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Articles

UN Peace-Building and Human Rights

*Reed Brody**

United Nations peace-keeping operations have mushroomed in recent years. The year 1992 alone saw an almost five-fold increase in peace-keeping activity. Beginning in 1988 with the UN Transition Assistance Group (UNTAG) which helped implement a comprehensive peace settlement in Namibia, and as the UN has become more involved in internal conflicts than inter-State wars, these efforts have increasingly gone beyond mere military «peace-keeping» operations to become multidisciplinary «peace-building» exercises with civilian components providing humanitarian relief, election supervision and human rights protection.

Two multidisciplinary operations in particular, the United Nations Observer Mission in El Salvador (ONUSAL) and the United Nations Transitional Authority in Cambodia (UNTAC), have included substantial human rights components, while the joint UN/OAS International Civilian Mission in Haiti (MICIVIH) had human rights as its sole mandate. Human rights field missions began this year in Guatemala (MINUGUA) and Rwanda as well. Missions in Angola, Mozambique, Somalia, South Africa, the Western Sahara and Yugoslavia have, to one degree or another, also been tasked with the observance or protection of human rights.

These field missions have marked a huge step forward in the UN's efforts to promote and protect human rights. In the past, the UN human rights programme was largely limited to the passage of resolutions in conference rooms in Geneva and New York. Today, the programme has moved into the field and become operational, engaged in activities from inspecting prisons, receiving complaints and observing trials to training police and even arresting suspects.

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1 See Goulding, «The Evolution of United Nations PeaceKeeping,» 69 *International Affairs*, at 451.

2 *Id.*, at 456.

3 See Amnesty International, *Peace-Keeping and Human Rights*, January 1994. See generally, United Nations, *United Nations Peace-Keeping*, UN Doc. no. PS/DPI/6/Rev.5 - May 1994 for a detailed description of current UN peace-keeping operations.

Errata

Due to a technical problem, the footnote numbers do not appear in the text. Please proceed as follows to situate footnotes:

For example: p. 1; § 1; L. 5; «activity.» (1) means:

- p.1 [page 1]
- § 1 [paragraph 1]
- L. 5 [line 5]
- «activity.» (1) [after the word «activity» insert footnote 1]

p. 1; § 1; L. 5; «activity.» (1)
p. 1; § 1; L 17; «protection.» (2)
p. 1; § 2; L. 17; «rights.» (3)
p. 2; § 3; L. 11; «Agreement» (4)
p. 2; § 4; L. 3; «settlement.» (5)
p. 2; § 4; L. 13; «Rights,» (6)
p. 2; § 4; L. 19; «ended.» (7)
p. 3; § 1; L. 1; «GUA,» (8)
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The appointment of a High Commissioner for Human Rights, the programme's first «executive,» and an increased emphasis on in-country technical assistance by the UN Centre for Human Rights, have further increased the UN's field capacity.

The operationalizing of human rights has not been without difficulty, however. Neat theoretical concepts have clashed with on-the-ground realities. The UN has been accused of sacrificing human rights principles in order to advance diplomatic ends. In addition, each mission has adopted different operating procedures and distinct structures, with little effort to systematize the UN's field experiences in human rights.

Each of the four major human rights field operations - El Salvador, Cambodia, Haiti and Guatemala - has come as an improvised response to a particular situation. In El Salvador, the UN guided the parties to a human rights agreement to break a negotiating impasse between the government and the Farabundo Marti National Liberation Front (FMLN). The July 1990 «San José Agreement» on human rights was the first accord to be signed on the way to a final, overall peace settlement, and ONUSAL's human rights verification mission was on the ground in July 1991 while talks continued and war still raged. That final settlement, signed in January 1992, was aimed at ending the armed conflict through the demobilization of the FMLN and its reintegration into Salvadorean society; consolidating democratic institutions; guaranteeing human rights through a series of constitutional reforms; and reunifying and reconciling Salvadorean society.

In Cambodia, by contrast, human rights were an afterthought to a comprehensive peace settlement. That settlement, negotiated in October 1991 by international and regional powers, conferred vast authority on the UN to end a civil war between the Vietnamese-backed government, on one side, and the Khmer Rouge guerrillas and two non-communist armies on the other. Guatemala followed the El Salvador model, with a UN-drafted «Global Agreement on Human Rights,» signed in March 1994, as the first step towards a future comprehensive settlement of Latin America's longest-running armed conflict, and a human rights verification mission in place before the civil war had ended. Within a month of the signing, a UN Preliminary Mission determined the requirements of a verification mission. In August, the Secretary-General recommended the creation of MINU-

4 A/44/971-S/21541, annex.

5 A/46/608 - S/23177, annex.

6 A/48/928 - S/1994/448.

7 Unlike the case of El Salvador, in which the San José agreement called for human rights monitoring to begin after a cease-fire, but was initiated earlier at the request of the parties, the Global Agreement on Human Rights specifically contemplated that UN verification of the agreement would begin before a cease-fire.

GUA, which opened its doors in November 1994. In Haiti, a human rights mission was intended to mitigate abuses by the *de facto* authorities and create conditions for the return of the democratically-elected government.

The UN's human rights mandate has also varied from mission to mission. The San José Agreement was detailed and specific, empowering ONUSAL to: verify the observance of human rights; receive complaints; visit any place without prior notice; hold meetings freely; collect information; make recommendations to the parties; and report regularly on human rights to the UN Secretary-General. Later peace accords broadened ONUSAL's human rights mandate to include judicial reform, the purging of abusers from the armed forces, human rights training of the National Civilian Police and the creation of a Human Rights Ombudsman. The parties also agreed to a Truth Commission to investigate past abuses and to abide by its recommendations for reform. The Salvador process, begun in 1991, is scheduled to be completed in April 1995, with most of its objectives achieved.

The 1991 Paris Peace Agreements on Cambodia gave UNTAC an unprecedented and sweeping mandate to administer the country during a transitional period leading up to May 1993 elections, but were vague regarding human rights. UNTAC was to oversee the disarming of the various factions and the return of hundreds of thousands of refugees, and have «direct supervision or control» of all government functions necessary to establishing a «neutral political environment» for «free and fair» elections. Recognizing that «Cambodia's tragic recent history requires special measures to assure protection of human rights,» the Paris agreements tasked UNTAC with «general human rights oversight» and authorized it to investigate human rights complaints and take «corrective action,» including the removal of Cambodian officials, and well as to arrest, detain and prosecute offenders. More importantly, UNTAC was empowered to issue binding directives to public agencies, to supervise and control civil police forces to ensure human rights protection and to «supervise other law enforcement and judicial processes.» Despite a commitment of $2 billion and the deployment of some 22,000 peacekeepers, UNTAC achieved mixed results: the Khmer Rouge refused to disarm or participate in elections, which were held anyway under less than ideal circumstances. The previous ruling party, despite a narrow election defeat, remains firmly in power.

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8 A/48/985

9 The operation in Rwanda, not examined in this article, was initiated in 1994 by the UN High Commissioner for Human Rights. At this writing, 25 monitors had been sent out of a total of 147 sought.

10 Pursuant to these provisions, UNTAC created a Special Prosecutor and detained three suspects, but was unable to find a court to try them. By contrast, ONUSAL, as it recognized in its first report, «does not have the power to prevent violations or to punish violators.» Rather, «it will attempt to persuade the parties to modify conduct that is incompatible with the (San José) Agreement, and its sole support in that task will be the moral authority of the United Nations.» A/45/1055 - S/23037, para. 16.

While respect for human rights has dramatically improved in most of the country, and refugees have been resettled, war continues to drain the country's resources.

In Haiti, MICIVIH's terms of reference were to verify the observance of human rights by receiving complaints, through unimpeded visits and interviews, as well as to make recommendations and reports. Over 230 human rights monitors - the largest such contingent yet - were deployed in February 1993. While the *de facto* authorities constantly interfered with the mission's work, MICIVIH was able, before being forced to evacuate the country in October 1993, to mitigate violations somewhat by its mere presence, and to keep international attention focused on Haiti through its reporting.

The Guatemala Global Agreement on Human Rights closely followed the Salvador model. Drawing on the lessons of El Salvador, however, it also contemplates a major role for MINUGUA in strengthening local institutions dedicated to the protection of human rights, such as the judiciary, the public ministry, human rights NGOs and, in particular, the human rights ombudsman.

Through these four experiences, as well as other UN operations, it is possible to draw some general lessons for future UN field activities in human rights.

1 The UN Must Respond Effectively to Evolving Human Rights Emergencies Before they Become Tragedies which Necessitate Special Operations

«An ounce of prevention is worth a pound of cure.» The UN and its member States must have the political will to respond to early warning of massive abuses. Some of today's worst crises might have been prevented had that will existed.

The case of the Iraqi Kurds is perhaps the most blatant. In the 1988 Anfal campaign, Saddam Hussein used poison gas to lay waste to Kurdish villages. The international community knew all about it ... and refused to act. Only after the Gulf War and the failed Kurdish rebellion produced a massive refugee outflow did the UN move to protect the Kurds.

The tragedy in Rwanda was foretold by the UN's own rapporteur on arbitrary executions who, after a 1993 visit in which he found government involvement in «massacres of civilian populations,» warned:

11 The parties disputed MICIVIH's exact powers, as they resulted from a proposal by the UN (A/47/908), accepted by President Jean-Bertrand Aristide, and an amended document agreed to by the *de-facto* authorities.

12 See also Amnesty International, *Peace-keeping and Human Rights*, *supra*., n. 3, which contains a «15-Point Programme for Implementing Human Rights in International Peace-keeping Operations» to which the author subscribes.

«[L]essons should be drawn from the past and the cycle of violence which has drenched both Burundi and Rwanda in blood must be broken. To this end, the impunity of the perpetrators of the massacres must be definitely brought to an end and preventive measures to avoid the recurrence of such tragedies must be designed.»

Again, the world refused to act. The international community's failures to react decisively to atrocities in Democratic Kampuchea, Somalia and ex-Yugoslavia also allowed these situations to deteriorate further, until more lives were lost and more massive international intervention became necessary.

2 Human Rights Should be an Integral Part of all UN Peace-Building Operations

Of all the UN's comprehensive operations, only Cambodia and El Salvador have included specific civilian human rights components and specific human rights responsibilities. In both cases, the UN's human rights work had a profoundly positive impact on the host country and contributed substantially to the achievement of mission objectives.

The protection and promotion of human rights ought to be a key pillar of any effort to supervise a peace settlement or restore a failed State. Reporting on Angola, Secretary-General Boutros Boutros-Ghali wrote: «respect for human rights constitutes a vital, indeed a critical component, among measures to resolve, on a long-term basis, conflicts of this nature, including efforts to promote enduring conditions of peace, national reconciliation and democracy.»

Indeed, as a matter of principle, human rights, as a purpose of the UN, should be part of all relevant UN activities. Reporting on the UN Mission for the Referendum in Western Sahara (MINURSO), the Secretary-General wrote: «While MINURSO's current military mandate is strictly limited to the monitoring and verification of the cease-fire, MINURSO, as a United Nations

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13 Report of the UN Special Rapporteur on extrajudicial, summary and arbitrary executions, Mr. Bacre Waly N'Diaye. December 1993. E/CN.4/7/Add.1, para. 171. Amnesty International has called Rwanda «a failed international responsibility.» *A call for UN human rights action on Rwanda and Burundi*, May 1994.

14 As Amnesty International has noted, «the relative success of these operations (Cambodia and El Salvador) can be at least partly attributed to the serious, open and accountable procedures of the human rights divisions.» *Supra*, n.3, at 22.

15 The UN World Conference on Human Rights, «recognizing the important role of the human rights components» in certain peace-keeping operations, recommended «that the Secretary-General take into account the reporting, experience and capabilities of the Centre for Human Rights and human rights mechanisms.» A/CONF.157/23/para.97.

16 S/25840, May 1993.

17 UN Charter, Article 1, paragraph 3.

mission, could not be a silent witness to conduct that might infringe the human rights of the civilian population.»

3 Political and Human Rights Objectives of Field Missions Must be Seen as Mutually Reinforcing

Human rights groups have accused the UN field operations of subordinating hard-hitting reporting to diplomatic expediency. According to Human Rights Watch (HRW), UN inattention to human rights stems from: a) «misguided neutrality» in its reluctance to be too critical of the side (usually the government) which commits the lion's share of abuses; b) «diplomatic caution» inherent in the UN system; c) «operational blackmail,» or ignoring abuses to secure operational goals; and d) the «cost and complexity» of ensuring full respect for human rights.

In September 1992, HRW stated that, while peace negotiations were still going on, ONUSAL «mistakenly viewed its human rights and peace missions as contradictory,» purposely «downplayed» its human rights component and «avoided timely public criticism of the government on human rights matters.»

HRW was even more critical of UNTAC which, it said, «too often subordinated human rights protection to keeping the peace process on track. Fear of alienating the main Cambodian parties made UNTAC officials reluctant to

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18 S/25170, 26 January 1993, para 25.

19 Amnesty International has also cautioned that when the «UN operation sees itself, not as the guardian of the settlement, but rather as an impartial facilitator, [it] becomes cautious about protesting too loudly lest it be perceived as taking sides.» *Supra*, n.3, at 22-23.

Mr. Marrack Goulding, former Under-Secretary-General for Peace-keeping Operations recognized this challenge to the UN's traditional impartiality:

> «Suppose that...one of the parties fails to comply fully with its obligations under the agreed settlement. Can the United Nations remain impartial between that party and the other? Should it not take action against the offending party to persuade or compel it to honour its commitments? Perhaps so. But if it takes that course and allows itself to become the perceived adversary of the offending party, does it not risk forfeiting that party's cooperation, on which the success of the whole enterprise may well depend?»

According to Goulding, merit is rarely on one side only. «But even if one party was wholly virtuous, the United Nations would still have to think very carefully before making the other party its enemy. Formally speaking, that might be a justifiable course. But it would not be the right course if, as a result, it became more difficult to achieve the overall objective of implementing the agreed settlement. Non-confrontational persuasion might offer better results.» Goulding, *supra*, n. 1, at 458.

20 Human Rights Watch, *The Lost Agenda: Human Rights and U.N. Field Operations*, June 1993, at 5-8.

21 Americas Watch, *El Salvador - Peace and Human Rights: Successes and Shortcomings of the United Nations Mission in El Salvador*, September 2, 1992, at 3. The report cited several cases in which ONUSAL had allegedly failed to report on government abuses. Human Rights Watch recognized that ONUSAL's criticism of the government increased after the final peace agreement. *The Lost Agenda*, *supra* n. 20, at 25. Nevertheless, in May 1994, IDHUCA, the Human Rights Institute of El Salvador's leading university, accused ONUSAL of exaggerating the government's «good will» and using «disproportionate praise» in its reporting.

take concrete action against abusers.» HRW's exaggerated conclusion was that «(D)espite all the money that the UN poured into human rights education, the lesson best learned after 17 months of UN administration is that there is no punishment for gross abuses.»

In a successful operation, political and human rights objectives must be treated as mutually re-enforcing. In El Salvador, the prompt and early installation of a human rights mission served as a confidence-building measure which helped facilitate an overall political settlement. The vast improvement in the human rights situation during ONUSAL's tenure has contributed to the irreversibility of the peace process. At the same time, much of the success of human rights verification was due to the overall political success of the Mission and the peace process itself. The UN's ability to work with the two sides to establish and maintain the framework of the Peace Accords was the foundation for ONUSAL's Human Rights Division's ability to carry out its verification.

At the same time, human rights concerns must be pressed forcefully and independently. Because ONUSAL's Human Rights Division reported directly to the Secretary-General, it was able to maintain a high and constant profile for the issue. In stark contrast, UNTAC's Human Rights Component did not report on the human rights situation. Rather, a small human rights section was included in UNTAC's overall report to the Secretary-General, leading to the impression that the UN was not overly concerned about the pattern of on-going abuses.

The challenges for MINUGUA are illustrative. According to the Independent Expert of the UN Commission on Human Rights, the Guatemalan army constitutes the major element of «real power» in the country. Without a solution, through a successful peace process, to the overriding problem of militarization and the subordination of civilian institutions, temporary efforts to improve the human rights situation or strengthen civil institutions will prove illusory. Yet if the UN is not vigilant in denouncing abuses, it will be complicit in an impunity that will only increase when the UN has left.

22 Asia Watch, *Cambodia: Human Rights Before and After the Elections*, May 1993, at 2.

23 *Id.*

24 In general, UNTAC failed to take advantage of its sweeping powers of verification and coercion. UNTAC made few public statements or reports on human rights abuses. It often failed to publicize violations of which it was aware for fear, apparently, of derailing the political process. Yet, in retrospect it is difficult to see how political objectives were advanced by this silence on human rights. Indeed, a senior UN official believes that the UN's failure to rein in the security apparatus of the Phnom Penh government indirectly led to a serious post-election coup attempt. See «Ambitious U.N. Effort in Cambodia Left Country With Old Problems,» *Washington Post*, 26 August 1994.

25 E/CN.4/1994/10, para. 45.

4 Missions Must Emphasize Both Verification and Institution Building

Any UN mission needs to adopt a development perspective, seeing its presence as temporary and fostering long-term, sustainable, solutions to a country's human rights problems. The strengthening of local institutions for the protection of human rights, such as the judiciary, ombudsman, and human rights groups, as well as the creation of security forces respectful of human rights, must, therefore, be a priority.

The proper balance between institution-building and verification will depend very much on the particularity of each case, taking into account, among other things, the overall political context, the stage of the country's development, and the political will of the government and the institutions in question. Different emphases may also be appropriate to different stages of the mission. Visible verification and public reporting can be important confidence-building measures in the early stages of a mission, while institution-building becomes more appropriate once the mission is established and focusing on long-term goals.

ONUSAL placed its initial emphasis on verification, but once the situation stabilized, it devoted increasing resources to institution-building, particularly the Human Rights Ombudsman and the National Civilian Police - institutions created by the Peace Accords. In addition to holding numerous workshops, ONUSAL detailed both civilian and police observers to the Ombudsman's offices to assist in its investigations and, in its last year, began transferring the complaints it received to the Ombudsman for joint verification. ONUSAL's Human Rights and Police Divisions combined monitoring and technical assistance to ensure that the new police performed effectively within the bounds of the law. ONUSAL also provided on-going technical assistance to the judiciary.

UNTAC's principal human rights focus, in a society disarticulated by decades of war, was human rights education. Taking advantage of the space created by its presence, UNTAC carried out an extensive programme of popular human rights education, using traditional Cambodian music troupes, mobile education teams, videos, cartoons, radio and television. Most importantly, it trained Cambodian human rights trainers. These activities appeared to have a real effect on people's knowledge of their rights and attitudes towards human rights in general. UNTAC also drafted a transitional criminal code for Cambodia, and provided courses for judges and lay defenders.

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26 As with human rights and diplomacy, the harmonization of institution-building and verification can also be a delicate task, particularly when verification leads the UN to criticize abuses committed by the very institutions - such as the police - it is trying to assist.

27 The Secretary-General described human rights education as the «cornerstone of UNTAC's activities in fostering respect for human rights.» S/23613, para. 12.

5 The UN Must Foster the Capacity of Civil Society

The sustainable development of democratic institutions requires a strong civil society to monitor and support those institutions. An independent and critical press, effective human rights organizations and other public interest groups are essential to maintaining government accountability. Yet most UN operations have focused almost exclusively on State-building activities. In fact, the UN's massive verification potential can have the unintended effect of displacing indigenous watchdogs.

Cambodia was a notable exception. The greatest, and most lasting, success of UNTAC's Human Rights Component was its role in the growth of an indigenous human rights movement in Cambodia. In a country still traumatized by the Khmer Rouge holocaust, UNTAC nurtured under its protective umbrella the beginnings of the first independent human rights groups to grow from Cambodian soil. With small grants, advice and training, it guided the development of these courageous young groups, even helping to create two of them. It also raised money for a Trust Fund to support educational and training activities and facilitated links between Khmer NGOs and their foreign and international counterparts, including an international symposium on human rights at which Asian and international human rights NGOs established a Task Force to give on-site support to Cambodian NGOs. Today, Cambodian rights groups are monitoring abuses and successfully forcing the government to investigate and prosecute violations.

6 The UN Must Respect the Culture of the Host Country

UN officials are guests in the countries in which they serve. All UN missions, with or without a human rights component, should be carried out in a culturally sensitive manner, taking into account local customs and traditions and weighing the long-term effects of the mission on the country and its population.

Problems are most likely to arise in situations like Cambodia, where a massive and almost exclusively male military contingent arrives in a fragile, traditio-

28 According to Mr. Clarence Dias and Mr. David Gillies, «Democracy cannot exist without civil society. A defining feature of democratic development is ... the extent to which people and organizations within civil society are empowered and political equality is increased.» Dias and Gillies, *Human Rights, Democracy and Development*, International Centre for Human Rights and Democratic Development, 1993.

29 See, e.g., Blair and Hansen, *Weighing in on the Scales of Justice: Strategic Approaches for Donor Supported Rule of Law Programs*, US Agency for International Development, 1994.

30 Coordinated by the International Human Rights Law Group, and originally financed by the UNTAC Trust Fund, the Task Force continues, two years later, to maintain a permanent on-site presence of Asian and American human rights activists to work with their Khmer colleagues.

31 For a discussion of this theme, see Parker, «Cultural Autonomy: A Prime Directive for the Blue Helmets,» 55 *University of Pittsburgh Law Review* 207 (1993).

nal society. That mission - like the ones in Mozambique and Yugoslavia - was marred by a dramatic rise in prostitution, the spread of AIDS, and charges of sexual harassment. The presence of 22,000 UN peacekeepers in Cambodia also created an economic upheaval, with UN staff driving the biggest (and, outside the big cities, the only) cars, living in the best houses, and causing prices to escalate.

