1963 SEMINAR ON THE ROLE OF THE POLICE IN THE PROTECTION OF HUMAN RIGHTS

CANBERRA, AUSTRALIA

29 April to 13 May 1963

ORGANIZED BY THE UNITED NATIONS

IN CO-OPERATION WITH THE GOVERNMENT OF AUSTRALIA

UNITED NATIONS, New York, 1963

ST/TAO/HR/16

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I. INTRODUCTION

A. ORGANIZATION OF THE SEMINAR

1. Under General Assembly resolution 926 (X) and Economic and Social Council resolution 605 (XXI) on advisory services in the field of human rights, the Government of Australia invited the Secretary-General of the United Nations to organize a seminar in Canberra on the role of the police in the protection of human rights. All countries and territories within the geographical scope of the Economic Commission for Asia and the Far East were invited to nominate participants. The seminar was held from 29 April to 13 May 1963.

2. The purpose of the seminar was to bring together key persons from the region in order to give them an opportunity of sharing views and experience gained in solving or attempting to solve problems connected with the subject matter of the seminar, in the hope that this would be beneficial to the participants and their Governments.

3. The following persons took part in the seminar as participants, alternates and observers nominated by their respective Governments:

Australia

Participants: Sir Garfield Barwick, Q.C., Attorney-General and Minister for External Affairs of the Commonwealth of Australia.

Sir Kenneth Bailey, Solicitor-General of the Commonwealth of Australia.

Mr. S.H.W.C. Porter, Chief Commissioner of Police, Victoria.

Mr. Zelman Cowen, Professor of Public Law and Dean of the Faculty of Law, University of Melbourne.

Mr. J.L. McClemens, Justice of the Supreme Court of New South Wales.

Alternates:[1/] Mr. R.W. Whitrod, Commissioner, Commonwealth Police Force.

Mr. H.A. Snelling, Q.C., Solicitor-General for New South Wales.

1/ Mr. K.O. Shatwell, Challis Professor of Law and Dean of the Faculty of Law, University of Sydney, was unable to attend the seminar. His place was taken by Mr. R.P. Roulston.

Alternates: (cont'd) Mr. R.P. Roulston, Senior Lecturer in Criminal Law, University of Sydney.

Mr. S.H. Good, Q.C., Solicitor-General of Western Australia.

Mr. N.T.W. Allan, Commissioner, New South Wales Police Force.

Observers: Mr. W.J. Delderfield, Commissioner of Police, Tasmania Police Force.

Mr. W.A.N. Wells, Q.C., Assistant Crown Solicitor, South Australian Crown Law Department.

Mr. F. Palethorpe, Chief Inspector of Police, Queensland Police Force.

Mr. E.J. Hook, First Assistant Secretary (Executive), Attorney-General's Department of the Commonwealth of Australia.

Mr. M.G.M. Bourchier, Department of External Affairs.

Mr. J.B. Giles, Inspector of Police, Adelaide.

Mr. G.J. Hawkins, Senior Lecturer in Criminology, University of Sydney.

Cambodia

Participant: Mr. Hy-Sieo, Advocate-General, Public Prosecutor's Office, Court of Appeal, Phnom Penh.

Ceylon

Participant: Mr. D.B.I.P.S. Siriwardhana, Deputy Inspector-General of Police and Assistant Secretary, Ministry of Defence and External Affairs.

Alternate: Mr. A. Nesaratnam, Second Secretary, Office of the High Commissioner for Ceylon in Australia.

China

Participant: Mr. Hwang You, Director, Department of Police Administration, Ministry of Interior.

Federation of Malaya

Participant: Mr. Salleh bin Abdul Rahman, Assistant Commissioner of Police, Ministry of Internal Security.

Alternate: Mr. Abdul Kadir bin Yusof, Solicitor-General, Attorney-General's Office.

Hong Kong

Participants: Mr. Maurice Heenan, Q.C., Attorney-General, Member of Executive and Legislative Councils.

Mr. E. Tyrer, Assistant Commissioner of Police, Police Headquarters.

India

Participant: Mr. Bibudhendra Misra, Deputy Minister for Law.

Alternate: Mr. B.K. Massand, High Commissioner for India in Australia and New Zealand.

Indonesia

Participant: Mr. Soeparno Soeri Atmadja, Deputy Chief (Special Affairs), Indonesian National Police.

