficulties. First, the Estonian Government

11 On 8 June 1995, Estonian Prime Minister Tiit Vahi stated that the Finnish Government is prepared to pay several million Finnish marks in aiding the repatriation of the approximately 10,000 retired Russian military officers currently living in Estonia.

was extremely slow in preparing the paperwork for residency and work permits. On top of this, the Departments of Migration and Citizenship were combined and reorganized, interrupting the orderly processing of the permits. The paperwork was finally ready by March 1994, but some local Russian newspapers advised their readers to ignore the law and not apply for permits. In April 1994, it became obvious that the deadline for legalizing the status of the aliens could not be met. On 18 May 1994, the Parliament adopted a Law on Temporary Travel documents in which the deadline for applying for residency and work permits called for in the Law on Aliens was extended until July 1995.

But by the set date - 12 July - about 150,000 of the approximately 400,000 non-citizens in Estonia had not yet registered to apply for residency and work permits. An official monitoring minority affairs said that "there are a number of people who were born and raised in Estonia and do not think they need to apply to continue living here. Some of those people simply will not apply." Sources within the Russian community said that the reason for the slow response to the 12 July deadline was that temporary residency permits would mean a loss of social privileges. The Law on Aliens stated that those who lived in the country without residency permits would lose the right to privatize their apartments and the right to receive certain benefits such as free medical insurance and child support.

Attempts were made by the new centre-left government to propose amendments that would give a second chance to those who missed the deadli-

ne, but these were killed by the right-wing opposition party during the last regular parliamentary session before a three month summer recess. At a dramatic Special Session of the Estonian Parliament, the deadline was extended past 12 July, giving the Interior Ministry another four months to receive applications. Persons who did not register before 12 July, however, would not be able to vote in the next round of local elections and might be subject to other restrictions. The vote to extend the deadline (57-0) took place in the last five minutes of the session after 31 conservative deputies walked out.

The proposed amendments had won praise from the Russian faction who had felt that they would help to more exactly determine the legal status of non-citizens in Estonia. A proposal by the Russian faction in Parliament to grant automatic permanent residence status to all people who lived in Estonia before 1 July 1990, was voted down by Parliament. It is expected, however, that the current government, which has often voiced its intent to promote the integration of aliens and better relations with Russia, will succeed in amending the Law on Aliens soon. Mr. Andres Kollist, Director-General of the Citizenship and Migration Board of Estonia, announced that the total number of Russian citizens living permanently in Estonia as of 15 May 1995, was 71,700. He also quoted a figure of 50,000 as representing the number of illegal residents in Estonia. According to Mr. Kollist, the present Estonian Law on Aliens is harmful since it encourages some former Soviet non-Estonian citizens to obtain Russian citizenship. As a result, Narva has more Russian citizens than Estonian citizens. He also expressed his concern regarding

corruption in the Citizenship and Migration Board. Indeed, a former Prime Minister had been arrested for allegedly bribing officials to issue Estonian passports for Russian business associates, though this charge was dropped on the grounds of entrapment - according to some critics, on the grounds of celebrity.

If all this sounds too depressing, let me quote a poll taken of ethnic Russians living in Estonia on 13 April 1995: only 2 percent stated they wished to emigrate elsewhere; more than half stated that they had never witnessed any inter-ethnic conflicts; 87 percent stated that they had never taken part in such conflicts. Only 9 percent stated that their greatest concern was ethnic tension between Russians and Estonians and only 8 percent said that the interests of ethnic Russians in Estonia were being infringed upon, and that they were concerned about this problem. About 66 percent believed Estonia must remain independent in order to ensure successful development.

But five days later, (18 April) Russian Foreign Minister Andrei Kozyrev stated at a Russian Defence and Foreign Policy Council meeting in Moscow that Russia might use military force to protect the 25 million ethnic Russians living abroad, adding that there were "other means of protecting Russians abroad as well," namely diplomatic, political and economic pressure. This comment was only one in a series of

tough foreign policy statements by Russian officials. He also accused Estonia and Latvia of a "deliberate policy of banishing ethnic Russians." Two days later, after inquiries by several Foreign Ministries as to "clarification" of his remarks, Mr. Kozyrev attempted to downplay his assertions by stating that there was nothing new in his comments and that he had been saying the same thing for five years.

Latvia

Whereas in Estonia most Russian speakers are concentrated in Tallinn and in the Northeast region, in Latvia they are spread over the seven largest cities, where they form more than 50 percent of the inhabitants.¹² They belong to several distinct groups: 1) bureaucrats from the leftover Soviet regime and Communist Party; 2) the leadership and workers of the military-industrial complex built by the Soviets after World War II; 3) retired military and KGB men with their families; 4) Soviet style "fortune hunters" of whom 40,000 arrived in Latvia every year (during the 1960's, 1970's and 1980's) and 30,000 left, leaving behind abandoned children and grandmothers; 5) some dissidents and intellectuals for whom Riga meant "Near Abroad" even during the Soviet era; and 6) a callous criminal/entrepreneurial element locally called "mafia." All of these present not only political but also economic problems - as opposed to those ethnic Russians and other minorities

12 Of the 2.7 million inhabitants in Latvia, 54% are Latvians (diminished from 75% prior to WWII). During the Soviet era, Latvia's capital city Riga was an important Soviet administrative, industrial, and military center. Other Latvian towns were popular destinations for Soviet military and KGB retirees, who were given housing preferences at the expense of the local population.

who have lived in Latvia for generations and fit in every walk of life without difficulty.

Due to World War II and the occupying Nazi and Soviet regimes, Latvia lost 35 percent of its original inhabitants. Of these, 232,000 perished in Soviet and Nazi death actions, while some 331,000 fled to the West or never returned from labour camps and terms of exile.¹³

The Soviets, after occupying the country, set up their own rules with consequences that reach to this very day. Discrimination against local inhabitants manifested itself in various areas: 1) leading positions in the government, Party, and State enterprises were given to outsiders and Latvians were not to be trusted. Some of these former bosses have used their positions to expropriate property and have become "businessmen," sometimes causing havoc in Latvia's budding economy. Above and beyond leadership positions, most Latvians were also barred from technical careers in occupations deemed "sensitive" or involving contact with foreigners; 2) housing policy: military personnel, including retirees were given priority for housing. Modern housing was built only for newcomers from other Soviet republics; 3) language use: the Russian language was obligatory in all spheres of official and commercial life in

Latvia to the virtual exclusion of the native language, Latvian. Persons attempting to carry out normal business in Latvian were subject to verbal and physical abuse; 4) education: a bizarre version of history was taught which meant that economics, philosophy, and political science were replaced by Marxism, while religion was forbidden. Educators subservient to the Soviet regime were placed in leading positions, affecting every level of schooling;¹⁴ 5) private property: the Soviets confiscated all private property and bank accounts.

As Latvia regained independence, and the new government started to redress these injustices, strong objection was heard not only from the people involved but also from Moscow. The arguments against the Law on Language, the Citizenship Law, and the Law on Aliens were almost the same as those used against the Estonians a year earlier. International human rights authorities urged Latvians to "let bygones be bygones" and to be "generous." They completely disregarded the fact that large groups of unassimilated and hostile people previously employed in the Soviet military-industrial complex had become unemployed. The factories, following the advice of the International Monetary Fund, had been closed - no similar facilities on that scale are planned for Latvia in the foreseeable future since Latvia lacks natural resources,

13 In the hinterlands of Siberia live an estimated 200,000 Latvians (with no Latvian schools, press or radio). Many of them were forcibly deported in 1941 and 1949 during mass actions. Some were subject to internal exile after labor camp terms. The Russian Government impedes their return to Latvia by refusing to distribute information and even by spreading disinformation among them.

14 For example, the 1995 UN Human Rights Committee Annual Report regrets that Latvia lacks appropriately educated judges. Experience in international law is particularly rare.

domestic energy sources, and markets for heavy industry. Some of these enterprises could, however, be salvaged and reopened in Russia if the right investor could be found who would be willing to finance the transfer. That would eliminate the problem of this work force having to learn another language, boost the Russian economy and relieve Latvia of a structural unemployment problem that it cannot easily solve. Western compassion for the minorities caught in these rapid developments would be much more appreciated if the Western countries would organize an emigration drive and absorb a few hundred thousand of the Russian industrial workers now living in Latvia. They would make good immigrants - hard workers, fairly well educated, happy to resettle with a promising future. The remainder would eventually be successfully reintegrated in the local economy as it restructures. It is the sheer size of this artificially created minority, rather than any discrimination against them, that creates the main problem.

As a rule, Latvians like foreigners and believe "foreigners are good for business." Before World War II, the minority laws were very liberal by prevailing standards. Even today, Latvians are quite friendly to what they term "real minorities" that include earthquake survivors from Armenia, Vietnamese textile workers, Greek civil war orphans, the traditional Polish and Jewish minorities, the Baltic Germans and Old Believers (bearded Orthodox Russians who fled the Russian heartland to escape religious persecution, settling in depopulated areas of Estonia and Latvia after the destructive Russian-Swedish war of the early 1700's).

Large numbers of "Russian-speakers" refuse to get involved in supporting the Moscow line. The vociferous groups accusing Latvians of human rights violations are usually led by ex-Soviet army officers. Some of them are retired and others just "privatized themselves" by discarding their uniforms and buying false passports. It is unfortunate that Latvia - urged on by the West - was pressured into acceding to Russian demands regarding residency rights for ex-Soviet army and KGB officers, in order to reach agreement on a Russian troop withdrawal plan. The withdrawal was virtually complete by 31 August 1994, but the terms were not popular. There is a strong but indirect connection between the signing of the agreement at the beginning of May 1994, and the toppling of the Latvian Government in mid-July.

There is a more direct connection between this agreement and the restrictive Citizenship Law passed on 22 June 1994. Various drafts of this law had been discussed by the Latvian Parliament ("Saeima"; before that, the Supreme Council) for the last four years. At first there were four proposals submitted for the Citizenship Law. One promoted the "zero-option"; two others, varying only in detail, finally resulted in the adopted law; but the fourth was the strictest which proposed to expel everybody who had come to live in Latvia during the Soviet occupation (since 1940).

Consideration of the Citizenship Law, debated by the Saeima during the fall of 1993 and prior to that by the Supreme Council three years earlier, was expedited by the signing of the Latvia-Russia treaties on troop withdraw-

wal. A compromise version sponsored by the two centrist political parties (Latvia's Way and Latvian Farmers Union) was tentatively adopted on the first reading on 26 November 1993, incorporating many provisions of an alternative draft by the opposition conservative Latvian National Independence Movement. Termed by Saeima Human Rights Commission Chair Mrs. Inese Birzniece (LC) as "the best possible compromise we could hope for," the legislation was debated and formally adopted on the second reading on 8 June 1994. This version of the Citizenship Law was presented to officials of both the OSCE and COE for their review prior to final approval. The international experts rejected the naturalization limits on foreign-born non-citizens and demanded that Latvia strike that provision or otherwise, Latvia would not be accepted as a member of the Council of Europe or European Union.

Prime Minister Valdis Birkavs pushed to limit debate, and managed to secure final approval before the Saeima's summer recess, so the law was adopted on 21 June.

The law reasserts the citizenship of all those who were *Latvian citizens* on 17 June 1940 (the date Latvia was occupied by the USSR) and their descendants. All others must go through the prescribed naturalization process. The law also restricts dual citizenship. In an exception to this rule, citizens and descendants who went into exile and could not return to Latvia between 17 June 1940 and 21 August 1991, will still be able to register as citizens through 1 July 1995 and maintain their citizenship.

A number of restrictions on who may be naturalized were included in the law. Persons cannot be naturalized if: they have used extra-constitutional methods to campaign against Latvian independence or democracy; have been convicted of expressing totalitarian ideas; are officials of a foreign government or serve in a foreign armed force. The law restricts Latvian citizenship rights for Soviet military retirees and former KGB operatives, and it would limit the naturalization of all foreign-born resident aliens to not more than 0.1% of the total number of Latvian citizens annually.

Naturalization will begin immediately for a number of categories eligible for early consideration. These include: all ethnic Latvians and Livs (an ancient and almost extinct Finno-Ugric minority living in Latvia); all Estonians and Lithuanians who have lived in Latvia for at least five years; Latvian language high school graduates, who have lived in Latvia at least five years; those married to Latvian citizens for at least ten years who have lived in Latvia for at least five years; and other special cases.

To be naturalized in the general order, an applicant must have spent at least five years in Latvia (starting 4 May 1990); have knowledge of the Latvian language, Constitution and history; have a legal source of income; and pledge an oath of loyalty to the Republic of Latvia. Persons satisfying these requirements are then placed into a queue according to their date of birth. All resident aliens not born in Latvia (estimated at approximately 500,000) would be able to apply for naturalization on 1 January 2000.

After an extended debate, the law was passed as proposed by a vote of 66-11,

with three deputies abstaining. During the debate a number of amendments concerning the naturalization limit were proposed and rejected, first deleting, then reinstating it. Prime Minister Valdis Birkavs, foreseeing complications, asked President Guntis Ulmanis not to sign the law but rather to send it back to the Parliament for a review. The President did just that, recalling the Saeima from its summer recess at the end of June. Many lawmakers, however, resented being called into special session and gave vent to their displeasure rather than dealing with the government's agenda.

Another extra-ordinary session had to be called on 22 July and this time they eliminated the quota. Latvian-speaking non-citizens will be naturalized over a ten year period beginning in 1995. During the first five years, qualified Latvian-born non-citizens will be naturalized, according to age, with younger categories becoming citizens first. During the second five years, qualified non-Latvian born non-citizens will become eligible for naturalization, also by age category. The new Latvian Citizenship Law went into effect 11 August 1994.

On 16 March 1995, the Latvian Parliament adopted several amendments to the Citizenship Law. Now, practically all ethnic Latvians living in Latvia have, through the process of registration (to be completed by 31 March 1996), been recognized as Latvian citizens and do not have to ask to be naturalized. Also, citizenship of all women and their descendants whose permanent place of residence is Latvia and who had lost their citizenship by marrying a foreigner has been renewed, as long as they have been

legally registered and have not taken on any other citizenship since 4 May 1990.

A third fundamental amendment recognizes as Latvian citizens all persons who have graduated from a full course of instruction at public schools teaching only in Latvian at the primary and general secondary levels.

The deputies also agreed that, in reviewing naturalization applications, Latvian language examination requirements would be waived for those individuals who had gained a general, secondary specialized, higher or vocational education in the Latvian language; group 1 invalids who have been granted the classification on a permanent basis; Group 2 and 3 vision, hearing and speech impaired individuals, and all persons who had legally settled in Latvia prior to the Soviet occupation, as well as those individuals who prior to the Soviet occupation were citizens of Estonia or Lithuania. The Saeima did, however, reject a proposal to exempt from Latvian language tests all other persons over 65 years of age.

The Latvian Citizenship Law was frowned upon by Moscow, but accepted by international experts. Mr. Miguel A. Martinez, the President of the Council of Europe's Parliamentary Assembly, visited Riga on 11 January 1995, and stated that Latvia's Citizenship Law and proposed Law on Stateless Residents met European Parliamentary standards. However, he also urged Latvia to ratify relevant international human rights and minorities' rights instruments.

The backlash against laws considered too lenient to Russian speakers was evident at local and municipal elections

(held on 30 May 1994): the conservative parties, asking for stricter laws, won a majority. Ever since, the Latvian Government has had to correct locally passed laws trying to take away some rights of non-citizens. For example, on 16 January, Minister for State Reforms Vita Terauda, suspended legislation passed by the Riga City Council proposing to provide welfare payments only to Latvian citizens. This ordinance openly contradicted a Latvian law permitting all permanent residents to receive welfare support.

Aside from reacting to such annoying incidents, many international human rights organizations have wrongly claimed that Latvian citizenship is only being granted to ethnic Latvians. This mistake is often made even by senior officials. For example, on 2 March 1994, US Secretary of State Warren Christopher, testifying before the US Senate, talked about one million Russians living in Latvia having a legitimate complaint... The Latvian Government has presented the following figures: there are a total of 722,486 ethnic Russians in Latvia; of these fully 38 percent are automatically citizens of Latvia and have full voting rights, because they were deemed to still have Latvian citizenship or to have inherited it. At the end of 1994, 21.32 percent of Latvian citizens were not ethnic Latvians, among them 289,106 (16.28 percent) Russians; 20,791 (1.18 percent) Belarusians; 4151 (0.23 percent) Ukrainians; 7253 (0.41 percent) Lithuanians; 39,522 (2.22 percent) Poles, 6828 (0.38 percent) Jews; 6794 (0.38 percent) Gypsies; 987 (0.06 percent) Germans; 1337 (0.08 percent) Estonians, plus a smattering of Armenians, Georgians, Tatars, Azeris, Moldovans, etc., and 203 (9.01 percent)

Latvians. They were all citizens of Latvia before World War II, or their descendants, and therefore automatically became citizens of Latvia under the new Law.

On 28 July 1995, the first 33 new citizens swore allegiance to Latvia. Of them 19 are from Riga, 10 from Rezekne and 4 from Talsi. They are now one step away from receiving their Latvian passports. Among the first group of new citizens are: Mr. Aleksandrs Kolbins, a soloist from the State Opera and Ballet company and Mr. Teodors Tverjons, Chairman of the Association of Commercial Banks. It is estimated that 5000 new citizens will be able to vote at the next parliamentary elections taking place during the fall of 1995.

Having had such a hard time adopting the Citizenship Law in Latvia, Members of Parliament were even more reluctant to start discussing the Law on Aliens. In fact, at the time of writing (August 1995) it has not yet been adopted. But the first important steps were taken on 12 April 1995, when the Saeima adopted the part of the law dealing with non-citizens who are permanent residents of Latvia, granting them full personal, economic, and other rights as enjoyed by Latvian citizens. The new law allows them the full freedom to choose their place of residence - not a self-evident right from the point of view of ex-Soviet citizens - and to leave and re-enter Latvia using special non-citizen passports. The law does not apply to Russian military personnel or military retirees. The provisions are meant for former Soviet citizens who are registered as permanent residents in Latvia, and have lived in Latvia prior to July 1992. The legal status of persons who

arrived in Latvia after July 1992 is determined by the law on their arrival and stay in Latvia as "foreigners" or as "stateless persons."

The law on the status of former Soviet citizens guarantees its subjects the customary rights and freedoms as provided by the constitutional law on the rights and duties of an individual and a citizen. The holder of a non-citizen passport also has the right to freely choose a place of residence in Latvia and to receive a spouse, children, and parents from abroad. S/he cannot be expelled from Latvia; s/he has the right to preserve her/his native language and culture; and to receive the assistance of a translator in a court trial.

To receive a non-citizen passport, an individual will have to present her/his Soviet passport with a written-in identity code as well as to testify with a signature that s/he is not a citizen of any other country. Stateless persons (individuals who have never been citizens of any State and were permanently registered in Latvia before July 1992), will also have the right to receive this passport.

According to the law, only those individuals who are not retired Russian servicemen and who have not lived illegally in apartments built for the use of the Russian army, can be registered on the official registry of inhabitants. Term-stay permits are thus annulled for persons who cohabited with ex-Soviet soldiers and were never legally registered as residents - this affects a small number of persons now living as squatters in military residences who were abandoned by former boyfriends or relatives.

The first part of the Law on Aliens, containing the provisions described above, was adopted with the vote count 55:9.

Implementation of the Citizenship Law, the Law on Aliens (as well as language law, various regulations on minorities, repatriation, etc.) depend on the integrity of the officials interpreting the law and dealing with the public, as well as on the non-citizens themselves. Last summer, I looked into a few controversies mentioned in some NGO reports as "human rights violations" in Latvia. One involved 13 girlfriends left behind by Russian soldiers. The women were denied permanent resident status because they had not possessed it on the date set by the law. It does sound harsh, but the officials in question had acted in accordance with the letter of the law, and similar laws certainly exist in many other countries.

Another report on human rights in Latvia stated that non-citizens were only getting 90 percent of the normal rate for unemployment assistance. After a thorough check, this allegation proved to be untrue. All permanent residents in Latvia - citizens and non-citizens alike - get the same amount of unemployment compensation. The accusation apparently started with Russian mothers registering their children as "unemployed" as soon as they graduated from high school. They did in fact receive 90 percent of the usual sum - as provided by the law for persons who had not previously been employed or who had not been employed for some time. (This part of the Unemployment Law is meant for people returning from military service, a long term in a hospital or sanatorium,

prison, etc.) Why were only Russian mothers complaining, I asked. Because for some reason Latvian mothers did not register their high school graduate children as unemployed for the summer before college, was the answer.

I also went to see Mr. Olafs Bruvers, the Minister of Human Rights. He claimed to have his hands full trying to look into every Russian complaint. He had found that some officials - often themselves ethnic Russians - at times misinterpreted the law, intentionally delayed registration of applicants, demanded "gifts", or were remarkably inefficient. In addition, a number of complaints had no real basis. Did he also try to redress complaints by Latvians, I asked. No, he said, Latvians did not come to him with complaints so he had no official cause to look into their cases. When Latvians started to trust me with long tales of fighting bureaucracy (a leftover from the Soviet era) I asked why don't they go and complain? They did not answer, just looked at me with their immensely tired, sad but patient eyes.

As a rule, Latvians love law and order. They take pride in being fair. But at times these characteristics are dimmed by fear of the intrusive unpredictable Neighbour to the East. Nevertheless, I have faith in Latvia's future. The people there realize they are experiencing a chaotic and difficult period in their lives. At the same time, they know they have enough resilience to survive.

The Russian Armed Intervention in Chechnya and its Human Rights Implications

Nicolas M. L. Bovay*

I Introduction

On 30 November 1994, Russian President Boris Yeltsin issued a decree "On Measures for the Restoration of the Constitutional Order and Enforcement of Laws in the Chechen Republic."¹ On 9 December 1995, Mr. Yeltsin issued the order for Russian armed forces to enter the secessionist north Caucasian Republic of Chechnya in order to forcefully remove the fiercely separatist regime of Chechen President Dzhokhar Dudayev. On 11 December, after having violently crushed barricades and road blocks in the neighbouring Republics of Ingushetiya and Dagestan, 40,000 Russian army and interior ministry troops with armoured vehicles crossed into northern, western and eastern Chechnya simultaneously. Incommensurable human suffering ensued, including killings, extrajudicial executions, torture, and other gross violations of human rights of civilians and military personnel, as well as huge destruction of public and private property and annihilation of the local economic and social infrastructures.

II Historical Background

The history of Russo-Chechen antagonism is an ancient one. Mr. Dudayev merely opened a new chapter in hostilities when he declared his land of one-and-a-half million people independent in December 1991, amid the confusion caused by the collapse of the USSR. The overwhelmingly Sunni Moslem country, on the northern slopes of the Caucasus mountain range, was colonised in 1867 as part of imperialist Russia's drive to the south. The bid to colonise the region started some 40 years earlier when Russia, reluctant to allow independent Caucasian entities to occupy a wide strip of territory between itself and newly acquired Georgia, started settling armed Cossack volunteers there. The establishment of Cossack settlements triggered resistance almost everywhere in the Caucasus and especially amongst Chechens, brought up to be warriors, who struggled more fiercely than others for independence. The Caucasus War of 1817-64, which ultimately brought Chechnya under control, claimed thousands of lives. But, even then, Saint Petersburg found it difficult to effective-

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1 *Novoje vremja*, No.14.

ly assert its imperial rule over a mountainous region traditionally governed by clans and vendetta. And then it took another 17 years for the Bolsheviks, who became Russia's new rulers in 1917, to cast a lasting imprint on Chechnya. The clans and Islam were persecuted, and the use of local languages discouraged, but never defeated in Chechen hearts.