While some adverse effect may be unavoidable, careful recruitment could lessen the gulf between the UN and the local population - including through the participation of nationals of countries with similar cultures and of women. The Preliminary Mission to Guatemala, for instance, recommended that the UN not only recruit anthropologists and others with experience in dealing with indigenous peoples, but that it make a special effort to recruit indigenous people themselves from other countries.

It should go without saying that those recruited, whether civilian or military - and particularly police - should be screened for their commitment to human rights and their aptitude for serving in a foreign country. On-site orientation and training not only in the work of the UN and the mission's objectives, but in local realities, should also be standard. The Guatemala mission began, for instance, with a five-day workshop during which staff received presentations from government officials, intellectuals, human rights groups and advance mission personnel to familiarize them with the local situation and instil norms of behaviour.

The Special Representative of the UN Secretary-General for Cambodia, ICJ Executive Committee Chairman Justice Michael Kirby, who was appointed following UNTAC's departure, has suggested that the UN prepare guidelines to govern the recruitment, briefing and training of UN peace-keeping personnel, and consider a «code of conduct» for peace-keepers as well as an office to consider complaints regarding their behaviour.

32 See, e.g., *Who's Watching the Peace Keepers*, Ms., May/June 1994, at 10. In Cambodia, the number of prostitutes reportedly rose from 6,000 to 20,000 during the 1-year mission. A UN report on Mozambique found that the UN-generated rise in prostitution had negatively affected the quality of life. *Id.*

33 E/CN.4/1994/73/Add.1, paras. 80-81.

7 The Need for Coordination

There is a pressing need to systematize the UN's human rights field experience. At present, each new mission starts virtually from scratch, defining its own organization, methodology and work methods. While each operation needs the flexibility to adapt to local requirements, that flexibility would be best built upon the foundation of a coherent «doctrine» of human rights field missions and a basic standard methodology. The hiring of field personnel is largely autonomous, and slow, leaving a large lag time between the decision to send a mission and actual deployment, during which time confidence in the UN can erode. This contrasts sharply with the electoral field, in which a specialized office uses a standard methodology and the same experts travel from one country to the next bringing to bear their accumulated expertise. With the exception of Rwanda, all of the UN's human rights field operations have been designed in New York, with little input from the very UN bodies in Geneva charged with the protection and promotion of human rights.

With the creation of a UN High Commissioner for Human Rights whose mandate includes the coordination of all UN human rights activities, and who also has overall supervision of the UN Centre for Human Rights, it would seem logical to create, under his control - or perhaps at New York headquarters but with the High Commissioner's input - a unit to plan and systematize human rights field activities. This unit could develop a standard methodology, guidelines such as those suggested in this article, and a preparedness to deploy an advance team when necessary. By making the human rights components as effective as possible, the unit could contribute immeasurably to the goals of UN peace-keeping as a whole.

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34 Each Mission has developed its own methodological guidelines, drawing, and improving, on previous experiences. ONUSAL, after operating for over one year without any standard methodology, developed a Methodological Guide for its staff, setting forth definitions and a procedure for handling and verifying complaints. In Haiti, a more detailed manual also gave guidance on how to handle specific situations such as demonstrations and prison visits and how to deal with the press. The 114-page MINUGUA manual, prepared by an advance technical mission comprised of ONUSAL staff on loan, contains chapters on verification (including detailed definitions of different rights) as well as staff conduct, with large sections on dealing with indigenous peoples.

Two Examples of Battling Impunity in Chile*

*Alejandro Salinas Rivera***

Preventing impunity in cases involving human rights violations is perhaps the greatest and most difficult challenge facing those working to protect and promote these rights. In making the transition from a political regime which violated human rights to one that respects them, the issue of impunity for serious human rights violations assumes great political and ethical priority, especially given the dilemma of prosecuting human rights violators while at the same time establishing the conditions of political stability which are needed to make the transition viable.

However, it is also important to consider the institutional obstacles to the transition process itself which place a characteristic imprint upon each one. In the case of Chile, the political transition from a military regime to the democratic governments of Presidents Patricio Aylwin Azocar and Eduardo Frei Ruiz-Tagle has been characterized by institutional obstacles devised by the military regime in order to maintain a certain amount of control. The Senate, for example, is currently comprised of democratically-elected senators, along with eight senators who were appointed by the government of General Pinochet. What this means is that in the upper house, the coalition government does not have the majority needed to approve laws necessary for strengthening democracy in the country.

In the area of human rights, the obstacle is the so-called Amnesty Law of 1978 (Legislative Decree 2.191), which was issued by the military regime to ensure impunity for those responsible for human rights violations committed during the first years of that government.

Although the Amnesty Law continues to pose a serious obstacle to justice, unfortunately it is the judiciary which

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* The Third Division of the Santiago Court of Appeals pronounced judgment on first appeal on 26 September 1994 in the case of the abduction, torture and death of Lumi Videla Moya, which occurred between 21 September and 3 November 1974.

In the case of the abduction and disappearance of Bárbara Uribe Tambley and Edwin Van Jurick Altamirano, which occurred on 10 July 1974, judgment on first appeal was pronounced on 30 September 1994.

Both judgments were drafted by Attorney and Professor of Constitutional Law, Humberto Nogueira Alcalá, who is a member of the Third Division of the Santiago Court of Appeals. Not long after, in April 1995, Mr. Nogueira was removed by the Supreme Court of Justice from the list of lawyers which, according to the Chilean judicial system, can make up certain determined cases in the Court of Appeals. The act was interpreted by Chilean jurists as a «punishment» for having written the two aforementioned sentences.

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has presented the greatest obstacle when dealing with cases involving human rights violations. During the military regime the judicial branch, with some exceptions, took shelter behind a broad interpretation of the 1978 Amnesty Law in order to refrain from investigating serious human rights violations and identifying those responsible for such actions.

The attitude of the Chilean courts has not changed much since the country declared itself a democracy. The courts — especially the appellate courts and the supreme court — continue to interpret the Amnesty Law in a broad sense, finding that those responsible for violations committed during the period covered by the law cannot be investigated since, according to the courts, the Amnesty Law totally «erases» the crime and exempts its perpetrators from responsibility. As a result of this interpretation, cases of human rights violations which are brought to the courts are dismissed almost automatically, without any attempt to investigate the facts or identify those responsible.

Fortunately, the discouraging outlook presented by the attitude of the Chilean courts has been somewhat offset by the efforts of some judges to change the «official» interpretation of the Amnesty Law. This is illustrated by the two judgments pronounced by the Third Division of the Santiago Court of Appeals. The first concerns the case of the abduction, torture and death of Lumi Videla; the second, concerns the detention and subsequent disappearance of Bárbara Uribe Tambley and Edwin Francisco Van Jurick Altamirano.

It will be useful to analyze these cases, bearing in mind the parameters set by international human rights instruments and those of international humanitarian law, since they could serve as precedents in future litigation, in national courts and in international proceedings.

The case of Lumi Videla was brought before the Santiago Court of Appeals through a remedy of appeal, as was the case of the abduction and disappearance of Bárbara Uribe Tambley and Edwin Francisco Van Jurick Altamirano. Both judgments passed by the Court consider whether or not statutory limitations are applicable. The Court concluded that they were not applicable since the time period specified by law had not expired and since there was no record to indicate that the perpetrators' unlawful association had ended. In the Uribe and Van Jurick case, the Court added that since what was involved was the crime of abduction (which is of an ongoing nature), it «continued to be committed after the time period covered by Legislative Decree No. 2.191 (Amnesty Law)».

State of War

The second aspect considered by the Court was to determine whether or not Chile was in a state of war at the time of Lumi Videla's abduction on 21 September 1974 and subsequent death on 3 November 1974, as well as at the time of the abduction of Uribe and Van Jurick on 10 July 1974. After examining a series of legal and factual arguments, the Court found that a state of war did indeed exist in Chile at the time of the acts under investigation and that

therefore «the Geneva Conventions, concerning protection of the human rights of organized enemy forces and of affected civilian populations, are fully applicable and war crimes — which are a form of abuse of the power within the context of an armed conflict, whether national or international — are punishable.»

Meaning and Scope of International Treaties

A third line of reasoning employed by the Court was to determine «the meaning and scope of international treaties with respect to the Chilean legal order.» The Court pointed out that only the Constitution could determine the existence of other standards within the legal order, as well as regulate the procedure to incorporate these into the system. The Court stated clearly that treaties become part of internal law upon approval by Congress, ratification by the President and publication in the *Diario Oficial*. It should be recalled that the Chilean system places international treaties and agreements hierarchically above the law, as has been confirmed by the decisions of the higher courts of justice.

The judgments of the Santiago Court of Appeals state that the interpretation and application of international treaties or conventions must be carried out in good faith (*bona fide*) and in accordance with the general rules of international law. The State may not invoke its own internal law to evade its international obligations, since in so doing it would be committing an unlawful act which compromises its international responsibility. In accordance with Article 27 of the Vienna Convention on the Law of Treaties of 1969, which was quoted in the judgments, a State Party may not invoke the provisions of its internal law as justification for its failure to perform the treaty.

Lastly, the Court noted that «in the event of a contradiction between law and treaty, the issue is not the validity of these norms but rather their applicability, an issue to be decided by the ordinary court, with preference given to application of the treaty».

The judgments of the Court of Appeals were also based on legal and philosophical considerations and noted for example that «in Articles 1, 5.2 and 19.26, the Constitution establishes as basic pillars of its legal order, the dignity of the human person and the fundamental human rights which arise therefrom and in the light of which the entire legal order should be interpreted.» Recognition is made of the difference between human rights instruments and other international treaties, as instructed by the International Court of Justice, since «the contracting States do not act in their own interest but rather exclusively in the common interest of preserving the higher aims which constitute the *raison d'être* of the convention.»

The Inter-American Court of Human Rights, which was quoted in both judgments, stated that «these are not traditional multilateral treaties concluded on the basis of a reciprocal exchange of rights for the mutual benefit of the contracting parties. Their aim is to protect the fundamental human rights of individuals, with respect to both their own State and to other contracting

States. In approving these human rights treaties, States submit to a legal order according to which, for the common good, they assume various obligations, not in relation to other States, but to the individuals under their jurisdiction.»

With respect to human rights, judges must interpret treaties in the light of their ultimate goal, which is to protect the human rights of the individual. This value and fundamental principle is the key to interpreting constitutional law, the result of which is a systematic and finalist interpretation.

As noted by theCourt of Appeals, it may be inferred from constitutional law, «that the obligation of all branches of government to yield to the Constitution and to respect and promote human rights not only establishes the duty of government bodies to refrain from harming the individual or institution protected by such rights, but also the positive obligation to contribute to the effectiveness of such rights, which constitute an essential component of the national public order.»

The obligation to protect and guarantee effective respect of fundamental rights has required that the State protect such rights penally. Penal protection is considered to be an essential component of the law itself, whether it be standards of international human rights law, international humanitarian law or internal law.

It should be noted that the Court of Appeals established that in the event of a conflict between the principle of legal security and the principles of justice and human rights, justice is the main concern. Hence, those instruments or provisions issued by political leaders which disregard such rights should be declared invalid or inapplicable.

The Geneva Conventions of 1949

The two judgments also make another type of argument which takes into account international humanitarian law, in particular the Geneva Conventions of 1949. The Court reasoned that the 1949 Geneva Conventions have been part of the Chilean legal system since 1951, when they were approved by the Congress and officially published.

The Court expressly states that in the case of a non-international armed conflict, the State Party is «required to ...ensure humanitarian treatment to those persons not directly participating in the hostilities or remaining outside the conflict for various reasons and, at all times and places, to prohibit bodily attacks, mutilations, cruel, inhuman or degrading treatment, torture, executions and attempts to kill.»

Various provisions of the Geneva Conventions, cited in the two judgments, mention the obligation of the State to prosecute and bring to trial those responsible for serious violations of humanitarian law. The Court concluded that «the authorities of a State Party may not prescribe internal laws which contravene the fulfilment in good faith of the international conventions and treaties under consideration (the 1949 Geneva Conventions), as from their entry into force. Hence, crimes which constitute serious infractions of the Conventions are not subject to any sta-

tute of limitations and not subject to amnesty. The ten-year statute of limitations in respect of crimes listed in Article 94 of the Penal Code may not be applied to them, nor may amnesty, as a means of extinguishing penal responsibility, as contained in Legislative Decree No. 2.191 (the Amnesty Law) be applied..»

It should also be pointed out that the State's responsibility is not limited to the prosecution and trial of those responsible for violations, but that it is equally important to avoid altering the criminal condition of, and subsequent responsibility for, acts which violate the rules of war and the rights of individuals during war. As noted by the Court of Appeals, such a situation would be equivalent to «self-absolution, which contradicts all basic legal notions based on respect for human rights, customary law and international human rights conventions, as well as damaging the basic values and principles of our own constitutional order...»

The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

This Convention served as a basis for both judgments, which indicated that it was fully applicable given its ratification by the State of Chile. This includes both the State's obligation contained in Article 4 to ensure that «all acts of torture are offences under its criminal law» and its obligation to make these offences «punishable by appropriate penalties which take into account their grave nature.»

On this subject, the Court stated that: «In accordance with the provisions cited, no statute of limitations or amnesty shall apply to crimes of torture, given the obligation imposed by the Treaty (which is part of the internal legal order of the State of Chile and which supersedes the law) for government bodies, and especially for courts of justice, to respect and promote the rights and obligations contained in the Treaty and undertaken by the State of Chile.» Consequently, these bodies may not fail «to investigate or exercise jurisdiction over known crimes of torture and those in which the perpetrators, accomplices or concealers of the crime under consideration are individual persons...»

The American Convention of Human Rights or the Pact of San José, Costa Rica

This has also been incorporated into Chile's internal law. By virtue of the provisions contained in the Convention, all government bodies and particularly the courts of justice, as stated in the judgments, are required to apply Article 1.1 which states: «The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination.» The Court of Appeals recognized the self-executing nature of the majority of the rights contained in the Convention, as has been recognized by the Inter-American Court of Human Rights, with the exception of a few provisions which require subsequent legislative development.

The two judgments under consideration stipulate that the «States Parties are required to investigate human rights violations and to punish those responsible as determined by ... the Inter-American Court of Human Rights in the Velásquez Rodríguez case (para. 174).» The judgments indicate that: «...an amnesty law which prohibits investigation, establishment of responsibility and competence by agents of the State who are found to be responsible, violates the obligation stipulated in Article 1.1 of the Convention. Amnesty laws of such scope, if declared valid, would transform national laws into legal impediments to compliance with the American Convention and other international instruments.»

The International Covenant on Civil and Political Rights (ICCPR)

The ICCPR has also been incorporated into Chile's internal legal system, as was recognized in both judgments. The Covenant establishes the obligation of the States Parties to not allow any restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party pursuant to law, conventions, regulations or custom on the pretext that the Covenant does not recognize such rights or that it recognizes them to a lesser extent (Article 5.2). In the Court's interpretation, this provision would render «inapplicable the statute of limitations for serious war crimes or crimes against humanity which violate fundamental human rights, such as the right to life and the right to not be tortured, which are guaranteed by the Constitution and reinforced by the International Covenant on Civil and Political Rights, in Articles 6.1 and 7.»

With respect to amnesty, which is allowed by the Covenant, the Court indicated that the Covenant limits amnesty exclusively to those condemned to death, «for the purpose of preserving the juridical asset of greatest value, that is, human life». Subsequently, the Court specified that amnesty cannot be invoked to «prevent the punishment of individuals or agents of the State who, although responsible for protecting and guaranteeing the life and the physical and mental integrity of persons, have violated those rights.»

The Right to Justice

The International Covenant of Civil and Political Rights, as quoted in the judgments, states that the right to justice with respect to criminal violations of human rights does not allow for suspension of any kind (Article 15.2). Consequently, the Court of Appeals states that: «In view of such a provision, the principle of legality or non-retroactivity cannot be upheld, since justice must be served in accordance with the general principles of law recognized by the community of nations, which take precedence over internal law in the event of a conflict between the two, even despite the possibility of endangering the very life of the nation...»

Lastly, the Santiago Court of Appeals stated that it is bound by the Constitution and by the international human rights covenants which have been ratified by the State of Chile, and that, therefore, it could not withdraw

from such a constitutional obligation without «abandoning its duties, jeopardizing the security and honour of the State of Chile in the international arena and weakening the Rule of Law and the principles of democratic constitutionalism which form the ethical and legal support for the Constitution of the Chilean nation.»

This final reasoning reflects the clear commitment of one sector of the Chilean judiciary to meet its international responsibilities in the area of human rights and to put forth the necessary effort to ensure that the Rule of Law is realized through concrete actions in favour of justice.

The Judgment of India's Supreme Court on the Constitutional Validity of the TADA Acts

Fali S. Nariman *

The twin objectives of every civilized criminal justice system are, first, ensuring the conviction of the guilty, and, second, avoiding conviction of the innocent. The integrity of the criminal justice system in any country is a higher objective than the conviction of a guilty person. The Anti Terrorists Acts (1984, 1985 and 1987), and the indiscriminate manner in which they were administered, led our citizens to question the integrity of India's Criminal Justice System. A few of them carried the question into the Courts by way of constitutional challenge; unsuccessfully, as it has now turned out.

On 11 March 1994, Seven Justices of the Supreme Court of India assembled to deliver their respective judgments in the TADA cases.

Hearing the majority judgment, I could not but help dismally recalling *ADM Jabalpur*, (AIR 1976 SC 1207). In impact and effect, *ADM Jabalpur* was to Indian Jurisprudence what a hundred years before, the *Dred Scott* decision (the notorious Slavery Case) was to become in American legal-lore. Scholars in the United States consider *Dred Scott* (*Scott vs. Sandford* - 60 US 393 - 1857) to be the worst ever rendered by the US Supreme Court. «It stands as a model of censurable judicial craft and failed judicial statesmanship» proclaims the (newly-published) *Oxford Companion to the Supreme Court of the United States*. *Dred Scott* was decided by a majority vote of 7:2 : Chief Justice Taney speaking for the Court, with Justices Curtis and Maclean dissenting. It is said that when twenty-five years later, Justice John Harlan wrote his blistering dissent in the Civil Rights Case (1883), he wrote it with the very pen and inkwell that Chief Justice Roger Taney had used when composing the opinion of the Court in the Slavery Case. Whilst the majority (in the Civil Rights Case) struck down key provisions of the Civil Rights Act of 1875, Justice Harlan maintained that segregation in public accommodation was a «badge of slavery» which Congress could constitutionally outlaw under the enforcement section of the Thirteenth Amendment. His own approach to statutory construction was expressed in his minority opinion:

> «It is not the words of the law but the internal sense of it that

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1. Kartar Singh Vs. State of Punjab and a batch of other cases (Writ Petitions, criminal appeals and SLPs) challenging the vires of - The Terrorist Affected Areas (Special Courts) Act, 1984, the Terrorists and Disruptive Activities (Prevention) Act, 1985, and the Terrorist and Disruptive Activities (Prevention Act), 1987 (commonly known as the TADA Acts).

2 Upholding the drastic Emergency laws on preventive detention.

makes the law: the letter of the law is nobody; the sense and reason of the law is the soul.»

Later, in *Plessy v. Ferguson* (1896) Justice Harlan again dissented - he set his face against the majority that advocated separate but equal treatment for African-Americans. Harlan died in 1911. Years later, when the Warren Court overruled *Plessy* - in *Brown v. Board of Education* (1954) - it was Justice Harlan's dissents that were seen as the more honourable face-saving past for the US Supreme Court ! Harlan was vindicated - but only posthumously!

All of this (and more) quickly passed through my mind when I heard the judgments read in the Court on the 11th March - upholding the constitutional validity of the TADA Acts. Since then, I have seen the written word. I find that there is much to applaud in the minority opinions of two Justices: K. Ramaswamy and R.M. Sahai. But alas, to what end? They too may be posthumously vindicated - but (going by current judicial experience) posthumous vindication takes just too long!

Meanwhile, all the judicial embellishments to Article 21 - the judicially contrived superstructure built around the great Life-and-Liberty Clause of our Constitution - a heartening feature of the Post- (June 1975) - Emergency Era - stand dismantled, if not demolished. We are where Gopalan's Case left us way back in 1951. Let me explain.

It was the expansive constitutional jurisprudence built up in the United States that caused one of its more conservative Justices (J. Frankfurter) to fear its export to foreign lands. He advised India's Constitutional Advisor (B.N. Rau) not to put in a due-process requirement in the Life-and-Liberty Clause (Article 21) in the Chapter on Fundamental Rights - rather, to use the neutral expression contained in the Japanese Constitution: «no person shall be deprived of his life or liberty except by procedure established by law.» The Constitution's framers accepted this advice. And in the first year of the Constitution, India's Supreme Court interpreted the expression as it read (and as it was intended to read) namely, that deprivation of life or liberty could be justified by any procedure which had the sanction of law (*Gopalan* v. *State of Madras* - AIR 1950 SC 27). But words take on new meaning with the passage of time. Eighteen years after 1950, an activist Court overruled *Gopalan* holding that «the procedure» prescribed by the law could always be scrutinised by Courts; any procedure that arbitrarily or unreasonably deprived a person of his life or liberty, would not pass muster under Article 21: (*Maneka Gandhi* - AIR 1978 SC 597): a cryptic comment to this decision was that «Indian Judges have made of the Japanese wording an American Due Process» ! But not any more. Not after the majority judgment in the TADA cases.

Almost at the beginning of the judgment, the Justices concede that the Acts

3 Article 21 reads:

"No person shall be deprived of his life or personal liberty except according to procedure established by law."

(TADA) «tend to be very harsh and drastic.»