Iran

Participant: Mr. Manouchehr Partow, Judge of the Supreme Court, Assistant to Attorney-General, Ministry of Justice.

Japan

Participant: Mr. Ryuichi Kojima, Chief Superintendent Inspection Officer, National Police Agency.

Alternates: Mr. Shigeki Ito, Attorney, Criminal Affairs Bureau, Ministry of Justice.

Mr. Yasumitsu Kiuchi, Police Superintendent, Research Officer, Personnel Affairs Section, Police Administration Division, Metropolitan Police Department.

New Zealand

Participant: Mr. C.L. Spencer, Commissioner of Police.

Alternates: Mr. J.W. Bain, Crown Counsel, Crown Law Office, Auckland.

Mr. B.J Cameron, Chief Advisory Officer, Department of Justice.

Mr. J. Meltzer, Secretary, New Zealand Police Association.

North Borneo

Participant: Mr. J.O. Ballard, Assistant Attorney-General.

Pakistan

Participant: Mr. M.S. Haider, Deputy Inspector-General of Police, Saidpur.

Philippines

Participant: Mr. Vicente Abad Santos, Dean of the College of Law, University of the Philippines.

Alternate: Mr. Rizal G. Adorable, Consul-General, Embassy of the Philippines, Canberra.

Republic of Korea

Participant: Mr. Doo Yul Choe, Chief, Criminal Investigation Division, National Police Headquarters.

Alternates: Mr. Hee Kwan Lee, Police Captain, Seoul Police Headquarters.

Mr. Nae Hyong Yoo, Police Captain, National Police College.

Republic of Viet-Nam

Participant: Mr. Le-Van-Tuan, Advocate-General, Court of Appeal, Saigon.

Singapore

Participant: Mr. Francis T. Seow, Crown Counsel and Deputy Public Prosecutor.

Alternates: Mr. Cheam Kim Seang, Assistant Commissioner, Criminal Investigation Department.

Mr. Wee-Kian Tan, District Judge.

Observers also attended the seminar from France, Thailand, Guam, Samoa (American), the Trust Territory of the Pacific Islands and Papua and Trust Territory of New Guinea.

4. The International Labour Organisation was represented at the seminar by Mr. Ian G. Sharp, and the Office of the United Nations High Commissioner for Refugees by Mr. A. McIver.

5. The following non-governmental organizations in consultative status with the Economic and Social Council were represented at the seminar by the following observers:

Category A

World Veterans Federation:

Mr. Harrie Mitchell

Category B

The Anti-Slavery Society for the Protection of Human Rights:

Miss Shirley Andrews

Catholic International Union for Social Service:

Father W.G. Smith, S.J.

Coordinating Board of Jewish Organizations:

Mr. Maurice Isaacs (from 8 to 13 May, Mr. W.S. Matsdorf)

Friends World Committee for Consultation:

Mr. Geza Santow (from 6 to 13 May, Mr. David K. Cooper)

International Alliance of Women:

Miss E.V. Barnett

International Bar Association:

Mr. P.B. Toose, Q.C.

International Commission of Jurists:

Mr. John Joseph Davoren, Q.C.

International Council of Women:

Mrs. G.N. Frost

International Criminal Police Organization (INTERPOL)

Mr. S.H.W.C. Porter

International Federation of Social Workers:

Mrs. E. McGuire

International Federation of University Women:

Mrs. Helen Crisp

International Federation of Women Lawyers:

Miss Veronica Pike

International Law Association:

Mr. H.A. Snelling, Q.C.

International League for the Rights of Man:

Mr. Julius Stone

International Social Service:

Miss Margaret H. Kelso

International Society for Criminology:

Sir John Barry

Pan Pacific and South-East Asia Women's Association:

Miss Nancy T. Burbidge

Society of Comparative Legislation:

Mr. Stanley W. Johnston

Women's International League for Peace and Freedom:

Mrs. Doris A. Blackburn

Register

International Federation of Senior Police Officers:

Mr. R.W. Whitrod

World Federation for Mental Health:

Dr. Richard Ramsay Webb

6. Mr. John P. Humphrey, Director of the Division of Human Rights in the United Nations Secretariat, represented the Secretary-General of the United Nations. Mr. John Male acted as Secretary of the seminar.