In 1943, when German troops reached the outskirts of Grozny, Chechen separatists launched a rebellion against Soviet dictator Josef Stalin. A year later, and after the reversal of fortunes that followed the Soviet victory of Stalingrad, Stalin took a terrible revenge. He exiled half a million Chechens and Ingushi to the wilderness of Kazakstan. Almost 200,000 people are believed to have died as a result of this enforced exile, which ended only in 1957. Treated as "enemies of the people," the Chechens and more than a million deportees from other ethnic minorities such as the Volga Germans, Crimean Tatars and Kalmyks, but also Balts and Ukrainians, barely eked out a living as farmers or mine workers in Stalin's labour camps.

It was until Soviet leader Nikita Krushchev's denunciation of Stalin in 1957 that the attempt to wipe out Chechnya as a nation was officially admitted to have been a mistake. The autonomous republic was reinstated, enabling some people to return home from the wild steppes of Kazakstan. To date, a diaspora of more than 100,000

Chechens still remains there. It is estimated that there are 300,000 Chechens in Syria, Iraq and especially Jordan.²

In August 1991, during the abortive hardline coup d'Etat launched in Moscow, the leaders of the Soviet-era unified Chechen-Ingush Autonomous Republic clearly voiced their unadulterated support for those plotting against Mr. Gorbachov. After the failure of the putsch, the discredited Chechen Soviet executive was replaced by a temporary council with the implicit blessing of Mr. Yeltsin who, at that time, was gaining political momentum on the Moscow scene and preparing the demise of the USSR *en coulisses*.

But Russia's plans for Chechnya failed when Mr. Dudayev, a Soviet air force pilot who had been based in Estonia and had militated for the Baltic country's independence, returned to Grozny and succeeded in uniting his people under the banner of independence from Moscow. In October 1991, Mr. Dudayev overthrew the temporary council in a bloody mutiny and was subsequently elected in Chechnya's first presidential elections which remained unrecognised by Russia. In November 1991, Mr. Yeltsin made a first attempt at regaining control of Chechnya by announcing a state of emergency and dispatching troops to reimpose Moscow rule. The attempt failed. Faced by other problems Russia then adopted a *laissez faire* policy over Chechnya that was to persist for two years, until the summer of 1994, when Yeltsin's government

2 One seat in Jordan's 80-seat parliament is reserved for a Chechen.

announced that it would no longer tolerate separatist Chechnya's harbouring of "criminals."

III Official and Occult Reasons for the Armed Intervention

Officially, Mr. Yeltsin took the decision to enter Chechnya, which since 1991 had been under the control of Mr. Dudayev's administration, "to prevent the disintegration of the Russian Federation" and to assist in the "struggle against organized crime" - in this context it should be remembered that Russian official iconography and populist imagery have long portrayed the Chechen people as an altogether unbecoming and rather awesome mixture of mafiosi and uncouth *montagnards*.

But the reasons given by Mr. Yeltsin do not explain everything. Russia's history has nearly always been dominated by the will to subjugate other peoples and nation States in the somewhat undefined geographical sphere possessively described by Russians as "our near abroad." Under the guise of "Panslavism," Russia has also recurrently demonstrated eagerness to "reunite," or rather subsume, other Slavic peoples (Ukrainians, Belarussians, Poles, etc.) under its "protective" realm, believing that they are no more than "little Russians," artificially estranged from the "great motherland". In the Caucasus, however, where people are not of Slavic descent, Russia's drive for conquest was motivated more by the will to pacify what it condescendingly considered to be uncivilised barbarians. The end result is that both Russia's neighbouring newly independent States and the numerous

ethnic minorities within the Federation itself, including the Chechens, have lost no occasion to denounce what they undoubtedly perceive as "Russian imperialism, chauvinism and jingoism." In this context it has become blatantly apparent that the Soviet paradigm merely served as a justification for Russian expansionism and that the Soviet State of the past was just a super Russian State, dominated by the centre, Moscow, in which all constituent republics remained subdued to the Russian capital. The present Russian State has not shown that it wanted to depart from the old imperial scheme and psyche.

In the months that followed the demise of the USSR, Russia lived a brief *lune de miel* with the West, which corresponded to an interlude of uncertainty concerning its perceived role in the post Cold War world. Illustrative of this period is the pro-Western stance it adopted in the Gulf War of 1991. Since then, however, Moscow has adopted a more assertive approach to its international relations. In the months that preceded the armed assault on Chechnya, Russia's security and foreign policies became increasingly motivated by the ambition to be seen and treated again as a superpower. As *The Economist* aptly indicated on 7 January 1995, "[T]he military establishment was keen to show that it can still do anything the Americans can do, and saw Chechnya as Russia's Haiti. Thus, the temptation to use force."

Another occult reason for the invasion of Chechnya may have been Russia's ambition to keep a high degree of control over the region's plethora of oil assets. Oil-rich Azerbaijan, which became independent in 1991, has demonstrated

great eagerness to further distance itself from Russia's rather cumbersome embrace over the "near abroad." And, fearing that if Azerbaijan was to rejoin either Turkey's or Iran's sphere of influence, because, as *The Economist* further explained, "with Azerbaijan goes control of the eastern end of the Caucasus and most of the oil reserves under the Caspian [sea]," Russia has been trying to forcefully woo Azerbaijan to agree to pump its oil through Russian pipelines, rather than through Iran. The problem for Russia is that the pipeline passes through Chechnya and that losing Chechnya would also mean losing essential economic resources.³ Chechnya expert Martin Mc Cauley, head of the social sciences department at London University's School of Slavonic and East European Studies told Reuters on 16 December 1994 that a key reason for Russia's campaign to bring Chechnya, which produced 2,6 million tonnes of crude oil last year out of the Russian output of 354 million tonnes, was economic: "Chechnya would be of no importance if not for oil. If it was a barren hillside, I don't think Russia would be bothered."

IV The Unravelling of a Tragedy: A Chronology of Events

Tension between Moscow and Grozny had been building up for several months. Previous attempts by the Russian military to take the capital of Chechnya had resulted in dismal failure and humiliation. Chechen combatants

also routed attempts by the Russian-backed oppositional Provisional Council to take Grozny towards the end of November 1994, dealing it a sharp psychological blow. Incensed by their successive fiascos in attempting to regain control of Chechnya, the Russian government and military establishment resorted to armed action.

Both sides seemed to brush aside the option of a political settlement to the question as their positions appeared as irreconcilable as ever. The head of the Dudayev delegation to talks with Russians was quoted on 13 December 1994 as saying: "It is useless to speak with the Chechen people in the language of ultimatum." Increasingly hardline Russian Foreign Minister Andrei Kozyrev told journalists after meeting with Swedish Foreign Minister Lena Hjelm-Wallen on 13 December: "If there is no disarmament in Chechnya, the Russian State will be obliged to use as much force as is required to establish order." Russian planes then pounded villages near Grozny. On the same day, Russian troops fired at a carload of journalists heading for Chechnya.

As Russian troops painstakingly streamed towards Grozny they encountered unexpectedly determined resistance from Chechen combatants. Massive bombing raids over Grozny and other neighbouring Chechen towns, hamlets, and other human settlements ensued. Chechens remained defiant; Reuters quoted one combatant as saying: "We can't lose. Either we win, or we die and go

³ See "The Chechen Trap," in *The Economist*, 7 January 1995, at. 25.

to heaven. All any one of us needs is Allah - and two machineguns."

After manifestations of lukewarm criticism from some Western governments, Mr. Yeltsin promised on 27 December to "rule out bombing that can result in casualties among Grozny's peaceful inhabitants."⁴ But the day after this promise, the Russian air force dropped more bombs in Grozny. One of them hit an orphanage, but fortunately the 47 children living there had been safely rushed into the shelter.

On Near Year's Eve a Russian onslaught on Grozny culminated once again in total military disaster. Russian air bombing raids and artillery barrages on Grozny intensified, taking a heavy toll on the city's population. Unofficial estimations of the number of casualties all established figures in the thousands. A massive population exodus followed.⁵

Conscious of the aggravation of the situation, the Russian Federal Migration Service had requested the UN, on 27 December, to assist internally displaced persons from Chechnya. The United Nations High Commissioner for Refugees (UNHCR) quickly responded on 30 December by forming a mission to

visit the beleaguered republic. But bureaucratic delays and alleged poor weather conditions held up deployment of the UNHCR team for two more weeks. Later, the "weather" pretext proved to be wholly fabricated. Similarly, an ICRC official also complained about Russian hampering of the relief process: "[W]e can't say whether it's deliberate red tape or the usual disorganization in the former Soviet Union. [But] the result is the same."⁶

On 4 January, Mr. Yeltsin once again ordered a halt to the bombing. However, massive bombings resumed on 5 January.⁷

Criticism of the Russian intervention in Chechnya has focused on two points. Firstly, the indiscriminate bombing of civilian areas and, secondly, gross human rights violations, including extrajudicial executions, mock executions, torture, beatings, forced disappearances, massacres and the use of anti-personnel land mines.

(a) The Indiscriminate Bombing of Civilian Areas

On 6 January 1995, the ICJ reacted by publicly denouncing the indiscrimi-

4 "What's Wrong With Yeltsin," in *Time*, 9 January 1995.

5 According to figures provided by the International Committee of the Red Cross (ICRC) in Geneva, there were 400,000 people living in Grozny, the capital of Chechnya, before the war started. In mid-January 1995, after intense bombing of Grozny, the population of the city was estimated at 40,000. At the end of May 1995, as fighting receded, 250,000 were living in the shattered capital. See "Facts and Figures," *ICRC Magazine Challenges*, June 1995, at 6. (These estimations correspond to those also provided by the UNHCR).

6 "Russian Red Tape Foils Chechnya Relief," in *International Herald Tribune*, 19-01-95.

7 See Robert Orttung, "Chechnya, A Painful Price," in *Transition*, Vol.1, No.3, 15 March 1995, at 2-7.

nate use of force exerted by the Russian army against civilian targets in and around Grozny which caused the death of thousands of Chechen and Russian civilians in just three weeks. It had become very clear, stated the ICJ in a press communiqué, that "the Russian army violated the right to life of unarmed civilians on a massive scale." A Reuters report, dated 12 January 1995, gives an idea of the degree of violence exerted on the population of Chechnya:

"Russian troops on Thursday [12 January] launched their heaviest artillery bombardment yet of the smashed Chechen Capital Grozny (...) and Moscow [is] sending in extra troops for a decisive storming of the city. Reporters who spent the night in Grozny said heavy shelling resumed at 8 a.m., marking the expiry of a 48-hour ceasefire declared by the Russian side. The truce had been violated by both sides from the start. Civilians [took refuge] in cellars to escape the relentless assault. Streets littered with rubble from earlier attacks, were all but deserted. Hundreds, if not thousands, of people have died in Grozny in a month of intense fighting ..."

Russian Foreign Ministry spokesman Grigory Karasin told Reuters a few

days later that human rights groups displayed "bias" by denouncing high civilian casualties in the fighting. "High losses were inevitable," he said, adding: "[W]e cannot fail to notice the inadequate and hasty reaction of a string of political activists and organizations... We observe a syndrome, a reflex reaction and a return to old stereotypes in reacting to events in our country."⁸

Governments around the world were then gradually abandoning their initial reluctance to criticise Russia as the scale of fighting reached hitherto unprecedented proportions and new reports of human rights violations perpetrated on a massive scale emerged day after day. For instance, the German Foreign Minister told Reuters, on 12 January 1995, that "the means used [by Russia] to solve the problem deserved criticism, massive criticism," and Mr. Jesse Helms, the Head of the US Senate Foreign Relations Committee, said that Russia risked losing US foreign aid if the "brutality" continued in Chechnya. French Foreign Minister Alain Juppé also castigated Moscow in unheard of terms. Mr. Boris Oleinik, Chairman of the Foreign Relations Committee of the Ukrainian Parliament, stated that "internal conflicts in the former USSR should be resolved peacefully and Russia had violated this principle."⁹

But international criticism did not seem to have much effect on Russia's militaristic stance. On 11 January, Mr.

8 Reuters News Service, 12 January 1995.

9 This approach towards Russia was adopted by all the newly independent States of the former USSR, including pro-Russian Belarus, but with the notable exception of Georgia, which has been confronted with a roughly similar problem in secessionist Abkhazia.

Dudayev announced that negotiations could bring the war to a close. He no longer insisted on the preliminary retreat of the Russian forces and declared that he was ready to renounce independence for greater autonomy. A week later the Russians launched another assault on the centre of Grozny and finally captured Mr. Dudayev's presidential palace, amidst scenes of unimaginable violence. On 22 January 1995, the independent Russian news agency Interfax reported that the corpses of 39 Russian soldiers carried from Chechnya to Russia's military headquarters in Mozdok, in the neighbouring region of North Ossetia, showed signs of torture.

Harrowing reports of human agony were dispatched by Reuters on 30 January 1995:

"Russian forces bombarded residential areas of Grozny, forcing terrified residents to cower in cellars. People fled underground as troops lobbed shells and missiles onto civilian districts in their latest offensive to crush secessionist rebels. [Around] 150,000 people, mostly old, sick women or children, were reported hiding in the cellars of Grozny. [A Russian Television station] broadcast footage from a village 50 km south of Grozny showing what it said was the aftermath of a Russian air strike on a nearby rest camp. The man-

gled bodies of a woman and her two young daughters sprawled on the floor of a house as her stunned husband watched."

By that time Chechen combatants were moving out of Grozny and heading for other areas of the republic. On 6 February 1995, the Russian military headquarters hastily announced the end of resistance in the capital. However, it is only on 21 February that the last attack on Grozny was finally launched. Since then, however, the situation in Grozny has remained catastrophic in human terms. A report by Mr. Bindig of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe (hereafter referred to as the "Bindig Report"), released on 29 June 1995, after a visit to Chechnya and surrounding republics in early June, confirmed that the situation in Grozny remained precarious. A truly apocalyptic picture is rendered:

"Most houses and apartment buildings, especially in the centre, are destroyed, or at least badly damaged by bombs and fire. What has not been destroyed has, more often than not, been looted. Putrefying corpses still remain in the cellars of some of the buildings, and the risk of epidemics in the city is rising as the summer gets hotter. Rubble, dirt and dust seem to be everywhere."¹⁰

10 Committee on Legal Affairs and Human Rights, Parliamentary Assembly of the Council of Europe, Report on the Human Rights Situation in Chechnya, Rapporteur Mr. Bindig (Germany-Socialist Group), Strasbourg, 29 June 1995 [AS/Jur (1995) 22], at 2. Hereinafter referred to as the "Bindig Report."

(b) Arbitrary Arrests, Extrajudicial Executions, Mock Executions, Torture, Beatings, and Forced Disappearances

Until the end of January, NGOs, Western governments and liberal Russian politicians had focused criticism about the war on Russia's indiscriminate bombing of civilian residential areas. But corroborated accounts of violent imprisonments and disappearances appeared to substantiate new allegations of systematic brutality. Such reports appeared to indicate a turning point in the war.

On 30 January 1995, officials from the Organization for Security and Cooperation in Europe (OSCE), returning from a fact-finding trip to Chechnya, said the seven-week conflict had produced widespread reports of human rights violations and that the scale of Russia's military action went beyond limits acceptable. "We have received reports about human rights violations on both sides before and during the conflict," OSCE delegation head Istvan Gyarmati told the press. The OSCE team visited a detention centre in Mozdok but could not confirm reports of torture there made public by the Russian human rights group "Memorial."

The press was able to report more precisely on human rights violations in

Chechnya. And reports of abuses became more and more abundant towards the end of January 1995. Under the title "Russian Brutality in Chechnya Cited," on 30 January 1995, the *International Herald Tribune* reported:

"Russian security forces [allegedly wearing masks] are practising systematic incarceration, with civilians suffocated and shot to death, disabled in beatings and put through mock executions, according to non-combatants in Chechnya recently released from one prison camp. Some civilians have also disappeared after being detained by Russian forces. [Detainees] are given two choices: confess and be sentenced to 12 or 15 years in prison, or be shot. [ICRC officials] expressed concern about the reports, saying Russian officials have not permitted visits to detainees or released a list of those in custody."

On 3 February 1995, the French daily newspaper *Le Monde* reported near systematic torture of prisoners in the infamous "filtration camp" installed by the Russians in Mozdok. The Mozdok "filtration camp" was one in a network of "filtration points" set up by the Ministry of the Interior to "filter" combatants from non-combatants.¹¹ *Le Monde*

11 *Ibid*, at 12. According to the "Bindig Report":

"there is absolutely no legal base for [the] setting up of [filtration points] under Russian Law. The filtration points operate in a complete legal void; officially, they do not even really exist, since there is no base for their existence. For this reason, there are also no guidelines as to who could or should be taken there. The arrests are thus completely arbitrary - the Ministry of the Interior troops can arrest and detain anyone they want in the filtration points. So, more often than not, ordinary Chechen men - civilians, not fighters - are "suspected" and taken to the filtration points."

confirmed witness accounts cited in the *International Herald Tribune* concerning masked torturers in Mozdok. It was alleged that most of the detainees in the Mozdok "filtration camp" came from Grozny, where special forces of the Russian Interior Ministry forcefully extracted people from their underground havens, often under the threat of using gas or hand grenades. Several reports indicated that grenades had, indeed, been used against recalcitrant civilians who refused to walk out of their shelters. It was alleged that all men aged fifteen to sixty, who were not of Russian origin, were afterwards separated from the others - including their wives and small children - and sent to Mozdok. The men were then thrown head down into trucks one on top of the other. Those who showed any sign of resistance were executed on the spot. After an eight-hour journey to Mozdok some detainees had suffocated to death.

According to testimonies recorded by Mr. Serguei Kovalev's Human Rights Commission,¹² trucks transported up to thirty Chechen detainees at a time. According to one such testimony, the special forces had, during a journey, opened fire against the detainees and the truck arrived in Mozdok drenched with blood. *Le Monde* reported that in Mozdok detainees were beaten for days,

and sometimes weeks, by masked and drunken commandos (the infamous *Spetsnaz*) from the Interior Ministry. It has been reported that military "physicians" were there to assess the effects of torture on detainees. According to testimonies, in Mozdok, up to twenty-two detainees were parked in railway carriage compartments designed for six people and were given two bottles of water a day for all. It has also been reported that the detainees were coerced into signing documents recognizing that they were combatants. Most refused. Those who accepted were then, allegedly, taken to a place where gunshots were then heard. However, it has been difficult to determine whether the detainees had actually been fired upon or not. The Russian press reported several testimonies of men who had undergone the ordeal of mock executions.¹³

According to the "Bindig Report," which cited provisional figures from the Russian NGO "Memorial," at least 2,000 Chechen men had been arrested and detained in "filtration points" by the beginning of June 1995. The existence of the "filtration points" also raised another problem concerning the administration of justice in Russia - that of the duration of imprisonment. It was alleged that some of the detainees had been held in cells for one or two months. The "Bindig

12 Mr. Kovalev was formerly Human Rights Commissioner for the State Duma (the upper house of the Russian Parliament). He was removed from this post on 10 March 1995, after his many overt critiques of Russia's intervention in Chechnya. He has been a human rights activist since the 1960's and reported on repression of Soviet dissidents. Arrested in 1974, Mr. Kovalev spent seven years in a labour camp for "anti Soviet agitation and propaganda." His criticism of the Chechnya war earned him the label of "enemy" by Russian Defence Minister Pavel Gratchov.

13 *Des témoins font état de tortures systématiques sur les prisonniers tchétchènes de Mozdok*, in *Le Monde*, 3 February 1995. See also: *Scènes de torture en Tchétchénie*, in *Libération*, 1 February 1995; "Russia: Amnesty International Calls for Immediate Action on Allegations of Human Rights Violations in the Chechen Republic," Amnesty International, 2 February 1995.

Report" gives details of such cases which would be too long to report in this paper. It should be noted, however, that his report confirms that such lengthy detention periods are illegal according to Russian law. The Constitution foresees a maximum of 48 hours in police custody and pre-trial detention, after which the detainee must be brought before a judge.

Reporting on violations of human rights committed by the Russians has been comparatively easier than documenting those perpetrated by the Chechens, assured both the "Bindig Report" and Human Rights Watch-Helsinki. This state of affairs is partly due to the fact that it has been simpler for human rights monitors to travel inside Russian-held territory than in Chechen strongholds. Interestingly, Mr. Bindig found that most complaints directed against the Chechen side were not connected to the armed conflict which broke out in December 1994. He noted that not only the Russian authorities, but also Russian local inhabitants and refugees complained more about the unlawful character of Mr. Dudayev's regime in the three years that preceded the conflict. The Russian authorities alleged that the Chechen regime had practised a policy of "ethnic cleansing" against the local Russian population. To date, this allegation has remained unverified.

In January, some international NGOs expressed concern over the fact that Chechen fighters reportedly claimed they took only Russian conscripts prisoner, and executed captured special forces troops. Amnesty International, in particular, urged the Chechen authorities to condemn publicly any executions, to ensure that such actions not be tolerated, and to take effective steps to prevent such actions.¹⁴ Human Rights Watch-Helsinki also gave the example of Chechen fighters who stored ammunition in an apartment building housing civilians which exploded when fired upon. It has also been alleged that people had been carelessly killed by Chechen fighters who did not know they were civilians running from one shelter to the next.¹⁵ Alleged violations of human rights committed by Chechen forces appear, however, to have been the exception rather than the rule.

It has been reported that a large number of Russian soldiers were victims of human rights violations committed by their own hierarchical superiors. Corroborated media reports denounced the sending of large numbers of unprepared and untrained young Russian conscripts to the theatre of war where they predictably lost their lives.¹⁶ The same reports assert that entire units of conscripts were not even informed that they were being sent to Chechnya in the first place. It is noteworthy that this

14 Amnesty International, "Russia: Amnesty International Raises Treatment of Captured Russian Troops," 19 January 1995.

15 Human Rights Watch-Helsinki, *War in Chechnya: New Report From the Field*, Vol.7, No.2, January 1995, at 2.

16 Michael Mihalka, "Too arrogant, Too Hasty, Too Ill-Prepared," in *Transition*, vol.1, no.3, 15 March 1995, at.10.

"clearly points to serious violations of humanitarian law and human-dimension commitments" the OSCE Member States subscribe to.¹⁷

By 21 March 1995, after the fall of Grozny, Russia had managed to gain control of the remaining Chechen strongholds in the lowlands, namely the towns of Shali, Argun, and Gudermes, forcing Dudayev's combatants to the mountainous regions of southern, eastern, and western Chechnya. But while the nature of the conflict gradually changed from urban warfare to a hit-and-run type guerrilla conflict, Russian troops persisted in committing serious violations of humanitarian law against civilians. Despite the retreat of Chechen fighters to the mountains, "Russians shelled civilian areas, indiscriminately fired on refugee columns, and looted and wantonly destroyed civilian property in their pursuit of elusive Dudayev fighters."¹⁸

(c) The Alleged Samashki Massacre

The alleged massacre committed in Samashki, in western Chechnya, between 6-8 April 1995, will probably go down in history as the most outrageous and revolting criminal act perpetrated by rogue Russian elements during the Chechnya war. And as such, it deserves separate treatment in this paper.