(i) The definition of «terrorist» and «disruptive activities» is so broad as to encompass even peaceful expression of views about sovereignty and territorial integrity;

(ii) the Acts permit detention in custody for investigation for up to six months (formerly, one year) without formal charge;

(iii) trials are not to take place in the ordinary criminal courts in public view, but before special «Designated Courts», *in camera*, and adopting procedures at variance with the Criminal Procedure Code;

(iv) if the person arrested and charged comes from a terrorist affected area (so declared by the Central or State Government) then the burden of proving that he has *not* committed a terrorist act is on him;

(v) confinement before trial is the rule, bail the rare exceptio, and;

(vi) above all, material safeguards entrenched in the substantive law for more than a century have been swept away under TADA Acts. A person can be convicted on the uncorroborated testimony of a co-accused (who has been granted a pardon), or on the recorded «confession» of an accused made to a Police Officer; the admissibility of such a confession was abhorrent to the framers of the Evidence Act way back in 1872; it was then rightly regarded as almost an invitation to custodial torture!

And yet the TADA Acts have been upheld as not violating Article 21. Why? Because of a glaring error in the majority judgment; an error of approach.

The Justices continued to look at the letter of Article 21 - as the majority did in *Gopalan* (1950) - even after their distinguished predecessors (in 1978) had bared its soul! The procedure prescribed by the law must not be arbitrary or unreasonable, the Constitution Bench of Seven Judges had said in *Maneka Gandhi* (1978) - «Arbitrary» or «unreasonable» *qua* what? Obviously *qua* deprivation of life and liberty, not *qua* the «law», or the object of the law. *Maneka Gandhi's case* is now made to stand on its head: however arbitrary or unreasonable the procedure for deprivation of life or liberty, however harsh and drastic the provisions of the law, they would be laudable! This is the *ratio* of *Kartar Singh*. That India was a signatory to, and had ratified the International Covenant on Civil and Political Rights (ICCPR) which had set standards for adjudging the reasonableness of laws affecting life and liberty, went unnoticed. The TADA Acts were plainly in breach of Articles 9 and 14 of ICCPR - the right of a person arrested to be «promptly» informed of any charge against him (Art 9(2)), the right of such person to be brought «promptly» before a judicial authority to stand trial within a reasonable time (Article 9(3)), the right to a public hearing (Article 14(1)), the right to be presumed innocent until pro-

ved guilty (Article 14(2)), the right not to be compelled to confess guilt (Article 14(3) (8)): none of these provisions are mentioned.

It is said that to ensure our safety and security, the TADA Acts *must* be enforced with all their harshness and rigour against persons who are admittedly and unquestionably «terrorists.» Yes, but not when they are only alleged to be so. The untrammelled, uncontrolled powers exercisable under the Acts are made more horrendous by the official statistical revelation that not more than one percent of those tried before the Designated Courts are convicted - the rest are acquitted for «want of evidence.» There is no further statistical information as to in how many cases this is because witnesses who have given sworn statements have refused to testify, and as to in how many cases it is because there were no genuine witnesses at all in the first place, no plausible «evidence» worth the name when the accused was first arrested and detained ! And we pride ourselves on being a country governed by the Rule of Law!

The conclusions of the majority upholding the constitutionality of TADA brings to mind the warning of an American Judge (Justice Frankfurter - the same Judge whose advice had been sought when drafting Article 21). He had said: «Don't rely on Judges and the Courts to save your freedoms.» He knew that Judges (and lawyers) were masters of the written word; they could rationalise (and so legitimize) the most tyrannical laws; some of our Judges had done it before in *ADM Jabalpur*, and they have now done it again in *Kartar Singh*. But under our Constitution, we *must* rely on our Judges to save our freedoms. No one else will. For us, only the hard way: to stimulate (and educate) public opinion and by robust disputation strive to remove, by the established processes of law, this blot on an otherwise unblemished record of the Supreme Court of India in the field of Human Rights.

Features of the Administration of Justice under Palestinian Rule

*Mona Rishmawi**

Introduction

The actions of the Palestinian Authority in the Gaza Strip and Jericho area derive from the Declaration of Principles on Interim Self-Government Arrangements, signed by Israel and the PLO on 13 September 1993, and the Agreement on the Gaza Strip and Jericho Area, signed between the same parties on 4 May 1994. The Declaration envisages three phases for the resolution of the Israeli/Palestinian conflict.

The first phase was implemented following the signing of the Agreement on the Gaza Strip and the Jericho Area on 4 May 1994, according to which, the powers that have been vested in the Israeli military government in Gaza and Jericho were transferred to the Palestinian Authority; a quasi-government lead by Mr. Yasser Arafat, and composed of 24 ministers from the Palestinian community in exile and the Occupied Territories. Certain matters related to external security, settlements, Israeli nationals, and foreign relations, however, remained under the jurisdiction of Israel. As a result Israel redeployed its forces and withdrew from about 62% of Gaza, and approximately 27 aquare kilometres of the Jericho area.

The second phase consists of an interim period of five years during which a gradual transfer of certain responsibilities that were under the jurisdiction of Israel is to take place. These responsibilities include education, culture, health, social welfare, direct taxation and tourism. Jurisdiction over Jerusalem, Israeli settlements, foreign relations and border control, are not to be transferred during this phase.

The final phase deals with the permanent status of the West Bank and Gaza Strip. Negotiations on the permanent status, according to the agreements, are to start no later than the beginning of the third year of the interim period.

The limitations set by the agreements affect the prospects for a proper independent judiciary under Palestinian rule. This paper will first provide a general overview of the Israeli/Palestinian Agreement. Secondly, it will outline some conceptual challenges related to the questions of laws and courts in the Palestinian areas. Thirdly, the existing legal system in the Palestinian areas will be briefly described. Fourthly, some features of the Palestinian actions in the Gaza Strip and Jericho will be examined. The paper will conclude by proposing some concrete action.

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Overview of the Agreements

There are several important themes that run through the agreements and give Israel the upper hand. As will be demonstrated below, the agreements do not provide for a real separation between Israel and the Palestinians. Rather, they create a relationship based on dependency. The agreements also promote the concept of shared Israeli and Palestinian sovereignty over the West Bank and Gaza Strip. They further provide for preferential treatment to Israelis and grant Israel full impunity over its violations of human rights during the period of occupation. Each of these issues will be discussed below.

1 Dependency not Separation

The agreements create a complex, almost unique, framework for the running of affairs. Although Israel asserts that the agreements embody the concept of separation between the Palestinians and Israelis, the provisions of the agreements render the Palestinian Authority dependent on Israel in several significant areas. They also allow Israel to be involved in the running of fundamental aspects of daily Palestinian life in the Gaza Strip and Jericho area. The agreements also subjugate the Palestinian political and economic structures to the Israeli ones. The agreement on the Palestinian police, for instance, allows Israel to determine the conduct and the functioning of the Palestinian police force. Also, the agreement on the structure and powers of the Palestinian National Authority (PNA) stipulates that the PNA must inform Israel if there is a change in its composition. Israel must also approve the mode and condition of elections. In other words, the agreements do not create a separate unit that will independently govern the territory under its control. Rather, under these agreements, the Palestinian Authority is an entity seriously dependent on Israel.

2 Shared Sovereignty

The second theme that runs through the agreements is the concept of shared Israeli and Palestinian sovereignty over the Occupied Territories. The agreements divide the land and functions between the Israelis and the Palestinians, at least during the interim period. Some areas of land, such as the settlements, military installations and borders are excluded from the jurisdiction of the Palestinian Authority and leave them in the hands of Israel, at least during the interim period. The agreements do not require Israel, for instance, to freeze its establishment or expansion of the Jewish settlements in the West Bank and Gaza Strip during the interim period. Also, although the Palestinian Authority is meant to assume power over Gaza and Jericho, certain functions such as foreign relations, external security, and the security of the Israeli settlers and military installations are excluded from the jurisdiction of the Palestinian Authority. In other words, the agreements allow Israel to share sovereignty over the West Bank and Gaza Strip.

3 Preferential Treatment of Israelis

Not only are Israeli structures and political systems given preference over

the Palestinian systems, the agreements accord individual Israelis more respect and privileges. For instance, there are three references in the agreements to respecting human rights and the Rule of Law. Two of these relate directly to the behaviour of the Palestinian Authority towards Israelis. When Israelis are arrested, or «stopped» by the Palestinian police, there is a clear provision stating that the Palestinian police should respect their human rights. There is no such provision committing Israel to the same conduct when arresting or detaining Palestinians. In light of reports of systematic ill-treatment of Palestinian detainees by Israeli security forces, and the widespread use of torture in Israeli prisons, it would not have been excessive to demand that Israel respect the human rights of the Palestinian detainees. In any case, the agreements do not accord the Palestinian Authority the power to arrest or detain Israelis or place them in custody. If an Israeli commits an offence in the territory under Palestinian control, the Palestinian police must immediately notify the Israeli military forces. Only the Israeli authorities have the power to arrest or detain Israelis. Moreover, Palestinian courts do not have the jurisdiction to try Israelis.

Also, the agreements allow the Palestinian police to use force only in self-defence. In any country in the world, police should not resort to force except in very exceptional circumstances, and only in self-defence. The question is why the agreements do not require Israel to apply the same standards, especially in light of the high number of Palestinians killed at the hands of Israeli soldiers under suspicious circumstances, and the credible information of Israel's use of summary executions through the actions of the special units.

4. Impunity

The question arises as to what is the responsibility of States for past human rights violations. Human rights norms require that those who commit gross violations of human rights and grave breaches of humanitarian law be brought to justice. As is known, during the phase of occupation, Israel committed and continues to commit grave breaches of the Fourth Geneva Convention Relative to the Protection of Civilians in Times of War. There is a clear provision in the Gaza/Jericho agreement which gives Israel absolute impunity with regard to its practices in Gaza and Jericho areas during occupation.

This general overview of the agreements demonstrates how the agreements are one-sided, reflect Israeli superiority, and reflect the type of relationship that Israel and the Palestinian entity have. The agreements are extremely unfair, and it is not possible to see how a lasting and durable peace can be achieved as a result of them. I will now turn to the actual situation in Gaza and Jericho.

Conceptual Challenges

Most societies accept that there is a need for laws to govern human and social interaction. While generally accepting this premise, the Palestinians of the West Bank and Gaza Strip view «law» in the negative. Throughout recent Palestinian history, «law» has

been used as an instrument for oppression. During the last three decades, «law» has been associated with Israeli Military Orders which gave sweeping powers to the military, affecting all aspects of life of the Palestinian population. As the Military Orders have been forcefully applied, «law» has a negative connotation in the Palestinian context. Much of the Israeli human rights violations had been justified as necessary for «maintaining law and order.»

In a society ruled by law, «maintaining law and order» should be interpreted as not the mere application of legal rules irrespective of their content and method of enforcement. If law is to be just, its objective should be to preserve human rights. Law, therefore, becomes a positive tool to allow for the healthy growth of each individual within society and to guarantee the respect of her/his civil, political, social, cultural, and economic rights.

Also, law should positively respond to social needs. In the West Bank and Gaza Strip, laws which govern civil behaviour were mainly kept as they were in 1967. Only rules that advance Israeli goals were added. As a result, and although a nucleus for a civil law system exists in the West Bank and Gaza Strip, the majority of the civil law rules are dated and need to be modernised. In addition, during the occupation, the civilian judicial structures in the West Bank and Gaza Strip have been severely undermined.

To transform the Palestinian image about «law», there is a need not only to delete the oppressive nature of much of the legal rules applied in the West Bank and Gaza Strip, but also to create new structures. In general, confidence in the legal and judicial institutions should be enhanced. A proactive approach is needed to make law respond to the needs of the population to ensure that its human rights are preserved.

Such an approach necessitates more than a slogan committing the Palestinian political bodies to the principles of democracy. It requires a detailed understanding of the objectives, concepts and mechanisms of democratic institutions. It also requires that those who are in power set themselves as examples of how to respect the Rule of Law and human rights. Is the current Palestinian Authority willing and capable of playing such a role?

At first sight, the PLO appears to be a democratic liberation movement. It has accepted multi-partisan representation, and has divided its ruling organs into executive and legislative powers. Various factors, however, have led to aborting the democratic character of the organization. In reality, power is centred in the hands of the Head of the Executive Committee who often manipulates rules and procedures. Such centralisation and manipulation severely undermine the democratic character of the PLO. The detailed knowledge of the goals and functions of democratic institutions is highly lacking in the official Palestinian political context.

There is more hope for democracy at the popular level. Regular elections of student councils at universities, trade-unions, and professional organizations have allowed the Palestinians to taste some flavours of democracy, albeit on a

small scale. Also many non-governmental organizations (NGOs) emerged in recent years, mainly to challenge Israeli policies in the West Bank and Gaza Strip and to respond to societal needs. The NGOs address matters ranging from health care, women issues and human rights to agriculture, land and water. While these organizations highlight the important role of the civil society, this concept is not adequately developed, however.

A strong civil society with a developed human rights culture is essential for democracy. During the occupation, the Palestinian human rights organizations challenged Israeli violations in the West Bank and Gaza Strip. Since Palestinian autonomy, these organizations have been equally challenging Palestinian violations of human rights. These organizations have been paving the way for creating a human rights culture within the society. This task, however, is far from complete.

In this context, it should be noted that there is a contrast between those Palestinians who came from the outside and those who normally live in the Occupied Territories. Although they cannot be blamed for their forced exile, most of those who returned to the Occupied Territories are persons with a quasi-military background. They are now members of either the police force or the security service. In addition, there are many professionals who quit their professions to join the PLO. When they returned, they were placed at the head of civic institutions. The high-level professional exiled Palestinians are still abroad.

The centralised PLO, which is trying to transform itself from a revolutionary to a State apparatus, is ruling a population that has been oppressed and occupied for many years. To complicate matters even further, this population is not convinced by or content with the deal that was constructed in Oslo on 13 September 1993. The lack of a democratic process to ensure the participation of this population in decision-making aggravates the situation.

Of special concern is that matters within the PLO, and therefore within the Palestinian Authority, are highly personalised. Mr. Yasser Arafat rules on every aspect of life: he enters into agreements with Israel, other foreign governments and the World Bank; he appoints ministers, civil servants and judges; he orders the cleaning of streets and the arrest of individuals; he arbitrates family disputes, etc.

Under such circumstances, there is little appreciation for details or technical advice. In contrast with Israel, which had a large technical team to study the Accords, the Oslo agreement was signed without being reviewed by any Palestinian lawyer. Also, the Cairo Agreement on Gaza and Jericho was, for instance, signed with a provision that kept the Israeli Military Orders in force in Gaza and Jericho.

Palestinian State institutions are given the importance that Mr. Arafat (or Israel) decide to give them, not the importance that they deserve in a proper entity based on the Rule of Law. As will be demonstrated below, under such circumstances, amending the prevailing legal rules is not considered a priority;

judges and prosecutors are appointed not necessarily on merit; arrests are made without adequate legal procedure; court jurisdiction is flouted by security forces.

The Prevailing Legal System

According to the Israeli/Palestinian Agreements, the laws that were in force in the Gaza Strip and Jericho before the implementation of the Agreements continue to apply, unless repealed in accordance with the provisions of the Agreements. As a result, the following laws are still in force in the two areas: British Mandate Laws (applicable in the Gaza Strip), Jordanian Law (applicable in Jericho), and Israeli-imposed Military Orders. Additionally, while existing laws, especially the Israeli Military Orders, grant wide powers to the military apparatus in these areas, the newly-installed Palestinian authorities have frequently invoked the PLO Revolutionary Criminal Procedures. In addition to being harsh, these laws are not part of the laws of the land.

The May 1994 *Agreement on the Gaza Strip and the Jericho Area* includes a provision that kept the Israeli Military Orders in force in the Gaza Strip and Jericho. Military Orders have been issued since June 1967 by Israeli occupation authorities and cover all aspects of life in the West Bank and the Gaza Strip. Totalling almost 1400 in the West Bank and 1100 in the Gaza Strip, many of these Orders were issued as amendments to existing laws and have severely undermined the Rule of Law and the functioning of the judicial system in both areas. The Palestinian power to enact new rules is governed by long and cumbersome procedures which were spelled out in Article 7 of the Gaza/Jericho Agreement. Accordingly, the Palestinians are required to notify Israel concerning proposed legislation. Israel may, within 30 days, request that the joint committee decide whether the proposed legislation conforms to the Israeli/Palestinian Agreements. Should the joint committee fail to reach an agreement, joint appeals committees are formed. Months can pass before the proposed legislation goes into effect. Israel reserves the right to veto the legislation if it considers that it threatens a «significant Israeli interest.»

Some Features of Palestinian Actions in Gaza and Jericho

During years of occupation, the Palestinian legal and judicial institutions suffered enormously. In addition to Military Orders and decrees, a stage of litigation has been cancelled and many matters falling within the jurisdiction of the Palestinian courts have been seized in favour of the Israeli military courts and tribunals; access to justice has been obstructed through imposing high fees on litigation; files have been closed; and, judges have been appointed by a military committee, and not always on merit. These problems and others have made the public lose confidence in the judicial process.

If Palestine is to be based on the Rule of Law, public confidence in the judiciary must be restored. The judiciary should be empowered to became a separate and equal State power. Only then, can it fulfil its role as the main protector of

human rights and justice. Bearing these principles in mind, the following is a brief discussion of some Palestinian actions concerning the administration of justice.

The Applicable Laws

As mentioned above, according to the Israeli/Palestinian Agreements, the laws which were in force before the implementation of the Agreements continue to be in force unless repealed in accordance with the provisions of the Agreements. As a result, the following laws are still in force in Gaza and Jericho: British Mandate laws (which are applicable in Gaza), Jordanian law (which is applicable in Jericho), and Israeli-imposed Military Orders. The Palestinian power to change these laws is governed by long and cumbersome procedures which were spelled out in Article 7 of the Gaza/Jericho Agreements.

While these laws, especially the Israeli Military Orders, grant wide power to the security apparatus in these areas, the Palestinian authorities still invoke the PLO Revolutionary Criminal Procedures. The reason for this might be that the Palestinian authorities wish to grant wide power to the Palestinian police and other security forces while being embarrassed to use the laws of occupation. Furthermore, few Palestinians, if any (including those who invoke them), have copies of such procedures.

Clarifying such confusion does not seem to be a priority for the Palestinian Authority. Answering a question last summer on the adoption of the Basic Laws which commit the Palestinian authorities to human rights, the Minister of Justice stated that the priority is to work on investment laws.

Appointing Judges to the Gaza and Jericho Courts

Without clarifying the legal rules on who has the authority to appoint, dismiss and promote judges, several controversial judicial appointments were made in Gaza and Jericho. A jurisdiction was also added in Jericho.

A former Gaza lawyer who returned from forced exile after the implementation of the Gaza/Jericho Agreement was appointed by Mr. Arafat as the Chief Justice of Gaza. One of his first actions was an attempt to dismiss women judges in Gaza. He retreated following an intervention by Mr. Arafat. Mr. Arafat also appointed an Attorney-General who is not held in high repute amongst the Gaza lawyers.

During the occupation Jericho had a magistrate court. Under Palestinian rule a district court has been established in Jericho. A legally trained Palestinian from outside the Occupied Territories was appointed as its head. Contrary to accepted judicial practice, the appointment was made by the Minister of Municipal Affairs. The judge does not

1 The discussion below is based on a visit to the West Bank and Gaza in September/October 1994, and information received from there since then.

possess adequate knowledge of the existing laws in the area. His decisions are commonly based on personal views rather than on the letter of the law. As a result, he has already made legal errors. Such errors render the question of appeal even more pressing.

In the past, the decisions of the Jericho court were subject to appeal before the Ramallah Court of Appeal. Since the Ramallah court is still under Israeli rule, there is a confusion on how to appeal the decisions of the Jericho courts. Despite the difference in the legal system, it seems that a decision was made that appeals should be made before the Gaza High Court sitting as a court of appeal. The court, however, has been returning the cases to the Jericho court without examining them. Hence, appeals of the decisions of the Jericho courts have been frozen.

The Jericho Prosecutor

In Jericho a new prosecutor has been appointed. He is also a Palestinian from outside the area and does not have adequate knowledge of the legal systems prevailing in the West Bank and Gaza Strip. The most important are questions of criminal proceedings. As one Palestinian judge correctly puts it, «the law of criminal procedure is the main law which preserves the rights of the accused. If it is not understood, and clearly and systematically applied, the rights of the accused will be in jeopardy.»

In practice, the legal basis for arresting or detaining a person is made without respect to criminal procedures. The authorities do not identify themselves when making the arrest and they use civilian cars. The arresting authorities do not notify the arrested person of his legal status, and they do not inform the family of the place of detention.

As a result, a number of persons have been arrested for long periods without their cases being submitted to court. Lawyers also face difficulties when trying to examine the prosecution file. Complaints to the Minister of Justice have been made in vain.

The Role of the Palestinian Security Forces

There are at least five Palestinian security forces which operate in the West Bank and Gaza Strip. These forces play a significant role in undermining the judiciary. In reality, they conduct arrests without warrants or legal ground.

In addition they are involved in conflict resolution in so-called arbitration agreements. Several cases, either while undergoing court examination or after verdict, have been arbitrated by the Palestinian Authority. The arbitrators, who normally do not possess legal training, have often reached conclusions which differed from those of the court. The question becomes that of enforcement. Contrary to the requirements of the Jordanian Law on Arbitration, the arbitration agreement often states that the arbitration decision is binding on the parties, that appeals can only be made to the Palestinian Authority, and that only the Palestinian Authorities can execute the decision.

The Jericho Intelligence Services sometimes act as the arbitrator. This sheds serious doubt over the question of consent of the parties, a fundamental requirement in arbitration.

The Special Courts

Perhaps the most disturbing feature of the actions of the Palestinian Authority in the autonomous areas is the establishment of the special security courts in Gaza in February 1995. There are serious concerns about the fairness of the trials conducted by these courts.

Little is known about the composition of these courts and the procedure followed before them. The published decree establishing these courts is too brief. Moreover, the courts are conducting their actions *in camera*. The public is not allowed to attend the trial. Attempts by human rights groups to attend sessions have failed. The court has already sentenced several individuals to long sentences of imprisonment.