7. Mr. J.M. McMillan of the Department of External Affairs acted as Chief Liaison Officer for the host Government. He was assisted by Mr. R.B. Hodgson of the Department of External Affairs.

B. OFFICERS OF THE SEMINAR

8. Sir Garfield Barwick, Attorney-General and Minister for External Affairs of Australia, was unanimously elected President of the seminar.
Sir Kenneth Bailey, Solicitor-General of Australia, was unanimously elected Chairman.

9. The following participants were unanimously electec Vice-Chairmen:

Mr. Hy-Sieo (Cambodia)
Mr. Maurice Heenan (Hong Kong)
Mr. Bibudhendra Misra (India)
Mr. Manouchehr Partow (Iran)
Mr. Ryuichi Kojima (Japan)

10. Mr. J.O. Ballard (North Borneo) was unanimously elected rapporteur.

C. PROGRAMME OF THE SEMINAR

11. The programme of the seminar was as follows:

A. Human rights and the police: Introductory

(a) Functions of the police:

(i) In the maintenance of public peace and order;

(ii) In the administration of criminal justice.

(b) Scope of police action in urban and in rural areas.

(c) (i) Freedom of the police from political interference;

(ii) Has the policeman a right to belong to, and be active in, a political party?

(d) Finger-printing: Should there be national compulsory finger-printing of all persons? Would this offend human rights? If so, which?

B. Human rights and preventive police action

(a) Preventive measures for the maintenance of public peace and order in respect of such matters as:

(i) Public meetings or processions;

(ii) Distribution of literature in public;

(iii) Loitering, consorting, etc.;

(iv) Movement and residence of certain classes of persons.

(b) Discretion of police authorities in making regulations, decisions or orders of a preventive character:

(i) Extent to which police authorities may restrict various freedoms by such regulations, decisions or orders, under the laws and under the general directives of executive authorities. What are the criteria regarding the legitimate purposes and scope of such measures?

(ii) Procedures to be followed by police authorities in making regulations, decisions or orders: prior inquiries and hearings of persons concerned; publication of regulations, decisions and orders; and notification to persons concerned. Should reasons for such regulations, decisions or orders be stated?

(c) Review of legality and propriety of such preventive measures.

(d) The carrying out of preventive measures: extent of police discretion as regards, in particular, the use of force.

(e) Human rights and preventive police action under a state of emergency or in similar situations.

C. Human rights, the police and the suspect: Investigation of Crime

(a) Interrogation:

(i) Should a person be required to give his name and address to a policeman:

A. where he is suspected of any offence?
B. where he is a witness to a crime?
C. in any other circumstances?

(ii) The limits of police power to interrogate:

A. before decision to charge;
B. before arrest or charge;
C. after inviting the suspect to come to the police station;
D. after arrest or charge.

(iii) Detention and interrogation. Should the police have the power to detain a suspect for a defined period for questioning? May the police keep the detained person incommunicado?

(iv) Duties of police to facilitate notification to relatives and legal representative of detained or arrested person of the fact of detention or arrest;

(v) Should the police inform a person of his rights, including the right to remain silent, before interrogating him? Has the person to be interrogated by the police a right to be assisted by counsel?

(vi) Confessions and admissions. The general problem of "the third degree", of preventing techniques of interrogation that infringe human rights. The use of such techniques as blood alcohol tests, lie detectors and narco-analysis.

(b) Powers of arrest, with and without warrant. Should there be a right of resistance to unlawful arrest?

(c) Powers of search and seizure, with and without warrant. Protection of privacy of the individual from invasion under general warrants.

(d) Wire-tapping and similar investigative techniques. In what circumstances is wire-tapping permissible in the detection of crime and in what ways should the practice be circumscribed?

(e) Entrapment - the use of the agent provocateur. To what extent should it be proper for police to facilitate the commission of a crime in order that they may bring about a prosecution? Should a person be entitled to rely on an assurance given by a policeman as to his rights and duties?

D. Human rights, the police and the accused: Prosecution and evidence given by the police

(a) Should a discretion whether to prosecute lie with the police, and if so, in what cases? Effect on police morale of decisions not to prosecute.