Samashki had a population of 15,000 inhabitants, mainly farmers and artisans. For three nights the little town was pummelled by a barrage of fire from heavy ground artillery. Then came 3000 Russian soldiers spraying shells from their tanks and tossing grenades indiscriminately into basement shelters. A journalist for the highly respected and establishment British daily the *Sunday Times*, reported from Samashki that psychopathic Russian troops had simply indulged in an orgy of violence after having captured the small town:

"Old people were gunned down without mercy as they emerged from cellars looking for water. Young men, whose only crime was that they were of fighting age, were beaten, tortured, and executed. Many of the killers appeared to have been on drugs: needles and ampoules littered the streets."¹⁹

As usual in such cases, it has proved extremely difficult to verify the allegations of human rights violations committed in Samashki, which was sealed off by Russian troops for several days after the massacre took place. Journalists and human rights monitors who reached the town after the ban had been lifted could only rely on hearsay and the testimonies of members of the families who were grievied by the loss of their kin.

17 Michael R. Lucas, "The War in Chechnya and the OSCE Code of Conduct" in *Helsinki Monitor: Quarterly on Security and Cooperation in Europe*, Netherlands Helsinki Committee, at 42]

18 Human Rights Watch-Helsinki, *Russia: Partisan War in Chechnya on the Eve of the WWII Commemoration*, May 1995, Vol.7, No.8., at 2.

19 "Slaughter of the Innocents: Drug-Taking Russian Troops Massacre Women and Children in Chechen Town," in *The Sunday Times*, 16 April 1995, at 16.

Concordant tales of survivors and Russian and international human rights monitors seem to substantiate the allegations and exclude the eventuality of a "Timisoara" style disinformation campaign. The *Sunday Times* wrote that "the [Russian] soldiers had made little attempt to clear up the evidence of the massacre," by the time Westerners had been allowed to enter the town at last. International aid workers estimated the death toll as 250, at the very least. Locals believe that it stands much higher. Official Russian sources, quoted by Human Rights Watch-Helsinki, estimate that at least 120 people died in the attack.

Whereas the official Russian media portrayed Samashki as a hotbed of Chechen resistance, it seems that the town was no more no less sympathetic to the ideal of independence than the rest of the breakaway region. General Anatoly Kulikov, the Russian commander of the operation, claimed that Samashki was "an enemy stronghold and that most of those killed were fighters." He said he had "no objections to the Russian Procurator's office investigating reports of murder of civilians during the assault." To date, however, it seems that the promise has remained *lettre morte*. Human Rights Watch-Helsinki reported that the Russian independent human rights group Memorial, compiled credible evidence that 94 of the fatalities were civilians, a strong indication that the Russian forces violated the rule of proportionality. Reports from Samashki suggest that there were more civilians than combatants in the town at the time of the assault. If, indeed, as the Russian side has alleged, combatants used the city's dwellings as fighting retrenchments, the destruction of the

houses cannot be considered a violation of international law. "If, however, only a small number of Chechen fighters had taken up positions in the buildings, the Russian forces would be responsible for disproportionate use of violence," stated Human Rights Watch-Helsinki.

The alleged Samashki massacre has been singled out on account of the sheer scale of the atrocity. But it should in no way be allowed to overshadow other atrocities committed elsewhere in Chechnya, where Russian troops deliberately indulged in a pattern of misconduct that has characterised their behaviour since the outset.

(d) The Budennovsk Hostage Crisis

The war spread beyond the borders of the Chechen Republic and into Russia's own territory on 14 June 1995, when a group of Chechen fighters, armed with automatic weapons and grenade launchers stormed the industrial city of Budennovsk, some 200 kilometres north of Chechnya. The Chechens attacked main public buildings and at least 41 people were killed and 50 injured on 14 June alone. Hundreds of people were seized in the town and forced into the hospital, where patients and staff were also taken hostage. Holding between 1,000 and 1,500 people, the Chechens fortified the hospital and threatened to kill the hostages unless Russia ceased hostilities in Chechnya.

The leader of the Chechen operation, Mr. Shamil Basajev, had reportedly demanded the launch of campaign of terror in Russia but this option was

clearly rejected by Mr. Dudayev and the Chechen hierarchy.

Thousands of Russian troops were dispatched to the scene in response and their first two assaults ended in dismal failure and carnage. Once again the conduct of the Russian forces in Budennovsk appears to have been both erratic and reprehensible. While terrified Russian hostages, many of them sick, waved white flags from the windows of the battered clinic, Russian troops disproportionately fired automatic weapons and heavy artillery at the building, setting one wing ablaze. On 18 June, reports claimed that 150 hostages had been killed. A number of hostages later said that they had been used as human shields by the Chechens. The Russian military prosecutor ordered an investigation into the killing by a Russian soldier of Russian journalist Natalja Aljakina.

On 18 June, Mr. Viktor Chernomyrdin, the moderate Russian Prime Minister, horrified by the turn of events, personally took charge of negotiating with Mr. Basajev. He promised to put an end to the war in Chechnya, support peace talks with the Chechen hierarchy, and offer safe passage to Chechnya for the rebels in exchange for the hostage's release. As a result, hundreds of hostages were released and the 74 hostage-takers were safely driven back to Chechnya where they subsequently dispersed. Mr. Chernomyrdin ordered General Kulikov to stop military operations on 18 June, hence officially marking the end of the war in Chechnya. The Budennovsk tragedy officially claimed 120 lives and stands out as the single most important human rights vio-

lation committed by Chechen insurgents. However, it should be remembered that Mr. Dudayev straightforwardly condemned the attack.

(e) The Spreading of Anti-Personnel Land Mines

In June 1995, the ICRC raised concern over another lingering international humanitarian law violation: that of anti-personnel mines. In the city of Shali, situated some 80 kilometres south east of Grozny, the local authorities had to advise people not to go more than 300 metres outside the town limits. The towns of Samashki and Argun have had to face the same menace. Fear of mines and unexploded shells is likely to continue marring the vital Chechen agricultural and other infrastructures for a long time. Anxiety has been preventing the inhabitants of Chechen villages from working in their fields and feeding their livestock. At the time of writing the situation seemed likely to deteriorate if farming could not be resumed and displaced people continued to flood in the area. This concern has been raised in the "Bindig Report" which cited the case of a aged man in Shali who could not let his cows out in the pastures because they exploded on landmines. The Report, though it lacked enough conclusive evidence to show that a deliberate policy of starvation of civilians existed on the part of the Russians, stated that such a "tendency seems to be manifesting itself." If this were the case, Russian forces would be violating Article 14 of the Second Additional Protocol to the Geneva Conventions which prohibits starvation of civilians as a method of combat. Such considerations naturally lead us to consider some of the international instru-

ments which have been violated during the Chechen conflict.

V Russian Violations of International Humanitarian Law and Custom

"Human Rights, international law and OSCE principles are being violated in unacceptable ways in Chechnya. Preserving [Russian] territorial integrity cannot be established by reducing whole neighbourhoods to rubble and ash. A lasting solution can only be a peaceful solution. The Russian leadership must grasp this."

Mr. Klaus Kinkel, German Foreign Minister, on 16 January 1995.

(a) The 1949 Geneva Conventions and their 1977 Protocols

The ICJ and other international human rights organizations based their condemnation of the behaviour of the Russian army upon legal grounds. Common Article 3 of the four Geneva Conventions, which applies both to international conflicts and to conflicts "not of an international character," and which is designed to protect non-combatants or persons placed *hors de combat*, as well as civilian property,²⁰ allows no derogation to the fundamental principle that civilians should not be harmed. Common Article 3 of the 1949 Geneva Conventions, which sets out minimum rules to be observed under all circumstances, provides:

"(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

- (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- (b) taking of hostages;
- (c) outrages upon personal dignity, in particular humiliating and degrading treatment;
- (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recogni-

20 See Cornelio Sommaruga, Human Rights and International Humanitarian Law, in *Bulletin of Human Rights* 91/1, United Nations, March 1992, at 57.

zed as indispensable by civilised peoples.

(2) The wounded and sick shall be collected and cared for."

Serious concern arose regarding the actions of both officers and rank-and-file soldiers in the war in Chechnya. "The fact that the Russian armed forces have not spared the civilian population in Chechnya, as prescribed by the Fourth Geneva Convention, means that widespread violations of humanitarian law both on the part of persons vested with command authority as well as ordinary soldiers have occurred."²¹

The four Geneva Conventions of 1949 and the two additional protocols of 1977, which form the basis of international humanitarian law, are "no less than the juridical expression of a common determination to extend rights and guarantees to several categories of individuals in time of war," wrote Dr. Cornelio Sommaruga, President of the International Committee of the Red Cross.²² The ICJ's early call upon the Russian Government to refrain from the use of indiscriminate force against civilians, bring the actions of its agents into conformity with accepted international standards, and bring a peaceful resolution to the conflict, reflected the urgency of the situation.

Russia persistently argued that it entered Chechnya to restore the consti-

tutional order in one of its constituent republics. Yet restoring order and legality by resorting to extreme violence becomes senseless if it predictably generates even more violence by fuelling more hatred and resentment. Furthermore, resorting to the sort of extreme violence exerted in Chechnya runs counter to the very notion of legality. Russia endeavoured to uphold in the first place. For, by targeting civilians in the name of its domestic law and order, Russia violated the international law provisions it had bound itself to respect. In believing that they could restore legality by breaking a higher form of legality - international law - Russian forces were guilty not only of grave breaches of the Conventions but also made a fatal mistake by ignoring the obligations they were bound to follow.

Well documented sources illustrate the systematic disregard by Russian forces of the provisions of common Article 3 of the Geneva Conventions. In a fascicle published in January 1995, Human Rights Watch-Helsinki, states:

"Russian forces have shown utter contempt for civilian lives in the breakaway republic of Chechnya. Eyewitnesses told our researchers of Russian bombs, shells and mortar fire levelling apartment buildings, entire neighbourhoods, and single-family homes in Grozny and hitting civilian areas in outlying villages in Chechnya

21 Michael R. Lucas, "The War in Chechnya and the OSCE Code of Conduct" in *Helsinki Monitor: Quarterly on Security and Cooperation in Europe*, Netherlands Helsinki Committee, at 42.

22 Cornelio Sommaruga, Human Rights and International Humanitarian Law, in *Bulletin of Human Rights* 91/1, United Nations, March 1992, at 57.

and in neighbouring Ingushetiya. Russian ground forces reportedly opened fire on civilians from a railroad car. Russian forces also destroyed at least two hospitals and part of a third, an orphanage, and several market areas. They have inflicted hundreds of civilian deaths, gruesome casualties, and caused an estimated 350,000 people to flee."²³

The bombardment of Grozny and its environs poses the well-known legal question of proportionality - a notion of international humanitarian law. Considering that, on the one hand, the Russian army is one of the largest in the world and has a huge potential of destruction, and that, on the other hand, the Chechen army is lightly equipped and considerably smaller in terms of staff and resources, the question of the proportionality of Russia's actions acquires a vivid dimension.

As we have seen above, Russian forces bombed out entire residential areas and inflicted various other forms of mistreatment upon innocent civilians in Grozny, Samashki and other places. Such behaviour amounts to collective penalty inflicted upon the civilian population as a whole. With the intent to punish the Chechen people, who in their vast majority, favoured independence rather than being forcefully reintegrated into the Federation, Russian forces have acted in flagrant violation of Article 33 of the Fourth Geneva Convention which

prohibits the collective punishment of populations. It reads:

"No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited.

Pillage is prohibited.

Reprisals against protected persons and their property are prohibited."

The Samashki massacre illustrated above typifies Russian misconduct in carrying out collective reprisals against civilians in the course of disarming elusive Chechen combatants. Human Rights Watch-Helsinki reported that "[A] disturbing development (...) has been the Russian forces' abuse of their right to disarm to mask for collective punishment against civilians" which is expressly prohibited by Article 33. In the case of Samashki, and other villages, Russian forces requested the handing over of an arbitrary number of weapons - a figure determined by intelligence reports - under threat of dire consequences. According to Human Rights Watch-Helsinki, such demands for weapons sometimes served as a pretext for an attack or for the detention of individuals. Samashki was bombed and stormed because it had been unable to turn over the 264 automatic weapons arbitrarily demanded by the Russians.

23 Human Rights Watch-Helsinki, *Russia's War in Chechnya: Victims Speak Out*, Vol.7, No.1, January 1995, at 2.

If Russia argues, as it has done, that Chechnya forms an integral part of the Federation, and if Russia argues, as it has done, that the Chechen conflict is an internal one, then it is *ipso facto* bound by Protocol II additional to the Geneva Conventions, which relates to internal armed conflict and mandates humane treatment of civilians and those who have ceased to take part in hostilities. Its Article 4 prohibits "violence to the life, health, or physical or mental well-being of persons, in particular murder as well as (...) torture, mutilation, or any form of corporal punishment." It also forbids the taking of hostages, collective punishments, outrages against personal dignity, pillage, and threats thereof. Well documented sources attest that Russian troops committed many of the crimes enumerated in Article 4. By ignoring the validity and supremacy of this particular article of the 2nd Protocol as well as other international law provisions that specifically govern the sphere of so-called internal conflicts, Russia's government and military simply displayed their utter contempt for the Rule of Law in the face of the world.

(b) The UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials

If Russia argues, as it has done, that its forces entered Chechnya to "restore constitutional order," then as "law enforcement" agents, their action should be

consistent with the provisions of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials²⁴ which state that:

"4. Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result."

The massive bombardment by Russian forces of civilian targets in and around Grozny contravenes the UN Basic Principles insofar as the Russian party had been offered an alternative to armed action by holding negotiations with the Chechen party. Mr. Dudayev had, at that time, expressed his willingness to hold such talks with the Russians. His proposal, however, was swiftly rejected by the Kremlin. Had such negotiations ever taken place and been successful it is highly probable that hundreds, perhaps even thousands, of lives could have been spared.

Ever since its outset, the Russian operation in Chechnya had been characterised by lack of restraint. In that respect, the UN Basic Principles are unambiguous:

24 Footnote No.133 to the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, states:

"...In countries where police powers are exercised by military authorities, whether uniformed or not, or by State security forces, the definition of law enforcement officials shall be regarded as including officers of such services."

"5 (a). [Law enforcement officials shall] exercise restraint in such use [of force] and act in proportion to the (...) legitimate objective to be achieved;

(b) Minimise damage and injury, and respect and preserve human life."

If, in Russia's eyes, gaining control of the territory of Chechnya constituted a "legitimate objective," it is evident that no restraint whatsoever was exercised in attaining that objective. Furthermore, Russian security forces inflicted maximum damage to the city of Grozny and injury to its civilian inhabitants, Chechen and Russian alike. In other words, certain rogue elements of the Russian forces acted not only disproportionately but also criminally, and in defiance of President Yeltsin's ban on such actions.

According to the UN Basic Rules, there is no place for impunity in such circumstances:

"7. Governments shall ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law," and,

"8. Exceptional circumstances such as internal political instability or any other public emergency may **not** be invoked to justify any departure from these basic principles." (Emphasis added)

The fact that little or no disciplinary

or criminal action seems to have been taken against rogue security forces elements who committed crimes in Chechnya indicates that, by allowing impunity to prevail, a serious threat to the Rule of Law exists in Russia. Conversely, however, it has been reported that Russian officers who refused to use arms against civilian targets in Chechnya have been sanctioned. Such actions constitute a violation of the UN Basic Principles which state that:

"25. Governments and law enforcement agencies shall ensure that no criminal or disciplinary action is imposed on law enforcement officials who, in compliance with (...) these basic principles, refuse to carry out an order to use force and firearms..."

(c) The OSCE Code of Conduct on Politico-Military Aspects of Security

It is worthwhile mentioning that on 6 December 1994, just five days before the start of Russia's military intervention in Chechnya, an important new document, the Code of Conduct on Politico-Military Aspects of Security, was approved by the Member States of the Organization for Security and Cooperation in Europe (OSCE) at a summit of the organization in Budapest.

A central aim of the Code is to prevent the misuse of military force to achieve political ends. "The Code is not a treaty or legally-binding but all OSCE States made a political commitment to conduct themselves according to these standards," stated Mrs. Christine Shelly, spokesperson of the US State

Department on 11 January 1995. The text²⁵ intends to give greater regional and sub-regional specificity to the international laws that govern military-political activities and the use of force, including the UN Charter and the Geneva Conventions. Russia, as a Member State of the OSCE, approved the Code on 6 December 1994 and has, therefore, committed itself to respecting it. Concerning the subject of impunity, Paragraph 31 of the Code states:

"The participating States will ensure that armed forces personnel vested with command authority exercise it in accordance with relevant national as well as international law and are made aware that they can be held individually accountable under those laws for the unlawful exercise of such authority and that orders contrary to national and international law must not be given. The responsibility of superiors does not exempt subordinates from any of their individual responsibilities."

Thus, "[T]he OSCE, the international community as a whole, as well as the Russian judiciary and Parliament have a responsibility to investigate these violations and to ensure that individuals responsible for them are apprehended, judged, and punished. The less extensive

but nevertheless serious violations on the part of the Chechen armed forces must be similarly taken up."²⁶

The "Bindig Report" on the Human Rights Situation in Chechnya of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe, authoritatively recalled that the Geneva Conventions and the OSCE Code of Conduct applied in the case of Chechnya. It recalled that: "Russia is bound by these documents of international humanitarian law, and must apply them in the Chechnya conflict." However, Mr. Bindig reported that when Russian General Kulikov had been confronted with some of the alleged violations of international humanitarian law committed by the Russian forces, he had answered that: "regretfully, a dirty thing like war is always accompanied by dirty acts." The "Bindig Report" found that, unfortunately, Mr. Kulikov's attitude seemed to have been shared and "widespread" among ordinary Russian soldiers. Mr. Kulikov's pseudo-justification of the atrocities committed by his troops in Chechnya therefore set the stage for widespread impunity for violations of international humanitarian law. More worrying still is that the superiors seemed to have known about and condoned such outrages. If this were the case it would appear that the Russian forces adopted a deliberate policy of terrorizing the population to extinguish the will of an entire nation.

25 Para. 39 of the Code states:

"The provisions adopted in this Code of Conduct are *politically binding*. Accordingly, this Code is not eligible for registration under Article 102 of the Charter of the United Nations. This code will come into effect on 1 January 1995." (emphasis added)

26 Michael R. Lucas, "The War in Chechnya and the OSCE Code of Conduct" in *Helsinki Monitor: Quarterly on Security and Cooperation in Europe*, 1995 No.2, Netherlands Helsinki Committee, at 42.

Mr. Bindig aptly remarked in this context that "the Geneva Conventions were, after all, conceived in the aftermath of World War II with its high civilian casualties in order to protect all human beings, including the non-combatants, from the ravages of war, so that a war would not include "dirty" acts committed on the civilian population any more."²⁷ The "Bindig Report" and other documents that have been released concerning the situation in Chechnya have pointed out the fact that there are also limits to the protection of civilians dictated by absolute military needs, such as acute self defence. However, it is a rule that international humanitarian war law is not to be derogated from in times of war, precisely because it was designed for times of war.

All in all, it has become sadly apparent that a culture of impunity has unfortunately been allowed to prevail in the Russian Federation. The "Bindig Report" noted that "[N]obody had ever heard of any soldier being prosecuted for [his] acts, let alone being convicted; the sole exception to this rule was General Kulikov who claimed that 60 investigations had been started, and that of these, about 20 percent had led to convictions." On the question of impunity, Mr. Bindig, who seemed not to have been totally convinced by Mr. Kulikov's supposedly reassuring words, concludes:

"It can thus be summarized that in principle there seems to be no investigation or prosecu-

tion of human rights abuses committed by Russian Federal forces against the Chechen population, neither through military discipline, nor through the ordinary judicial system. This is an unacceptable situation. Military discipline must be strengthened in such a way that arbitrary arrests, looting, extortions and the whole list of abuses [listed] in this report either are prevented in the first place, or are properly prosecuted afterwards."²⁸

(d) Other Relevant International Texts

This chapter would not be complete if it failed to mention that Russian forces have not respected United Nations General Assembly Resolution 2444 (1968), which relates to internal armed conflicts, provides standards for distinguishing between combatants and civilians and for sparing the latter as much as possible. There are also strong indications that Russia could have violated the UN Convention against Torture and Other Forms of Cruel and Degrading Treatment which prohibits torture, beatings, and other forms of mistreatment of persons.

VI Governmental Control of the Military

That the bombing of Grozny continued after Mr. Yeltsin had personally

²⁷ The "Bindig Report," *Op. Cit.*, at 7.

²⁸ *Ibid.*, at 20.

ordered its cessation is clearly indicative of a lack of executive control over the military, at least during some stages of the offensive. This incident, and other similar developments during the Chechnya war, illustrate that certain elements within the Russian armed forces and interior security services acted well beyond their normal mandate. The decision to intervene in Chechnya was, as we have seen above, taken by Mr. Yeltsin and certain members of the government - the so-called "Power Ministers" in the newly established Russian Security Council - against the opinion of certain other members of the government and of the two houses of Parliament, the (lower) Federation Council and the (upper) State Duma. Both houses privileged a political settlement to the conflict rather than the military option favoured by the executive's militaristic core. On 8 December 1994, the Federation Council even passed a resolution that expressly prohibited the use of force in Chechnya. Both Federation Council and the State Duma then passed a number of resolutions criticizing Mr. Yeltsin's decision to resort to armed action and calling for an end to the offensive and a negotiated settlement to the conflict. On 12 February 1995, the Federation Council requested the Russian Supreme Court to examine the constitutionality of Mr. Yeltsin's decision to invade Chechnya.

VII The Opposition to the War in Russia

One encouraging factor that emerged within Russia, however, was the

nascence of an endogenous public opposition movement to the war in Chechnya. Manifestations of such opposition emanated even from within the powerful military-industrial complex. Examples include General Eduard Vorobyov, who refused, on 22 December 1994, to lead units he commanded into battle near Grozny and who was later transferred to reserve duty for that reason, and General Alexander Lebed, the "hawkish" Commander of the 14th Army in the breakaway Russian-speaking Transdnistr region of Moldova, who publicly voiced his opposition to the military solution in spite of his nationalist ideas. Numerous other anonymous officers and conscripts refused the intervention in Chechnya. Mothers of young conscripts demonstrated publicly and were often compelled to send their sons to distant hideaways to avoid their being drafted.

Also indicative of the new *elan* given to the incipient antiwar movement, the major reformist political party "Russia's Choice;" as well as leading human rights activists Elena Bonner and Serguei Kovalev relentlessly voiced their pacifist stance. Mr. Boris Fedorov, former Minister of Finance and Member of Parliament (Duma) denounced Russia's invasion as "gross military incompetence that had caused needless bloodshed" and called for Yeltsin's resignation.²⁹

The "Bindig Report" reveals that the overwhelming majority of the population in the big cities of Russia, such as Moscow and Saint Petersburg, was firmly against the war, while in the countryside a more "patriotic" approach

29 See Robert Orttung, "Chechnya, A Painful Price," in *Transition*, Vol.1, No.3, 15 March 1995, at 3.

would command a majority. The alleged friction between urban and rural areas of the country is, however, rather simplistic and reductive. Opposition to the war in remote areas of Russia has remained largely undocumented. Unverified rumours contend that riots were sparked off in rural villages and small towns because the local population tried to prevent the drafting of their youngsters into units bound for Chechnya. Manifestations of public dissatisfaction over the military intervention in Chechnya emanated mostly from the independent television station NTV, which won particular plaudits for its reports from the battle zone, as well as other media outlets. The daily *Izvestija*, for instance, named Mr. Kovalev, Russian human rights Commissioner, "Man of the Year," for informing citizens on the human rights abuses being committed in Chechnya and for repeatedly countering the government-sponsored official propaganda on the matter.