Treatment of Prisoners

Amongst the main problems facing the Palestinian prisoners is the inadequacy of the review procedure of their cases. In Gaza, political prisoners are commonly detained without legal basis. Suspects are not informed about the reasons for detention. The only reason that is commonly given is that the arrest is taking place by order of the President.

Detainees remain in prison for a long time. In Jericho, release on bail is subject to the whim of the prosecutor. While the majority of political prisoners are generally well-treated, those suspected of common crimes are beaten at random. In July 1994, Mr. Farid Jarbou' was the first Palestinian to die in Palestinian Police custody.

A positive matter, however, is that human rights groups are allowed to visit places of detention in Jericho without complicated procedures.

Recommended Concrete Action

A few months after the Oslo agreement was signed, the International Commission of Jurists (ICJ) and its Centre for the Independence of Judges and Lawyers (CIJL) sent a mission to the West Bank and Gaza Strip in December 1993, to study the status of the Palestinian civilian courts.

The Mission reviewed the status of the civilian courts under Israeli rule. Then it offered a number of recommendations aimed at making the civil nucleus for a proper civil judiciary under a Palestinian self-governing authority. These recommendations remain valid and they are reiterated here. They include that:

- the Palestinian authorities incorporate international human rights norms within the new legal system;

2 *The Civilian Court System in the West Bank and Gaza: Present and Future,* ICJ/CIJL, June 1994.

- the widest possible consultation of all sectors of society be exercised at every stage when drafting various Palestinian legal instruments, including basic laws, without discrimination;

- judges and lawyers be fully consulted about questions relating to the judiciary and the legal profession;

- the establishment of an independent legal profession be encouraged in view of its centrality to the principles of the Rule of Law;

- the development of legal competence in the areas of the West Bank and the Gaza Strip be strengthened and encouraged through initiating and carrying out appropriate measures such as programmes for applied legal studies;

- there be strict separation between the executive, legislative and judicial powers in the future Palestinian authority;

- the independence of the judiciary be guaranteed and enshrined in the Constitution and different laws;

- the judiciary be given full powers over all matters of a judicial nature, especially those relevant to human rights;

- a High Council of the Judiciary be established with the power to appoint, promote and dismiss judges;

- the power of judicial review on civil, administrative and constitutional matters be exercised by the highest judicial authority, either by establishing a Court of Cassation or a Supreme Court;

- the Palestinian police force be required to follow the Code of Conduct of Law Enforcement Officials and to respect human rights norms;

- the independence of Palestinian human rights NGOs be respected and that they be allowed to function without the interference of the authorities.

The Role of the NGOs in the Battle Against Discrimination

Alejandro Artucio *

There are many compelling reasons for opposing a practice as abominable as that of discrimination. Whether it is based on race, ethnic origin, skin colour, language, national or social origin, sex, religious or philosophical beliefs, economic or social standing, birth, political or other opinion, or any other reason, discrimination is truly an affront to human dignity.

Discrimination has always been an intolerable phenomenon. It arises when, for the reasons mentioned above, certain human beings claim superiority over others and, therefore, subjugate, or, failing this, restrict others. There are many cases in which such attitudes have led to persecution and criminal acts. Some extreme examples are provided by the «Ku Klux Klan» (which is still in existence), anti-Semitism, ethnic cleansing and *apartheid* - attitudes which can all lead to genocide. Unfortunately, no society is immune to this type of abomination, and, therefore, it resurfaces (never disappearing completely) in advanced democratic societies. The most tragic example in today's world is that of contemporary Europe; not because discrimination no longer exists in other parts of the world, but because one might have imagined it long since overcome on that continent. And yet, discrimination today assumes a thousand different guises: some old, such as racism; and other newer ones, such as extreme xenophobia and general intolerance.

We are also witnessing a new wave of intolerance in the area of religion and beliefs, along with its accompanying discrimination, as illustrated by the current movements towards religious extremism and fundamentalism.

Discrimination is, or refers to, all measures or actions which revoke, diminish, or tend to revoke or diminish, the enjoyment, recognition or exercise of human rights in any sphere of life in society. Discrimination is not always violent, but that does not make it any less reprehensible. At times it is cloaked in paternalism, but remains discrimination just the same.

As the history of humanity has shown, battling this phenomenon is no easy matter. Some types of discrimination are deeply rooted in cultural traditions. The first task for the NGOs is to deal with whatever negative discrimination is found in national laws, as in the case of *apartheid*. And yet, while equality before the law is indeed essential, it alone does not suffice. There must also be equal opportunity. Nor does the battle end there. In fact, the most difficult challenge lies in opposing those cultural expressions or traditions mentioned previously. In order to do this we must turn to the field of education, which, at all levels, may be called upon to demonstra-

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te the falsehood of any theory based on ideas of superiority, as well as to promote equality and respect for others, including respect for their ideas and beliefs.

The first step in this task is to distinguish those measures which are not discriminatory in the sense implied here, including those aimed at differentiating nationals from foreigners for the purposes of exercising political rights, the right to enter and reside in one's own country, etc., provided such measures are not directed at any one group in particular. Measures adopted to promote the advancement of a disadvantaged group should also not be considered discriminatory so long as they are not maintained once equality has been achieved. These types of measures are referred to as «positive discrimination».

The question arises as to what the NGOs can or should do, as well as what position they should assume in the battle against discrimination.

One of their tasks is to promote the drafting of legal international instruments and the mechanisms for applying them, although one might say that enough has already been done in this regard. Nevertheless, existing instruments must be improved and must continue to evolve. There are numerous international instruments which prohibit discrimination and make reference to combating it; some do so exclusively with respect to racial discrimination, others address discrimination against women, discrimination based on religion or belief, and others still, discrimination for a comprehensive range of reasons.

It would exceed the scope of this article to analyze all of the international and regional instruments which deal with discrimination and the mechanisms created by the international community to combat this phenomenon. We will take only a brief look at them in the order in which they were introduced.

American Declaration of the Rights and Duties of Man

Bogota, 2 May 1948

This was the first international human rights instrument to take a stand against discrimination, which is described in Article II. The body entrusted with overseeing respect for the rights recognized in the Declaration later became the Inter-American Commission on Human Rights.

Convention on the Prevention and Punishment of the Crime of Genocide

9 December 1948

Genocide is considered to be a crime under international law which the States Parties to the Convention undertake to prevent and punish. It can be committed in time of peace or in time of war and consists of acts committed with the intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such. Unfortunately, the intent to destroy a political group was not considered to be genocide by the drafters of the Convention. Today's massacres are most often committed against political dissidents.

It should be pointed out that in order to constitute the crime of genocide, it is sufficient that there be «intent» to destroy a group, even if such destruction does not actually take place. This is illustrated by Article 2 (d) of the Convention, which lists as genocide the act of «imposing measures intended to prevent births within the group,» provided that these are adopted «with intent to destroy, in whole or in part» the said group.

The Convention does not provide for the creation of a supervisory body to monitor compliance with its provisions. However the States Parties pledge - among other things - to prosecute, bring to trial and punish, in the competent courts of any State Party, all those charged with genocide. This Convention is the first to mention the idea of creating an International Penal Tribunal for the purpose of trying perpetrators, and other participants, for the crime of genocide. Fifty years later, that tribunal still does not exist.

The International Commission of Jurists (ICJ) has been campaigning for the establishment of such an international jurisdictional body, which would operate on a permanent basis. Its competence would be to judge those offences classified as crimes against humanity, crimes under international law, and grave violations of human rights, when the latter are committed in a gross or systematic manner. This presents another task for the NGOs.

The UN World Conference on Human Rights, which was held in Vienna in June 1993, made reference to this proposal when it encouraged the United Nations International Law Commission «to continue its work on an international criminal court» (paragraph 92 of the Vienna Declaration and Programme of Action). In July 1994, the International Law Commission completed a Draft Statute for an International Criminal Court, and submitted it to the UN General Assembly for consideration.

The Universal Declaration of Human Rights

Paris, 10 December 1948

The Declaration reaffirms that all persons are equal in dignity and rights and are entitled to equal protection against discrimination (Articles 1,2 and 7). One of its provisions, which has had great impact in the world of labour, prohibits discrimination in the workplace and establishes the principle of equal pay for equal work (Article 23).

The Declaration stresses the importance of education, stating that it should promote understanding, tolerance and friendship among all nations and ethnic groups, as well as activities for the maintenance of peace (Article 26).

European Convention for the Protection of Human Rights and Fundamental Freedoms

Rome, November 1950

The Convention refers to the enjoyment of the rights set forth «without distinction on any ground», such as sex, race, colour, language, religion, political or

other opinions, national or social origin, association with a national minority, property, or birth (Article 14).

The European system provides for two supervisory mechanisms to oversee compliance with the Convention, and hence, with the provisions prohibiting discrimination. These are:

a) The European Commission of Human Rights, which consists of a number of members equal to that of the States Parties to the Convention, elected by the Committee of Ministers of the Council of Europe, from among candidates who are persons of high moral character and recognized competence in the field of human rights. The members serve in their personal capacity, and not as government representatives of the States of which they are nationals. This procedure of electing experts who are not government officials, which was to be repeated in subsequent international and regional instruments, has produced good results. The experts usually act with greater independence, in terms of the criteria and positions they maintain, than they could if they were acting on behalf of their governments.

   Among other duties, the Commission may examine communications (petitions) from individuals, non-governmental organizations and groups of individuals. This is the first appearance of the right to petition in an international instrument. In order to be heard by the Commission, the State against which a petition is lodged must have previously made a declaration recognizing the competence of the Commission to consider individual communications. Furthermore, the remedies provided by domestic law must have been exhausted. This last requirement establishes the subsidiarity of the international supervisory mechanisms.

b) The European Court of Human Rights, which consists of a number of judges equal to that of the members of the Council of Europe, elected by the Consultative Assembly from among jurists of high moral character and recognized competence in the field of human rights. This is a jurisdictional body, whose decisions are binding for the States Parties.

   The Commission and the States Parties, as well as individuals (the latter pursuant to the Eleventh Protocol to the European Convention, May 1994) may bring a case before the Court; however, in order for the Court to act, the respondent State must have previously made a statement accepting the Court's jurisdiction.

Convention No. 111, International Labour Organization (ILO), Concerning Discrimination in Respect of Employment and Occupation

June 1958

This Convention reiterates the (non-discriminatory) principle of equal pay for equal work already established in the Universal Declaration of Human Rights.

UNESCO - Convention Against Discrimination in Education

December 1960

Within the scope of UNESCO's competence, this Convention governs matters concerning non-discrimination in education and the direction education should take in order to combat the phenomenon.

International Convention on the Elimination of All Forms of Racial Discrimination

21 December 1965

The Convention specifies what is meant by racial discrimination (Article 1) and stipulates that States must combat ideas of superiority on the basis of race, colour or ethnic origin (Articles 2 and 4).

The Convention's ultimate objective is to eliminate discrimination; it mentions civil, political, economic, social and cultural rights (Article 5). It should be recalled that at the time the Convention was approved, the two International Covenants on human rights did not yet exist. The Convention also stresses the importance of education in the battle against racial discrimination.

The Convention established a Committee on the Elimination of Racial Discrimination to oversee compliance with the obligations undertaken by the States Parties. It consists of 18 experts, elected by the States Parties to the Convention, who serve in their personal capacity and not as representatives of the States of which they are nationals. These experts are elected from among persons «of high moral standing and acknowledged impartiality» (Article 8). In forming the Committee, consideration is given to «equitable geographical distribution and to the representation of the different forms of civilization as well as of the principal legal systems» (a formula which would reappear in subsequent international instruments).

The States must submit periodic reports to the Committee on «the legislative, judicial, administrative or other measures» which they have adopted and which give effect to the provisions of the Convention. They must also report the obstacles encountered which have hampered or impeded the enjoyment of certain rights. The Committee invites States to send a representative when their report is being considered, providing the opportunity for an in-depth discussion between the members of the Committee and the State representative. Finally, the Committee may make suggestions and recommendations to the State, which are communicated to the UN General Assembly. The summary record of such proceedings is distributed throughout the world in the six working languages of the United Nations. It alone exerts a degree of pressure on offending governments which do not wish to have their international image tarnished.

Among other activities, the Committee considers communications (petitions) from individuals or groups of individuals. However, before doing so, the State must have previously made a declaration recognizing the competence of the Committee to receive and consi-

der communications from individuals or groups of individuals (Article 14). Furthermore, the petitioner or petitioners must have exhausted all available domestic remedies. After considering the petition and taking into account the information furnished by both the petitioner and the State concerned - which takes place in closed meetings - the Committee may find that the State has violated the rights of an individual and may make suggestions and recommendations to remedy the situation.

States members of the United Nations and States non-members may ratify or accede to the Convention, provided that in the latter case, the State is a member of a UN specialized agency, or Party to the Statute of the International Court of Justice. Switzerland is an example of a country which is not a member of the United Nations, but which is a member of its specialized agencies.

International Covenant on Economic, Social and Cultural Rights (ICESCR)

December 1966

The ICESCR reaffirms the prohibition of all forms of discrimination (Article 2, paragraph 2) and provides guidelines for education, which should be directed towards promoting understanding, tolerance and friendship among all nations and groups, and towards furthering activities for maintaining peace.

In order to oversee respect for the rights recognized in the Covenant, the United Nations Economic and Social Council (ECOSOC) established a Committee on Economic, Social and Cultural Rights. This body, which is not mentioned in the Covenant, is comprised of 18 independent experts appointed by ECOSOC. Given the usefulness and successful functioning of the Committee, efforts are currently being directed towards granting it conventional status by means of an optional protocol to the Covenant to be ratified or acceded to by the States.

The States Parties are required to submit periodic reports to the Committee describing the «measures which they have adopted and the progress made in achieving the observance of the rights recognized» in the Covenant (Article 16), as well as of the «difficulties affecting the degree of fulfilment of obligations». The procedure for considering the reports is similar to that of the Committee on the Elimination of Racial Discrimination. The Committee invites States to send a representative when their report is under consideration, providing the opportunity for an in-depth discussion between the members of the Committee and the representative of the State concerned. The summary records of these proceedings are distributed throughout the world in the six working languages of the United Nations.

In contrast to other instruments, the Covenant does not recognize the right of victims of violations to submit communications (petitions), probably because no supervisory mechanism is provided. It will be the task of the NGOs to push for the adoption of an optional protocol to the Covenant which recognizes the individual's right to petition. Efforts in this

direction are already under way and the Committee has indicated its support for such a solution.

International Covenant on Civil and Political Rights (ICCPR)

16 December 1966

The anti-discrimination clause appears as early as Article 2, paragraph 1 of the ICCPR, as in the ICESCR. Although the ICCPR authorizes that in exceptional situations which endanger the life of the nation (states of emergency), governments may adopt extraordinary measures and suspend certain rights, such measures may not involve discrimination on the ground of race, colour, sex, language, religion or social origin (Article 4).

The ICCPR recognizes the equality of all persons before the law and the obligation of the States Parties to ensure that laws prohibit any discrimination and guarantee all persons equal and effective protection against discrimination on any ground (Article 26). This Covenant reaffirms the rights of ethnic, religious or linguistic minorities, in community with other members of their group, «to enjoy their own culture, to profess and practise their own religion, or to use their own language» (Article 27).

To oversee compliance with its provisions, the Covenant established a Human Rights Committee, comprised of 18 experts («persons of high moral character and recognized competence in the field of human rights», Article 28), who serve in their personal capacity and are elected for four years by the States Parties. The Committee may not include more than one national of the same State (Article 31).

States Parties must submit periodic reports to the Committee concerning the provisions they have adopted which give effect to the rights recognized in the Covenant, as well as the «difficulties» encountered which affect fulfilment of the obligations. Following the discussion between the Committee and the representative of the State whose periodic report is being considered, the Committee may make recommendations concerning the manner in which the rights recognized in the Covenant should be respected in that State. These recommendations may also be communicated to ECOSOC. The Committee is required to publish an annual report, which it submits to the General Assembly, containing its observations on the reports submitted by the States and its final observations regarding cases reported in individual communications.

According to the Optional Protocol of the ICCPR, the Committee may receive individual communications from alleged victims of the violation of any right recognized in the Covenant, provided that the State against which the petition is lodged has ratified or acceded to the Protocol.

Once the examination of a communication has begun, implying a long process in which the information and opinions of both the petitioner and the State concerned are taken into consideration (in closed meetings), the Committee initially rules on the «admissibility» of the communication. In order

for it to be declared admissible, the matter must not have been referred to «another procedure of international investigation or settlement» (such as the Inter-American Commission on Human Rights or the European Commission of Human Rights) and the petitioner, or those submitting the petition on his or her behalf, must have exhausted all available domestic remedies which do not unjustifiably prolong the matter.

Upon concluding the examination of admissibility, the Committee proceeds to analyze whether the grounds for the communication exist. Upon concluding this phase, the Committee may declare the State in question to have violated the rights of an individual (in this case, if the individual has been subjected to discrimination), and may make suggestions and recommendations to the State in order to remedy the situation. These are what are known as its «final observations» and they usually have a considerable impact on the State in question.

The Committee may also consider interstate communications - that is, when one State alleges that another State Party has violated rights recognized in the Covenant - provided that both parties have made declarations recognizing the competence of the Committee to examine such complaints (Articles 41 and ff.). The procedure for processing these is similar to that for individual communications.

Recently, the Committee established a follow-up procedure for monitoring the States' attitude with respect to its observations.

American Convention on Human Rights

22 November 1969

The States Parties undertake to ensure everyone the free and full exercise of the rights recognized in the Convention «without any discrimination» for reasons of race, colour, sex, language, religion, political or other opinion, national or social origin, economic status, birth or any other social condition (Article 1). The Convention also protects the freedom of conscience and religion (Article 12). It prohibits any propaganda for war and «any advocacy of national, racial, or religious hatred» (Article 13, paragraph 5). It proclaims all persons to be equal before the law and entitled, without discrimination, to equal protection (Article 24).

The Convention allows governments, in exceptional circumstances which threaten the independence or security of the State (states of emergency), to adopt extraordinary measures and suspend certain rights, provided such measures do not involve discrimination on the basis of race, colour, sex, language, religion or social origin (Article 27).

The American system provides for two supervisory mechanisms:

a) In approving the American Convention on Human Rights, conventional status was given to the already existing Inter-American Commission on Human Rights. This Commission consists of seven members («persons of high moral character and recognized competence in the field of human rights,»

Article 34), who serve in their personal capacity, and not as government representatives of the States of which they are nationals. They are elected by the General Assembly of the Organization of American States (OAS), with the clear mention that they do not represent the governments of the States of which they are nationals, but rather all of the Member States of the OAS. No two nationals of the same State may be members of the Commission.

Among other activities, the Commission may examine communications from individuals, groups of individuals, or non-governmental organizations, alleging a State to have violated the rights guaranteed by the American Convention. In contrast to the European system, it is not necessary for a State against which a petition has been brought to have made any declaration recognizing the competence of the Commission. However, the subject of the petition may not «be pending in another international proceeding for settlement» and all available remedies under domestic law must have been pursued and exhausted (unless the exercise of these has not been permitted or there has been «unwarranted delay in rendering a final judgment» under the aforementioned remedies - Article 46). This once again establishes the subsidiarity of the international supervisory mechanisms.

Once the long process of examining the communication has begun, in which the information and opinions of the petitioner and the State in question are considered (in closed meetings), the Commission rules on the «admissibility» of the communication. After determining its admissibility, the Commission attempts to find a «friendly solution» to the matter. Failing this, it may establish whether the grounds for the communication exist and may declare the State in question to have violated the rights of an individual (for our purposes, if the petitioner has been subjected to discrimination), in which case the Commission makes pertinent suggestions and recommendations to remedy the situation.

The Commission may also consider interstate communications, which arise when a State alleges that another State Party has violated a right recognized in the Convention, provided that both States (petitioner and respondent) have declared that they recognize the competence of the Commission to examine this type of petition. The procedure for dealing with interstate communications is similar to that for individual communications.

b) The Inter-American Court of Human Rights. This is a jurisdictional body composed of seven judges («jurists of the highest moral authority and of recognized competence in the field of human rights», Article 52) proposed by the States Parties to the Convention. No two judges may be nationals of the same State. The Court is not, properly speaking, an organ of the OAS, but rather an autonomous judicial institution.

Only the States Parties and the

Commission have the right to submit a case to the Court (Article 61); individuals do not (this limitation has been overcome in the European system through the approval of the Eleventh Protocol to the European Covenant for the Protection of Human Rights and Fundamental Freedoms).

In order for the Commission to bring a case before the Court, and in contrast to the procedure for the Commission, the respondent State must have made a declaration recognizing the jurisdictional competence of the Court. The case must also have been brought before the Commission and processed by this body until reaching a final determination, without it having been possible to obtain a negotiated settlement.

If the Court finds that a State has violated a right -in this case, one which protects against discrimination - it shall rule that the injured party be ensured the enjoyment of his right, that the consequences of the measure or situation be remedied, and that fair compensation be paid to the injured party, if appropriate (Article 63). The States undertake to comply with the judgment of the Court (Article 68).

International Convention on the Suppression and Punishment of the Crime of *Apartheid*

30 November 1973

The crime of *apartheid* is classified as a crime against humanity and defined as a series of «inhuman acts committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them» (Article II). The Convention states that *apartheid* consists of practices of racial segregation and discrimination (what the discriminators in South Africa euphemistically referred to as the «theory of separate development»).

The States undertake - among other things - to ensure that persons charged with the crime of *apartheid* are prosecuted, brought to trial and punished by the competent courts of any State Party. Once again, as in the case of genocide, there is mention of an International Penal Tribunal to try perpetrators and other participants for the crime of *apartheid* (Article V). To date, no such tribunal has been created.