(b) Should the police conduct prosecutions? If the police were allowed to conduct prosecutions, to what extent and in what manner should they be subject to control or supervision by the public prosecutor or other authorities? If the police were not so allowed, what should be the relationship between the functions of the police and those of the prosecuting authorities?

(c) Should the police advise a prisoner on such matters as how he should plead, the probable time of hearing, and the probable sentence?

(d) The role of the police in prosecuting. What should be the function of the police in relation to:

(i) the presentation of evidence, including corroborative evidence by policemen?

(ii) evidence favourable to the accused?

(iii) an accused "known" to be guilty against whom there is little evidence?

(e) Should police officers serve as judges or magistrates and should there be policemen on duty in the courts? What should be the magistrate's attitude to the police prosecutor and to evidence given by police officers?

(f) Should police documents - e.g. the watch house arrest book and police notebooks - be privileged from production in court, and, if not, in what form should they be produced?

E. Human rights and police discipline: Control of and remedies against abuse or excess of police powers

(a) What should be the civil liability of the policeman and of the State in respect of abuse or excess of the policeman's powers?

(b) What should be the criminal liability of the policeman in respect of abuse or excess of his powers?

(c) Desirable forms of disciplinary machinery.

(d) Police disciplinary boards. What should be the position with regard to:

(i) their composition;

(ii) their jurisdiction;

(iii) the publicity or otherwise of their proceedings where a private individual is the complainant; and

(iv) Press reporting of their proceedings?

(e) The Ombudsman; civil liverties commissioners or bureaux.

F. Human rights and the administration and training of the police

(a) The inculcation of respect for human rights by police administration and training.

(b) The relation to human rights of:

(i) aspects of recruitment such as the age, background and quality of recruits;

(ii) training programmes at various levels of seniority and experience;

(iii) the inculcation of moral values and esprit de corps;

(iv) the extent and standard of training of the police in law; and

(v) the training of the police in law and social problems by teachers who are other than senior police officers.

(c) The value of:

(i) a knowledge of the work of, and collaboration with, other social agencies;

(ii) adequate Government support of the police in staffing and training matters; and

(iii) establishing a "profession" of police officer, with common standards and mobility between police forces.

(d) Should a policeman be permitted to hold a second job - if so, of what kind?

(e) Should each country devise and promulgate a police code of ethics?

(f) Should there be collaboration between South East Asian countries in police training?

G. Human rights and public relations of the police

(a) The attitude of the public to the police:

(i) What should be the aims in this regard, and what are the best methods of achieving them?

(ii) Circumstances which might cause deterioration of public respect for police:

A. any tendency of policeman to consider himself as being above the law, or to disregard human rights;

B. secrecy of police rules and regulations;

C. duty to enforce a law which might be regarded as bad or unrealistic;

D. use of police to enforce industrial laws;

(iii) Methods of increasing public respect for and confidence in the police.

(b) The use of mass media to publicize the police:

(i) police, public and the Press;

(ii) television

(iii) police publications.

(c) The role of the police association (trade union).

(d) The police and civil summonses:

(i) Effect of policeman serving summons in a civil (debt) case;

(ii) Impression made on the debtor and on the public.

(e) The police and punishment:

(i) the value of police "warning" as a technique of treatment of juvenile delinquents;

(ii) should ex-prisoners have to report to the police?

(iii) should the police give information about prisoners e.g. to employers?

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D. DISCUSSION LEADERS

12. The following participants acted as discussion leaders for various items or sub-items:

Agenda Item A	Mr. Francis T. Seow (Singapore)
B (a) and (b)	Mr. Vicente A. Santos (Philippines)
B (c), (d) and (e)	Mr. C.L. Spencer (New Zealand)
C (a)	Mr. Salleh bin Abdul Rahman (Federation of Malaya)
C (b), (c), (d) and (e)	Mr. Le-Van-Tuan (Republic of Viet-Nam)
D (a), (b) and (c)	Mr. N.T.W. Allan (Australia)
D (d), (e) and (f)	Mr. Nae Hyong Yoo (Republic of Korea)
E	Mr. M.S. Haider (Pakistan)
F	Mr. Soeparno Soeri Atmadja (Indonesia)
G (a)	Mr. D.B.I.P.S. Siriwardhana (Ceylon)
G (b), (c), (d) and (e)	Mr. Hwang You (China)

E. DOCUMENTATION

13. Two background papers were prepared for the seminar, background paper A by Major-General Selwyn C. Porter, Chief Commissioner of Police, Victoria, Australia, and Professor Zelman Cowen, Dean of the Faculty of Law and Professor of Public Law, University of Melbourne, Australia; and background paper B by Mr. Juhei Takeuchi, Director, Criminal Affairs Bureau, Ministry of Justice, Japan.