In the meantime the State owned "Ostankino" television network embarked on a campaign of active disinformation, serving daily doses of propaganda to the public, in pure unadulterated Soviet-style. "Ostankino" has often been suspected of non-neutral reporting of events in the "near abroad" and for provoking pro-Russian sentiment in the former Soviet republics that had become independent. But more worrying still is that the Russian Fund for the Freedom of Information reported nearly 100 concrete cases between 1 December 1994 and January 1995 of journalists' rights being violated while they were covering Chechnya.³⁰ Abuses ranged

from the murder and beating of some journalists to obstruction of their work. All in all, it has become abundantly clear that the war left Russian society deeply divided.

VIII The ICJ Stance on Chechnya

The ICJ took no position concerning Chechnya's claim to independence and, consequently, no position on whether the war was of an international or non-international character. Its stance on Chechnya invariably was that all parties to the conflict should respect international humanitarian law to prevent civilian casualties. Having made that clear, however, the ICJ eventually had no other option than to acknowledge that even if both parties were responsible for abuses, Russian violations of human rights did, indeed, outnumber the Chechen ones. On 3 February 1995, in light of the growing number of substantiated reports of atrocities committed in Chechnya, the ICJ publicly approved the decision of the Council of Europe to impose a *sine die* bar on Russia's application to join the organization. The ICJ stated that Russia's application to join the Council of Europe was hardly compatible with the measures applied by its forces against non-combatants in Chechnya, which violated the Geneva Conventions and its Protocols, the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, the OSCE Code of Conduct on Politico-Military Aspects of Security, the European Convention on Human Rights, and other international instruments. The ICJ was of the opinion that

30 *Ibid.*, at 7.

the acceptance of Russia as a member State of the Council of Europe without proper consideration of the behaviour of its agents in Chechnya would inevitably result in the dampening of the European Convention on Human Rights, and would damage the credibility of the Council of Europe, an organization whose aims, *inter alia*, include the upholding of the Rule of Law.

On 1 March 1995, during the fifty-first Session of the UN Commission on Human Rights held between 30 January-10 March 1995, the ICJ urged, once more, the Russian army to respect international law and called upon the Government of Russia to seek an immediate peaceful resolution to the conflict. The ICJ joined other international NGOs in requesting that UN Special Rapporteurs with relevant mandates, such as those on Torture and on Extrajudicial, Summary or Arbitrary Executions, as well as the Working Groups on Enforced Disappearances and on Arbitrary Detention, pay an urgent visit to Chechnya. The ICJ stated that the situation that prevailed in Chechnya, in addition to the well-known situations in the former Yugoslavia and Rwanda, highlighted the need to bring the perpetrators of gross violations of human rights and grave breaches of humanitarian law to justice. The statement made by the ICJ recalled that it is the impunity granted to such perpetrators that encourages the deterioration in the respect for human rights in many countries of the world. In this context, the ICJ welcomed the recent efforts made to render the establishment of a permanent International Criminal Court possible.

On 9 May 1995, the ICJ urged the Heads of States and Governments, participating in the commemoration ceremonies marking the 50th anniversary of the end of World War II in Moscow, to clearly condemn all human rights violations taking place throughout the world and press for an end to impunity for the perpetrators of such atrocities. The ICJ reiterated the necessity for the criminal accountability of perpetrators of gross human rights violations in Chechnya. The ICJ indicated that the presence of many world leaders for the commemoration in Moscow, at a time when horrific abuses were being committed by Russian forces in Chechnya, would just serve to condone violations of human rights, and first of all the right to life of thousands of non-combatant civilians.

The ICJ appealed to world leaders to announce publicly that they would back monetary sanctions against the Russian Federation by, *inter alia*, freezing a US \$6.8 billion International Monetary Fund (IMF) loan until the Russian army puts an end to its violations of human rights in Chechnya and takes firm action to ensure that the officers and soldiers responsible for the atrocities be brought to justice and punished accordingly. The ICJ deplored the fact that few States had clearly denounced Russia for the enormity of the crimes that were continuously being committed and for the outrageous criminal behaviour of certain elements within the armed forces during their campaign of wanton destruction and terror.

Concerned about the fate of anti-war protesters in Russia, and in order to press for a fair trial by the Russian judiciary in the context of the Chechen war,

the ICJ mandated, on 13 January 1995, Ms. Tanya Smith, Director of Legal Programmes at the Moscow Centre for Constitutionalism in Eastern Europe, to attend proceedings before the Moscow Administrative Court on two administrative trials against peaceful anti-war protesters. The 11 defendants were accused of participating in unsanctioned picketing in front of the Italian Embassy in Moscow, on 11 January. The defendants protested against the war in Chechnya and the West's lack of determination in denouncing the Russian armed forces for committing human rights abuses in that conflict. The demonstration was organized by "Memorial," the largest human rights organization in Russia. The trial started on 23 January and the ICJ observer subsequently reported that all cases had been closed by the judge.

Human rights activists Mr. Serguei Kovalev and Mrs. Elena Bonner, parliamentarians, leading pacifists, mothers of soldiers, and jurists preoccupied by the evolution of the Rule of Law in Russia, courageously and publicly voiced their stance and disagreement with the "Party of War" decisions and terror tactics in Chechnya, but their voices have not been sufficiently echoed by governments around the world.

IX The Attitude of the International Community

The world's lack of determination, during the first few weeks of the war, in condemning human rights violations committed in Chechnya is symptomatic of the political vacuum that has prevailed in the post Cold War era. It is also

indicative of the "Russia first" attitude that often, and not only tacitly, prevailed in most of the Western foreign ministries whereby, because of its size and influence, Russia has been politically, economically and financially favoured, to the detriment of its smaller neighbour States of Central and Eastern Europe. The international community's lukewarm opposition to Russian officialdom seemed to be motivated by fear of indirectly promoting a nationalist backlash in Russia.

A more worrying aspect is that the West, and the United States in particular, lost no time in publicly depicting the situation in Chechnya as an "internal affair" of the Russian Federation. In adopting such a "hands off" policy, the international community not only wanted to avoid antagonizing Russia, but also displayed astonishing ignorance of the relevant international law, either in time of war or in time of peace. This pusillanimous attitude was denounced by human rights activists and concerned NGOs:

"It is noteworthy that a number of OSCE States (...) were quick to publicly declare the Chechen war as an internal affair of the Russian Federation. US President Bill Clinton's prompt statement to this effect hardly reflected the letter or the spirit of the freshly signed [OSCE] Code of Conduct [see above]. The US Administration's position also appeared to have overlooked the fact that the Code of Conduct and other OSCE norms and procedures and those of other international

instruments do not allow the putative "internal nature" of a conflict to justify disinterest or reluctance of the international community to act resolutely and expeditiously to prevail upon the conflict parties to resolve the conflict as quickly as possible and to vigorously apply OSCE and other instruments to this end."³¹

The problem is that the lukewarm and rather half-hearted attitude displayed by the international community in denouncing the actions undertaken by the infamous "Party of War" faction within the Russian Government, and certain rogue elements of the Russian armed forces and Interior Ministry troops in Chechnya, have undoubtedly had the effect of granting the Russian government and its armed agents a *de facto* license to disregard flagrantly the basic principles of international law, including the Geneva Conventions (1949) and the recently adopted OSCE Code of Conduct.³²

Daily reports of the atrocious violations of human rights committed by Russian forces finally reversed the initial trend. The European Union (EU), under the leadership of its French Presidency, adopted the toughest stance. On 9 March, French Foreign Minister Alain Juppé declared that the EU would not hesitate to use economic pressure to compel Russia to observe human rights standards in Chechnya. He made it

also clear to Mr. Yeltsin that an interim trade agreement with Russia would not be signed if the latter gave no assurances as to the respect of human rights. On 15 March, the EU "utterly condemned atrocities committed against civilians in violation of basic human rights." The Council of Europe Parliamentary Assembly's Political Affairs Committee had also expressed its opposition to human rights violations by "unreservedly condemning the indiscriminate use of military force against the civilian population," on 10 January 1995. The Parliamentary Assembly passed a resolution on 2 February 1995 which suspended the procedure concerning statutory opinion on Russia's request for membership." In this resolution the Parliamentary Assembly listed the international instruments Russia had violated, as well as the OSCE Code of Conduct, as a justification for denial of membership. In doing so, the EU and the Council of Europe adopted the politics of conditionality which have characterized Europe's approach in other parts of the world.

In comparison, the American approach to the problem has constituted a rebuff to the notion of conditionality. The American stance has been much more timid than that of the Europeans. The USA shied away from denouncing Russia's systematic brutality against civilians and failed to use its influence in the Bretton Woods institutions as leverage to force Russia's compliance with international humanitarian standards.

31 Michael R. Lucas, "The War in Chechnya and the OSCE Code of Conduct" in *Helsinki Monitor: Quarterly on Security and Cooperation in Europe*, Netherlands Helsinki Committee; ft. at 38.

32 See Michael R. Lucas, *Op. Cit.*

The US administration, in line with its well-established policy of favouring the Russian Federation in its international relations, restricted itself to verbal and general criticism of Russia's action in Chechnya. It merely expressed concern over the loss of civilian lives and called for a political settlement of the problem. In any case, the USA systematically mitigated any form of criticism by appropriately recalling that Chechnya was Russia's "internal" affair. It is also worthwhile mentioning that the American tone remained unchanged even after the Samashki massacre had been revealed to the world. Human Rights Watch-Helsinki noted:

"By limiting its condemnation of Russian abuse to words, the [US] administration has lost the opportunity to send a strong message to Moscow that it will not countenance the murder of civilians. As a result, the [World War II commemoration ceremonies in which President Clinton participated on 9 May 1995 and 10 May Clinton/Yeltsin Summit, held in Moscow, are] likely to be viewed by the Russian Government as the US government's tacit acceptance of the conduct of Russian forces in Chechnya. More disturbing still, generous financial assistance to Russia, in which the US government plays a critical role, belies the administration's stated commitment to ending civilian suffering in

Chechnya and bestows on the Russian Government the international prestige it keenly seeks. Indeed, on 11 April, as the news of the atrocities in Samashki became public, the International Monetary Fund finalized a US \$6.8 billion loan to Russia to help close Russia's budget deficit."³³

The ICJ and other international NGOs promptly urged the Western governments participating in the World War II ceremonies to suspend the US \$6.8 billion loan to Russia - which stood as the second largest in the history of the IMF. Strangely, few governments seemed to have thought that the granting of the loan was particularly untimely in view of the tremendous and lingering impact the Samashki massacre had on Western minds and the media at that time.

The long-awaited direct international involvement in Chechnya finally became a concrete reality on 18 April 1995, when the Assistance Group of the OSCE was deployed in Grozny. The mandate of the OSCE team, *inter alia*, will be to investigate human rights violations committed in Chechnya. The Assistance Group's broad mandate necessarily entails that it will have to deal with the problem of impunity of perpetrators of gross human rights violations in Chechnya. The ICJ joined other international NGOs in urging the OSCE team to ensure that officers and soldiers responsible for abuse be brought to justice in appropriate judicial

33 Human Rights Watch-Helsinki, *Russia: Partisan War in Chechnya on the Eve of the WWII Commemoration*, May 1995, Vol.7, No.8., at 6.

fora, in line with promises made by the Russian authorities themselves.

X Promoting Proactive International Involvement

Although, under the aegis of the OSCE, the warring parties in Chechnya have finally been brought to the negotiating table, the appalling events that took place in Chechnya indicate that much more remains to be done at the UN and OSCE levels in the sphere of preventive conflict resolution. If not many more "Chechnyas" will occur, especially since Russia's relations with several of its autonomous republics are far from being really satisfactory. In this context, the recently established OSCE mission of mediation between the Ukrainian authorities and the representatives of the majority Russian-speaking population in the Ukrainian Autonomous Republic of Crimea should be seen as a first step that should be emulated; tension in Crimea has receded partially because of the OSCE's proactive intervention in the peninsula.

Another example of a successful international initiative is the UN presence in the Former Yugoslav Republic of Macedonia (FYROM). On this subject Professor Bertrand G. Ramcharan writes:

"We are seeing (...) an evolution in the *problématique* of human rights violations which will require more emphasis on

preventive measures in the international system in the future. (...) It is much more difficult to deal with [internal and/or ethnic] conflicts after they have broken out - when passions are high and the desire for vengeance proliferates. In situations of potential internal conflict (...) preventive peacekeeping could be a valuable way of defusing problems and preventing their eruption. There has, however, been only one preventive peacekeeping operation to date: the UN operation in the FYROM (...) which has been highly acclaimed as the first successful preventive deployment in the history of peacekeeping operations."³⁴

XI Conclusion

It has been established beyond any possible doubt that Russian forces in Chechnya committed gross violations of human rights and grave breaches of international humanitarian law. The indiscriminate use of fire against civilian residential areas, and human rights abuses committed against both civilians and combatants, including murder, extrajudicial executions, torture, looting, arson, extortion, and forced disappearances, have stunned the world and should be strongly condemned. It has also been established that Chechen forces also perpetrated human rights violations, albeit on a smaller scale, and

34 Bertrand G. Ramcharan, "New Models of Human Rights Protection: Preventive Peacekeeping," in *The Review of the International Commission of Jurists No. 50, 1993*, at 102.

that these should also be strongly condemned. The hatred that has filled hearts on both sides in Chechnya will take years, if not generations, to be overcome - if it ever is. The impunity which has, until the present time, been allowed to prevail must be broken. The future of the Rule of Law in Russia is at stake.

On 10 July 1995, started the hearings of the Russian Constitutional Court on the legality of President Yeltsin's order to send troops into Chechnya, opening a case that marked the first serious confrontation in court between Russia's Parliament and President since October 1993. Deputies from both houses of Parliament requested the Court to rule on the constitutionality of three presidential decrees and one government resolution, which formed the legal basis for the decision to send troops into Chechnya on 11 December 1994. "If [Yeltsin] were to lose the case, he would find it dramatically more difficult to justify the Chechnya campaign and the enormous loss of life it entailed," reported *The Moscow Times* on 11 July 1995. "The Constitutional Court must make a historic choice between the power of law and raw power," said Mr. Issa Kostoyev, Head of the Federation Council's Constitutional Legislation Committee before the Court. The hearings were continuing as these lines were being written.

The juridical outcome of the Chechen tragedy will determine the orientation of Russian society for the foreseeable future. And this, in turn, will reveal to the world whether Russia can be kept safe for democracy. The future looks bleak at the very least. A sign of

the times is that more and more Western governments, diplomats, scholars, and journalists predict the ominous return of an assertive and revanchist Russian Empire led by a "red/brown" coalition. If this ever turned out to be the case, Chechnya would be remembered merely as a distant and ghastly prologue. The frightening words of an anonymous Polish demonstrator protesting Russia's invasion of Chechnya in front of the Russian embassy in Warsaw come back to mind: "Today Grozny; Tomorrow Kyiv; and after tomorrow Warsaw."

Commentary

The United Nations Commission on Human Rights: 51th Session

The UN Commission convened for the 51st time on 30 January 1995 at the United Nations Office at Geneva, Switzerland, to discuss, for a period of six weeks, the status of human rights around the world. "As long as violations of human rights continue, then the work of the Commission must continue," declared the High Commissioner for Human Rights, in one of the three opening speeches delivered. However, the organization and efficiency of the work of the Commission itself was criticised by its outgoing Chairman, Mr. Peter van Wulfthen Palthe of the Netherlands. He viewed the previous session, where he had submitted a draft decision that would assist in dealing with the clustering of agenda items along with some other weaknesses highlighted in the procedure of the Commission's sessions, as a missed opportunity to solve these problems by way of agenda reforms. This year's elected Chairman was Mr. Musa Bin Hitam from Malaysia, who promised to endeavour to proceed in a conscientious and orderly manner with the agenda, appealing to delegates to comply with time limits for their speeches and interventions.

At its first meeting, the Commission elected the following officers: Chairman,

Mr. Musa bin Hitam (Malaysia); Vice-Chairmen, Mr. Hocine Meghlaoui (Algeria), Mr. Valentin Dobrev (Bulgaria), Mr. José Pallais (Nicaragua); and as Rapporteur, Mr. Hannu Halinen (Finland).

Question of the Violation of Human Rights in the Occupied Arab Territories, Including Palestine (Agenda Item 4)

The first item discussed on this year's agenda was the question of the violation of human rights in the Occupied Arab Territories, including Palestine. The focus of debate was the Report of the Special Rapporteur on the Occupied Palestinian Territories (E/CN.4/1995/19), personally introduced by Mr. René Felber.

The human rights situation in these areas continues to be of major concern as was emphasised by information received from al-Haq, the ICJ West Bank affiliate; during 1994, 143 Palestinians were killed by Israelis (including Israeli forces, Special Units, and settlers), and 16 Palestinians were killed by the Palestinian police. One of the main factors which aggravates the situation is undoubtedly the continued existence of

settlers in the Occupied Territories and their manifestations of aggressive behaviour which hinder the entire peace process. This was the general opinion echoed in the statements made by several countries of the international community, calling on Israel to respect its international obligations and stating that there can be no meaningful peace in the existing circumstances.

In an oral intervention, the ICJ Secretary-General, Mr. Adama Dieng, condemned all attacks on life, whether Israeli or Palestinian. However, Israel had demonstrated departures from legality when it undertook collective reprisals against Palestinians following every killing of an Israeli. Particular mention was made of an instance last January when Israel openly, publicly, and explicitly endorsed torture. The main aim of the intervention was, nevertheless, not to repeat the "... sad and depressing story of systematic human rights violations," but to express dismay at Mr. Felber's report which "... systematically characterises the situation in purely political terms and reaches purely political conclusions." Whilst agreeing, regretfully, that the Commission does away with Mr. Felber's services, the ICJ does believe that the essential mandate of the Special Rapporteur on the human rights situation in the Occupied Territories should be maintained.

Then, under Resolution 1995/1 on human rights violations in the Occupied Arab Territories, including Palestine, the Commission deeply regretted the continued violation of human rights in the Occupied Palestinian Territories since the signing of the Declaration of Principles on 13 September 1993, in

particular the continuation of acts of killing and the detention of thousands of Palestinians without trial, the continuation of the extension and the establishment of Israeli settlements, the confiscation of property of Palestinians and the expropriation of their land.

It called once more upon Israel to desist from all forms of human rights violations in the Palestinian and other Occupied Arab Territories and to respect international law, the principles of international humanitarian law, and its commitments to the provisions of the Charter and resolutions of the UN; and to withdraw from Palestinian territory, including Jerusalem, and the other Occupied Arab Territories. The resolution was adopted by a roll-call vote of 26 in favour to 2 against (Russian Federation and United States of America), with 21 abstentions.

Israel was asked in Resolution 1995/2 on human rights in the Occupied Syrian Golan to comply with the relevant resolutions of the UN General Assembly and of the UN Security Council and to desist from changing the physical character, demographic composition, institutional structure, and legal status of the Occupied Syrian Golan. It emphasised that the displaced persons of the population of the Occupied Syrian Golan must be allowed to return to their homes and recover their property.

Furthermore, it determined that all legislative and administrative measures and actions taken or to be taken by Israel that purported to alter the character and legal status of the Occupied Syrian Golan were null and void and constituted a flagrant violation of inter-

national law. The Commission also decided to include in the provisional agenda of its fifty-second session, as a matter of high priority, the item entitled "Question of the Violation of the Human Rights in the Occupied Arab Territories, including Palestine." The resolution was adopted by a roll-call vote of 25 in favour to 1 against (United States of America), with 23 abstentions.

By Resolution 1995/3 on Israeli Settlements in the Occupied Arab Territories the Commission reaffirmed that the installation of Israeli civilians in the Occupied Territories was illegal and constituted a violation of the relevant provisions of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, regretted that the Government of Israel had not fully complied with the provisions of the Commission on Human Rights resolutions 1990/1, 1991/3, 1992/3, 1993/3, and 1994/1; and urged it to abstain fully from installing any settlers in the Occupied Territories. The resolution was adopted by roll-call vote of 46 in favour to 1 against (United States of America), with 3 abstentions.

The Right of People to Self-Determination and its Application to People under Colonial or Alien Domination or Foreign Occupation (Agenda Item 9)

Item 9 on the right of peoples to self-determination and its application to peoples under colonial or alien domination or foreign occupation was dealt simultaneously with Item 4 as the two are interrelated.

UN Special Rapporteur, Mr. Enrique Bernales Ballesteros, spoke to the Commission about his Report on the question of the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination (E/CN.4/1995/29). One of the countries he scrutinised and identified as engaging mercenaries was Angola, however the Angolan Government openly denied this attack and added that since the war in Angola has been brought to an end there was now no need to send monitors there.

The inalienable right of the Palestinian people to self-determination without external interference was once more reaffirmed in Resolution 1995/4; and Israel was asked to comply with its obligations under the Charter and the principles of international law, and to withdraw from the Palestinian Territories, including Jerusalem, and other Arab Territories which it had occupied since 1967 by military force so as to enable the Palestinian People to exercise their universally recognised right of self-determination. It decided to consider at its fifty-second session as a matter of high priority the situation in occupied Palestine. The resolution was adopted by roll-call vote of 27 in favour to 1 against (United States of America), with 22 abstentions.

Under Resolution 1995/5 on the use of mercenaries as a means of impeding the exercise of the right of peoples to self-determination, the Commission stated that the recruitment, use, financing and training of mercenaries should be considered as offences of grave concern to all States; urged all States to prevent

mercenaries from using any part of their territory to any sovereign State; called upon all States that had not yet done so to consider taking early action to accede to or ratify the International Convention against the Recruitment, Use, Financing and Training of Mercenaries; and decided to extend the mandate of the Special Rapporteur for three years.

It also decided to consider at its fifty-second session the question of the use of mercenaries as a means of impeding the exercise of the right of peoples to self-determination and recommended a draft decision to the Economic and Social Council for adoption under which the Council would approve the Commission's decision to extend the mandate of the Special Rapporteur for three years and request the Secretary-General to provide him with all necessary assistance. The resolution was adopted by roll-call vote of 34 in favour to 1 against (United States of America), with 15 abstentions.

Concerning the Middle East peace process the Commission emphasised in Resolution 1995/6 that the achievement of just and lasting peace in the Middle East was vital for the full implementation of human rights in the area; welcomed the peace process started at Madrid, and supported the subsequent bilateral negotiations; and also welcomed the establishment of the Palestinian Authority and its positive efforts to develop sound governance based on the will of the Palestinian people and democratic procedures. It further called on the Centre for Human Rights to make available, on request, its programmes of advisory services and technical assistance to the Palestinian Authority, and invited governments to contribute to the pro-

gramme; and encouraged the continuation of negotiations on implementation of the text stage of the Declaration of Principles. The resolution was adopted by roll-call vote of 50 in favour to none against.

The Commission stressed hope in Resolution 1995/7 on Western Sahara that the direct talks between Morocco and the *Frente Popular para la Liberacion de Saguia el-Hamra y Rio de Oro* would resume soon in order to create an atmosphere conducive to the speedy and effective implementation of the settlement plan; and decided to follow the development of the situation in Western Sahara and to consider the question at its 1996 session, as a matter of high priority.