The «Group of 3» of the UN Commission on Human Rights is entrusted with overseeing compliance with the Convention against *Apartheid*. It periodically informs the Commission on Human Rights, which examines its reports and adopts resolutions.

Convention on the Elimination of All Forms of Discrimination Against Women

18 December 1979

The States Parties agree to pursue «a policy of eliminating discrimination against women» (Article 2), and undertake to adopt the necessary measures to ensure that men and women are equal before the law, both in legislation and in

practice. The temporary special measures adopted to accelerate *de facto* equality between men and women shall not be considered discrimination; however, «these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved» (Article 4).

The body charged with overseeing respect for the rights enshrined in the Convention is the Committee on the Elimination of Discrimination Against Women, which consists of 23 «experts of high moral standing and competence in the field covered by the Convention» (Article 17). The experts are elected by the States Parties.

African Charter on Human and Peoples' Rights

Nairobi, 26 June 1981

The Charter affirms the obligation of the States Parties to ensure «without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or other opinion, national and social origin, fortune, birth or other status» the rights which it contains. It proclaims the equality of all persons before the law and grants all persons equal protection of the law (Articles 2 and 3). It prohibits all forms of discrimination and establishes the principle of equal pay for equal work (Article 15). The State undertakes to ensure the elimination of all discrimination against women and children (Article 18).

The African Commission on Human and Peoples' Rights was created to oversee observance of the rights recognized in the Charter. It consists of 11 members, who are elected by the Assembly of Heads of State and Government for a period of six years (from among African personalities of the highest reputation, known for their morality, integrity, impartiality and competence in matters of human rights, Article 31). The members serve in their personal capacity, and not as representatives of the governments of the States of which they are nationals. The Commission may not include more than one national of the same State.

Among other tasks, the Commission considers the reports prepared periodically by the States Parties, which describe the legislative or other measures taken with a view to giving effect to the rights and freedoms recognized and guaranteed by the Charter (Article 62). Following the debate between the Commission and the representative of the State Party, the Commission may inform the government in question of any observations it deems pertinent.

The supervisory body is also charged with receiving communications submitted by individuals or NGOs (Article 55), after exhausting local remedies, if any, unless this procedure is unduly prolonged.

The Commission is also competent to examine interstate communications, which arise when one State alleges that another State Party has violated one of the provisions of the Charter.

Once it has examined a communication and has taken into account the information and opinions of both petitioner and State - or of both States in the

case of an interstate communication - (in closed meetings), the Commission attempts to arrive at an «amicable solution». If this is not possible, it may prepare a report stating its findings, in which it establishes that a particular State has violated the rights protected by the Charter (for our purposes, in the case of discrimination). It may also propose suggestions and recommendations to remedy the situation. Its report is then sent to the parties and to the Assembly of Heads of State and Government, to which it may also make recommendations concerning the manner in which the case should be handled (Articles 52 and 53).

Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief

UN General Assembly Resolution 36/55 of 25 November 1981

Additional Protocol to the American Convention on Human Rights, in the area of Economic, Social and Cultural Rights

San Salvador, 17 November 1988

This instrument affirms the duty of the States Parties to this Protocol to guarantee the exercise of the rights set forth in the Protocol «without discrimination of any kind» for the reasons already mentioned in the American Convention on Human Rights (Article 3). It specifies that education should be directed towards fostering understanding, tolerance and friendship among all nations and various groups, without discrimination of any kind (Article 13).

The various specialized organizations of the OAS are responsible for overseeing compliance with the Protocol; in some situations (including in the case of discrimination) the Inter-American Commission on Human Rights may assume this responsibility, through the system of individual petitions.

The States Parties are required to submit periodic reports to the General Secretariat of the OAS concerning all the measures they have taken to ensure due respect for the rights set forth in the Protocol (Article 19). However, in contrast to the other instruments we have seen, this particular Protocol does not establish a mechanism for examining the reports and discussing any eventual observations with government representatives.

The Convention on the Rights of the Child

6 December 1989

This Convention establishes as principle that the rights of the child shall apply «without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status» (Article 2). The States Parties agree to take measures to ensure the child's protection against discrimination on the basis of the status, activities,

expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

This instrument once again emphasizes the far-reaching importance of education. It stipulates that the education of the child shall be non-discriminatory and shall be directed to the development of understanding, tolerance, and «friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin» (Article 29). An important aspect of the Convention is that the measures which the States Parties may take regarding the child must always be guided by what is «in the best interests of the child».

The Convention established the Committee on the Rights of the Child for overseeing compliance with its provisions. It consists of 10 experts (of high moral standing and recognized competence...), who serve in their personal capacity and are elected by the States Parties.

As in other instruments, the Convention stipulates that States must submit to the Committee periodic «reports on the measures they have adopted which give effect to the rights recognized» in the Convention. The reports shall also indicate «difficulties» affecting the degree of fulfilment of the obligations. The Committee examines the reports, and, as in other cases (such as the International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights, as well as the Convention on the Elimination of Racial Discrimination), this provides the opportunity for an in-depth debate during which the Committee may inform the government in question of pertinent observations concerning the way in which the rights recognized in the Convention should be respected in that State.

The Convention does not provide for a system to process individual communications, by means of which victims, their representatives, or an NGO, may report violations of the Convention. A future task for the NGOs would be to advocate the adoption of an optional protocol to the Convention which establishes the individual's right to petition. Efforts in this direction have already begun and the Committee has indicated its support for such a solution.

Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities

UN General Assembly Resolution 47/135 of 18 December 1992

This Declaration affirms the obligation of the States Parties to protect the existence and distinct identity of these groups, through the adoption of legislative and other measures. All persons, whether individually or collectively, may exercise the right to enjoy their own culture, to profess and practise their own religion and to use their language; all of this in private or in public, without interference or any form of discrimination.

As illustrated by the foregoing inventory, we have at our disposal a body of international standards aimed at preventing and suppressing discrimination and,

in some cases, bringing to justice and punishing perpetrators of these abominable acts. There also exists, at both the international and regional level, a series of bodies and mechanisms whose protection should be sought more frequently in cases or situations of discrimination.

The efforts of the NGOs in the struggle against discrimination are certainly not limited to the international sphere; nor is this their main priority. They do, however, have an enormous task to carry out at the national level, within each State. This task encompasses a number of aspects, the most important of which is to educate society and to create a true culture of tolerance and of respect for the opinions of others, as well as for their ethnic and cultural differences.

To do this, the NGOs must combat ignorance and those cultural expressions which, perhaps unintentionally, tend to foster discrimination. This may be accomplished through the use of publications, conferences and the media, as well as by teaching human rights in general, and non-discrimination in particular. It may also be accomplished through educational programmes which discourage actions and attitudes that can lead to racism, xenophobia and intolerance on the basis of religion or belief. The NGOs should also organize and carry out seminars, meetings, and training courses on pertinent topics.

The bulk of their efforts should be directed towards those sectors of the population which need it most. To help increase awareness, it may be useful to publish small, user-friendly leaflets (perhaps containing drawings and photographs) aimed at those with lower levels of education. National NGOs could coordinate their efforts with other groups particularly sensitive to the problem of discrimination.

In addressing themselves to judges, government officials and human rights activists, NGOs should stress the possibility and necessity of invoking standards of international law before the national courts and before governments. They should seek a practical and effective means of access to international law, to serve as an additional, powerful weapon for combating discrimination.

The NGOs should support governments engaged in the battle against discrimination. National and international NGOs should join forces in carrying out all of the tasks mentioned above, providing mutual support and complementing one another.

Even if not their main priority, NGOs should not overlook opportunities at the international level, including those to exert healthy pressure on the international community for governments to modify their behaviour and correct the erroneous attitudes and traditions which are deeply rooted in our contemporary societies. The national and international NGOs should also join forces in this area; the former bringing factual information and experience to bear in understanding what is happening at the local level and the latter, drawing upon their availability, influence and access to inter-governmental bodies to exert the «healthy pressure» referred to earlier.

Seen from this perspective, it is clear that NGOs should strengthen their par-

ticipation in the work of the supervisory bodies so as to enhance the effectiveness of anti-discrimination efforts. This means submitting reports on situations or cases of discrimination to the respective Committees and Commissions, as well as commenting on the reports presented by governments. The supervisory bodies have found this to be useful, as it provides them with information they can use in questioning government representatives and serves as a mechanism to monitor governments in their preparation of periodic reports.

Wherever possible, the NGOs should submit communications reporting cases or situations of discrimination. If unable to do so directly, they can advise the individuals concerned to submit a communication, thereby serving to accompany the case.

In terms of standard-setting, NGOs should encourage those governments which have not yet done so to ratify or accede to the international human rights instruments. They should also advocate the withdrawal of certain clauses in those instruments which considerably limit their application. In other situations they should work for the approval or modification of legislation. At the national level, they should lobby the respective governments to adopt the legislation called for in the instruments in an effort to harmonize national and international law. At the international level, they should contribute to the development of international law by drafting new instruments, or by complementing existing ones with optional protocols, not only to improve levels of protection, but also to obtain the right to act before the corresponding supervisory inter-governmental bodies.

Likewise, the NGOs should use their influence to encourage greater coordination and cooperation among the bodies and mechanisms themselves. This should extend not only to the bodies of the United Nations, but also to its specialized organizations (the ILO, UNESCO, etc.), as well as to regional organizations, such as the Organization of American States, the Organization of African Unity and the Council of Europe.

Within the specific context of the United Nations, the NGOs should request that in the course of their duties, the special rapporteurs, independent experts and working groups of the UN Commission on Human Rights and its Sub-Commission on Prevention of Discrimination and Protection of Minorities, pay particular attention to discriminatory acts, situations and legislation.

The ultimate goal can be nothing other than to completely eliminate all forms of discrimination. Whether it is based on race, ethnic origin, skin colour, language, national or social origin, sex, religious or philosophical convictions, economic or social position, birth, political opinion or beliefs, or any other reason, discrimination constitutes a dangerous affront to human dignity.

Achieving this goal means making a reality of what can no longer be denied: that all persons are equal in dignity and rights. It means viewing differences in race, skin colour, language or beliefs as part of the great richness of humanity and recognizing that each group can contribute towards making us all better human beings.

Commentaries

Human Rights and their Treatment in the 1994 General Assembly and Permanent Council of the OAS

*Felipe González and Diego Rodríguez**

I Introduction

The 24th regular session of the General Assembly of the Organization of American States (OAS) was held in Belém do Pará, Brazil, between 5-10 June 1994. In the course of its proceedings, the General Assembly approved two new inter-American human rights instruments: the Inter-American Convention on the Forced Disappearance of Persons and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (see basic texts).

Once again this year there were increased numbers of non-governmental organizations (NGOs) working in the field of human rights present at the General Assembly. In addition to the International Commission of Jurists (ICJ) and the International Human Rights Law Group, those represented were: Amnesty International, the Centre for Justice and International Law (CEJIL), the Colombian Section of the Andean Commission of Jurists, the Federation of Families of Disappeared Detainees (FEDEFAM), Human Rights Watch, and *Servicio Justicia y Paz* (SERPAJ). However, owing to the lack of a regular procedure in the system of participation, not all of the above-mentioned NGOs were officially represented.

In spite of the obstacles to more formal participation, the NGOs were able to contribute substantially as they had been doing since the Permanent Council sessions, finding support among a large number of national delegations. Particularly noteworthy were the NGOs' efforts in preparing the Inter-American Convention on Forced Disappearance of Persons, which was approved this year by the General Assembly.

At the sessions of both the Permanent Council and General

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Assembly, the NGOs coordinated their efforts in a number of areas, including: the structural and budgetary strengthening of the Inter-American Commission on Human Rights, several aspects related to the Inter-American Court of Human Rights, and the Inter-American Convention for the Prevention, Punishment and Eradication of Violence Against Women.

However, the main thrust of the NGOs' efforts during the General Assembly was to obtain permanent and formal access to the policy-making bodies of the OAS. Although this topic was not included in the agenda of the General Assembly, the groundwork was laid for the forthcoming adoption of a resolution to that effect.

II The Permanent Council

1 The NGOs' Need for a Formal Mechanism of Participation in the Policy-Making Bodies of the OAS

Contrary to their situation at the OAS, NGOs at the United Nations enjoy formal participation through their consultative status with ECOSOC. By means of this mechanism, NGOs may regularly attend debates, officially distribute documents, make written and oral statements and participate in the meetings of experts, working groups, and others.

The NGOs have, until now, participated on an informal basis in some of the OAS policy-making bodies. Over the years, for example, various NGOs have requested permission and been invited to attend the General Assembly. However, in addition to being completely discretionary, this mechanism poses a number of problems. One in particular stems from the fact that the OAS Secretariat sometimes requires NGOs to furnish background information, which they are not always able to submit prior to the deadline, and consequently fail to receive an invitation. This was the case this year with the Colombian Section of the Andean Commission of Jurists. The NGOs who do receive invitations are allowed to attend the debates, but may not take part in them or distribute official documents, in contrast to the procedure at the United Nations.

As regards the OAS Permanent Council, the NGOs have traditionally been excluded from its debates. However, following a seminar organized by the American University in Washington D.C., during the first quarter of 1994 a number of States made proposals recommending that NGOs be permitted to attend Permanent Council debates. Subsequently, the Law Group, the ICJ, and a few other NGOs were allowed to attend some of its sessions. Their participation is evaluated in this article. Nevertheless, NGO participation still has not been formalized.

The only institutional mechanism of participation available to NGOs in recent years with respect to OAS policy-making bodies was that granted for the purpose of preparing the Inter-American Convention on Forced Disappearance. This proved to be a fruitful exercise in collaboration. It should be mentioned that before the NGOs were allowed to participate in drafting the Convention, the latter appeared to be headed for failure.

The NGOs' lack of formal access to the OAS creates a series of problems, such as, for example, the fact that «invitations» sometimes come as a surprise (in the form of a telephone call the day before the meeting) and are thus subject to the member countries' discretion. Moreover, NGOs have sometimes not been informed of initiatives which concern them directly and have not been invited to the corresponding sessions. To all this must be added the fact that agendas are not made available to the NGOs until the meeting itself. These examples all point to the need for formal access.

The Permanent Council sessions to which some NGOs were invited focused on the discussion of the Annual Report of the Inter-American Commission on Human Rights (IACHR) and on the subject of Haiti. According to information obtained informally, in other sessions there were debates on such topics as NGO access to OAS policy-making bodies, the proposal to increase the number of IACHR members, and the Report of the Inter-American Court of Human Rights. The NGOs were not asked to attend these meetings, even on an informal basis.

2 The Annual Report of the Inter-American Commission on Human Rights

This year's Annual Report contained 23 reports of individual cases, some of which involved several victims. The respondent States in those cases were: Canada, Colombia (5 reports), El Salvador (6), Guatemala (2), Haiti (3), Honduras, Mexico, Nicaragua, Peru and the United States (2). The general reports on the human rights situation in individual countries focused on Cuba, Guatemala, Nicaragua and Peru. Since the 1993 General Assembly, the IACHR has also published general reports on the countries of Colombia and El Salvador.

There was a lively discussion concerning the draft resolution on the Commission's Annual Report to the General Assembly. Several delegations voiced strong criticism of the Commission, rebuking its work. The critics were headed by the Governments of Nicaragua (whose representative was the President of the Committee on Juridical and Political Affairs), Peru, and the Ecuadorian delegation. Nicaragua criticized the IACHR, stating that it «is not objective and does not apply constructive criteria, but rather attempts to intervene openly in the internal affairs of Nicaragua,» and rejected the Special Report in its entirety.

The Nicaraguan representative proposed the inclusion of a paragraph recommending that the IACHR take stock of the general situation of human rights in all the countries. Several States considered the paragraph to be limiting since, owing to time constraints, it would prevent the Commission from attending to its main task which was to protect human rights.

The Government of Peru led the attack on the general reports contained

1 Comments of the Nicaraguan representative before the Legal and Political Affairs Committee of the Permanent Council. (OAS/Ser. P, GA/doc. 3078/94 add. 1, 17 May 1993, p. 57).

in the Annual Report, arguing that they, like the special reports, should be submitted to the States in question before being published. Professor Michael Reisman, President of the Commission, recalled that the general reports were part of the Annual Report and were aimed at obtaining an immediate response in certain cases, whereas the special reports allowed for a less immediate response. He stated that such flexibility was essential to the IACHR's work and that the concerns of the governments on this matter would be examined from that standpoint. The Peruvian initiative was eventually rejected by the Permanent Council.

The Peruvian delegation also proposed inserting a paragraph in the resolution to the effect that terrorism «constitutes a systematic and deliberate violation of human rights.» Representatives from Chile and Costa Rica opposed the initiative, pointing out that at the international level, responsibility for human rights violations rested solely with the State.

These two delegations, together with Argentina, Canada and the United States of America, were the most fervent supporters of the work of the Inter-American Commission on Human Rights. Other delegations, such as those of Mexico and Venezuela, did not take a definite stand.

The position of the Ecuadorian delegation deserves separate mention. It maintained that NGOs only defend the human rights of criminals, adding that it was incorrect to claim that the State was solely responsible, at the international level, for human rights violations. The statements of the Ecuadorian delegation elicited a response from the Canadian delegation, which argued that the State's total and unrestricted respect for human rights was the best way to overcome crime and terrorism.

There was a clear lack of political will on the part of the Permanent Council to support and strengthen the IACHR's activity. The persistent attacks by some countries, the passivity of others, and the efforts at mediation on the part of a few, make for a very complex situation, calling for an urgent response from those capable of influencing the various factions on this issue, such as the new Secretary-General of the OAS. It is also important, for States which have not yet done so, to ratify the American Convention on Human Rights as soon as possible.

During the 18 April 1994 session of the Committee on Juridical and Political Affairs of the Permanent Council, the Costa Rican delegation proposed that a paragraph on the subject of AIDS be included in the draft resolution on the IACHR, which would be the first formal mention of the subject by the inter-American human rights system. Both Canada and the United States of America supported the Costa Rican proposal, despite the fact that the Commission's Annual Report did not discuss the AIDS issue.

Brazil expressed its doubts as to the relevancy of AIDS to human rights issues, since it viewed this as strictly a public health problem. Costa Rica nonetheless maintained its position, basing its arguments on recent UN reports on this subject.

The Law Group worked closely with the permanent representative of Costa Rica, providing documentation to help the delegation maintain its initiative. The paragraph proposed by Costa Rica was ultimately included in the resolution on the IACHR Annual Report.

3 Haiti

It was evident that, through its policy-making bodies, the OAS' response to the Haitian crisis had been slow and ineffective. Practically speaking, it did no more than back existing UN measures. This is perhaps the clearest recent example of the inter-American system's ineffectiveness in the face of urgent situations of direct concern to the countries in the hemisphere.

The Permanent Council meetings were no exception. Under the «pressure» implied by the fact that the UN was about to issue a resolution strengthening the Haitian embargo, several States prepared a resolution which, in addition to coming too late, did not respond adequately to the dramatic situation in that country - a situation later confirmed in the Special Report presented to the General Assembly by the IACHR.

The Law Group and the ICJ, for their part, actively supported the initiatives of the permanent representative of Haiti to the OAS which were aimed at developing the concept of the international responsibility of individuals perpetrating crimes against humanity.

III The OAS General Assembly

1 The Declaration of Belém do Pará

This declaration reaffirmed the close ties between human rights and representative democracy which have existed (at least at the declaratory level) since the early days of the inter-American system and have been recalled by both the Inter-American Commission and Court of Human Rights on numerous occasions. The Declaration stresses «the need to ensure for all, without distinction as to race, nationality, creed or sex, the full enjoyment of all human rights and fundamental freedoms, especially the effective exercise of representative democracy.»

These issues also relate to the struggle to overcome extreme poverty, as stated in the Declaration: «democracy, the full observance of all human rights, and economic and social development are interdependent and mutually reinforcing concepts, and development and the struggle to overcome extreme poverty are a priority in promoting the exercise of those rights.»

2 The Inter-American Commission on Human Rights

The political atmosphere in which the Annual Report of the Inter-American Commission on Human Rights was debated by the Committee on Juridical and Political Affairs in the General Assembly, was much less agitated than that of the Permanent Council. In contrast to previous years, the

2 OAS/Ser. P., GA/doc. 3104/94 rev. 3, 10 June 1994.

Committee's discussion of the IACHR's Annual Report did not call that body's activities into question or dispute the legitimacy of its actions. In fact, the majority of comments by government delegations contained explicit support for the IACHR's efforts and, despite a few remarks on some aspects of its work, did not challenge its general orientation.

Opening the debate, the representative of Chile expressed bold support for the Commission, thereby setting the tone of the discussion. Other expressions of support for the Commission came from the representatives of Argentina, Canada, Colombia, Guatemala, the United States and others. The Nicaraguan representative repeated his criticism of the Commission's Annual Report in much the same manner as he had presented it in the Permanent Council.

Yet he did so on another, more subtle, but equally effective level. The Government of Nicaragua, which had been the most critical of the Commission in the Permanent Council, obtained approval for a draft resolution in which the Member States which had not yet done so were reminded of the need to formulate their observations on the question of increasing the number of Commission members. This proposal, submitted by Nicaragua to the General Assembly in 1993, seeks to increase the Commission's membership from 7 to 11, on the assumption that a better geographical distribution within the Commission is necessary.

The NGOs present at the General Assembly considered this argument to be irrelevant within the context of the inter-American human rights system, since the Commission's members are elected on an individual basis and do not represent the countries of which they are nationals. The Statute of the IACHR clearly stipulates that: «The Commission shall represent all the member States of the Organization» (Article 2.2). The Nicaraguan initiative thus appears as an attempt to weaken the Commission, especially as regards its duties to oversee the effective protection of human rights in the hemisphere. Given that currently the Commission meets only a few times a year, more Commission members would mean more widely spaced meetings. Moreover, the lack of adequate resources for the permanent «staff» of the Commission is notorious.