14. The participants prepared the following working papers dealing with the subject matter of the seminar from the point of view of the situation in their respective countries as follows: 2/

WP/1	Mr. Maurice Heenan, Q.C., (Hong Kong)
WP/2	Mr. Hwang You (China)
WP/3	Mr. Doo Yol Choe (Republic of Korea)
WP/4	Mr. Ryuichi Kojima (Japan)
WP/5	Mr. M.S. Haider (Pakistan)
WP/6	Mr. J.O. Ballard (North Borneo)
WP/7	Mr. Manouchehr Partow (Iran)
WP/8	Mr. Ong Pang Boon (Singapore)
WP/9	Mr. Hy-Sieo (Cambodia)
WP/10	Mr. N.Q. Dias (Ceylon)
WP/11	Mr. Vicente Abad Santos (Philippines)
WP/12	Mr. G.V.C. Young (Sarawak)
WP/13	Mr. Salleh bin Abdul Rahman (Federation of Malaya)

2/ Mr. G.V.C. Young (Sarawak) was unable to attend the seminar. Mr. N.Q. Dias (Ceylon) and Mr. Ong Pang Boon (Singapore) were unable to attend; their places were taken by Mr. D.B.I.P.S. Siriwardhana and Mr. Francis T. Seow, respectively.

WP/14 Mr. C.L. Spencer (New Zealand)
WP/15 The Attorney-General's Department of the Commonwealth of Australia
WP/16 Mr. Le-Van-Tuan (Republic of Viet-Nam)
WP/17 Mr. Bibudhendra Misra (India)
WP/18 Mr. J.L. McClemens (Australia)

F. OPENING SPEECHES

15. Sir Garfield Barwick, Attorney-General and Minister for External Affairs of Australia addressed the seminar. Mr. J.P. Humphrey, as representative of the Secretary-General of the United Nations, thanked the Government of Australia for having extended its hospitality to the seminar, and expressed his appreciation of the excellent arrangements which had been made.

II. TOPICS DISCUSSED

A. Human rights and the police: Introduction

(a) Functions of the police

16. Only a brief reference was made to the main functions of the police which, it was agreed were the maintenance of law and order, the preservation of public peace, and the protection of life, liberty and property, the prevention and detection of crime, the apprehension of offenders and the investigation of crimes. Further discussion on these and other functions of the police were taken up under other items on the agenda of the Seminar.

(b) Scope of police action in urban and in rural areas

17. Except for Iran, where there is a separate gendarmerie for rural areas, it was generally thought that there was essentially no basic difference in the functions of the police in urban or rural areas, though the fact that the scope of police activities differes from country to country was evident from the papers submitted by the participants to the Seminar.

(c) (i) Freedom of the police from political interference

(ii) Has the policeman a right to belong to, and be active in a political party?

18. It was the unanimous view that there should be no political interference with the police in their functions. In most countries the police are subject to direction by a Minister belonging to a political party and to scrutiny by Parliament; any political interference in any such direction or scrutiny could be avoided if there were well defined laws and regulations laid down governing the powers and duties of the police. A further suggestion was that the police force should be put under the control of an independent commission not subject to political interference or influence.

19. It was generally agreed that a policeman should not take part in political activity. Most participants also felt that a policeman should not be a member of a political party but should thereby not be precluded from voting at elections. They considered that political activity by the police would involve them in a conflict of loyalties.

20. Certain participants maintained that unless evidence could be adduced to show that belonging to a political party had a detrimental effect on the discharge of their duties by the police, there was no reason why a policeman should not belong to a party. Belonging to a party was not the same as taking part in political activity which should not be permitted. Examples were given of countries in which policemen were allowed to belong to a political party, although it was also pointed out that in some of these countries no policeman had in fact joined a political party. It was claimed that participation by the police in political

parties posed little danger of political interference or pressure because the police had to follow the laws and regulations governing their functions and duties irrespective of what political party they belonged to.