Violation of Human Rights in Southern Africa: Report of the Ad Hoc Working Group of Experts (Agenda Item 5), Monitoring and Assisting the Transition to Democracy in South Africa (Agenda Item 6) and Implementation of the International Convention on the Suppression and Punishment of the Crime of Apartheid (Agenda Item 15)

On the topic of South Africa, the Commission had before it the Report of the Special Rapporteur on monitoring and assisting the transition to democracy (E/CN.4/1995/24), as well as that of the Ad Hoc Working Group of Experts regarding the violations of human rights in South Africa.

In Resolution 1995/9 on Monitoring and Assisting the Transition to Democracy in South Africa, the Commission expressed its profound

satisfaction at the entry into force of South Africa's new Constitution, the holding of one person/one vote elections, the convening of South Africa's new Parliament, and the installation of its new President and Government of National Unity. It considered that the mandate of the Special Rapporteur to monitor the transition to democracy in South Africa had been successfully concluded, and decided to remove from its agenda, as of its fifty-second session, the item entitled "Monitoring and Assisting the Transition to Democracy in South Africa."

Concerning the Implementation of the International Convention on the Suppression and Punishment of the Crime of Apartheid (Resolution 1995/10) the Commission, noting the report of the Group of Three, recognised that the diligent application and monitoring of the International Convention by the international community had greatly assisted the dismantling of *apartheid* in South Africa. It decided to remove from the agenda of its fifty-second session the item entitled "Implementation of the International Convention on the Suppression and Punishment of the Crime of Apartheid."

In Resolution 1995/8 it congratulated - in addition - all South Africans and their political leaders on their success in bringing *apartheid* to an end in laying, through broad-based negotiations, the foundations for a new, non-racial and democratic South Africa with equal and guaranteed rights for all.

The Observer of South Africa said that with the adoption of the resolutions the Commission had closed an important

chapter in its history - a chapter that neither South Africa nor the Commission hoped to reopen. His government attached great importance to this decision, he said, for it was only through that "slate cleaning" process that the new South Africa could assume its rightful place in the Commission.

Implementation of the Programme of Action for the Third Decade to Combat Racism and Racial Discrimination (Agenda Item 16)

Three days of debate were dedicated to the subject of racism and racial discrimination. In line with the implementation of the programme of action for the Third Decade to combat Racism and Racial Discrimination, the UN Special Rapporteur, Maurice Glélé-Ahanhanzo, thanked the Commission for its response to his report (E/CN.4/1995/78 and Add. 1) on contemporary forms of racism. His mandate included examining racism and discrimination against blacks, Arabs and Muslims, xenophobia, negrophobia and anti-Semitism, and human rights violations against women and migrant workers. He also encouraged all the NGOs, including those who had already worked with him, to continue to assist him.

The general opinion echoed was that governments should cooperate and work together to enforce humanitarian standards concerning racial discrimination. Conflicts and violence due to racism could finally threaten peace and security in the world (former Yugoslavia and Rwanda). It was stated, that the primary goals of the first two years had not been achieved and also agreed with the

recommendations of the Special Rapporteur concerning the importance of education programmes.

The Commission adopted Resolution 1995/11 on the Implementation of the Programme of Action for the Third Decade to Combat Racism and Racial Discrimination. Under the resolution, it declared that all forms of racism and racial discrimination, whether institutionalised or resulting from official doctrines or some sort of belief in racial superiority, such as "ethnic cleansing," were among the most serious violations of human rights in the contemporary world and must be combated by all available means. It called upon the international community to provide the UN Secretary-General with appropriate financial resources for efficient action against racism and racial discrimination, and requested him to ensure the necessary financial resources were provided for the implementation of the activities of the Third Decade during the biennium's 1994-1995 and 1996-1997.

With regard to Measures to Combat Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance the Commission took note in Resolution 1995/12 of the report of the Special Rapporteur on Measures to Combat Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance. It requested him to continue to examine incidents of discrimination against Blacks, Arabs and Muslims, xenophobia, negrophobia, anti-Semitism and related intolerance, as well as governmental measures to overcome them, and to report on these matters to the Commission at its fifty-second session.

Under Decision 1995/104 on a World Conference Against Racism, Racial and Ethnic Discrimination, Xenophobia and other Related Contemporary Forms of Intolerance, the Commission suggested, through the Economic and Social Council, to the General Assembly to consider the possibility of convening a world conference on the subject. Also Sub-Commission draft decision one on a World Conference Against Racism was adopted without vote.

Economic, Social and Cultural Rights, the Realisation of the Right to Development (Agenda Items 7, 8)

"To say that human rights must first be improved at all costs is a philosophical luxury which has nothing to do with everyday reality," said the representative of Sudan. This was especially significant in setting the scene for the Commission's discussion of economic, social and cultural rights, and the right to development.

Delegates drew attention to the problem of multilateral debt and called for a real political dialogue between debtors and creditors in accordance with the principle of shared responsibility. They noted an inadequate level of political will with regard to the implementation of the right to development and asked what the richest nations were doing to reduce the huge gap separating the rich from the poor.

Furthermore, they said that all categories of human rights were indivisible and no one set of rights should have priority over another as set out in the

1993 Vienna Declaration and Programme of Action. However, some stated that the right to development required a favourable global economic climate and that structural adjustment policies should have elements which mitigated their impact on the most vulnerable sectors of society. Most speakers hoped that the outcome of the UN World Summit for Social Development (Copenhagen, 6-12 March 1995), with the goals of poverty alleviation, reduction of unemployment, and social exclusion, would contribute to the further enjoyment of economic, social and cultural rights.

The delegate of the Netherlands and past Chairman of the Commission (Mr. Peter van Wulfften Palthe) recognised that there is some tension which exists between civil and political rights on the one hand, and economic, social and cultural rights on the other. The former requires restraint on behalf of governments, while the latter necessitates active intervention. This tension can, in his view, be controlled by a combination of representative democracy with respect for human rights, a market economy, and a social policy promoting equal opportunities.

Then in Resolution 1995/15 the Commission requested the UN Secretary-General to establish a programme unit in the Centre for Human Rights for the promotion of economic, social, and cultural rights, in particular those related to the debt burden of developing countries and the implementation of the right to development; decided to continue to consider, at its fifty-second session, the agenda item entitled "Question of the Realisation in All Countries of the Economic, Social and

Cultural Rights Contained in the Universal Declaration on Human Rights and in the International Covenant on Economic, Social and Cultural Rights," and the study of special problems which the developing countries face in their efforts to achieve these human rights, including:

- a) problems related to the right to enjoy an adequate standard of living; foreign debt, economic adjustment policies, and their effects on the full enjoyment of human rights and, in particular, on the implementation of the Declaration on the Right to Development;
- b) the effects of the existing unjust international economic order on the economies of the developing countries, and the obstacle that this represents for the implementation of human rights and fundamental freedoms.

Resolution 1995/13 was adopted, on the Effects on the Full Enjoyment of Human Rights of the Economic Adjustment Policies Arising from Foreign Debt and, in Particular, of the Implementation of the Declaration on the Right to Development, by roll-call vote of 33 in favour (Asia, Africa, Middle East, South America) to 15 against (Western and Eastern Europe, United States of America, Canada, Australia) with 4 abstentions.

As to human rights and the environment, the Commission requested in Resolution 1995/14 that the UN publish the final report of the Special Rapporteur of the Sub-Commission in all the official languages; at its fifty-

second session, a report containing the opinions of governments, specialised agencies, and intergovernmental and non-governmental organizations on the issues raised in the Special Rapporteur's report; and decided to continue its consideration of this question at its next session.

Concerning the question of the realisation in all countries of economic, social, and cultural rights, it was recommended in Resolution 1995/15 that the Centre for Human Rights convene expert seminars for chairpersons of the human rights treaty monitoring bodies and representatives of specialised agencies and non-governmental organizations, as well as representatives of States, focusing on specific economic, social, and cultural rights, with a view to clarifying the particular content of these rights. It also invited Member States to consider the desirability of drawing up national action plans identifying steps to improve the situation of human rights, as well as to seek the participation of communities affected by the non-realisation of these rights.

Further, the Commission requested the UN Secretary-General to invite the international financial institutions to continue considering the possibility of organizing an expert seminar on the role of these institutions in the realisation of economic, social, and cultural rights. It also requested the UN World Summit for Social Development to acknowledge the human rights dimensions of social development and to use the rights recognised by human rights conventions as a basis for relevant sections of the programme of action to be adopted by the Copenhagen Summit.

Under Resolution 1995/16, the Commission took note of Resolution 1994/41 of 26 August 1994 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities which took note with appreciation of the interim reports of the Special-Rapporteur on Human Rights and Extreme Poverty and invited him to continue to give special attention to the following aspects in preparing his reports: the effects of extreme poverty on the enjoyment of all human rights and fundamental freedoms of those affected by it; efforts by the poorest themselves to exercise their rights and conditions in which they can convey their experiences and ideas of the poorest and those committed to working alongside them. It also invited the Special Rapporteur to pay attention to the Declaration and Programme of Action to be adopted by the UN World Summit for Social Development.

By a text on the right to development (Resolution 1995/17), the Commission requested the UN Secretary-General to provide the Centre for Human Rights with a focal unit to follow up on the Declaration on the Right to Development and its implementation. It welcomed the Working Group's efforts towards the establishment of a permanent evaluation mechanism to follow up implementation of the Declaration on the Right to Development. It further recommended that the Economic and Social Council dedicate the high-level segment of one of its substantive sessions to evaluate the implementation of the Declaration, and that the question of the realisation of the right to development be adequately reflected in the work and the final outcome of the UN World Summit for Social Development.

The resolution was adopted by roll-call vote of 36 in favour (Asia and Southern States) to 15 against (Western States), and one abstention.

In draft Resolution IV of the Sub-Commission, as contained in document E/CN.4/1995/2 (Resolution 1995/19) on the right to adequate housing, the Commission invited the Special Rapporteur to submit his final report to the Sub-Commission at its 47th session. It recommended that the Economic and Social Council approve the Commission's request to the UN Secretary-General to provide the Special Rapporteur on the right to adequate housing with all the necessary financial, technical and expert assistance required for the completion of his final report.

On human rights and income distribution (Decision 1995/105), the Commission adopted, without vote, a decision by which it approved the decision to appoint Mr. José Bengoa as Special Rapporteur on the relationship between the enjoyment of human rights, in particular economic, social, and cultural rights, and income distribution at both national and international levels taken into account the preliminary and final reports of the Sub-Commission's Special Rapporteur on extreme poverty.

Women's Rights, Programme and Methods of Work of the Commission, and Internally Displaced Persons. (Agenda Item 11)

Women's human rights could be more fully integrated into the mainstream of UN system-wide activity by

enabling the Commission on the Status of Women to comment on the many reports of the Special Rapporteurs and Working Groups of the Commission. Similarly, the High Commissioner for Human Rights should review the reports prepared for the Fourth World Conference on Women.

Resolutions were adopted on this aspect on the elimination of violence against women (Resolution 1995/85), and the question of integrating the human rights of women into the human rights mechanisms of the United Nations (Resolution 1995/86).

On the subject of UN human rights machinery, there was a call for urgent revision of the human rights advisory services and technical assistance programmes, saying they had been used by some governments as a way of avoiding international supervision and had had no real impact on the human rights situations.

A permanent International Criminal Court, which would play a major role in correcting gross violations of human rights and promoting accountability was now required, the Deputy Prime Minister of the Netherlands told the Commission. The major obstacle to the achievement of human rights objectives was the increasingly precarious financial situation of human rights activities in the UN.

Resolutions were adopted on: ways and means for overcoming obstacles to the establishment of a democratic society and requirements for the maintenance of democracy (Resolution 1995/60); the composition of the staff of the Centre for

Human Rights (Resolution 1995/61); the respect for the universal freedom of travel and the vital importance of family reunification (Resolution 1995/62); the strengthening of the Centre for Human Rights (Resolution 1995/64); human rights and terrorism (Resolution 1995/43); the protection of human rights in the context of the human immunodeficiency virus (HIV) and acquired immune deficiency syndrome (AIDS) (Resolution 1995/44); human rights and unilateral coercive measures (Resolution 1995/46); the Decade for Human Rights Education (Resolution 1995/47); regional arrangements for the promotion and protection of human rights in the Asian and Pacific region (Resolution 1995/48); the development of public information activities in the field of human rights, including the World Public Information Campaign for Human Rights (Resolution 1995/49); and national institutions for the promotion and protection of human rights (Resolution 1995/50).

Internally displaced persons was other important issue. The Commission adopted a resolution (Resolution 1995/57) recognising the gravity of the situation and extending the mandate of the Representative of the Secretary-General (Mr. Francis Deng), for a new period of three years. The ICJ stated its support for the work of Mr. Deng and mentioned several measures necessary to adopt in order to improve his mandate by answering the following questions: in what ways can international aid be focused and diversified, extending it to those groups particularly affected by internal displacement, notably women, children, and other vulnerable groups?; In what ways can humanitarian aid be prevented from being politically manipulated?;

How can an efficient early warning mechanism be established in order to avoid the expansion of certain crises, as well as to provide urgent action by the international community in coordination with humanitarian and non-governmental organizations?

Torture, Detention and Imprisonment (Item 10).

France, speaking on behalf of the European Union, was the first country to deliver a statement under item 10. This item included consideration of not only detention and imprisonment, but also of torture, inhuman or degrading treatment, enforced or involuntary disappearances and, in particular, the status of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and the question of a draft optional protocol to it. Under Resolution 1995/33, the Commission recommended that an open-ended working group meet in 1996 on this draft.

Five special rapporteurs, introduced their reports, addressing the current situation world-wide with regard to enforced disappearances, arbitrary detention and torture. They said only a few governments had adopted measures to incorporate the act of enforced disappearance as an offence, with appropriate penalties, into domestic criminal codes. Mr. Ivan Tosevski, Chairman of the Working Group on Enforced or Involuntary Disappearances, appreciated the fact that two governments which had in the past declined cooperation - Angola and Morocco - had recently opened a new chapter in their dealings with

the Group. On the other hand, he expressed dismay at the rejection by the Governments of Serbia and Montenegro of his request to visit those countries, in contravention of the Commission's Resolution to that effect. This was further emphasised in draft Resolution L.88/Rev.1 (Resolution 1995/89), adopted this year and discussed below in the context of Bosnia and Herzegovina. With regard to the problem of missing persons in the territory of the former Yugoslavia, the Commission adopted Resolution 1995/35, which urged the Federal Republic of Yugoslavia (Serbia and Montenegro) to allow the expert member of the Working Group to visit Belgrade and to disclose all relevant information on missing persons.

The Chinese reaction to the report on arbitrary detention was harsh. Mr. Zhang Yishan, speaking for China, said that the Working Group had seriously exceeded its mandate by reviewing and even evaluating the political institutions and mechanisms of sovereign States. He said that it was fraught with examples of selectivity and double standards and, moreover, politically prejudiced and unfair, making rash judgments on the question of arbitrary detentions.

A defensive and critical reaction was likewise received by Sudan. The Sudanese delegate claimed that despite their cooperation with the Special Rapporteur, the report contained sweeping allegations which were unsubstantiated. He said that some individuals reported as detained had never in fact been detained; that others had been detained for inciting to overthrow the government, while others had been tried for acts of sabotage.

The representative of the Colombian delegation explained that all human rights problems in his country had to be seen within the context of the internal armed conflict. He claimed that this was especially true in the case of detainees and prisoners. Colombia was concerned by the secret justice system, known as the "regional justice" system. The government could not protect the lives of attorneys, judges, and witnesses in trials for drug trafficking, terrorism or rebellion unless their identities were kept secret.

It was at this stage that the sixth annual report of the ICJ's Centre for the Independence of Judges and Lawyers, Attacks on Justice, was published and its contents referred to in an oral intervention by Ms. Mona Rishmawi, CIJL Director. In view of the figures contained in the report - 572 jurists in 58 countries had suffered reprisals between June 1993-December 1994 for carrying out their professional functions -, the significance of UN involvement in protecting judicial and legal independence was magnified. The ICJ welcomed the report by the Special Rapporteur on the Independence of the Judiciary, Dato' Param Cumaraswamy, which adequately outlined the legal principles pertaining to judicial and legal independence and raised hope for the future. The Commission formally welcomed the report submitted by Mr. Cumaraswamy and invited the Centre for Human Rights to publish a fact sheet (Resolution 1995/36).

The Commission was told by Amnesty International that it had played a vital role in the battle to end persistent and grave human rights violations whe-

rever they occurred. But it added that the mechanisms it embodied were woefully under-resourced and that sufficient staff was needed in order to carry out on-site visits.

Concern at inadequate resources, both human and material, was expressed in Commission Resolution 1995/40, which focused mainly on the shortage in the context of the Special Rapporteur on Freedom of Opinion and Expression. It also invited the Special Rapporteur to pay particular attention to the relationship between the effective implementation of the right to free opinion and expression and incidents of discrimination based upon gender.

Several of the interventions made by non-governmental organizations under this item consisted of testimonies of victims of human rights abuses. One of the most moving was that made by Mr. Palden Gyatso on behalf of the International Movement Against All Forms of Discrimination and Racism. The speaker, a Tibetan monk, had spent 33 years in Chinese Prisons and Labour Camps in Tibet. Unimaginable hardships had been inflicted upon him, including forced hard labour, deprivation of food, and various types of cruel acts.

Mr. Jahn Bolad Saud Baghistani told the Commission that he had been arrested and tortured by Iraqi authorities. Speaking for the International Committee for European Security and Cooperation, he claimed that he had been threatened by Iraqi diplomats at the Commission and that the Iraqi Government wanted to assassinate him. He said that he could show where nails went through his body and where ciga-

rette burns had burned his skin. He requested the Commission to consider his allegations of torture by Iraqi authorities.

Under Resolution 1995/37, the Commission urged all governments to promote the implementation of the Vienna Declaration and the fulfilment of the financial obligations of all States Parties to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

The Arab Organization of Human Rights drew the Commission's attention to the situation of the Lebanese detainees in the Israeli Occupied Territories, especially in the camps of Southern Lebanon and the El-Khiam prison. There was evidence of grave violations of human rights of the detainees - most of whom had never been tried or appeared before a court of law but instead were imprisoned for failing to pay certain taxes as a sign of rebellion against occupation -, particularly torture. Some detainees had died in El-Khiam but the Government of Israel had taken no steps to investigate the causes of death. Visits by family members were severely restricted - or even prohibited - and access to examine the conditions of the prison had been denied to the International Committee of the Red Cross. The speaker urged the Commission to take action to condemn Israel for continuing to detain Lebanese prisoners; to investigate the reasons for deaths in the camps; to release the sick, minors, women, and those whose sentences had expired.

Access of NGOs to the UN

A workshop hosted by the International Service for Human Rights

brought together about 200 NGO representatives to discuss the extent of our participation in the UN Commission. The under-representation of NGOs is of increasing concern especially as so much seems to hinge on the granting of "consultative status" by the Economic and Social Council, a procedure which depends on a set of unpublished criteria. It is only those NGOs which have been accorded consultative status that have the right to deliver written or verbal statements.

Representatives of regional NGOs from Asia, Latin America, Eastern Europe, and the African continent spoke of the situation of NGOs in their respective countries and about the hardships they encounter. For example, speaking for the American group, the representative said that the mere inadequacy and lack of telephone lines and faxes, the use of which we take for granted in the West, makes their work that much more difficult. This obstacle to the dissemination of information, due to sparse resources, can lead to serious consequences. One that was mentioned was the complete unawareness of many African NGOs of the existence of the Working Group on the Convention for the Protection of Human Rights Defenders - a process which has been ongoing for a decade.

A further complaint focused on the cooperation between international NGOs, such as Amnesty International, and regional ones. An example of how this relationship can be used in a constructive way was offered by a speaker on behalf of the Eastern European countries: in a previous Commission meeting when she did not have the right to speak herself, an international NGO allowed

her to speak under their name. She encouraged such behaviour and greatly appreciated it.

A review of the rules on NGOs will take place in June 1995, in New York. However, if no decision is made by then, it will go on to the ECOSOC's agenda when it meets next in Geneva, in July 1995.

Status of the International Covenants on Human Rights (Agenda Item 17); Effective Functioning of Bodies Established Pursuant to United Nations Human Rights Instruments (Agenda Item 18)

Concerning the succession of States in respect of international human rights treaties, the Commission requested in Resolution 1995/18 the human rights treaty bodies to consider further the continuing applicability of the respective international human rights treaties to successor States, with the aim of assisting them in meeting their obligations. It requested the UN Secretary-General to encourage successor States to confirm their obligations under the treaties to which their predecessor States were a party.

Under Resolution 1995/22 on the Status of the International Covenants on Human Rights, the UN Secretary-General was invited to intensify systematic efforts to encourage States to become parties to the Covenants and urged States Parties to fulfil in good time their reporting obligations under the covenants and in their reports to make use of gender desegregated data.

It requested the UN Secretary-General to consider ways and means of including national seminars or workshops to train governments officials, State Parties with their agreement to the Covenants in the preparation of their reports, and to provide the Human Rights Committee and the Committee on Economic, Social and Cultural Rights with additional means to deal effectively and in a timely manner with the increasing workload.

Sub-Commission, Indigenous Peoples (Agenda item 19, 19a)

Before starting the general discussion of the work of the Sub-Commission and indigenous issues, Mrs. J. S. Attah, the Chairperson of the Sub-Commission addressed the Commission (she also presented her report contained in documents E/CN.4/1995/2 (Sub-Commission) and E/CN.4/1995/83 (methods of work and new developments)).

She stated that representatives of indigenous peoples without consultative status should be allowed to participate in the discussion of the draft UN Declaration on the Rights of Indigenous Peoples at other levels, beyond the Sub-Commission. She also pointed out that the problem with the term "indigenous people" without an "s" would never be accepted by these groups.

During the discussion the speakers supported the proposed establishment of a permanent forum on indigenous peoples, and of a mechanism to monitor implementation of the Declaration within the UN system. An inter-sessional working group on the draft declaration

should be formed which should include a broad range of indigenous organizations. They also said that it was time for the Commission to create a separate agenda item on the subject. Speakers described the situation of indigenous peoples in several countries (e.g. Mexico, Brazil, United States of America), the impact of limited political participation by indigenous peoples and also the role of transnational corporations in usurping indigenous land and resources.

Afterwards, according to the report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on its 46th session, the Commission called - in Resolution 1995/25, concerning traffic in women and girls - upon all governments to take appropriate measures to prevent the misuse and exploitation by traffickers of economic activities, such as the development of tourism and the export of labour. It recommended that the problem of trafficking in women and girl children be given consideration in the context of the implementation of all relevant international legal instruments.

The Commission recommended in Resolution 1995/26 that the Sub-Commission, when adopting the agenda for its 1996 session, allocate sufficient time for an adequate discussion of its studies and reports and decided to invite the Chairman of the Sub-Commission at its 1995 session to call for consultations with the members of the Bureau of the Commission.

In Resolution 1995/27 on Contemporary Forms of Slavery, the Commission endorsed with one proviso

the Sub-Commission's recommendation regarding the review of the implementation of the conventions on slavery and requested the Sub-Commission to give further consideration to its proposed appointment of Mrs. H.E. Warzazi as Special Rapporteur on the Exploitation of Child Labour and Debt Bondage, subject to the submission of a preparatory document. It also invited the Sub-Commission to continue considering the strengthening of its involvement in the activities of the Working Group and requested the UN Secretary-General to invite those eligible States that had not ratified or acceded to the conventions on slavery to consider doing so.