Antigua and Barbuda, Canada and the United States of America supported the NGO viewpoint. Nevertheless, the Nicaraguan proposal found support among several governments, including those of Brazil, Colombia and Mexico. The decision on the proposal is still pending and, as it now stands, could go either way. The NGOs will continue to lobby for the rejection of this proposal.

The NGOs attending the debates agreed that it was not a matter of dismissing the fact that the work of the Commission - especially in terms of protection - can and should be improved, but rather that unfounded criticisms challenging the legitimacy of its exercise of that duty are counterproductive. Emphasis should instead be placed on the States' compliance with the Commission's recommendations in order to ensure the effective enjoyment of human rights.

3 The Inter-American Court of Human Rights

The President of the Court, Dr. Rafael Nieto Navia, presented the Court's Report to the Committee on Juridical and Political Affairs of the General Assembly. In contrast to previous years, he did not mention the lack of full compliance by Honduras with its Court-imposed obligations in the Velásquez Rodríguez and Godínez Cruz cases. According to unofficial statements, the new Government of Honduras would be ready very soon to comply with all of the Court's decisions, which until now have only partially been carried out.

Three vacancies in the Court were filled in Belém. Judges are elected in their personal capacity and not as representatives of their countries. In the weeks preceding the election, there was much controversy surrounding the nomination by the Government of Argentina of Dr. Carlos Corach, a high-ranking official of that country's executive branch, owing to the fact that his election would go against the rules concerning incompatibility as contained in Article 18 of the Court's Statute. Dr. Corach's candidacy was ultimately withdrawn on 2 June, only three days before the General Assembly.

Elected as judges were Alirio Abreu Burelli, Antonio Cançado, and Trindade y Oliver Jackman, nationals of Venezuela, Brazil and Barbados, respectively, who, as mentioned previously, will serve in a personal capacity.

4 The Inter-American Convention on Forced Disappearance of Persons

After years of work and numerous setbacks, the OAS General Assembly adopted the Inter-American Convention on Forced Disappearance of Persons [OAS/Ser. P, GA/doc. 3114/94]. The process of drafting the instrument, begun in 1987, nearly floundered two years ago. This led to the paradox of the United Nations being the first to adopt an instrument on forced disappearances («Declaration on the Protection of All Persons from Enforced and Involuntary Disappearance») which was inspired by the fact that a convention was being prepared at the inter-American level.

The NGOs, including the Law Group and the ICJ, worked jointly to resurrect the draft convention. By virtue of a General Assembly resolution adopted in 1992, the NGOs began to participate alongside the other States in the Working Group responsible for drafting this instrument.

The Inter-American Convention defines forced disappearance as «the act of depriving a person or persons of his or their freedom, in whatever way, perpetrated by agents of the State or by groups of persons acting with the authorization, support, or acquiescence of the State, followed by an absence of information or a refusal to acknowledge that deprivation of freedom or to give information on the whereabouts of that person, thereby impeding his or her recourse to the applicable legal remedies and procedural guarantees» (Article 2).

3 OAS/Ser.P, GA/doc. 3114/94, 8 June 1994.

Among the most controversial aspects of the Convention was the classification of forced disappearance as a crime against humanity. This classification had already been applied in OAS General Assembly resolutions (which, moreover, had been quoted by the Inter-American Court of Human Rights in the Velásquez Rodríguez and in the UN Declaration on the subject, the preamble of which states that «the practice of such acts is of the nature of a crime against humanity». Finally, the Inter-American Convention contains a provision in its Preamble according to which «the systematic practice of the forced disappearance of persons constitutes a crime against humanity.»

The Convention mentions several points which are inferred from the classification of forced disappearance as a crime against humanity, including the inadmissibility of due obedience to superior orders as grounds for defence. Dangerously, the 1992 draft convention recognized these grounds, despite the serious implications this would have had in an international instrument for the prevention and punishment of forced disappearances. By not admitting the defence of due obedience, the Convention reaffirmed the provisions of the corresponding UN instrument, as well as what had already been established by the Inter-American Convention for the Prevention and Punishment of Torture.

The new instrument also contains a series of measures to be adopted in the internal legislations of the States Parties, including: the exclusion of all special jurisdictions, particularly military, in trying these acts (Article 9); internal laws may not deem acts constituting forced disappearance to have been committed in the course of military duties (Article 9); States must maintain official up-to-date registries of detainees and make them available to persons with a legitimate interest (Article 11); judges must be guaranteed free access to detention centres and «to all places where there is reason to believe the disappeared person might be found, including places that are subject to military jurisdiction» (Article 10); etc.

The NGOs objected to two aspects which were retained in the Convention. The first concerned the issue of statutory limitations. In accordance with established principles, crimes against humanity are not subject to statutory limitations. Whereas the Convention maintains the non-applicability of statutory limitations to forced disappearances as a general rule, it stipulates that where there is a law of fundamental character imposing a statute of limitations for all types of crimes, «the period of limitation shall be equal to that which applies to the gravest crime in the domestic laws of the corresponding State Party» (Article 7, paragraph 2). The second objectionable aspect concerned the processing of petitions regarding forced disappearances, particularly in the initial stages, which, in general are subject to the procedures for individual petitions in the inter-American system. However, the Convention stipulates that before ruling on the admissibility of a petition regarding forced disappearance, the Inter-

4 E/CN.4/1992/19/Rev. 1, p. 8.

American Commission on Human Rights must urgently and confidentially request information from the State in question. The NGOs objected to this last point, since they viewed the public petition to be an important factor in preventing the consummation of a disappearance.

5 The Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women («Convention of Belém do Pará»)

The approval of this instrument [OAS/Ser. P, GA/doc. 3115/94] confirmed the growing importance being given to the rights of women in international forums, including the inter-American system.

The ICJ and the Law Group lobbied for its adoption, given that violence against women in the region is practised systematically, resulting in the death, injury and social marginalization of women.

Among the most noteworthy aspects of the Convention is the proposal to eradicate social practices which subordinate women for economic, cultural and other reasons. Also notable is the requirement that States adopt measures to prevent, punish and ultimately, eradicate violence against women in situations involving internal conflict and displaced populations, contexts in which such practices usually occur.

According to the Convention, States are responsible both when violence against women has been perpetrated by the State or its officials and when it has been tolerated by them. The Inter-American Commission of Women and the Inter-American Commission on Human Rights were designated as supervisory bodies.

6 NGO Status with Respect to OAS Policy-Making Bodies

Although this issue was not discussed formally during the General Assembly sessions, the NGOs present held a series of meetings aimed at obtaining legal recognition from the policy-making bodies of the OAS (the Permanent Council and its working groups; the General Assembly). They also established contact with several national delegations (including Canada, Chile, the United States of America and Uruguay) to obtain their support, finding them to be receptive.

As to what would be the most appropriate legal mechanism to ensure NGO access to the policy-making bodies of the OAS, one idea is for the NGOs to be granted consultative status with the Permanent Council. This would enable them to participate in the Council and its working groups, as well as in the First and Second Committees of the Council and General Assembly. As regards these, the bulk of NGO work focuses on the Committee on Juridical and Political Affairs, the Economic and Social Council, and the Council for Education, Science and Culture, especially as concerns the allocation of resources to the inter-American organizations working in the field of human rights. This solution would enable the NGOs to attend the sessions of the bodies mentioned previously and to make oral interventions in the greatest number of such bodies as possible. Lastly, such a mecha-

nism would have to permit NGOs to distribute their documents as official OAS documents, as is already being done in the UN.

Negotiations continued along these lines following the General Assembly as part of efforts to obtain legal recognition as soon as possible.

7 Haiti

During the General Assembly, the Ad-Hoc Meeting of Ministers of Foreign Affairs on Haiti issued a resolution stating that the de facto military authorities in Haiti had failed to comply with the Agreement of Governor's Island and that the political leadership and the Haitian people were impeded from freely exercising their fundamental rights. The resolution also stated that the «Inter-American Commission on Human Rights has confirmed that the overall human rights situation in Haiti shows a very grave deterioration in, and disregard for, the most elementary human rights, within the context of a systematic plan to intimidate and terrorize a defenceless people.» (The Commission travelled to Haiti in May and presented its report to the General Assembly).

Before and during the General Assembly, the Government of the United States of America attempted to garner the support of OAS members for a military intervention in Haiti. However, its initiative did not succeed. Instead, it was decided to emphasize the need for OAS Member States to support and reinforce the embargo measures, including the suspension of commercial flights and financial transactions with Haiti.

8 Capital Punishment in Peru

The recently promulgated Peruvian Constitution extended the list of acts punishable with the death penalty. This is in open violation of the obligations undertaken by the Peruvian State as a State Party to the American Convention on Human Rights, Article 4 of which prohibits such extensions. The Inter-American Court of Human Rights was categorical in establishing the scope of this requirement in its Advisory Opinion on Restrictions to the Death Penalty (Inter-American Court of Human Rights, Restrictions to the Death Penalty; Articles 4(2) and 4(4) of the American Convention on Human Rights; Advisory Opinion OC-3/83 of September 8, 1983. Serie A, No. 3).

It is unfortunate that the OAS General Assembly did not issue a statement and adopt measures in this connection, given the gravity of the situation and the message that the Peruvian Government may be conveying to other States Parties to the «Pact of San José.»

9 HIV and AIDS

Although no separate resolution was adopted on persons carrying the Human Immunodeficiency Virus (HIV) and affected by the Acquired Immune Deficiency Syndrome (AIDS), these issues were mentioned in the resolution on the Report of the Inter-American Commission of Human Rights.

In this regard, Paragraph 18 of that resolution establishes the need to respect

the principle of non-discrimination, to ensure legal and social equality for persons infected with HIV and those suffering from AIDS, to urge Member States to provide such persons with adequate treatment and, fully respecting the human rights of sick persons, to adopt the necessary educational and public health measures to prevent the spread of that disease and others similar to it.

10 Resolution on the «Enhancement of the Administration of Justice in the Americas»

The General Assembly adopted a resolution on enhancing justice, in which it invites the OAS Permanent Council to study the various aspects of the subject and submit a report to the next General Assembly.

With respect to human rights, there are daily examples of serious deficiencies in the bodies entrusted with administering justice in many countries in the region. Thus, in processing individual cases the Inter-American Commission on Human Rights often waives the requirement that domestic remedies be exhausted, as it considers those which remain to be ineffective. Delays in justice, the lack of impartiality on the part of certain judges, breaches of due process and of the requirement to provide proper legal defence, as well as the need for transparency in trials are some of the crucial issues to be examined by the Permanent Council.

IV Conclusion

The approval of two new international human rights instruments was the most outstanding accomplishment of the inter-American system in 1994. In preparing the Inter-American Convention on Forced Disappearance, the point was made that cooperation between NGOs and the system's policy-making bodies can be fruitful. Nevertheless, the inter-American system of human rights continues to reveal many weaknesses and remains less than fully effective.

In this context, emphasis must be placed on the NGOs' need to obtain formal and legally recognized access to the policy-making bodies of the OAS in order to strengthen the Organization's efforts in the field of human rights.

The 46th Session of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities

In a world still adrift in the wake of the ending of Cold War, the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities held its 46th Session from 1-26 August 1994 in the UN Office at Geneva. Mrs. Judith Attah (Nigeria) was unanimously elected Chairperson of the Session.

In the words of one of the Sub-Commission members, the current state of international affairs is more aptly described as the «New World Disorder.» It is characterized by disturbing trends which have serious implications for the enjoyment of all categories of human rights. Amongst these are the deepening socio-economic gulf between, on the one hand, the developed world, and, on the other, the developing and economies-in-transition countries; the vicious ethnic conflicts in Both Africa and Eastern Europe; and increasing manifestations of racism and other forms of intolerance throughout the world.

We are also witnessing an abdication of State responsibility in many areas crucial to the effective realization of human rights. This ranges from the complete collapse of State structures in the midst of civil strife, to an increasing tendency in developed countries towards economic deregulation and privatisation.

These themes were reflected in much of the work and debates of the Sub-Commission. The political and economic instability of the emerging world order reinforces the need to strengthen the mechanisms and procedures for the protection of human rights in the world. In some areas, the Sub-Commission made significant progress. However, particularly in relation to its consideration of country situations, its work was characterized by an unacceptable degree of selectivity and lack of objectivity.

Combating Impunity

The darkest shadows cast over the Sub-Commission were the genocide committed in Rwanda and the war crimes perpetrated in Bosnia and Herzegovina. These crises reinforced the urgent need for the establishment of international mechanisms to combat impunity in respect of the perpetrators of gross violations of human rights, and to strengthen the enforcement mechanisms of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide.

Rwanda

In a resolution it adopted on the situation in Rwanda, the Sub-Commission called for both national and international action to identify and hold accountable the individuals responsible

for the atrocities, and for guaranteeing compensation to the victims or their heirs in accordance with the principles of international law. In the light of the invidious role played by a local radio station, *Radio mille collines*, in fuelling the conflict in Rwanda, it also emphasized the accountability of the media for war propaganda and incitement to ethnic and racial hatred. Finally, the Sub-Commission stressed the importance of establishing an international criminal court in order to try the persons responsible for the crimes committed in the context of the Rwandan conflict.

A Permanent International Criminal Court

The Sub-Commission adopted a resolution in which it requested the UN Commission on Human Rights to recommend the urgent consideration and adoption of the draft Statute for an International Criminal Court submitted to the UN General Assembly by the International Law Commission. The ICJ, which has been advocating the establishment of such a tribunal, welcomed the call for the urgent adoption of the Statute. However, in its statement to the Sub-Commission, the ICJ expressed concern that the draft Statute did not incorporate a procedure by which victims of international crimes and crimes against humanity could lodge complaints, as well as the undue restrictions on the jurisdiction of State parties to refer complaints relating to crimes other than genocide to the Court. It also has reservations concerning the jurisdiction conferred on the UN Security Council by the draft Statute to make a determination that a State has committed an act of aggression before a complaint against an individual alleging a crime of aggression can be lodged. According to the ICJ, this procedure could unnecessarily politicise the workings of the Court.

However, the ICJ believes that the draft Statute provides an excellent and realistic overall framework for a permanent International Criminal Court. Such a tribunal would not only provide an appropriate forum to deal with the perpetrators of gross violations of humanitarian and human rights law, but would also serve as a deterrent against such acts in the future. A study by the Expert, Mr. Chernichenko (Russian Federation), on the definition of gross and large-scale violations of human rights and international crimes will also facilitate progressive development in the enforcement of international human rights law standards. [E/CN.4/Sub.2/1993/10 and Corr.1]

Reform of the Genocide Convention

The Sub-Commission called on State Parties to the Genocide Convention to consider the establishment of a treaty committee to monitor compliance with the Convention through the assessment of State reports, and, as a preventive step, to draw the attention of the UN High Commissioner for Human Rights to situations which may lead to genocide. It will also be studying the implications of extending the scope of the Convention to cover similar acts committed with a political motive.

Impunity and Economic, Social and Cultural Rights

In the field of economic, social and cultural rights, the Sub-Commission also recognized the importance of combating impunity. This year, the Special Rapporteurs on impunity, Mr. Guissé (Sénégal) and Mr. Joinet (France), did not consider the question of impunity for perpetrators of violations of civil and political rights. Instead, as requested by the Sub-Commission at its previous session, they focused on economic, social and cultural rights. In their preliminary report on this aspect, they dealt with the development of principles and mechanisms of accountability for corruption and the responsibility of the international financial institutions [E/CN.4/Sub. 2/1994/11]. A group of NGOs, including the ICJ, expressed concern that the report focused only on these two aspects of a much broader problem.

Compensating the Victims

An important dimension of the fight against impunity is entrenching the right to reparation under international law for victims of gross human rights violations. Progress was made in this regard through an important study by the Special Rapporteur, Mr. van Boven (Netherlands) [E/CN.4/Sub.2/1993/8]. The Sub-Commission's sessional Working Group on the question of the human rights of detained persons was renamed the «Working Group on the Administration of Justice and the Question of Compensation» in order to give separate consideration to the issue of compensation. It decided to continue its analysis and consideration of the basic principles and guidelines concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms proposed in Mr. van Boven's study. The possibility exists that the Sub-Commission may decide to establish a separate sessional working group solely on the question of compensation at its next session.

UN Humanitarian Action and Human Rights

In the light of the problematic nature of the recent humanitarian-inspired UN interventions in Somalia, Iraq, Rwanda, and Haiti, and the increasing involvement of the UN in providing and coordinating humanitarian assistance in many areas, the Sub-Commission has recognized the need to develop clear guidelines and principles to govern UN activities in this complex field. In its previous session, the Sub-Commission decided to include a separate agenda item on this question. In the current session, it adopted a unanimous resolution in which it recommended to the Commission that it appoint Mrs. Palley (United Kingdom) as Special Rapporteur to continue her study on the implications for human rights of UN action and humanitarian assistance under the UN Charter. In the interesting debate on this subject, following the presentation of a preliminary working paper by Mrs. Palley [E/CN.4/Sub.2/1994/39], many speakers referred to the selective and politically compromised character of coercive interventions by the UN. Some members were of the view that this issue would have to be addressed not only through the development of objective

and clear standards to govern such interventions, but through a reform of UN structures and procedures to ensure their representitivity, and compliance with democratic principles. Questions were also raised by some experts concerning the propriety of economic sanctions in the light of international human rights standards.

The Eradication of Racial Discrimination, Xenophobia, and other Contemporary forms of Intolerance

The Sub-Commission decided to terminate its agenda item on South Africa at its next session after consideration of the final report by the Special Rapporteur, Mrs. Attah (Nigeria). This represented an historic occasion in the battle against *apartheid*. The ending of *apartheid* in South Africa represents not only a victory against racism, but also a significant demonstration of a peaceful and constructive process of transition to democracy.

However, a number of statements from NGOs and experts drew attention to the serious and alarming manifestations of racism and other forms of intolerance in the world. This ranged from the phenomena of «ethnic cleansing» in the former Yugoslavia and many other parts of the world to continued manifestations of anti-Semitism. A more subtle but powerful form of ethnic discrimination is behind the tightening of the immigration policies and laws in many developed countries. In the light thereof, the Sub-Commission recommended that a world conference against racism, racial and ethnic discrimination, xenophobia and other related contemporary forms of intolerance take place in 1997, in the context of the Third Decade to Combat Racism and Racial Discrimination proclaimed by the General Assembly.

Indigenous Peoples

The adoption by the Sub-Commission of the draft UN Declaration on the Rights of Indigenous Peoples [E/CN.4 Sub.2/1994/2/Add.1] was a landmark in the progress of this Declaration through UN structures. Work on the drafting of this Declaration began almost a decade ago. The Sub-Commission submitted the draft Declaration to the Commission on Human Rights with a request that it consider the draft as expeditiously as possible at its 51st Session. It also recommended to the Commission and ECOSOC that they take effective measures to ensure that representatives of indigenous peoples are enabled to participate in the consideration of the draft Declaration by these two bodies, regardless of their consultative status with ECOSOC. The hope was expressed by a representative of an indigenous persons' organization in a statement to the Sub-Commission that the highlight of the International Decade of the World's Indigenous Peoples commencing on 10 December 1994 would be the adoption by the General Assembly of a universal convention.

In her report to the Sub-Commission, the chairperson of the Working Group on Indigenous Populations, Mrs. Daes (Greece) drew attention to the process involved in the drafting of the Declaration. This process

was unique in UN history for its openness and transparency. The Working Group had provided a forum for consultation and participation by a wide range of indigenous groups, NGOs and governments.

On the substance of the Declaration, some governmental observers expressed reservations about the key right to self-determination for indigenous peoples recognized in Article 3 of the draft Declaration. However, Mrs. Daes and other experts emphasized that most indigenous groups did not seek secession from existing States, nor did they aspire to separate statehood. What was rather envisaged was the recognition of a special right to a degree of territorial or functional autonomy (or both) for indigenous peoples within a framework of cooperation with the State. This was an essential prerequisite to enable indigenous persons to ensure their physical and cultural survival as a distinct group without assimilation by dominant groups in societies. It was also necessary to preserve the close relationship of indigenous groups to their traditional lands, including preservation of the environment of such lands. A further significant aspect of the draft Declaration is the requirement in Article 33 that the promotion and maintenance of the customs and traditional structures of indigenous persons must occur in conformity with internationally recognized human rights standards.

A Working Group on Minorities

The proper recognition of minority rights, and the development of adequate national and international mechanisms for the early detection, resolution and prevention of conflicts involving minorities were identified as key elements in a comprehensive programme proposed by the Sub-Commission member, Mr. Eide (Norway). Arising out of his important working paper on the rights of minorities [E/CN.4/Sub.2/1994/36] , the Sub-Commission adopted a resolution in which it requested the Commission and ECOSOC to endorse the establishment of an inter-sessional working group. This working group would be composed of five of its members and be open to representatives of minorities regardless of their consultative status. Its mandate would be to examine, *inter alia*, peaceful and constructive solutions to situations involving minorities, and would incorporate an early warning and preventive element. In particular, it would be charged with:

- reviewing the practical application of the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities;

- providing recommendations to the Sub-Commission, the High Commissioner of Human Rights and other competent entities on measures for the protection of minorities where it identifies a risk of the erup-

1 Also see his final report on the protection of minorities: E/CN.4/Sub.2/34 and Add.1-4.

tion or escalation of violence between different groups in society;

- promoting dialogue between minority groups in society and between those groups and the governments.

The Right to a Fair Trial under all Circumstances:

A Possible Third Protocol to the Covenant?