(d) Finger-printing: should there be national compulsory finger-printing of all persons? Would this offend human rights? If so which?

21. During the discussion participants referred to the purposes served by finger-printing. For example, finger-printing was an aid to crime detection; it served as a protective measure against frauds; it helped to identify a person where problems arose in connexion with immigration control, distribution of supplies during national calamities and in relation to probate and other matters connected with the death of an unidentified person. It was noted, however, that finger-printing was not compulsorily required in the countries of the region, though in the Federation of Malaya and Hong Kong compulsory finger-printing for the purpose of issuing identity cards was provided for; however, the legislation was not administered by the police and the records were not available to the police. In Japan there was no national compulsory finger-printing but some prefectures were putting in force a voluntary finger-printing registration system. The participant from the Republic of Korea intimated that there was a proposal in his country to enact a law providing for finger-print registration of all citizens, though there was opposition by the public because they believed that finger-printing was connected with crime, and the cost of finger-printing all citizens would be out of proportion to its usefulness.

22. Certain participants reminded the Seminar of the detestation felt by ordinary citizens against finger-printing because of its association with criminals. For instance some applicants for passports in Iran had considered finger-printing as an insult, and consequently had given up the idea of getting a passport altogether. The association of finger-printing with criminals and with the investigation of crimes was thought to be the cause of the prejudice against finger-printing rather than that finger-printing itself infringed any human rights. Those individuals who were asked to give finger-prints for purposes other than those connected with crimes often feared that they might be subject to self-incrimination.

23. Certain participants felt that if finger-printing was required for other than investigation of crimes, it would be thought to interfere with the person's right to security and liberty, or it might injure his reputation or dignity, or interfere with his right to privacy and freedom of movement. It was also argued that in so far as investigation of crimes was concerned, compulsory finger-printing was not justified in view of the small proportion of criminals and still smaller proportion of those who left finger-prints. Moreover the cost and labour involved, especially in thickly populated countries, in carrying out any scheme of compulsory finger-printing was out of proportion to its usefulness and had, in some countries, prevented implementation.

24. The majority of participants, however, thought that much of the objection to compulsory finger-printing stemmed from prejudice arising from the historical association with criminality and that compulsory finger-printing could be a valuable aid to identification and serve useful social purposes. Compulsory finger-printing separated from its association with crime would in no sense involve a person in self-incrimination and would be perfectly compatible with the protection of his human rights. Human rights could not be infringed when action

was taken for the good of all people. Compulsory finger-printing should not create uneasiness in law-abiding citizens, because its only effect would in the end be to assist them. Only law breakers would be adversely affected, and it was doubtful whether they could claim any infringement of their human rights by being compulsorily finger-printed.

25. The majority view was that there was no objection in principle to national compulsory finger-printing of all citizens, that finger-printing should not be associated only with crimes, and that there was no infringement of any human rights of the person whose finger-prints were taken because the protection of the rights of the society and his own interest required certain limitation of his rights.

B. Human rights and preventive police action

26. One of the main functions of the police is to take preventive measures for the maintenance of public peace and order. From the outset of the discussions, it was agreed that preventive measures in times of emergency were necessarily different from those which were admissible in ordinary circumstances and that the two categories of measures should be considered separately.

27. One participant drew a distinction between what he called "passive" and "active" prevention. "Passive" prevention might consist, for instance, in making the police known to the public, in co-operating with social agencies, in giving advice and generally in adopting attitudes which had a restraining influence on potential offenders. However, the better known method of "active" prevention - intervention by the police, supported if necessary by force, with a view to preventing the commission of offences - had to be resorted to in various fields. The discussions at the seminar mainly centered upon the latter kind of preventive mathods but the importance of passive prevention was accepted by all participants.

28. It was stressed that many preventive measures taken or enforced by the police had the effect of placing restrictions upon the exercise of various freedoms. One of the basic duties of the police in the preventive field was therefore to remember always that they were dealing with innocent persons and to keep in mind Article 11 (1) of the Universal Declaration of Human Rights. It was difficult, but necessary, to try to set limits to preventive police action with a view to safeguarding the fundamental rights of the individual.