As to the International Decade of the World's Indigenous People, the Commission agreed in Resolution 1995/28 on a final programme of activities for 1995. It also invited governments to give full consideration to the final comprehensive programme of action for the decade as contained in document A/49/444.

Concerning a Permanent Forum for Indigenous Peoples in the UN system the Commission endorsed, in Resolution 1995/30, the recommendation of its Sub-Commission that the Centre for Human Rights should organize a workshop on the possible establishment of such a forum, which it recommended to be held for a period of three days prior to the 1995 session of the Working Group on Indigenous Populations.

With regard to Minimum Humanitarian Standards, all States were invited in Resolution 1995/29 to consider reviewing their national legislation relevant to situations of public emergen-

cy and the UN Secretary-General was requested to transmit the text of the Declaration of Minimum Humanitarian Standards, adopted in 1991 (E/CN.4/Sub.2/1991/55), to Governments, and intergovernmental and non-governmental organizations for their comments.

Under a resolution on humanitarian assistance it was decided not to forward to the Economic and Social Council the draft decision of the Sub-Commission authorising a study on the question of Implications for Human Rights of UN actions, including the question of humanitarian assistance.

In Resolution 1995/31 on the Report of the Working Group on Indigenous Populations of the Sub-Commission the UN Secretary-General was also requested to give all the necessary resources and assistance, from within existing overall UN resources, to the Working Group in discharging its tasks, and appealed to all governments, organizations and individuals to consider requests for further contributions to the UN Voluntary Fund for Indigenous Populations.

With regard to the Rights of Indigenous Peoples, the Commission decided in Resolution 1995/32 to establish an open-ended inter-sessional working group with the sole purpose of elaborating a draft Declaration on the Rights of Indigenous Peoples; and invited relevant UN organs, bodies, programmes and specialised agencies and non-governmental organizations in consultative status with the Economic and Social Council, interested in contributing to the activities of the working group, to participate in its work.

It also requested the UN Secretary-General to invite governments, IGOs, NGOs, and organizations of indigenous peoples authorised to participate to submit comments on the draft declaration. An annex to the text sets out the procedures governing the participation of organizations of indigenous people not in consultative status, which are asked to make application to the Coordinator of the International Decade of the World's Indigenous People.

Furthermore, the Commission decided, under a text on the Protection of the heritage of indigenous people (Decision 1995/108), to submit the principles and guidelines annexed to the preliminary report of the Special Rapporteur on Indigenous Populations to Indigenous Peoples' organizations, communities and nations, as well as to governments, specialised agencies and IGOs and NGOs concerned, for their comments. It recommended that the Economic and Social Council requests the UN Secretary-General to submit those same formulations and that it authorises the Rapporteur to take them into account in preparing her final report.

By a decision on Treaties, Agreements and other Constructive Arrangements between States and Indigenous Populations, the Commission endorsed in Decision 1995/109 the recommendation of its Sub-Commission that the Special Rapporteur on such treaties make all possible efforts to submit his second progress report in 1995 to the Working Group on Indigenous Populations at its 1995 session and to the Sub-Commission at its 1996 session, as well

as his final report to both bodies in 1996. It also asked the Economic and Social Council to endorse the same recommendations.

In Resolution 1995/58 it called upon the UN Secretary-General to maintain the integrity of programmes within the UN systems relating to persons with disabilities, including the UN Voluntary Fund on Disability, in order to promote the right and the equalisation of opportunities and full inclusion within societies of persons with disabilities. It requested States to cooperate fully with the Special Rapporteur and meet his requests for information; and requested the UN Secretary-General to ensure appropriate support for the effective functioning of the long-term strategy to implement the World Programme of Action concerning Disabled Persons to the Year 2000 and decided to continue to consider the question at its next session.

Rights of the Child (Agenda Item 24)

Unless effective action is taken to stop the sale of children, child prostitution and child pornography, the UN would be failing to deal with one of the worst human rights violations, told the Chairman of the Working Group on a draft Optional Protocol to the Convention on the Rights of the Child, Resolution 1995/78 and Resolution 1995/79. He added that, although all members of the Working Group had rejected those practices, they were on the increase world-wide and there was an urgent need to eradicate them.

Taking into account the serious situation on this matter, it was decided to

renew, for a period of three years, the mandate of the Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography.

NGOs supported the strengthening of the Convention on the Rights of the Child and the elaboration of the optional protocols on the sale of children and children in armed conflict. It was said that since its existence the UN mechanism had not yet been fully utilised in promoting the rights of the child, it was not necessary to establish new ones before having explored the one that already existed.

Country Situations (Item 12)

The question of the violation of human rights and fundamental freedoms in any part of the world, with particular reference to colonial and other dependent countries and territories, was further divided into two sub-headings in order to pay special attention to the situation in Cyprus and other countries where consistent patterns of gross violations of human rights could be detected. The countries of the former Yugoslavia, Iraq, Iran, Southern Lebanon, Afghanistan, China, East Timor, Myanmar (Burma), Colombia, Cuba, Guatemala, Haiti, Burundi, Equatorial Guinea, Nigeria, Rwanda, Sudan, and Zaire, were the countries cited as displaying such patterns.

A draft decision on the situation in Cyprus was read by the Chair and adopted without a vote on 8 March, 1995.

Rwanda's Justice Minister, Mr. Alphonse Marie Nkubito, told the

Commission that his government's first concern was respect for human rights and it was concentrating on ending human rights violations, notably impunity, summary executions, disappearances, torture, dictatorship, the persecution of journalists, revenge squads, and the destruction of property. He called on the international community to keep the promises it made to rebuild the country as soon as possible, particularly in the domain of the domestic judicial system. Resolution 1995/91 on the situation of human rights in Rwanda was adopted at the Commission without a vote. It notes the deep concern of the international community over the findings of the Special Rapporteur (E/CN.4/1995/7 and 12), that disappearances, arbitrary arrests and detentions, summary executions, and attacks against displaced persons are still taking place and extends his mandate for an additional year.

The Special Rapporteur on Human Rights in Iraq, Mr. Theo Van Boven, introduced his report and relayed to the participants at the Commission some of the atrocious abuses he had witnessed in Iraq. He drew attention to the tragic plight of the Marsh Arabs, coerced into leaving their homelands by the Iraqi Government that had drained the marshes and hence deprived these people of the primary source of their livelihood. Other instances of human rights violations were the death decrees issued to persons convicted of having committed a crime, such as theft and robbery, in accordance with the Muslim law of the Shari'a. It was commonplace to find that the penalty for stealing an apple, for example, would be the amputation of a limb. A punishment grossly disproportionate in the view of many government and NGO representatives.

With the description of these and other events in the report it was no wonder, Mr. Van Boven said, that the Iraqi Government had accused him of bias, gross exaggeration and political motivation. The report, however, did not mention that the continued application of economic sanctions - which has aggravated the already desperate conditions in Iraq and has led people to commit petty theft for survival - could be classed as a human rights violation in itself.

Mr. Van Boven's mandate was extended for a further year, and his report was taken note of with appreciation by the Commission's Resolution 1995/76, which was adopted by a majority of 31 votes in favour, 1 against (Sri Lanka), and 21 abstentions.

As for Bosnia and Herzegovina, Croatia, Serbia, and Montenegro, Resolution 1995/89 was adopted by a unanimous roll-call vote of 44 in favour and 7 abstentions. This recalls in particular the police brutality, as well as killings of ethnic Albanians, as part of an attempt to change the ethnic structure of Serbian held Kosovo. Strong language is used to express the attitude of the international community towards the continual refusal of Serbia and Montenegro (that form the Federal Republic of Yugoslavia) to allow entry of UN observer missions and field officers of the Special Rapporteur, and demands that they do so. Finally, the international community "renews its expression of outrage" at the use of the systematic practice of rape as a weapon of war against women and children and as an instrument of "ethnic cleansing."

A series of resolutions were also adopted on the situation of human rights

in the Papua New Guinean held island of Bougainville (1995/65), Afghanistan (1995/74), Myanmar (1995/72), Equatorial Guinea (1995/71), Sudan (1995/77), Cuba (1995/66), and in Southern Lebanon, where Israeli violations of human rights in this occupied zone and in the Western Bekaa plain were deplored in Resolution 1995/67, and Burundi (1995/90). In relation to Cuba, the Commission requested the Cuban Government to authorise the visit of the Special Rapporteur on Arbitrary Detention and extended the mandate of the existing Special Rapporteur by one year. The representative of Cuba voiced his opposition to the Resolution by claiming that it was impossible to vote on it if the financial implications were not available, nonetheless, it was adopted on a roll-call vote of 22 in favour, 8 against and 23 abstentions.

In relation to Burundi, the resolution contains the appointment of a Special Rapporteur with the task of drawing up a report on the situation of human rights in the country for submission to the Commission at its fifty-second session.

Cuba introduced draft Resolution L.26/Rev. 2, on the violation of human rights in the United States of America as a result of persisting racism and racial discrimination, encouraging the USA to invite once again the Special Rapporteur on Contemporary forms of Racism, as previously he had only visited four States. However, Cuba's efforts were fruitless and the draft Resolution was rejected by 32 votes, with 13 abstentions and 3 in favour.

The Commission decided in Resolution 1995/73 on Extrajudicial,

Summary or Arbitrary Executions, adopted without a vote, to extend the mandate of the Special Rapporteur for a further three years, whilst also expressing concern over the lack of resources made available to him.

In response to draft Resolution L.90 on the continued violations of human rights in the Islamic Republic of Iran, the Iranian delegation delivered a written and oral statement containing remarks on the proposal which purported to extend the mandate of the Special Rapporteur for a further year. The delegation alleged that the tone and wording of the text went far beyond that of the Special rapporteur's report that, in itself, presented a "distorted picture" of Iran. The remarks were made in reference to each clause of L.90 in an attempt to indicate the "biased and unbalanced judgements" of its sponsors. L.90 was, nevertheless, adopted with 28 votes in favour, 8 against, and 17 abstentions (Resolution 1995/68).

The Commission, in Resolution 1995/70, called upon the Government of Haiti to take the legal and political measures necessary for the improvement of the administration of justice and of the prison system and condemned the human rights violations which took place during the previous *de facto* regime. The situation in Zaire was highlighted by the adoption of Resolution 1995/69, which deplored the continuing serious violations of human rights there and decided to extend the mandate of the Special Rapporteur (Mr. Roberto Garretón).

The Chairman issued statements on the situation in Russian held Chechnya

and in Indonesian held East Timor under item 12. The Chair called for an immediate ceasefire in the Republic of Chechnya and for the unhindered delivery of humanitarian aid to all groups of the civilian population in need. It deplored the grave violations of human rights and expressed deep concern over the disproportionate use of force used by the Russian forces in the small Caucasian breakaway republic. As for East Timor, the Chairman stated that the Commission welcomed the decision of the Indonesian Government to investigate the recent violent incident where six people were killed and to make the findings public. It called for the government to implement the findings of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions.

With regard to Colombia, there was much NGO action throughout the six weeks to try and bring the seriousness and extent of the human rights situation to the Commission's attention, including a day of silent protest when yellow armbands were worn by participants. Even though, there was no resolution drafted nor any statements by the Chairman, as was the case for Chechnya and East Timor, there was nonetheless a letter written on behalf of the Colombian Government in which it invited visits from Special Rapporteurs and promised to cooperate fully with them. This was then read out to the members of the Commission and officially taken note of.

Draft Resolution L.100 on the human rights situation in Nigeria was rejected in a roll-call vote of 17 in favour to 21 against, with 15 abstentions. If passed, it would have called upon the government to ensure the observance of all human rights, in particular by restoring

habeas corpus, releasing all political prisoners, restoring freedom of the press, lifting arbitrarily imposed travel restrictions, and ensuring full respect for the right of trade unionists. Algeria, speaking on behalf of the African Group, said that they decided by consensus that the draft was the result of a political approach that would not help improve the situation in Nigeria.

Unprecedented action took place on the subject of China in this year's session. When draft Resolution L.86 was initially presented, the Chinese delegation tabled a no-action vote. Previously, voting on a Chinese resolution has always been prevented by a successful no-action motion. This time, however, the no-action vote was defeated, and a vote on the resolution itself followed. The resolution was very narrowly rejected by 21 votes to 20 with 12 abstentions. Under the draft Resolution, the Commission called upon that country's government to take further measures to ensure the observance of all human rights, including the rights to freedom of assembly, religion, and a fair trial, as well as the rights of women, and to improve the impartial administration of justice. The resolution would have also included a visit by the Special Rapporteur on Religious Intolerance and other thematic special rapporteurs and working groups.

Procedure 1503

A number of countries were considered under procedure 1503. Procedure 1503 was discontinued for the following: Albania, the Lao People's Democratic Republic, Latvia, Moldova, Rwanda,

Slovenia, Thailand, and Uganda. The following countries continue under consideration, by public announcement of 22 February 1995: Armenia, Azerbaijan, Chad, and Saudi Arabia.

Draft Declaration on the Rights and Responsibilities of Human Rights Defenders (Item 23)

The Chairman of the Working Group on the draft Declaration on the Rights and Responsibilities of Human Rights Defenders, Mr. Jan Helgesen, presented before the Commission his report on tenth session (E/CN.4/1995/93). In spite of the efforts made by some States and NGOs, results obtained after ten years of work are few. Some delegations, including the USA, Chile, Canada and Iceland, support the work of the Working Group, and said that it should be necessary to extend its mandate in order to continue with its work.

A joint statement presented by several NGOs, including the ICJ, pointed out that it was essential for grass-roots organizations to have an international instrument that could help their efforts in promoting and protecting human rights. However, the strongest opposition to the recognition of NGOs rights stem from some of the Working Group's members.

Resolution 1995/84, recommended to the ECOSOC an open-ended working group of the Commission on Human Rights to meet for a period of one week prior to the fifty-second session in order to continue work on the elaboration of a draft declaration.

Advisory Services (Item 21)

Countries such as El Salvador (Resolution 1995/63), Guatemala (Resolution 1995/51), Togo (1995/52), Cambodia (Resolution 1995/55) and Somalia (Resolution 1995/56) will receive advisory services from the UN Centre for Human Rights.

In relation to El Salvador, the Commission decided to conclude consideration of this case, taking into account the recommendations made by the Independent Expert (Mr. Pedro Nikken), as well as the progress of the peace process in the country. The UN Centre for Human Rights was requested to facilitate the implementation of the technical cooperation agreement in close contact with the Salvadoran Government.

In the case of Guatemala, the Commission recognised the efforts made by the Government of Guatemala, and took into account the recommendations of the Independent Expert (Ms. Mónica Pinto) as well as the contributions of the UN Mission in Guatemala (MINUGUA). The Commission decided to consider the question at its fifty-second session under the appropriate agenda item, in the light of the report of the Independent Expert.

The Special Representative of the UN Secretary-General for Cambodia (Mr. Michael D. Kirby, who is also Chairman of the ICJ Executive Committee), was requested to report to the Commission at its fifty-second session on the role of the Centre for Human Rights in assisting the Government and people of Cambodia and to provide an interim report to the General Assembly at its fiftieth session.

The resolution on Somalia strongly urged all parties in the country to respect the human rights and fundamental freedoms of all, apply criminal justice standards and protect UN personnel, as well as requested the Independent Expert to study ways and means of how to best implement a programme of advisory services for Somalia. The UN Secretary-General was also requested to report to the Commission at its fifty-second session on the human rights situation.

Basic Texts

Council of Europe

Framework Convention for the Protection of National Minorities and Explanatory Report

Strasbourg, February 1995

Introduction:

The Framework Convention for the Protection of National Minorities, drawn up within the Council of Europe by Ad Hoc Committee for the Protection of National Minorities (CAHMIN) under the authority of the Committee of Ministers, was adopted by the Committee of Ministers of the Council of Europe on 10 November 1994 and opened for signature by the member States of the Council of Europe on 1 February 1995. Non-member States may also be invited by the Committee of Ministers to become Party to this instrument.

This publication contains the text of the Framework Convention for the Protection of National Minorities as well as the explanatory report.

Framework Convention for the Protection of National Minorities

The member States of the Council of Europe and the other States, signatories to the present framework Convention,

Considering that the aim of the Council of Europe is to achieve greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage;

Considering that one of the methods by which that aim is to be pursued is the maintenance and further realisation of human rights and fundamental freedoms;

Wishing to follow-up the Declaration of the Heads of State and Government of the member States of the Council of Europe adopted in Vienna on 9 October 1993;

Being resolved to protect within their respective territories the existence of national minorities;

Considering that the upheavals of European history have shown that the protection of national minorities is essential to stability, democratic security and peace in this continent;

Considering that a pluralist and genuinely democratic society should not only respect the ethnic, cultural, linguistic

tic and religious identity of each person belonging to a national minority, but also create appropriate conditions enabling them to express, preserve and develop this identity;

Considering that the creation of a climate of tolerance and dialogue is necessary to enable cultural diversity to be a source and a factor, not of division, but of enrichment for each society;

Considering that the realisation of a tolerant and prosperous Europe does not depend solely on cooperation between States but also requires transfrontier cooperation between local and regional authorities without prejudice to the constitution and territorial integrity of each State;

Having regard to the Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols thereto;

Having regard to the commitments concerning the protection of national minorities in United Nations conventions and declarations and in the documents of the Conference on Security and Cooperation in Europe, particularly the Copenhagen Document of 29 June 1990;

Being resolved to define the principles to be respected and the obligations which flow from them, in order to ensure, in the member States and such other States as may become Parties to the present instrument, the effective protection of national minorities and of the rights and freedoms of persons belonging to those minorities, within the Rule of Law, respecting the territorial

integrity and national sovereignty of States;

Being determined to implement the principles set out in this framework Convention through national legislation and appropriate governmental policies,

Have agreed as follows:

Section I

Article 1

The protection of national minorities and of the rights and freedoms of persons belonging to those minorities forms an integral part of the international protection of human rights, and as such falls within the scope of international cooperation.

Article 2

The provisions of this framework Convention shall be applied in good faith, in a spirit of understanding and tolerance and in conformity with the principles of good neighbourliness, friendly relations and cooperation between States.

Article 3

- 1 Every person belonging to a national minority shall have the right freely to choose to be treated or not to be treated as such and no disadvantage shall result from this choice or from the exercise of the rights which are connected to that choice.
- 2 Persons belonging to national minorities may exercise the rights and

enjoy the freedoms flowing from the principles enshrined in the present framework Convention individually as well as in community with others.

Section II

Article 4

- 1 The Parties undertake to guarantee to persons belonging to national minorities the right of equality before the law and of equal protection of the law. In this respect, any discrimination based on belonging to a national minority shall be prohibited.
- 2 The Parties undertake to adopt, where necessary, adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority. In this respect, they shall take due account of the specific conditions of the persons belonging to national minorities.
- 3 The measures adopted in accordance with paragraph 2 shall not be considered to be an act of discrimination.

Article 5

- 1 The Parties undertake to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage.

- 2 Without prejudice to measures taken in pursuance of their general integration policy, the Parties shall refrain from policies or practices aimed at assimilation of persons belonging to national minorities against their will and shall protect these persons from any action aimed at such assimilation.

Article 6

- 1 The Parties shall encourage a spirit of tolerance and intercultural dialogue and take effective measures to promote mutual respect and understanding and cooperation among all persons living on their territory, irrespective of those persons' ethnic, cultural, linguistic or religious identity, in particular in the fields of education, culture and the media.
- 2 The Parties undertake to take appropriate measures to protect persons who may be subject to threats or acts of discrimination, hostility or violence as a result of their ethnic, cultural, linguistic or religious identity.

Article 7

The Parties shall ensure respect for the right of every person belonging to a national minority to freedom of peaceful assembly, freedom of association, freedom of expression, and freedom of thought, conscience and religion.

Article 8

The Parties undertake to recognise that every person belonging to a national minority has the right to manifest his or her religion or belief and to establish

religious institutions, organizations and associations.

Article 9

- 1 The Parties undertake to recognise that the right to freedom of expression of every person belonging to a national minority includes freedom to hold opinions and to receive and impart information and ideas in the minority language, without interference by public authorities and regardless of frontiers. The Parties shall ensure, within the framework of their legal systems, that persons belonging to a national minority are not discriminated against in their access to the media.
- 2 Paragraph 1 shall not prevent Parties from requiring the licensing, without discrimination and based on objective criteria, of sound radio and television broadcasting, or cinema enterprises.
- 3 The Parties shall not hinder the creation and the use of printed media by persons belonging to national minorities. In the legal framework of sound radio and television broadcasting, they shall ensure, as far as possible, and taking into account the provisions of paragraph 1, that persons belonging to national minorities are granted the possibility of creating and using their own media.
- 4 In the framework of their legal systems, the Parties shall adopt adequate measures in order to facilitate access to the media for persons belonging to national minorities and in

order to promote tolerance and permit cultural pluralism.

Article 10

- 1 The Parties undertake to recognise that every person belonging to a national minority has the right to use freely and without interference his or her minority language, in private and in public, orally and in writing.
- 2 In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if those persons so request and where such a request corresponds to a real need, the Parties shall endeavour to ensure, as far as possible, the conditions which would make it possible to use the minority language in relations between those persons and the administrative authorities.
- 3 The Parties undertake to guarantee the right of every person belonging to a national minority to be informed promptly, in a language which he or she understands, of the reasons for his or her arrest, and of the nature and cause of any accusation against him or her, and to defend himself or herself in this language, if necessary with the free assistance of an interpreter.

Article 11

- 1 The Parties undertake to recognise that every person belonging to a national minority has the right to use his or her surname (patronym) and first names in the minority language and the right to official recognition of them, according to modalities provided for in their legal system.

2 The Parties undertake to recognise that every person belonging to a national minority has the right to display in his or her minority language signs, inscriptions and other information of a private nature visible to the public.

3 In areas traditionally inhabited by substantial numbers of persons belonging to a national minority, the Parties shall endeavour, in the framework of their legal system, including, where appropriate, agreements with other States, and taking into account their specific conditions, to display traditional local names, street names and other topographical indications intended for the public also in the minority language when there is a sufficient demand for such indications.

Article 12

1 The Parties shall, where appropriate, take measures in the fields of education and research to foster knowledge of the culture, history, language and religion of their national minorities and of the majority.

2 In this context the Parties shall inter alia provide adequate opportunities for teacher training and access to textbooks, and facilitate contacts among students and teachers of different communities.

3 The Parties undertake to promote equal opportunities for access to education at all levels for persons belonging to national minorities.

Article 13

1 Within the framework of their education systems, the Parties shall recognise that persons belonging to a national minority have the right to set up and to manage their own private educational and training establishments.

2 The exercise of this right shall not entail any financial obligation for the Parties.

Article 14

1 The Parties undertake to recognise that every person belonging to a national minority has the right to learn his or her minority language.

2 In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if there is sufficient demand, the Parties shall endeavour to ensure, as far as possible and within the framework of their education systems, that persons belonging to those minorities have adequate opportunities for being taught the minority language or for receiving instruction in this language.

3 Paragraph 2 of this article shall be implemented without prejudice to the learning of the official language or the teaching in this language.

Article 15

The Parties shall create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and econo-

mic life and in public affairs, in particular those affecting them.

Article 16

The Parties shall refrain from measures which alter the proportions of the population in areas inhabited by persons belonging to national minorities and are aimed at restricting the rights and freedoms flowing from the principles enshrined in the present framework Convention.