The final report by Mr. Treat (USA) and Mr. Chernichenko (Russian Federation) on the right to a fair trial was presented to the Sub-Commission [E/CN.4/Sub.2/1994/24]. The two most significant aspects of this report are the following:

- a draft «Body of Principles on the Right to a Fair Trial and a Remedy» which is intended to consolidate international standards on a fair trial

- a draft Third Optional Protocol to the International Covenant on Civil and Political Rights aimed at guaranteeing, under all circumstances, the right to a fair trial and a remedy. This Protocol is specifically intended to ensure the non-derogability during public emergencies of Articles 2.3, 9.3, 9.4, and 14 of the Covenant.

It was noted, however, that the Human Rights Committee was not in favour of such a Third Protocol because it could undermine existing jurisprudence on the non-derogability of fair trial rights and have negative implications for non-State parties to the Covenant. In a resolution adopted by the Sub-Commission on this subject, it reaffirmed that the above articles of the Covenant should be considered non-derogable as they «are necessary to protect other non-derogable rights.» The ICJ had previously recommended to the Sub-Commission that they call on States «to maintain, at all times and under all circumstances, the right to *habeas corpus* as set forth in Article 9(4) of the International Covenant on Civil and Political Rights.» The Sub-Commission also recommended that the Commission consider at its 52nd Session the establishment of an open-ended working group to draft a Third Optional Protocol to the Covenant «aiming at guaranteeing under all circumstances the right to a fair trial and a remedy.»

Military Tribunals

The Andean Commission of Jurists (an ICJ affiliate) and a number of other NGOs expressed concern in their statements to the Sub-Commission that the above draft «Body of Principles on the Right to a Fair Trial and a Remedy» allowed for military jurisdiction over civilians (albeit on a restrictive basis), for example, when the civilian has committed an offence in a military facility. They expressed their conviction that

2 Joint intervention by the International Commission of Jurists (ICJ) and the *Fédération internationale des droits de l'homme* (FIDH), *Habeas Corpus as a Non-Derogable Right*, UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, 43rd Session (August 1991).

military tribunals should not enjoy jurisdiction over civilians and in respect of common crimes committed by military personnel under any circumstances.

Freedom of Movement

The Sub-Commission unanimously adopted an important resolution affirming the right of persons «to remain in peace in their own homes, on their own lands and in their own countries.» It also affirmed the right of refugees and displaced persons «to return, in safety and dignity, to their country of origin and/or within it, to their place of origin or choice.» This resolution arose out of a detailed analysis of the human rights dimensions of population transfer, including the implantation of settlers, contained in the progress report of Mr. Al Khasawneh (Jordan) [E/CN.4/Sub.2/1994/18].

Other Fields of Activity

The Sub-Commission also adopted resolutions in its following fields of activity:

- It recommended that the Commission authorize the Working Group on Contemporary Forms of Slavery to continue its work on reviewing the implementation of the 1926 and 1956 Slavery Conventions;

- Mrs. Chavez (USA) was invited to submit a working paper on the situation of systematic rape, sexual slavery and slavery-like practices during wartime;

- recommendations were adopted on a programme of action for the prevention of the sale of children, child prostitution and child pornography, and on the prevention of traffic in persons;

- the UN Secretary-General was asked to report on greater coordination within the UN on rights and endeavours affecting disabled persons, and to facilitate a discussion on the possible exercize of Ombudsman functions in this area;

- a comprehensive resolution on the question of discrimination in the context of HIV or AIDS was adopted by consensus;

- the Commission on Human Rights was also requested to extend the mandate of the Sub-Commission's Special Rapporteur, Mrs. Warzizi (Morocco), for two more years to enable her to undertake an in-depth study concerning the differences and similarities between traditional practices affecting the health of women and children in many parts of the world;

- finally, a resolution proposed by 19 experts on the obstacles to the establishment of a democratic society was postponed for consideration at the next session of the Sub-Commission.

Lack of Independence

In spite of these achievements, the Sub-Commission continued to display

many of the negative features which have marred its work in past sessions. A continuing problem is the lack of independence of some of its members. The Commission on Human Rights has established criteria for ensuring the appointment of independent and impartial experts to the Sub-Commission. Notwithstanding these guidelines, many of the experts have an unacceptable degree of association with the governments by whom they were nominated, such as diplomatic representatives, members of foreign affairs ministries or governmental advisers.

Selectivity in Dealing with Country Situations:

the cases of Colombia, Peru and Indonesia

This lack of independence of some of the Sub-Commission's members is reflected in the selectivity with which it continues to deal with country situations. This selectivity was displayed in the current session by the Sub-Commission's failure to adopt resolutions on the grave human rights situations in Colombia and Peru. The serious and systematic pattern of gross violations is not only publicly known but, particularly in the case of Colombia, was brought to the attention of the Sub-Commission in a number of statements by NGOs and were referred to by a number of experts in the general debates. A resolution condemning the serious human rights violations by Indonesia in East Timor was narrowly defeated (11-11-1). Another resolution condemning the human rights violations by Indonesia in West Papua, the Aceh region of Sumatra and the Moluccas was also defeated (7-14-3-1).

Other Country Resolutions

Iraq

A resolution was adopted condemning the human rights violations committed by the Government of Iraq (14-7-3-1). The resolution called on the government to cease its siege and internal embargo against the north and the Shiite populations in the south, and to re-establish the electricity supply to both regions. It also called on the government to cease its terrorists acts against opposition leaders and UN personnel. Concern was expressed over the continued refusal of the government to cooperate with the Special Rapporteur of the Commission on Human Rights, Mr. van der Stoel (Netherlands). It urged a visit by the Special Rapporteur to the border zones and marshlands, and to report his findings to the General Assembly. Finally, the Sub-Commission urged the implementation of Security Council Resolution 688 (1991) of 5 April 1991, and the recommendations of the Special Rapporteur to station permanent monitors in the area of the marshlands and establish permanent aid centres.

Islamic Republic of Iran

The resolution adopted concerning the human rights situation in the Islamic Republic of Iran (15-6-3-1) took into consideration the extensive and continuing human rights violations by the government. These included, *inter alia*, arbitrary and summary executions, torture, inhuman and degrading treatment and punishment, lack of guarantees for a fair trial and disregard for freedom of

expression and freedom of religion. The situation of women and the practice of gender-based discrimination in the country received particular attention in the resolution. The Sub-Commission demanded that the government cease its attacks on religious groups such as Bahai's and Christians, and also any involvement in or toleration of murder and State-sponsored terrorism. The government responded by claiming that the resolution was sponsored by terrorist groups which were motivating the actions of the Sub-Commission. The situation in Iran will be considered further at the Sub-Commission's next session.

Burundi

After a debate on the situation in this African country, closely linked with the dramatic events in neighbouring Rwanda, the Sub-Commission adopted a resolution by consensus. It took into consideration the effects of racial hatred and violence, and the forcible transfer and exodus of people from Burundi. This also had the effect of loss of agricultural production which risked major nutritional problems. The Sub-Commission requested the establishment, by independent bodies, of the individual responsibility of those involved in the massacres of civilians which occurred in the spiral of violence catalysed by the assassination of the President of the Republic on 21 October 1993. It urged the government to take all effective measures necessary to carry out an inquiry into arbitrary executions, to punish those responsible, disarm the population and repress all forms of encouragement of racial hatred. Finally, it called on the relevant UN bodies to strengthen their surveillance of the human rights situation in Burundi, including the sending of observers, with a view to preventing any re-emergence of violence.

Chad

It emerged from the debate on this resolution, that the situation of human rights in Chad was being considered under the confidential procedure of Resolution 1503. A public resolution was also adopted (18-6-1) in which the Sub-Commission expressed its deep concern over the flagrant systematic violations in the country, and the impunity enjoyed by those responsible for the violations. It particularly condemned the «massive and persistent violations» committed by the armed and security forces, including the Republican Guard. It also called on the Commission on Human Rights to establish a monitoring system for the general human rights situation in Chad with a view to examining the question at its 52nd Session. Chad will be on the Sub-Commission's agenda at its 47th Session.

Bougainville

A resolution on this territory was adopted without a vote, particularly in the light of the report presented by Mr. Ndiaye (Senegal), the Special Rapporteur of Commission on Extrajudicial, Summary or Arbitrary Executions. The Sub-Commission called on the Government of Papua New Guinea to allow the immediate and unconditional flow of humanitarian assistance into all parts of Bougainville, including the area currently subject to a military blockade. It also urged the government to invite the relevant Special Rapporteurs to investigate

reports of torture and extrajudicial, summary and arbitrary executions and to cooperate with them.

Haiti

In the period after the adoption of Security Council Resolution 940 (1994) of 31 July 1994, the situation in Haiti remained critical. A resolution on Haiti was adopted by consensus in which the Sub-Commission expressed its conviction that the full implementation of the Governor's Island Agreement by all parties was the only valid framework for resolving the crisis. The human rights violations committed by members of the armed forces received strong condemnation. The Sub-Commission also expressed concern about the fate of the Haitian nationals who were fleeing their country. It expressed the hope that the good offices mission being prepared by a group of Latin American countries would be successful, and lead to the restoration of democracy in Haiti within the framework of the Governor's Island Agreement. Finally, it was decided to continue consideration of the situation of human rights in Haiti at the next session.

Guatemala

The progress of the peace process in Guatemala was observed with satisfaction by the Sub-Commission. However, it expressed its concern that there continued to be complaints about human rights violations from all sides despite the signing of the Comprehensive Agreement on Human Rights. The Sub-Commission also noted the fact that cases of impunity continue to exist, and that little progress had been made in the investigation and judicial proceedings concerning cases of human rights violations. The Secretary-General was requested to ensure the establishment, as soon as possible, of the United Nations Verification Mission in Guatemala.

Middle East

The peace process in this region initiated at Madrid on 30 October 1991, was endorsed by the Sub-Commission in a unanimous resolution. It expressed support for the active role and the assistance provided by the UN in implementing the Declaration of Principles of Interim Self-Government signed by the State of Israel and the Palestine Liberation Organization (PLO). This Declaration, according to the Sub-Commission, constituted a positive contribution to the protection of human rights in the Middle East. It was decided to take no action on another resolution proposed by a group of experts, condemning the disregard by Israel for the applicable rules of humanitarian law and for human rights violations, including the establishment of Israeli settlements in the Occupied Territories.

Concluding Address

The session ended with a concluding address by the UN High Commissioner for Human Rights, Mr. José Ayala Lasso. He reported on the outcome of his recent visits to three African States: Rwanda, Burundi and Malawi. It appeared that the governments had generally responded positively to his diplomatic initiatives on behalf of the UN to improve the human rights situations in these countries, especially with

regard to technical and advisory services. He also praised the achievements of the Sub-Commission, highlighting in particular the progress on the draft Declaration on the Rights of Indigenous Peoples and preventive measures for the protection of minorities.

Confidential Procedure: Resolution 1503

The Sub-Commission considered the cases of countries subject to the confidential procedure of ECOSOC Resolution 1503, which was set up to deal with persistent situations of grave and flagrant human rights violations. Although the Sub-Commission's programme called for it to examine a reform of the confidential procedure, and possibly even its annulment, it did not proceed to this discussion during its 46th session. Nor was it possible to find out which cases the Sub-Commission had considered, with the exception of Chad.

The ICJ has indicated its concern over the growing tendency for the Sub-Commission to use the confidential procedure as a pretext for withholding grave human rights violations from public awareness and discussion. This distorted interpretation of Resolution 1503 has led to the notion that the only way to resolve the problems it creates is to rescind the resolution and, with it, the procedure for considering persistent situations of grave human rights violations. This creates a false dilemma, since the main problem is the establishment of an effective mechanism for dealing with and correcting situations of grave and persistent human rights violations.

Economic, Social and Cultural Rights

Various aspects of this important subject were considered by the Sub-Commission, the most noteworthy of which were proposed measures to ensure the full realization of economic, social and cultural rights [E/CN.4/Sub.2/1994/L.18/Rev.1]. The Sub-Commission requested that the Commission on Human Rights consider appointing thematic rapporteurs to investigate specific economic, social and cultural rights, paying special attention to the right to adequate housing and the relationship between human rights and the environment. The rapporteurs should also examine the work carried out by the Committee on Economic, Social and Cultural Rights concerning the adoption of an optional protocol to the International Covenant on Economic, Social and Cultural Rights granting individuals and groups of individuals the right to submit communications alleging non-compliance by States Parties with the provisions of the Covenant.

The Commission was also asked to request each country rapporteur to include a specific reference to the enjoyment of economic, social and cultural rights in their reports. The Secretary-General was requested to continue efforts to obtain legislative recognition of these rights in the UN Member States, as well as to make concrete proposals as to the need for further standard-setting in this field, taking into account the draft international convention on housing rights contained in the second progress report of the Special Rapporteur on promoting the realization

of the right to adequate housing [E/CN.4/Sub.2/1994/20] and the draft declaration of principles on human rights and the environment [E/CN.4/Sub.2/1994/9, annex 1].

The Sub-Commission discussed the relationship between income distribution and the enjoyment of human rights, and appointed as Special Rapporteur on this topic, Mr. Bengoa {Chile}, who was requested to pay special attention in his report to aspects concerning the realization of the rights to development and education. He is to submit his final report to the Sub-Commission at its 49th session.

The interim report on human rights and extreme poverty [E/CN.4/Sub .2/1994/19], presented by the Special Rapporteur, Mr. Despouy (Argentina), was well-received by the Sub-Commission. Of interest was the proposal to hold a seminar on «Extreme poverty and denial of human rights» (October 1994, New York) with the participation of persons living in extreme poverty and those who lend them assistance. In his report, the Special Rapporteur specified the essential aspects of the study: the definition and causes of extreme poverty, the policies aimed at eradicating it, and the efforts of national and international organizations to address this problem.

The ICJ conveyed its observations to the Sub-Commission concerning the obvious link between development, democracy and human rights, as had already been noted by the World Conference on Human Rights, held in Vienna in 1993. The ICJ also pointed out that the term «right to development» should not be interpreted strictly from the standpoint of economic growth, since, as indicated by the Special Rapporteur, Mr. Despouy, «economic growth does not necessarily go hand-in-hand with a proportional decline in poverty» (Paragraph 39 of the interim report). Popular participation, as a right and obligation of the citizen, is considered to be a necessary element for democratic functioning. However, extreme poverty is an obstacle to such participation and, consequently, to the enjoyment of civil and political rights.

In its presentation, the ICJ stressed that the Sub-Commission should focus its efforts on the search for legal mechanisms to make economic, social and cultural rights exigible in national courts of law and international judicial bodies. Likewise, the international bodies charged with promoting and protecting these rights should be strengthened. The Committee on Economic, Social and Cultural Rights is carrying out this task at the initial level, despite the lack of an effective system to follow-up on its decisions.

The Sub-Commission also considered two aspects relating to the enjoyment of the right to housing, including: a) human rights dimensions of population transfer and the implantation of settlers [E/CN.4/Sub.2/1994/18, corr. 1]; and, b) forcibly displaced persons. It invited the Committee on Economic, Social and Cultural Rights to consider the adoption of general observations on the subject, with reference to the specific obligations of the States Parties to the International Covenant concerning the rights to adequate food and housing.

Draft International Convention against Enforced Disappearance

Continuing a process begun more than a decade ago, the Sub-Commission entrusted the expert, Mr. Joinet (France), with a study on compliance with measures taken in observance of the Declaration on the Protection of all Persons from Enforced Disappearance, which was adopted by the UN General Assembly in 1992. Mr. Joinet was asked to present a draft universal convention on this subject to the next session of the Sub-Commission, for consideration by the Working Group on the Administration of Justice and the Question of Compensation. Mention should be made of the offer made by the NGOs to assist the expert in his task and of the experience gained by these organizations in drafting the 1992 UN Declaration and the Inter-American Convention on Forced Disappearance of Persons, which was ultimately adopted by the 24th General Assembly of the OAS in June 1994.

Within the context of the programme on the Administration of Justice and the Human Rights of Detained Persons, the ICJ expressly indicated in its presentation to the Sub-Commission that forced disappearance constitutes «a crime against humanity and should be declared as such in an international instrument,» indicating strong support for the Sub-Commission's initiative. The ICJ also recalled the process of drafting the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the fact that the Sub-Commission itself had prepared the first draft of the Declaration on enforced disappearance in 1988.

The Sub-Commission's Working Methods and Procedures

The Sub-Commission voted to establish a five-member working group in order to address one of the most complex and controversial aspects of its programme: namely, the organization of its work with respect to the agenda item of the violation of human rights and fundamental freedoms. This initiative comes as a result of Resolution 1994/23, issued by the Commission on Human Rights, in which it repeats its invitation to the Sub-Commission to rationalize better its working programme.

The debate of the working group focused on suggestions for the Sub-Commission's working methods regarding this programme and, in particular, regarding the form of participation granted the NGOs and government observers. The working group ultimately adopted certain recommendations which prejudice the rights of NGOs in terms of the time available for their interventions. The working group approved limiting to two sessions the time allotted for the remarks of all observers, including NGOs. The available time would be divided evenly among those registered. This measure directly affects the right of NGOs' to present their papers since they have to share the time with government observers and intergovernmental bodies, implying a drastic reduction in the ten-minute limit originally set in the guidelines for NGOs. This elicited an immediate reaction from the NGOs present, who joined together in protesting the measure before the Sub-Commission.

The Sub-Commission did not arrive

at a decision concerning the time limit for oral interventions. Thus, the working group's suggestion remains pending. The situation did, however, call forth the more serious underlying issue of the NGOs' right to express their viewpoint in intergovernmental forums. The working group's proposal reveals a tendency to limit the NGOs' rights, under the guise of rationalizing the work of the Sub-Commission, which is unacceptable.

The working group adopted another measure in which it established a new order for discussion of this topic. Henceforth the debate would begin with the presentations of the NGOs, followed by the response of the government observers and lastly, by that of the experts.

Along the same lines, the Sub-Commission discussed and ultimately approved postponing the debate on the topic of violations of human rights and fundamental freedoms (the sixth item on its programme) to the first week of its next session. This initiative, proposed by the expert, Mr. Lingren (Brazil), is, in his own words, aimed at «avoiding the NGOs' lobbying efforts... and having more time to deal with more important matters.» This is another example of the problem mentioned previously in which, under the pretext of rationalizing the Sub-Commission's work, attempts are being made to diminish the NGOs' right to adequately express their viewpoints and pursue their activities in keeping with their role in the system.

This state of affairs, together with the already mentioned lack of independence in some experts and their selectivity in examining only certain countries, gives cause to reflect upon the current status of this important UN body, which is responsible for promoting and protecting human rights and alerting non-governmental organizations.

Human Rights and the Environment

The Sub-Commission took stock of the final report prepared by the Special Rapporteur, Mrs. Ksentini (Algeria), on human rights and the environment [E/CN.4/Sub.2/1994/9]. One of the most noteworthy aspects of the study was the clear relationship drawn between the right to development, democratic participation and the environment. This relationship is discussed at various points throughout the study and supports the notion of the indivisibility and interdependence of all human rights. The study also discussed such issues such as underdevelopment, poverty, environmental degradation and sustainable development. Other aspects of the problem were also analyzed, including: indigenous peoples and situations of armed conflict or those threatening international peace and security. Environmental degradation and its impact was also discussed in relation to the so-called vulnerable groups, which include women, children, young persons, disabled persons, and environmental refugees.

Among the recommendations made in the report was a special call to the various human rights bodies to examine the environmental dimension of human rights within the fields of concern to them. The study also presented the Sub-

Commission and the Commission on Human Rights with a draft declaration of principles on human rights and the environment. The Sub-Commission adopted a resolution recommending that the Commission on Human Rights request observations and make recommendations concerning the above-mentioned draft.

Lastly, the Sub-Commission adopted a resolution in which it requested the Commission to appoint a Special Rapporteur on human rights and the environment whose mandate would be to supervise, examine and receive communications and make recommendations on environmental problems which affect the full enjoyment of human rights. If appointed, the Special Rapporteur would present his or her report to the Commission on Human Rights at its 52nd session.

Basic Texts

Inter-American Convention on Forced Disappearance of Persons

Approved by the OAS General Assembly on June 9, 1994 in Belém do Pará, Brazil.

The General Assembly,

HAVING SEEN the report of the Permanent Council on the draft Inter-American Convention on Forced Disappearance of Persons (AG/doc 3072/94);

CONSIDERING that, through resolutions AG/RES.890 (XVII-0/87), AG/RES.950 (XVIII - 0/88), AG/RES.1014 (XIX - 9/89), AG/RES.1033 (XX - 0/90), and AG/RES.1172 (XXII - 0/92), the General Assembly has addressed the subject of the draft Inter-American Convention on Forced Disappearance of Persons, prepared by the Inter-American Commission on Human Rights;

BEARING IN MIND that in accordance with Article 3.k of the Charter of the OAS, one of the essential principles of the Organization of American States is to proclaim the fundamental rights of the individual without distinction as to race, nationality, creed, or sex; and

INSPIRED BY THE DESIRE to cooperate in preventing and punishing the forced disappearance of persons,

Resolves:

To adopt the following Inter-American Convention on Forced Disappearance of Persons :

Inter-American Convention on the Forced Disappearance of Persons

Preamble

The member states of the Organization of American States signatory to the present Convention,

DISTURBED by the persistence of the forced disappearance of persons;

REAFFIRMING that the true meaning of American solidarity and good neighbourliness can be none other than that of consolidating in this Hemisphere, in the framework of democratic institutions, a system of individual freedom and social justice based on respect for essential human rights;

CONSIDERING that the forced disappearance of persons is an affront to

the conscience of the Hemisphere and a grave and abominable offense against the inherent dignity of the human being, and one that contradicts the principle and purposes enshrined in the Charter of the Organization of American States;

CONSIDERING that the forced disappearance of persons violates numerous non-derogable and essential human rights enshrined in the American Convention on Human Rights, in the American Declaration of the Rights and Duties of Man, and in the Universal Declaration of Human Rights;

RECALLING that the international protection of human rights is in the form of a convention reinforcing or complementing the protection provided by domestic law and is based upon the attributes of the human personality;

REAFFIRMING that the systematic practice of the forced disappearance of persons constitutes a crime against humanity;

HOPING that this Convention may help to prevent, punish, and eliminate the forced disappearance of persons in the Hemisphere and make a decisive contribution to the protection of human rights and the rule of law,

RESOLVE to adopt the following Inter-American Convention on the Forced Disappearance of Persons :

Article I

The States Parties to this Convention undertake :

a) Not to practice, permit, or tolerate the forced disappearance of persons, even in states of emergency or suspension of individual guarantees;

b) To punish within their jurisdictions those persons who commit or attempt to commit the crime of forced disappearance persons and their accomplices and accessories;

c) To cooperate with one another in helping to prevent, punish and eliminate the forced disappearance of persons;

d) To take legislative, administrative, judicial, and any other measures necessary to comply with the commitments undertaken in this Convention.