Article 17

- 1 The Parties undertake not to interfere with the right of persons belonging to national minorities to establish and maintain free and peaceful contacts across frontiers with persons lawfully staying in other States, in particular those with whom they share an ethnic, cultural, linguistic or religious identity, or a common cultural heritage.
- 2 The Parties undertake not to interfere with the right of persons belonging to national minorities to participate in the activities of non-governmental organizations, both at the national and international levels.

Article 18

- 1 The Parties shall endeavour to conclude, where necessary, bilateral and multilateral agreements with other States, in particular neighbouring States, in order to ensure the protection of persons belonging to the national minorities concerned.

- 2 Where relevant, the Parties shall take measures to encourage trans-frontier cooperation.

Article 19

The Parties undertake to respect and implement the principles enshrined in the present framework Convention making, where necessary, only those limitations, restrictions or derogations which are provided for in international legal instruments, in particular the Convention for the Protection of Human Rights and Fundamental Freedoms, in so far as they are relevant to the rights and freedoms flowing from the said principles.

Section III

Article 20

In the exercise of the rights and freedoms flowing from the principles enshrined in the present framework Convention, any person belonging to a national minority shall respect the national legislation and the rights of others, in particular those of persons belonging to the majority or to other national minorities.

Article 21

Nothing in the present framework Convention shall be interpreted as implying any right to engage in any activity or perform any act contrary to the fundamental principles of international law and in particular of the sovereign equality, territorial integrity and political independence of States.

Article 22

Nothing in the present framework Convention shall be construed as limiting or derogating from any of the human rights and fundamental freedoms which may be ensured under the laws of any Contracting Party or under any other agreement to which it is a Party.

Article 23

The rights and freedoms flowing from the principles enshrined in the present framework Convention, in so far as they are the subject of a corresponding provision in the Convention for the Protection of Human Rights and Fundamental Freedoms or in the Protocols thereto, shall be understood so as to conform to the latter provisions.

Section IV

Article 24

- 1 The Committee of Ministers of the Council of Europe shall monitor the implementation of this framework Convention by the Contracting Parties.
- 2 The Parties which are not members of the Council of Europe shall participate in the implementation mechanism, according to modalities to be determined.

Article 25

- 1 Within a period of one year following the entry into force of this framework Convention in respect of a Contracting Party, the latter shall transmit to the Secretary-General of

the Council of Europe full information on the legislative and other measures taken to give effect to the principles set out in this framework Convention.

- 2 Thereafter, each Party shall transmit to the Secretary-General on a periodical basis and whenever the Committee of Ministers so requests any further information of relevance to the implementation of this framework Convention.
- 3 The Secretary-General shall forward to the Committee of Ministers the information transmitted under the terms of this Article.

Article 26

- 1 In evaluating the adequacy of the measures taken by the Parties to give effect to the principles set out in this framework Convention, the Committee of Ministers shall be assisted by an advisory committee, the members of which shall have recognised expertise in the field of the protection of national minorities.
- 2 The composition of this advisory committee and its procedure shall be determined by the Committee of Ministers within a period of one year following the entry into force of this framework Convention.

Section V

Article 27

This framework Convention shall be open for signature by the member States

of the Council of Europe. Up until the date when the Convention enters into force, it shall also be open for signature by any other State so invited by the Committee of Ministers. It is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

Article 28

1 This framework Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which twelve member States of the Council of Europe have expressed their consent to be bound by the Convention in accordance with the provisions of Article 27.

2 In respect of any member State which subsequently expresses its consent to be bound by it, the framework Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval.

Article 29

1 After the entry into force of this framework Convention and after consulting the Contracting States, the Committee of Ministers of the Council of Europe may invite to accede to the Convention, by a decision taken by the majority provided for in Article 20.d of the Statute of the Council of Europe, any non-member State of the Council of Europe which, invited to sign in accordance with the provisions of Article 27,

has not yet done so, and any other non-member State.

2 In respect of any acceding State, the framework Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of accession with the Secretary-General of the Council of Europe.

Article 30

1 Any State may at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories for whose international relations it is responsible to which this framework Convention shall apply.

2 Any State may at any later date, by a declaration addressed to the Secretary-General of the Council of Europe, extend the application of this framework Convention to any other territory specified in the declaration. In respect of such territory the framework Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.

3 Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary-General. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary-General.

Article 31

1 Any Party may at any time denounce this framework Convention by means of a notification addressed to the Secretary-General of the Council of Europe.

2 Such denunciation shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of the notification by the Secretary-General.

Article 32

The Secretary-General of the Council of Europe shall notify the member States of the Council, other signatory States and any State which has acceded to this framework Convention, of:

- a any signature;
- b the deposit of any instrument of ratification, acceptance, approval or accession;
- c any date of entry into force of this framework Convention in accordance with Articles 28, 29 and 30;
- d any other act, notification or communication relating to this framework Convention.

In witness whereof the undersigned, being duly authorised thereto, have signed this framework Convention.

Done at Strasbourg, this 1st day of February 1995, in English and French,

both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary-General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe and to any State invited to sign or accede to this framework Convention.

Explanatory Report

Background

1. The Council of Europe has examined the situation of national minorities on a number of occasions over a period of more than forty years. In its very first year of existence (1949), the Parliamentary Assembly recognised, in a report of its Committee on Legal and Administrative Questions, the importance of "the problem of wider protection of the rights of national minorities." In 1961, the Assembly recommended the inclusion of an article in a second additional protocol to guarantee to national minorities certain rights not covered by the European Convention on Human Rights (ECHR). The latter simply refers to "association with a national minority" in the non-discrimination clause provided for in Article 14. Recommendation 285 (1961) proposed the following wording for the draft article on the protection of national minorities:

"Persons belonging to a national minority shall not be denied the right, in community with the other members of

their group, and as far as compatible with public order, to enjoy their own culture, to use their own language, to establish their schools and receive teaching in the language of their choice or to profess and practise their own religion."

2. The committee of experts, which had been instructed to consider whether it was possible and advisable to draw up such a protocol, adjourned its activities until a final decision had been reached on the Belgian linguistics cases concerning the language used in education (European Court of Human Rights. Judgment of 27 July 1968, Series A No. 6). In 1973 it concluded that, from a legal point of view, there was no special need to make the rights of minorities the subject of a further protocol to the ECHR. However, the experts considered that there was no major legal obstacle to the adoption of such a protocol if it were considered advisable for other reasons.
3. More recently, the Parliamentary Assembly recommended a number of political and legal measures to the Committee of Ministers, in particular the drawing up of a protocol or a convention on the rights of national minorities. Recommendation 1134 (1990) contains a list of principles which the Assembly considered necessary for the protection of national minorities. In October 1991, the Steering Committee for Human Rights (CDDH) was given the task of considering, from both a legal and a political point of view, the conditions
4. In May 1992, the Committee of Ministers instructed the CDDH to examine the possibility of formulating specific legal standards relating to the protection of national minorities. To this end, the CDDH established a committee of experts (DH-MIN) which, under new terms of reference issued in March 1993, was required to propose specific legal standards in this area, bearing in mind the principle of complementarity of work between the Council of Europe and the CSCE. The CDDH and the DH-MIN took various texts into account, in particular the proposal for a European Convention for the Protection of National Minorities drawn up by the European Commission for Democracy through Law (the so-called Venice Commission), the Austrian proposal for an additional protocol to the ECHR, the draft additional protocol to the ECHR included in Assembly Recommendation 1201 (1993) and other proposals. This examination culminated in the report of the CDDH to the Committee of Ministers of 8 September 1993, which included various legal standards which might be adopted in this area and the legal instruments in which they could be laid down. In this connection, the CDDH noted that there was no consensus on the

in which the Council of Europe could undertake an activity for the protection of national minorities, taking into account the work done by the Conference on Security and Cooperation in Europe (CSCE) and the United Nations, and the reflections within the Council of Europe.

interpretation of the term "national minorities."

5. The decisive step was taken when the Heads of State and Government of the Council of Europe's member States met in Vienna at the summit of 8 and 9 October 1993. There, it was agreed that the national minorities which the upheavals of history have established in Europe had to be protected and respected as a contribution to peace and stability. In particular, the Heads of State and Government decided to enter into legal commitments regarding the protection of national minorities. Appendix II of the Vienna Declaration instructed the Committee of Ministers:

- to draft with minimum delay a framework convention specifying the principles which contracting States commit themselves to respect, in order to assure the protection of national minorities. This instrument would also be open for signature by non-member States;
- to begin work on drafting a protocol complementing the European Convention on Human Rights in the cultural field by provisions guaranteeing individual rights, in particular for persons belonging to national minorities.

6. On 4 November 1993, the Committee of Ministers established an ad hoc Committee for the Protection of National Minorities (CAHMIN). Its terms of reference

reflected the decisions taken in Vienna. The committee, made up of experts from the Council of Europe's member States, started work in late January 1994, with the participation of representatives of the CDDH, the Council for Cultural Co-operation (CDCC), the Steering Committee on the Mass Media (CDMM) and the European Commission for Democracy through Law. The High Commissioner on National Minorities of the CSCE and the Commission of the European Communities also took part, as observers.

7. On 15 April 1994, CAHMIN submitted an interim report to the Committee of Ministers, which was then communicated to the Parliamentary Assembly (Doc. 7109). At its 94th session in May 1994, the Committee of Ministers expressed satisfaction with the progress achieved under the terms of reference flowing from the Vienna Declaration.

8. A certain number of provisions of the framework Convention requiring political arbitration as well as those concerning the monitoring of the implementation were drafted by the Committee of Ministers (517bis meeting of Ministers' Deputies, 7 October 1994).

9. At its meeting from 10 to 14 October 1994, CAHMIN decided to submit the draft framework Convention to the Committee of Ministers, which adopted the text at the 95th Ministerial Session on 10 November 1994. The framework Convention

was opened for signature by the Council of Europe's member States on 1 February 1995.

General Considerations

Objectives of the framework Convention

10. The framework Convention is the first legally binding multilateral instrument devoted to the protection of national minorities in general. Its aim is to specify the legal principles which States undertake to respect in order to ensure the protection of national minorities. The Council of Europe has thereby given effect to the Vienna Declaration's call (Appendix II) for the political commitments adopted by the Conference on Security and Cooperation in Europe (CSCE) to be transformed, to the greatest possible extent, into legal obligations.

Approaches and fundamental concepts

11. In view of the range of different situations and problems to be resolved, a choice was made for a framework Convention which contains mostly programme-type provisions setting out objectives which the Parties undertake to pursue. These provisions, which will not be directly applicable, leave the States concerned a measure of discretion in the implementation of the objectives which they have undertaken to achieve, thus enabling them to take particular circumstances into account.

12. It should also be pointed out that the framework Convention contains no definition of the notion of "national minority." It was decided to adopt a pragmatic approach, based on the recognition that at this stage, it is impossible to arrive at a definition capable of mustering general support of all Council of Europe member States.

13. The implementation of the principles set out in this framework Convention shall be done through national legislation and appropriate governmental policies. It does not imply the recognition of collective rights. The emphasis is placed on the protection of persons belonging to national minorities, who may exercise their rights individually and in community with others (see Article 3, paragraph 2). In this respect, the framework Convention follows the approach of texts adopted by other international organizations.

Structure of the framework Convention

14. Apart from its Preamble, the framework Convention contains an operative part which is divided into five sections.

15. Section I contains provisions which, in a general fashion, stipulate certain fundamental principles which may serve to elucidate the other substantive provisions of the framework Convention.

16. Section II contains a catalogue of specific principles.

17. Section III contains various provisions concerning the interpretation and application of the framework Convention.
18. Section IV contains provisions on the monitoring of the implementation of the framework Convention.
19. Section V contains the final clauses which are based on the model final clauses for conventions and agreements concluded within the Council of Europe.

Commentary on the Provisions of the Framework Convention

Preamble

20. The Preamble sets out the reasons for drawing up this framework Convention and explains certain basic concerns of its drafters. The opening words already indicate that this instrument may be signed and ratified by States not members of the Council of Europe (see Articles 27 and 29).
21. The Preamble refers to the statutory aim of the Council of Europe and to one of the methods by which this aim is to be pursued: the maintenance and further realisation of human rights and fundamental freedoms.
22. Reference is also made to the Vienna Declaration of Heads of State and Government of the member States of the Council of Europe, a document which laid the foundation for the present framework Convention (see also paragraph 5 above). In fact, the text of the Preamble is largely inspired by that declaration, in particular its Appendix II. The same is true of the choice of undertakings included in Sections I and II of the framework Convention.
23. The Preamble mentions, in a non-exhaustive way, three further sources of inspiration for the content of the framework Convention: the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and instruments which contain commitments regarding the protection of national minorities of the United Nations and the CSCE.
24. The Preamble reflects the concern of the Council of Europe and its member States about the risk to the existence of national minorities and is inspired by Article 1, paragraph 1, of the United Nations Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities (Resolution 47/135 adopted by the General Assembly on 18 December 1992).
25. Given that the framework Convention is also open to States which are not members of the Council of Europe, and to ensure a more comprehensive approach, it was decided to include certain principles from which flow rights and freedoms which are already guaranteed in the ECHR or in the protocols thereto (see also in connection with this, Article 23 of the framework Convention).
26. The reference to United Nations conventions and declarations recalls

the work done at the universal level, for example in the International Covenant on Civil and Political Rights (Article 27) and in the Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities. However this reference does not extend to any definition of a national minority which may be contained in these texts.

27. The reference to the relevant CSCE commitments reflects the desire expressed in Appendix II of the Vienna Declaration that the Council of Europe should apply itself to transforming, to the greatest possible extent, these political commitments into legal obligations. The Copenhagen Document in particular provided guidance for drafting the framework Convention.
28. The penultimate paragraph in the Preamble sets out the main aim of the framework Convention: to ensure the effective protection of national minorities and of the rights of persons belonging to those minorities. It also stresses that this effective protection should be ensured within the rule of law, respecting the territorial integrity and national sovereignty of States.
29. The purpose of the last recital is to indicate that the provisions of this framework Convention are not directly applicable. It is not concerned with the law and practice of the Parties in regard to the reception of international treaties in the internal legal order.

Section I

Article 1

30. The main purpose of Article 1 is to specify that the protection of national minorities, which forms an integral part of the protection of human rights, does not fall within the reserved domain of States. The statement that this protection "forms an integral part of the international protection of human rights" does not confer any competence to interpret the present framework Convention on the organs established by the ECHR.
31. The article refers to the protection of national minorities as such and of the rights and freedoms of persons belonging to such minorities. This distinction and the difference in wording make it clear that no collective rights of national minorities are envisaged (see also the commentary to Article 3). The Parties do however recognise that protection of a national minority can be achieved through protection of the rights of individuals belonging to such a minority.

Article 2

32. This article provides a set of principles governing the application of the framework Convention. It is, *inter alia*, inspired by the United Nations Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations (General Assembly Resolution 2625 (XXV) of 24 October 1970). The

principles mentioned in this provision are of a general nature but do have particular relevance to the field covered by the framework Convention.

Article 3

33. This article contains two distinct but related principles laid down in two different paragraphs.

Paragraph 1

34. Paragraph 1 firstly guarantees to every person belonging to a national minority the freedom to choose to be treated or not to be treated as such. This provision leaves it to every such person to decide whether or not he or she wishes to come under the protection flowing from the principles of the framework Convention.

35. This paragraph does not imply a right for an individual to choose arbitrarily to belong to any national minority. The individual's subjective choice is inseparably linked to objective criteria relevant to the person's identity.

36. Paragraph 1 further provides that no disadvantage shall arise from the free choice it guarantees, or from the exercise of the rights which are connected to that choice. This part of the provision aims to secure that the enjoyment of the freedom to choose shall also not be impaired indirectly.

Paragraph 2

37. Paragraph 2 provides that the rights

and freedoms flowing from the principles of the framework Convention may be exercised individually or in community with others. It thus recognises the possibility of joint exercise of those rights and freedoms, which is distinct from the notion of collective rights. The term "others" shall be understood in the widest possible sense and shall include persons belonging to the same national minority, to another national minority, or to the majority.

Section II

Article 4

38. The purpose of this article is to ensure the applicability of the principles of equality and non-discrimination for persons belonging to national minorities. The provisions of this article are to be understood in the context of this framework Convention.

Paragraphs 1 and 2

39. Paragraph 1 takes the classic approach to these principles. Paragraph 2 stresses that the promotion of full and effective equality between persons belonging to a national minority and those belonging to the majority may require the Parties to adopt special measures that take into account the specific conditions of the persons concerned. Such measures need to be "adequate," that is in conformity with the proportionality principle, in order to avoid violation of the rights of others as well as discrimination against others. This principle requires,

among other things, that such measures do not extend, in time or in scope, beyond what is necessary in order to achieve the aim of full and effective equality.

40. No separate provision dealing specifically with the principle of equal opportunities has been included in the framework Convention. Such an inclusion was considered unnecessary as the principle is already implied in paragraph 2 of this article. Given the principle of non-discrimination set out in paragraph 1 the same was considered true for freedom of movement.

Paragraph 3

41. The purpose of paragraph 3 is to make clear that the measures referred to in paragraph 2 are not to be regarded as contravening the principles of equality and non-discrimination. Its aim is to ensure to persons belonging to national minorities effective equality along with persons belonging to the majority.

Article 5

42. This article essentially aims at ensuring that persons belonging to national minorities can maintain and develop their culture and preserve their identity.

Paragraph 1

43. Paragraph 1 contains an obligation to promote the necessary conditions in this respect. It lists four essential elements of the identity of a national minority. This provision does not imply that all ethnic, cultural, lin-

guistic or religious differences necessarily lead to the creation of national minorities (see in this regard the report of the CSCE meeting of experts, held in Geneva in 1991, section II, paragraph 4).

44. The reference to "traditions" is not an endorsement or acceptance of practices which are contrary to national law or international standards. Traditional practices remain subject to limitations arising from the requirements of public order.

Paragraph 2

45. The purpose of paragraph 2 is to protect persons belonging to national minorities from assimilation against their will. It does not prohibit voluntary assimilation.
46. Paragraph 2 does not preclude the Parties from taking measures in pursuance of their general integration policy. It thus acknowledges the importance of social cohesion and reflects the desire expressed in the preamble that cultural diversity be a source and a factor, not of division, but of enrichment to each society.

Article 6

47. This article is an expression of the concerns stated in Appendix III to the Vienna Declaration (Declaration and Plan of Action on combating racism, xenophobia, anti-Semitism and intolerance).

Paragraph 1

48. Paragraph 1 stresses a spirit of tolerance and intercultural dialogue and

points out the importance of the Parties' promoting mutual respect, understanding and cooperation among all who live on their territory. The fields of education, culture and the media are specifically mentioned because they are considered particularly relevant to the achievement of these aims.

49. In order to strengthen social cohesion, the aim of this paragraph is, inter alia, to promote tolerance and intercultural dialogue, by eliminating barriers between persons belonging to ethnic, cultural, linguistic and religious groups through the encouragement of intercultural organizations and movements which seek to promote mutual respect and understanding and to integrate these persons into society whilst preserving their identity.

Paragraph 2

50. This provision is inspired by paragraph 40.2 of the Copenhagen Document of the CSCE. This obligation aims at the protection of all persons who may be subject to threats or acts of discrimination, hostility or violence, irrespective of the source of such threats or acts.

Article 7

51. The purpose of this article is to guarantee respect for the right of every person belonging to a national minority to the fundamental freedoms mentioned therein. These freedoms are of course of a universal nature, that is they apply to all persons, whether belonging to a national minority or not (see, for instance,

the corresponding provisions in Articles 9, 10 and 11 of the ECHR), but they are particularly relevant for the protection of national minorities. For the reasons stated above in the commentary on the preamble, it was decided to include certain undertakings which already appear in the ECHR.

52. This provision may imply for the Parties certain positive obligations to protect the freedoms mentioned against violations which do not emanate from the State. Under the ECHR, the possibility of such positive obligations has been recognised by the European Court of Human Rights.
53. Some of the freedoms laid down in Article 7 are elaborated upon in Articles 8 and 9.

Article 8

54. This article lays down more detailed rules for the protection of freedom of religion than Article 7. It combines several elements from paragraphs 32.2, 32.3 and 32.6 of the CSCE Copenhagen Document into a single provision. This freedom of course applies to all persons and persons belonging to a national minority should, in accordance with Article 4, enjoy it as well. Given the importance of this freedom in the present context, it was felt particularly appropriate to give it special attention.

Article 9

55. This article contains more detailed

rules for the protection of the freedom of expression than Article 7.

Paragraph 1

56. The first sentence of this paragraph is modelled on the second sentence of Article 10, paragraph 1, of the ECHR. Although the sentence refers specifically to the freedom to receive and impart information and ideas in the minority language, it also implies the freedom to receive and impart information and ideas in the majority or other languages.
57. The second sentence of this paragraph contains an undertaking to ensure that there is no discrimination in access to the media. The words "in the framework of their legal systems" were inserted in order to respect constitutional provisions which may limit the extent to which a Party can regulate access to the media.

Paragraph 2

58. This paragraph is modelled on the third sentence of Article 10, paragraph 1, of the ECHR.
59. The licensing of sound radio and television broadcasting, and of cinema enterprises, should be non-discriminatory and be based on objective criteria. The inclusion of these requirements, which are not expressly mentioned in the third sentence of Article 10, paragraph 1, of the ECHR, was considered important for an instrument designed to protect persons belonging to a national minority.

60. The words "sound radio," which also appear in paragraph 3 of this article, do not appear in the corresponding sentence in Article 10 of the ECHR. They are used in order to reflect modern terminology and do not imply any material difference in meaning from Article 10 of the ECHR.

Paragraph 3

61. The first sentence of this paragraph, dealing with the creation and use of printed media, contains an essentially negative undertaking whereas the more flexibly worded second sentence emphasises a positive obligation in the field of sound radio and television broadcasting (for example the allocation of frequencies). This distinction reflects the relative scarcity of available frequencies and the need for regulation in the latter field. No express reference has been made to the right of persons belonging to a national minority to seek funds for the establishment of media, as this right was considered self-evident.

Paragraph 4

62. This paragraph emphasises the need for special measures with the dual aim of facilitating access to the media for persons belonging to national minorities and promoting tolerance and cultural pluralism. The expression "adequate measures" was used for the reasons given in the commentary on Article 4, paragraph 2 (see paragraph 39), which uses the same words. The paragraph complements the undertaking laid down in the last sentence of Article 9, paragraph 1. The measures envisaged by

this paragraph could, for example, consist of funding for minority broadcasting or for programme productions dealing with minority issues and/or offering a dialogue between groups, or of encouraging, subject to editorial independence, editors and broadcasters to allow national minorities access to their media.

Article 10

Paragraph 1

63. The recognition of the right of every person belonging to a national minority to use his or her minority language freely and without interference is particularly important. The use of the minority language represents one of the principal means by which such persons can assert and preserve their identity. It also enables them to exercise their freedom of expression. "In public" means, for instance, in a public place, outside, or in the presence of other persons but is not concerned in any circumstances with relations with public authorities, the subject of paragraph 2 of this article.

Paragraph 2

64. This provision does not cover all relations between individuals belonging to national minorities and public authorities. It only extends to administrative authorities. Nevertheless, the latter must be broadly interpreted to include, for example, ombudsmen. In recognition of the possible financial, administrative, in particular in the military field, and technical difficulties

associated with the use of minority languages in relations between persons belonging to national minorities and the administrative authorities, this provision has been worded very flexibly, leaving Parties a wide measure of discretion.

65. Once the two conditions in paragraph 2 are met, Parties shall endeavour to ensure the use of a minority language in relations with the administrative authorities as far as possible. The existence of a "real need" is to be assessed by the State on the basis of objective criteria. Although contracting States should make every effort to apply this principle, the wording "as far as possible" indicates that various factors, in particular the financial resources of the Party concerned, may be taken into consideration.
66. The Parties' obligations regarding the use of minority languages do not in any way affect the status of the official language or languages of the country concerned. Moreover, the framework Convention deliberately refrains from defining "areas inhabited by persons belonging to national minorities traditionally or in substantial numbers". It was considered preferable to adopt a flexible form of wording which will allow each Party's particular circumstances to be taken into account. The term "inhabited ... traditionally" does not refer to historical minorities, but only to those still living in the same geographical area (see also Article 11, paragraph 3, and Article 14, paragraph 2).

Paragraph 3

67. This paragraph is based on certain provisions contained in Articles 5 and 6 of the European Convention on Human Rights. It does not go beyond the safeguards contained in those articles.

Article 11

Paragraph 1

68. In view of the practical implications of this obligation, the provision is worded in such a way as to enable Parties to apply it in the light of their own particular circumstances. For example, Parties may use the alphabet of their official language to write the name(s) of a person belonging to a national minority in its phonetic form. Persons who have been forced to give up their original name(s), or whose name(s) has (have) been changed by force, should be entitled to revert to it (them), subject of course to exceptions in the case of abuse of rights and changes of name(s) for fraudulent purposes. It is understood that the legal systems of the Parties will, in this respect, meet international principles concerning the protection of national minorities.

Paragraph 2

69. The obligation in this paragraph concerns an individual's right to display "in his or her minority language signs, inscriptions and other information of a private nature visible to the public." This does not, of course, exclude persons belonging to national minorities from being required to use, in addition, the official language and/or other minority lan-

guages. The expression "of a private nature" refers to all that is not official.

Paragraph 3

70. This article aims to promote the possibility of having local names, street names and other topographical indications intended for the public also in the minority language. In implementing this principle the States are entitled to take due account of the specific circumstances and the framework of their legal systems, including, where appropriate, agreements with other States. In the field covered by this provision, it is understood that the Parties are under no obligation to conclude agreements with other States. Conversely, the possibility of concluding such agreements is not ruled out. It is also understood that the legally binding nature of existing agreements remains unaffected. This provision does not imply any official recognition of local names in the minority languages.

Article 12

71. This article seeks to promote knowledge of the culture, history, language and religion of both national minorities and the majority population in an intercultural perspective (see Article 6, paragraph 1). The aim is to create a climate of tolerance and dialogue, as referred to in the preamble to the framework convention and in Appendix II of the Vienna Declaration of the Heads of State and Government. The list in the second paragraph is not exhaustive whilst the words "access to text-

books" are understood as including the publication of textbooks and their purchase in other countries. The obligation to promote equal opportunities for access to education at all levels for persons belonging to national minorities reflects a concern expressed in the Vienna Declaration.

Article 13

Paragraph 1

72. The Parties' obligation to recognise the right of persons belonging to national minorities to set up and manage their own private educational and training establishments is subject to the requirements of their educational system, particularly the regulations relating to compulsory schooling. The establishments covered by this paragraph may be subject to the same forms of supervision as other establishments, particularly with regard to teaching standards. Once the required standards are met, it is important that any qualifications awarded are officially recognised. The relevant national legislation must be based on objective criteria and conform to the principle of non-discrimination.

Paragraph 2

73. The exercise of the right referred to in paragraph 1 does not entail any financial obligation for the Party concerned, but neither does it exclude the possibility of such a contribution.

Article 14

Paragraph 1

74. The obligation to recognise the right of every person belonging to a national minority to learn his or her minority language concerns one of the principal means by which such individuals can assert and preserve their identity. There can be no exceptions to this. Without prejudice to the principles mentioned in paragraph 2, this paragraph does not imply positive action, notably of a financial nature, on the part of the State.

Paragraph 2

75. This provision concerns teaching of and instruction in a minority language. In recognition of the possible financial, administrative and technical difficulties associated with instruction of or in minority languages, this provision has been worded very flexibly, leaving Parties a wide measure of discretion. The obligation to endeavour to ensure instruction of or in minority languages is subject to several conditions; in particular, there must be "sufficient demand" from persons belonging to the relevant national minorities. The wording "as far as possible" indicates that such instruction is dependent on the available resources of the Party concerned.
76. The text deliberately refrains from defining "sufficient demand," a flexible form of wording which allows Parties to take account of their countries' own particular circumstances. Parties have a choice of

means and arrangements in ensuring such instruction, taking their particular educational system into account.

77. The alternatives referred to in this paragraph – “opportunities for being taught the minority language or for receiving instruction in this language” – are not mutually exclusive. Even though Article 14, paragraph 2, imposes no obligation upon States to do both, its wording does not prevent the States Parties from implementing the teaching of the minority language as well as the instruction in the minority language. Bilingual instruction may be one of the means of achieving the objective of this provision. The obligation arising from this paragraph could be extended to pre-school education.

Paragraph 3

78. The opportunities for being taught the minority language or for receiving instruction in this language are without prejudice to the learning of the official language or the teaching in this language. Indeed, knowledge of the official language is a factor of social cohesion and integration.
79. It is for States where there is more than one official language to settle the particular questions which the implementation of this provision shall entail.

Article 15

80. This article requires Parties to create the conditions necessary for the effective participation of persons

belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them. It aims above all to encourage real equality between persons belonging to national minorities and those forming part of the majority. In order to create the necessary conditions for such participation by persons belonging to national minorities, Parties could promote – in the framework of their constitutional systems – inter alia the following measures:

- consultation with these persons, by means of appropriate procedures and, in particular, through their representative institutions, when Parties are contemplating legislation or administrative measures likely to affect them directly;
- involving these persons in the preparation, implementation and assessment of national and regional development plans and programmes likely to affect them directly;
- undertaking studies, in conjunction with these persons, to assess the possible impact on them of projected development activities;
- effective participation of persons belonging to national minorities in the decision-making processes and elected bodies both at national and local levels;
- decentralised or local forms of government.

Article 16

81. The purpose of this article is to protect against measures which change the proportion of the population in areas inhabited by persons belonging to national minorities and are aimed at restricting the rights and freedoms which flow from the present framework Convention. Examples of such measures might be expropriation, evictions and expulsions or redrawing administrative borders with a view to restricting the enjoyment of such rights and freedoms ("gerrymandering").

82. The article prohibits only measures which are aimed at restricting the rights and freedoms flowing from the framework Convention. It was considered impossible to extend the prohibition to measures having the effect of restricting such rights and freedoms, since such measures may sometimes be entirely justified and legitimate. One example might be resettlement of inhabitants of a village in order to build a dam.

Article 17

83. This article contains two undertakings important to the maintenance and development of the culture of persons belonging to a national minority and to the preservation of their identity (see also Article 5, paragraph 1). The first paragraph deals with the right to establish and maintain free and peaceful contacts across frontiers, whereas the second paragraph protects the right to participate in the activities of non-governmental organizations (see also in this connection, the provi-

sions on freedom of assembly and of association in Article 7).

84. The provisions of this article are largely based on paragraphs 32.4 and 32.6 of the Copenhagen Document of the CSCE. It was considered unnecessary to include an explicit provision on the right to establish and maintain contacts within the territory of a State, since this was felt to be adequately covered by other provisions of the framework Convention, notably Article 7 as regards freedom of assembly and of association.

Article 18

85. This article encourages the Parties to conclude, in addition to the existing international instruments, and where the specific circumstances justify it, bilateral and multilateral agreements for the protection of national minorities. It also stimulates transfrontier cooperation. As is emphasised in the Vienna Declaration and its Appendix II, such agreements and cooperation are important for the promotion of tolerance, prosperity, stability and peace.

Paragraph 1

86. Bilateral and multilateral agreements as envisaged by this paragraph might, for instance, be concluded in the fields of culture, education and information.

Paragraph 2

87. This paragraph points out the importance of transfrontier coopera-

tion. Exchange of information and experience between States is an important tool for the promotion of mutual understanding and confidence. In particular, transfrontier cooperation has the advantage that it allows for arrangements specifically tailored to the wishes and needs of the persons concerned.

Article 19

88. This article provides for the possibility of limitations, restrictions or derogations. When the undertakings included in this framework Convention have an equivalent in other international legal instruments, in particular the ECHR, only the limitations, restrictions or derogations provided for in those instruments are allowed. When the undertakings set forth in this framework Convention have no equivalent in other international legal instruments, the only limitations, restrictions or derogations allowed are those which, included in other legal instruments (such as the ECHR) in respect of different undertakings, are relevant.

Section III

Article 20

89. Persons belonging to national minorities are required to respect the national constitution and other national legislation. However, this reference to national legislation clearly does not entitle Parties to ignore the provisions of the framework Convention. Persons belonging to national minorities must also

respect the rights of others. In this regard, reference may be made to situations where persons belonging to national minorities are in a minority nationally but form a majority within one area of the State.

Article 21

90. This provision stresses the importance of the fundamental principles of international law and specifies that the protection of persons belonging to national minorities must be in accordance with these principles.

Article 22

91. This provision, which is based on Article 60 of the ECHR, sets out a well-known principle. The aim is to ensure that persons belonging to national minorities benefit from whichever of the relevant national or international human rights legislation is most favourable to them.

Article 23

92. This provision deals with the relationship between the framework Convention and the Convention for the Protection of Human Rights and Fundamental Freedoms, reference to which is included in the Preamble. Under no circumstances can the framework Convention modify the rights and freedoms safeguarded in the Convention for the Protection of Human Rights and Fundamental Freedoms. On the contrary, rights and freedoms enshrined in the framework Convention which are the subject of a corresponding provision in the Convention for the Protection of

Human Rights and Fundamental Freedoms must be interpreted in accordance with the latter.

Section IV

Articles 24-26

93. To provide for overseeing the application of the framework Convention, the Committee of Ministers is entrusted with the task of monitoring the implementation by the Contracting Parties. The Committee of Ministers shall determine the modalities for the participation in the implementation mechanism by the Parties which are not members of the Council of Europe.
94. Each Party shall transmit to the Secretary-General on a periodical basis and whenever the Committee of Ministers so requests information of relevance to the implementation of this framework Convention. The Secretary-General shall transmit this information to the Committee of Ministers. However, the first report, the aim of which is to provide full information on legislative and other measures which the Party has taken to give effect to the undertakings set out in the framework Convention, must be submitted within one year of the entry into force of the framework Convention in respect of the Party concerned. The purpose of the subsequent reports shall be to complement the information included in the first report.
95. In order to ensure the efficiency of the monitoring of the implementation of the framework Convention, it

provides for the setting up of an advisory committee. The task of this advisory committee is to assist the Committee of Ministers when it evaluates the adequacy of the measures taken by a Party to give effect to the principles set out in the framework Convention.

96. It is up to the Committee of Ministers to determine, within one year of the entry into force of the framework Convention, the composition and the procedures of the advisory committee, the members of which shall have recognised expertise in the field of the protection of national minorities.
97. The monitoring of the implementation of this framework Convention shall, in so far as possible, be transparent. In this regard it would be advisable to envisage the publication of the reports and other texts resulting from such monitoring.

Section V

98. The final provisions contained in articles 27 to 32 are based on the model final clauses for conventions and agreements concluded within the Council of Europe. No article on reservations was included; reservations are allowed in as far as they are permitted by international law. Apart from Articles 27 and 29 the articles in this section require no particular comment.

Articles 27 and 29

99. The framework Convention is open for signature by the Council of

Europe's member States and, at the invitation of the Committee of Ministers, by other States. It is understood that "other States" are those States which participate in the Conference on Security and Cooperation in Europe. These provisions take account of the Vienna Declaration, according to which the framework Convention should also be open for signature by non-member States (see Appendix II to the Vienna Declaration of the Council of Europe Summit).

Council of Europe
Additional Protocol to the European Social Charter
Providing for a System of Collective Complaints

Preamble

The member States of the Council of Europe, signatories to this Protocol to the European Social Charter opened for signature in Turin on 18 October 1961 (hereinafter referred to as "the Charter"),

Resolved to take new measures to improve the effective enforcement of the social rights guaranteed by the Charter;

Considering that this aim could be achieved in particular by the establishment of a collective complaints procedure, which, inter alia, would strengthen the participation of management and labour and of non-governmental organizations,

Have agreed as follows:

Article 1

The Contracting Parties to this Protocol recognise the right of the following organizations to submit complaints alleging unsatisfactory application of the Charter:

a) international organizations of employers and trade unions referred to in paragraph 2 of Article 27 of the Charter;

b) other international non-governmental organizations which have consultative status with the Council of Europe and have been put on a list established for this purpose by the Governmental Committee;

c) representative national organizations of employers and trade unions within the jurisdiction of the Contracting Party against which they have lodged a complaint.

Article 2

1. Any contracting State may also, when it expresses its consent to be bound by this Protocol in accordance with the provisions of Article 13, or at any moment thereafter, declare that it recognises the right of any other representative national non-governmental organization within its jurisdiction, which has particular competence in the matters governed by the Charter, to lodge complaints against it.
2. Such declarations may be made for a specific period.
3. The declarations shall be deposited with the Secretary-General of the Council of Europe who shall transmit copies thereof to the Contracting Parties and publish them.

Article 3

The international non-governmental organizations and the national non-governmental organizations referred to in Article 1 b and Article 2 respectively may submit complaints in accordance with the procedure prescribed by the aforesaid provisions only in respect of those matters regarding which they have been recognised as having particular competence.

Article 4

The complaint shall be lodged in writing, relate to a provision of the Charter accepted by the Contracting Party concerned and indicate in what respect the latter has not ensured the satisfactory application of this provision.

Article 5

Any complaint shall be addressed to the Secretary-General who shall acknowledge receipt of it, notify it to the Contracting Party concerned and immediately transmit it to the Committee of Independent Experts.

Article 6

The Committee of Independent Experts may request the Contracting Party concerned and the organization which lodged the complaint to submit written information and observations on the admissibility of the complaint within such time-limit as it shall prescribe.

Article 7

1. If it decides that a complaint is admissible, the Committee of

Independent Experts shall notify the Contracting Parties to the Charter through the Secretary-General. It shall request the Contracting Party concerned and the organization which lodged the complaint to submit, within such time-limit as it shall prescribe, all relevant written explanations or information, and the other Contracting Parties to this Protocol, the comments they wish to submit, within the same time-limit.

2. If the complaint has been lodged by a national organization of employers or a national trade union or by another national or international non-governmental organization, the Committee of Independent Experts shall notify the international organizations of employers or trade unions referred to in paragraph 2 of Article 27 of the Charter, through the Secretary-General, and invite them to submit observations within such time-limit as it shall prescribe.
3. On the basis of the explanations, information or observations submitted under paragraphs 1 and 2 above, the Contracting Party concerned and the organizations which lodged the complaint may submit any additional written information or observations within such time limit as the Committee of Independent Experts shall prescribe.
4. In the course of the examination of the complaint, the Committee of Independent Experts may organize a hearing with the representatives of the parties.

Article 8

1. The Committee of Independent Experts shall draw up a report in which it shall describe the steps taken by it to examine the complaint and present its conclusions as to whether or not the Contracting Party concerned has ensured the satisfactory application of the provision of the Charter referred to in the complaint.
2. The report shall be transmitted to the Committee of Ministers. It shall also be transmitted to the organization that lodged the complaint and to the Contracting Parties to the Charter, which shall not be at liberty to publish it.

It shall be transmitted to the Parliamentary Assembly and be made public at the same time as the resolution referred to in Article 9 or no later than four months after it has been transmitted to the Committee of Ministers.

Article 9

1. On the basis of the report of the Committee of Independent Experts, the Committee of Ministers shall adopt a resolution by a majority of those voting. If the Committee of Independent Experts finds that the Charter has not been applied in a satisfactory manner, the Committee of Ministers shall adopt, by a majority of two-thirds of those voting, a recommendation addressed to the Contracting Parties to the Charter.

2. At the request of the Contracting Party concerned, the Committee of Ministers may decide, where the report of the Committee of Independent Experts raises new issues, by a two-thirds majority of the Contracting Parties to the Charter, to consult the Governmental Committee.

Article 10

The Contracting Party concerned shall provide information on the measures it has taken to give effect to the Committee of Ministers recommendation, in the next report which it submits to the Secretary-General under Article 21 of the Charter.

Article 11

Articles 1 to 10 of this Protocol shall apply also to the articles of Part II of the First Additional Protocol to the Charter in respect of the States Parties to that Protocol, to the extent that these articles have been accepted.

Article 12

The States Parties to this Protocol consider that the appendix to the Charter relating to Part III reads as follows:

“It is understood that the Charter contains legal obligations of an international character, the application of which is submitted solely to the supervision provided for in Part IV thereof and in the provisions of this Protocol.”

Article 13

1. This Protocol shall be open for signature by member States of the Council of Europe signatories to the Charter, which may express their consent to be bound by:
 - a) signature without reservation as to ratification, acceptance or approval; or
 - b) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval.
2. A member State of the Council of Europe may not express its consent to be bound by this Protocol without simultaneously or previously ratifying the Charter.
3. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the Council of Europe.

Article 14

1. This Protocol shall enter into force on the first day of the month following the expiration of a period of one month after the date on which five member States of the Council of Europe have expressed their consent to be bound by the Protocol in accordance with the provisions of Article 12.
2. In respect of any member State which subsequently expressed its consent to be bound by it, the Protocol shall enter into force on the

first day of the month following the expiration of a period of one month after the date of the deposit of the instrument of ratification, acceptance or approval.

Article 15

1. Any Party may at any time denounce this Protocol by means of a notification addressed to the Secretary-General of the Council of Europe.
2. Such denunciation shall become effective on the first day of the month following the expiration of a period of twelve months after the date of receipt of such notification by the Secretary-General.

Article 16

The Secretary-General of the Council of Europe shall notify all the member States of the Council of:

- a) any signature;
- b) the deposit of any instrument of ratification, acceptance or approval;
- c) the date of entry into force of this Protocol in accordance with Article 14;
- d) any other act, notification or declaration relating to this Protocol.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Strasbourg, the 9 November 1994, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary-General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe.

*World Summit for Social Development
Copenhagen 6-12 March 1995
Evaluation*

*by the International Commission of Jurists
14 March 1995*

The International Commission of Jurists (ICJ) concluded today its evaluation of the UN World Summit for Social Development which took place in Copenhagen, between 6-12 March 1995.

The ICJ is particularly pleased by the massive participation of human rights and development non-governmental organizations (NGOs). Around 3000 international, regional, national and local NGOs from around the world were represented in Copenhagen, holding activities relating to all aspects of human rights and development. An NGO Forum, which began two days before the official inauguration of the UN Summit, continued throughout the duration of the Summit.

The ICJ regrets that the NGO Forum was situated a long way from the Bella Centre which housed the Summit. Moreover, the ICJ is disappointed by the fact that NGOs were discouraged from substantially participating in the Summit, and particularly in the governmental drafting committees which took place in virtual governmental seclusion. The process was characterized by insufficient transparency.

A Summit designed to draft a document focusing on the importance of a

participatory development process should have incorporated openly the participation of civil society and NGOs in the negotiations. The ICJ believes that no effective agenda for social development can emerge and succeed without the participation of civil society and NGOs. Therefore, in the follow-up process and subsequent UN work, active input from civil society and NGOs should be sought from the beginning to the end.

Positive trends

Commenting on the Summit's Declaration and Programme of Action (hereafter: "the Final Declaration"), the ICJ welcomes the reaffirmation of the universality, indivisibility, interdependence, and interrelation all human rights, including the right to development. The ICJ and other human rights groups had feared that this could prove to be a stumbling block, given that the principle came under attack from a certain number of States.

The ICJ welcomes the fact that Governments who signed the Declaration made "commitments" rather than the usual "principles" or "objectives."

The ICJ welcomes the inclusion in the Final Declaration of the need for encouraging ratification of existing international human rights conventions, and the full implementation of the provisions of international instruments that have been ratified, in particular the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR).

The ICJ welcomes the fact that gender issues are integrated throughout most of the Final Declaration. States have, for example, committed themselves to integrate gender concerns in the planning and implementation of policies and programmes for the empowerment of women. The ICJ is pleased by the inclusion of references made to the specific rights of women and, in particular, to CEDAW.

The ICJ welcomes the mentioning of the rights of indigenous peoples and the necessity of empowering them so that they may participate in the life of nations whilst being able to retain their own identities.

The ICJ welcomes the fact that the Final Declaration calls for the implementation of the Plan of Action adopted by the World Summit for Children in 1990 and the ratification and implementation of the Convention on the Rights of the Child (1989).

The ICJ is pleased by the fact that strong language was adopted on employment and that words such as "promoted" or "it is important" have been substituted by the more binding term of "require." The ICJ welcomes

the fact that reference was made to the ILO Conventions including those on forced and child labour, the freedom of association, the right to organize and bargain collectively, and the principle of non-discrimination. There is, however, no mention of a specific right to employment.

Though falling short of mentioning the existence of a specific right to education, the need to provide universal education is to be found throughout the Final Declaration and it is recognized that education plays a vital role in alleviating poverty.

Negative trends

The ICJ is disappointed that the Final Declaration does not substantially strengthen human rights issues and does not propose new mechanisms for the implementation of human rights. The ICJ is particularly disappointed that the Final Declaration does not endorse the call of the 1993 Vienna Conference on Human Rights to study the creation of an Optional Protocol under the ICESCR which would, in effect, give individuals and groups the right to complain against violations of their social rights before the UN Committee on Economic, Social and Cultural Rights.

The Final Declaration often fails to call upon States to translate their international obligations into domestic laws by incorporating the norms and standards contained in international human rights law into their national laws and constitutions. There is an immediate need for corresponding national, local, and municipal laws so that international-

ly recognized human rights become enforceable in domestic courts of law, and a need for a much better knowledge of the provisions of international instruments.

Although the ICJ is pleased that the words "human rights" are mentioned more than 40 times in the Final Declaration, it regrets the fact that the document generally downgrades the essence of economic, social, civil, cultural, and political rights by referring mostly to broad open ended terms such as human "basic needs," and fails to specifically mention, for instance, the right to health, education, adequate housing, and food. Instead, it should have referred to the legal obligations of States to respect, protect, fulfil, and promote human rights existing in international instruments.

Further, the Final Declaration does not adequately address violations of human rights resulting from policies imposed by the World Bank and the International Monetary Fund. It fails to develop guidelines for assessing the human rights impact of the policies, actions and omissions of the Bretton Woods institutions, and to establish appropriate mechanisms of accountability.

The Final Declaration fails to establish a regular monitoring of States' compliance with their obligations. The ICJ believes that such monitoring should be carried out by the UN Committee on Economic, Social, and Cultural Rights because of its experience in examining State reports under the Covenant.

Conclusion

The ICJ welcomes the positive outcomes of the Copenhagen Summit and believes that the Final Declaration and Programme of Action is, generally, an encouraging document. This public commitment should signal the beginning of a new era heralding the promotion and protection of all human rights at the national level, in conformity with international instruments, as well as achieving sustainable development, through pro-active international cooperation.

The task that lies ahead is to ensure that the commitments made by the 185 countries represented at this Summit will be honoured and that adequate monitoring and funding of the process will be ensured. Unfortunately, the Final Declaration made little mention of this necessity.

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