Article II

For the purposes of this Convention, forced disappearance is considered to be the act of depriving a person or persons of his or her freedom, in whatever way, perpetrated by agents of the state or by persons or groups of persons acting with the authorization, support, or acquiescence of the state, followed by an absence of information or a refusal to acknowledge that deprivation of freedom or to give information on the whereabouts of that person, thereby impending his or her recourse to the applicable legal remedies and procedural guarantees.

Article III

The States Parties undertake to

adopt, in accordance with their constitutional procedures, the legislative measures that may be needed to define the forced disappearance of persons as an offense and to impose an appropriate punishment commensurate with its extreme gravity. This offense shall be deemed continuous or permanent as long as the fate or whereabouts of the victim has not been determined.

The States Parties may establish mitigating circumstances of persons who have participated in acts constituting forced disappearance when they help to cause the victim to reappear alive or provide information that sheds light on the forced disappearance of a person.

Article IV

The acts constituting the forced disappearance of persons shall be considered offenses in every State Party. Consequently, each State Party shall take measures to establish its jurisdiction over such cases in the following instances :

a. When the forced disappearance of persons or any act constituting such offense was committed within its jurisdiction;

b. When the accused is a national of that state;

c. When the victim is a national of that state and that state sees fit to do so.

Every State Party shall, moreover, take the necessary measures to establish its jurisdiction over the crime described in this Convention when the alleged criminal is within its territory and it does not proceed to extradite him.

This Convention does not authorize any State Party to undertake, in the territory of another State Party, the exercise of jurisdiction or the performance of functions that are placed within the exclusive purview of the authorities of that other Party by its domestic law.

Article V

The forced disappearance of persons shall not be considered a political offense for purposes of extradition.

The forced disappearance of persons shall be deemed to be included among the extraditable offenses in every extradition treaty entered into between State Parties.

The States Parties undertake to include the offense of forced disappearance as one which is extraditable in every extradition treaty to be concluded between them in the future.

Every State Party that makes extradition conditional on the existence of a treaty and receives a request for extradition from another State Party with which it has no extradition treaty may consider this Convention as the necessary legal basis for extradition with respect to the offense of forced disappearance.

State Parties which do not make extradition conditional on the existence of a treaty shall recognize such offense

as extraditable, subject to the conditions imposed be the law of the requested state.

Extradition shall be subject to the provisions set forth in the constitution and other laws of the requested state.

Article VI

When a State Party does not grant the extradition, the case shall be submitted to its competent authorities as if the offense had been committed within its jurisdiction, for the purposes of investigation and when appropriate, for criminal action, in accordance with its national law. Any decision adopted by these authorities shall be communicated to the state that has requested the extradition.

Article VII

Criminal prosecution for the forced disappearance of persons and the penalty judicially imposed on its perpetrator shall not be subject to statutes of limitations.

However, if there should be a norm of a fundamental character preventing application of the stipulation contained in the previous paragraph, the period of limitation shall be equal to that which applies to the gravest crime in the domestic laws of the corresponding State Party.

Article VIII

The defense of due obedience to superior orders or instructions that stipulate, authorize, or encourage forced disappearance shall not be admitted. All persons who receive such orders have the right and duty to obey them.

The States Parties shall ensure the training of public law-enforcement personnel or officials includes the necessary education on the offense of forced disappearance of persons.

Article IX

Persons alleged to be responsible for the acts constituting the offense of forced disappearance of persons may be tried only in the competent jurisdictions of ordinary law in each state, to the exclusion of all other special jurisdictions, particularly military jurisdictions.

The acts constituting forced disappearance shall not be deemed to have been committed in the course of military duties.

Privileges, immunities, or special dispensations shall not be admitted in such trials, without prejudice to the provisions set forth in the Vienna Convention on Diplomatic Relations.

Article X

In no case may exceptional circumstances such as a state of war, the threat of war, internal political instability, or any other public emergency be invoked to justify the forced disappearance of persons. In such cases, the right to expeditious and effective judicial procedures

and recourse shall be retained as a means of determining the whereabouts or state of health of a person who has been deprived of freedom, or of identifying the official who ordered or carried out such deprivation of freedom.

In pursuing such procedures or recourse, and in keeping with applicable domestic law, the competent judicial authorities shall have free and immediate access to all detention centres and to each of their units, and to all places where there is reason to believe the disappeared person might be found, including places that are subject to military jurisdiction.

Article XI

Every person deprived of liberty shall be held in an officially recognized place of detention and be brought before a competent judicial authority without delay, in accordance with applicable domestic law.

The States Parties shall establish and maintain official up-to-date registries of their detainees and, in accordance with their domestic law, shall make them available to relatives, judges, attorneys, any other person having a legitimate interest, and other authorities.

Article XII

The States Parties shall give each other mutual assistance in the search for, identification, location, and return of minors who have been removed to another state or detained therein as a consequence of the forced disappearance of their parents or guardians.

Article XIII

For the purpose of this Convention, the processing of petitions or communications presented to the Inter-American Commission on Human Rights alleging the forced disappearance of persons shall be subject to the procedures established in the American Convention on Human Rights and to the Statute and Regulations of the Inter-American Commission on Human Rights and to the Statute and Rules of Procedure of the Inter-American Court of Human Rights, including the provisions on precautionary measures.

Article XIV

Without prejudice to the provisions of the preceding article, when the Inter-American Commission on Human Rights receives a petition or communication regarding an alleged forced disappearance, its Executive Secretariat shall urgently and confidentially address the respective government and shall request that government to provide as soon as possible information as to the whereabouts of the allegedly disappeared person together with any other information it considers pertinent, and such request shall be without prejudice as to the admissibility of the petition.

Article XV

None of the provisions of this

Convention shall be interpreted as limiting other bilateral or multilateral treaties or other agreements signed by the Parties.

This Convention shall not apply to the international armed conflicts governed by the 1949 Geneva Conventions and their Protocols concerning protection of wounded, sick, and shipwrecked members of the armed forces; and prisoners of war and civilians in time of war.

Article XVI

This Convention is open for signature by the member states of the Organization of American States.

Article XVII

This Convention is subject to ratification. The instruments of ratification shall be deposited with the General Secretariat of the Organization of American States.

Article XVIII

This Convention shall be open to accession by any other state. The instruments of accession shall be deposited with the General Secretariat of the Organization of American States.

Article XIX

The states may express reservations with respect to this Convention when adopting, signing, ratifying or acceding to it, unless such reservations are incompatible with the object and purpose of the Convention and as long as they refer to one or more specific provisions.

Article XX

This Convention shall enter into force for the ratifying states on the thirtieth day from the date of deposit of the second instrument of ratification.

For each state ratifying or acceding to the Convention after the second instrument of ratification has been deposited, the Convention shall enter into force on the thirtieth day from the date on which the state deposited its instrument of ratification or accession.

Article XXI

This Convention shall remain in force indefinitely, but may be denounced by any State Party. The instrument of denunciation shall be deposited with the General Secretariat of the Organization of American States. The Convention shall cease to be in effect for the denouncing state and shall remain in force for the other State Parties one year from the date of deposit of the instrument of denunciation.

Article XXII

The original instrument of this Convention, the Spanish, English, Portuguese and French texts of which are equally authentic, shall be deposited with the General Secretariat of the Organization of American States, which

shall forward certified copies thereof to the United Nations Secretariat, for registration and publication, in accordance with Article 102 of the Charter of the United Nations. The General Secretariat of the Organization of American States shall notify member states of the Organization and states acceding to the Convention of the signatures and deposit of instruments of ratification, accession or denunciation, as well as of any reservations that may be expressed.

Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women

Convention of Belém do Parà, Brazil

(Adopted by acclamation by the twenty-fourth regular session of the General Assembly of the Organization of American States on 9 June 1994, in Belém do Parà, Brazil)

The General Assembly,

CONSIDERING that recognition and full respect for all rights of women is an essential condition for their development as individuals and for the creation of a more just, united and peaceful society;

CONCERNED that the violence affecting many women in the Americas is a situation that is widespread, without distinction as to race, class, religion, age or any other factor;

CONVINCED of its historic responsibility to confront this situation in order to find positive solutions;

CONVINCED of the need to provide the inter-American system with an international instrument that will help resolve the problem of violence against women;

RECALLING the conclusions and recommendations of the Inter-American Consultation on Women and Violence held in 1990, and the Declaration on the Eradication of Violence against Women, adopted by the Twenty-fifth Assembly of Delegates of the Inter-American Commission of Women;

ALSO RECALLING Resolution AG/RES. 1128 (XXI-0/91), «Protection of Women against Violence», adopted by the General Assembly of the Organization of American States;

TAKING INTO CONSIDERATION the broad consultation process carried out by the Inter-American Commission of Women since 1990 to study and draft an inter-American convention on women and violence; and

HAVING SEEN the results achieved by the Sixth Special Assembly of Delegates of the Commission,

Resolves:

To approve the following Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women «Convention of Belém do Parà.»

Preamble

The States Parties to this Convention,

Recognizing that full respect for human rights has been enshrined in the American Declaration of the Rights and Duties of Man and the Universal Declaration of Human Rights, and reaffirmed in other international and regional instruments;

Affirming that violence against women constitutes a violation of their human rights and fundamental freedoms, and impairs or nullifies the observance, enjoyment and exercise of such rights and freedoms;

Concerned that violence against women is an offence against human dignity and a manifestation of the historically unequal power relations between women and men;

Recalling the Declaration on the Elimination of Violence against Women, adopted by the Twenty-fifth Assembly of Delegates of the Inter-American Commission of Women, and affirming that violence against women pervades every sector of society regardless of class, race or ethnic group, income, culture, level of education, age or religion and strikes at its very foundations;

Convinced that the elimination of violence against women is essential for their individual and social development and their full and equal participation in all walks of life; and

Convinced that the adoption of a convention on the prevention, punishment and eradication of all forms of violence against women within the framework of the Organization of American States is a positive contribution to protecting the rights of women and eliminating violence against them,

Have agreed to the following:

Chapter I

Definition and Scope of Application

Article 1

For the purposes of this Convention, violence against women shall be understood as any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere.

Article 2

Violence against women shall be understood to include physical, sexual and psychological violence:

a. that occurs within the family or domestic unit or within any other interpersonal relationship, whether or not the perpetrator shares or has shared the same residence with the woman, including, among others, rape, battery and sexual abuse;

b. that occurs in the community and is perpetrated by any person, including, among others, rape, sexual abuse, torture, trafficking in per-

sons, forced prostitution, kidnapping and sexual harassment in the workplace, as well as in educational institutions, health facilities or any other place; and

c. that is perpetrated or condoned by the state or its agents regardless of where it occurs.

Chapter II

Rights Protected

Article 3

Every women has the right to be free from violence in both the Public and private spheres.

Article 4

Every women has the right to the recognition, enjoyment, exercise and protection of all human rights and freedoms embodied in regional and international human rights instruments. These rights include, among others:

a. The right to have her life respected;

b. The right to have her physical, mental and moral integrity respected;

c. The right to personal liberty and security;

d. The right not to be subjected to torture;

e. The right to have the inherent dignity of her person respected and her family protected;

f. The right to equal protection before the law and of the law;

g. The right to simple and prompt recourse to a competent court for protection against acts that violate her rights;

h. The right to associate freely;

i. The right of freedom to profess her religion and beliefs within the law; and

j. The right to have equal access to the public service of her country and to take part in the conduct of public affairs, including decision-making.

Article 5

Every women is entitled to the free and full exercise of her civil, political, economic, social and cultural rights, and may rely on the full protection of those rights as embodied in regional and international instruments on human rights. The States Parties recognize that violence against women prevents and nullifies the exercise of these rights.

Article 6

The right of every woman to be free from violence includes, among others:

a. The right of women to be free from all forms of discrimination; and

b. The right of women to be valued and educated free of stereotyped patterns of behavior and social and cultural practices based on concepts of inferiority or subordination.

Chapter III

Duties of the States

Article 7

The States Parties condemn all forms of violence against women and agree to pursue, by all appropriate means and without delay, policies to prevent, punish and eradicate such violence and undertake to:

a. refrain from engaging in any act or practice of violence against women and to ensure that their authorities, officials, personnel, agents, and institutions act in conformity with this obligation;

b. apply due diligence to prevent, investigate and impose penalties for violence against women;

c. include in their domestic legislation penal, civil, administrative and any other type of provisions that may be needed to prevent, punish and eradicate violence against women and to adopt appropriate administrative measures where necessary;

d. adopt legal measures to require the perpetrator to refrain from harassing, intimidating or threatening the woman or using any method that harms or endangers her life or integrity, or damages her property;

e. take all appropriate measures, including legislative measures, to amend or repeal existing laws and regulations or to modify legal or customary practices which sustain the persistence and tolerance of violence against women;

f. establish fair and effective legal procedures for women who have been subjected to violence which include, among others, protective measures, a timely hearing and effective access to such procedures;

g. establish the necessary legal and administrative mechanisms to ensure that women subjected to violence have effective access to restitution, reparations or other just and effective remedies; and

h. adopt such legislative or other measures as may be necessary to give effect to this Convention.

Article 8

The States Parties agree to undertake progressively specific measures, including programs:

a. to promote awareness and observance of the right of women to be free from violence, and the right of women to have their human rights respected and protected;

b. to modify social and cultural patterns of conduct of men and women,

including the development of formal and informal educational programs appropriate to every level of the educational process, to counteract prejudices, customs and all other practices which are based on the idea of the inferiority or superiority of either of the sexes or on the stereotyped roles for men and women which legitimize or exacerbate violence against women;

c. to promote the education and training of all those involved in the administration of justice, police and other law enforcement officers as well as other personnel responsible for implementing policies for the prevention, punishment and eradication of violence against women;

d. to provide appropriate specialized services for women who have been subjected to violence, through public and private sector agencies, including shelters, counseling services for all family members where appropriate, and care and custody of the affected children;

e. to promote and support governmental and private sector education designed to raise the awareness of the public with respect to the problems of and remedies for violence against women;

f. to provide women who are subjected to violence access to effective readjustment and training programs to enable them to fully participate in public, private and social life;

g. to encourage the communications media to develop appropriate media guidelines in order to contribute to the eradication of violence against women in all its forms, and to enhance respect for the dignity of women;

h. to ensure research and the gathering of statistics and other relevant information relating to the causes, consequences and frequency of violence against women, in order to assess the effectiveness of measures to prevent, punish and eradicate violence against women and to formulate and implement the necessary changes; and

i. to foster international cooperation for the exchange of ideas and experiences and the execution of programs aimed at protecting women who are subjected to violence.

Article 9

With respect to the adoption of the measures in this Chapter, the States Parties shall take special account of the vulnerability of women to violence by reason of, among others, their race or ethnic background or their status as migrants, refugees or displaced persons. Similar consideration shall be given to women subjected to violence while pregnant or who are disabled, of minor age, elderly, socio-economically disadvantaged, affected by armed conflict or deprived of their freedom.

Chapter IV

Inter-American Mechanisms of Protection

Article 10

In order to protect the right of every woman to be free from violence, the States Parties shall include in their national reports to the Inter-American Commission of Women information on measures adopted to prevent and prohibit violence against women, and to assist women affected by violence, as well as on any difficulties they observe in applying those measures, and the factors that contribute to violence against women.

Article 11

The States Parties to this Convention and the Inter-American Commission of Women may request of the Inter-American Court of Human Rights advisory opinions on the interpretation of this Convention.

Article 12

Any person or group of persons, or any nongovernmental entity legally recognized in one or more member states of the Organization, may lodge petitions with the Inter-American Commission on Human Rights containing denunciations or complaints of violations of Article 7 of this Convention by a State Party, and the Commission shall consider such claims in accordance with the norms and procedures established by the American Convention on Human Rights and the Statutes and Regulations of the Inter-American Commission on Human Rights for lodging and considering petitions.

Chapter V

General Provisions

Article 13

No part of this Convention shall be understood to restrict or limit the domestic law of any State Party that affords equal or greater protection and guarantees of the rights of women and appropriate safeguards to prevent and eradicate violence against women.

Article 14

No part of this Convention shall be understood to restrict or limit the American Convention on Human Rights or any other international convention on the subject that provides for equal or greater protection in this area.

Article 15

This Convention is open to signature by all the member States of the Organization of American States.

Article 16

This Convention is subject to ratification. The instruments of ratification

shall be deposited with the General Secretariat of the Organization of American States.

Article 17

This Convention is open to accession by any other state. Instruments of accession shall be deposited with the General Secretariat of the Organization of American States.

Article 18

Any State may, at the time of approval, signature, ratification, or accession, make reservations to this Convention provided that such reservations are:

a. not incompatible with the object and purpose of the Convention, and

b. not of a general nature and relate to one or more specific provisions.

Article 19

Any State Party may submit to the General Assembly, through the Inter-American Commission of Women, proposals for the amendment of this Convention.

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

Article 20

If a State Party has two or more territorial units in which the matters dealt with in this Convention are governed by different systems of law, it may, at the time of signature, ratification or accession, declare that this Convention shall extend to all its territorial units or to only one or more of them.

Such a declaration may be amended at any time by subsequent declarations, which shall expressly specify the territorial unit or units to which this Convention applies. Such subsequent declarations shall be transmitted to the General Secretariat of the Organization of American States, and shall enter into force thirty days after the date of their receipt.

Article 21

The Convention shall enter into force on the thirtieth day after the date of deposit of the second instrument of ratification. For each State that ratifies or accedes to the Convention after the second instrument of ratification is deposited, it shall enter into force thirty days after the date on which that State deposited its instrument of ratification or accession.

Article 22

The Secretary General shall inform all member states of the Organization of

American States of the entry into force of this Convention.

Article 23

The Secretary General of the Organization of American States shall present an annual report to the member states of the Organization on the status of this Convention, including the signatures, deposits of instruments of ratification and accession, and declarations, and any reservations that may have been presented by the States Parties, accompanied by a report thereon if needed.

Article 24

This Convention shall remain in force indefinitely, but any of the States Parties may denounce it by depositing an instrument to that effect with the General Secretariat of the Organization of American States. One year after the date of deposit of the instrument of denunciation, this Convention shall cease to be in effect for the denouncing State but shall remain in force for the remaining States Parties.

Article 25

The original instrument of this Convention, the English, French, Portuguese and Spanish texts of which are equally authentic, shall be deposited with the General Secretariat of the Organization of American States, which shall send a certified copy to the Secretariat of the United Nations for registration and publication in accordance with the provisions of Article 102 of the United Nations Charter.

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Recent ICJ Publications

The Civilian Judicial System in the West Bank and Gaza: Present and Future

Published by the ICJ/CIJL in English, French and Arabic.
136 pp. Geneva 1994. 10 Swiss francs plus postage.

This report examines the history, structure and functioning of the Palestinian civilian judicial system and discusses how this system has been distorted during Israeli military occupation. The report is divided into two parts: 1. Under Israeli Military Rule, which describes Israeli interference in the proper administration of civilian justice in the Occupied Territories and the impact of more than 2500 Israeli Military Orders, and makes recommendations for the immediate future; and 2. Under a Palestinian Authority, which discusses the gradual transfer of power in the Gaza Strip and the Jericho Area during the Interim Period established by the Israel/PLO Accords and advises on criteria for the building of a new legal system under Palestinian authority.

Rights of the Child Report of a Training Programme in Asia

published by the ICJ in English. 373 pp. Geneva 1994.
15 Swiss francs plus postage

This is the Report of the September 1993 training programme which was held in Lahore, Pakistan, for persons working in children's organizations in Asia. Participants from 16 Asian countries included lawyers and representatives of IGOs and NGOs working on children's rights. The purpose of the Lahore training programme was to *inter alia* provide a follow up to the World Conference on Human Rights, held in Vienna in June 1993, which called for the ratification of the Convention on the Rights of the Child (CRC) by 1995. It formed part of the ICJ's programmes in Asia on paralegal training and the provision of legal services to the poor and other disadvantaged groups. The Report contains participants' papers which reflect upon their experiences with regard to the situation of children in different Asian countries and on the work being done in developing human rights education material for children. It also discusses international mechanisms for the protection of children's rights, including the CRC.

Comfort Women, An Unfinished Ordeal

published by the ICJ in English. 205 pp. Geneva 1994.
17 Swiss francs plus postage

This Report is the outcome of an ICJ mission to the Philippines, the Republic of Korea, the Democratic People's Republic of Korea and Japan in April 1993 to study the issue. It documents the circumstances in which "sexual services" were forcibly obtained from Korean and Filipino women by the Japanese army before and during World War II. It contains testimonies of former "Comfort Women" who have revealed their ordeal. It examines the legal responsibility of the present Japanese government towards these women and what steps must be taken to rehabilitate them. The Report was written by Ms. Ustinia Dolgopol (Australia), and Ms. Snehal Paranjape (India). They interviewed over 40 victims, three former soldiers, government representatives, NGOs, lawyers, academics and journalists. The Report urges the Government of Japan to provide full rehabilitation and restitution to the victims as it bears a moral and legal obligation towards them. It contains recommendations as to how this should be done.

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