29. In the opinion of some participants, particularly among those from Australia and New Zealand, the powers of the police and the scope of its preventive action, even in normal times, had a tendency to expand: for instance, the growing concern with juvenile delinquency might conceivably lead to proposals for the control by the police of all entertainments for young persons. The fear was expressed that such an expansion of the scope of preventive action might ultimately subject to police control too many areas of social life and thereby increase existing threats to human rights.

30. Other participants thought that the police was fully justified in expanding the scope of its preventive action when its objectives were to ensure the welfare of the people: in that perspective the police, as a socially protective body, should act in the best interests of weak, handicapped or distressed persons in order to secure their integration into society.

31. It was said, for instance, that the police were justified in seeking to send, not to prison but to a psychiatric observation centre, persons who were suspected of being mentally ill and who were reasonably believed to be about to commit an offence (see also Working Paper No. 18). Similar action might usefully be taken in respect of derelicts and alcoholics.

32. The Seminar was also informed that a Juvenile Crimes Prevention Section, which had been established within the New Zealand Police was functioning successfully: with a view to offering preventive guidance to young potential offenders, it had sought and obtained the co-operation of the parents.

33. Social police action of this type was sometimes conducted in the absence of any written law. The public not only accepted it but often considered it as the natural duty of the policeman in the community.

34. The following factors were mentioned as exerting a restraining influence on the police: control and guidance by the courts, public opinion, a free Press, the religious standards of police officers, and mainly perhaps a proper training of the police force. Some participants felt that striking the proper balance between the interests of the community and the rights of the individual depended essentially upon the efforts of the police themselves, with only a limited need for legislation.

(a) Preventive measures for the maintenance of public peace and order in respect of such matters as:

(i) Public meetings and processions

35. It was generally agreed that the police should not interfere with the exercise of the right to hold meetings and processions in public places except when such meetings and processions were likely to obstruct traffic or disturb the peace. Further, if powers were given by law for a particular purpose they should not be used for a different purpose, for example, powers to control traffic should not be used as a mere cover for preventing political meetings.

36. The holding of public meetings and processions was often subject to prior registration of names, places, times and other relevant data with the authorities, and in various countries prior authorization by licence had to be sought. Very few requests were rejected in normal times.

37. Once permission was granted, it was the duty of the police to protect the meeting against undue disturbance or riots unless the conduct of the meeting caused a disturbance or a riot, in which case the police were bound to restore order, even if this meant terminating the meeting.

38. The question was raised as to whether the police authorities might prohibit the holding of a lawful meeting or order a lawful assembly to disperse, with a view to protecting lives and properties, when there were reasonable grounds to believe that hostile groups would attack the meeting and disturb the peace.

(ii) Distribution of literature in public

39. All the participants who took part in the discussion expressed the view that the distribution of literature in public might be curbed only when the contents of such literature violated the law or when the distribution of literature interrupted traffic or otherwise caused a nuisance. References were made to the laws concerning libel, obscene literature, seditious libel and the security of the state as were in force in various countries.

40. In several countries the law required the prior registration of printing presses and equipment with the authorities, and copies of books or pamphlets issued for distribution in public should bear the names and addresses of the publishers.

41. It was considered that prior censorship should be avoided. If, in exceptional circumstances, censorship were established, it should be exercised by special bodies and not by the police. The police authorities might be empowered to confiscate objectionable literature only after its distribution had taken place or had been attempted. One participant expressed the view that it was preferable to grant this power of confiscation to administrative authorities or to high police authorities rather than to the courts since undesirable publicity was thereby avoided; but it was generally agreed that the right of appeal to the courts against police decisions should be provided for.

(iii) Loitering, consorting, etc.

42. Various views were expressed concerning the so-called vagrancy laws of certain countries. The Seminar was informed, that in New Zealand for instance it was a criminal offence to be found without visible and lawful means of support; and that it was punishable for a suspected person to frequent a public place with the intention of committing any crime, or for a person to be the occupier of a house frequented by reputed thieves or to be found habitually in their company and to fail to show his presence therein for a lawful purpose.

43. In the opinion of some participants, such laws, however useful they might be for the purpose of preventing crime, were in conflict with fundamental principles of penal law as applied by the courts: punishment might be inflicted on account of the status of a person or on the basis of mere suspicion, not for any of his acts or attempted acts; the burden of proof rested in certain cases on the accused, as regards, for instance, the lawful origin of his means of support or the lawful purpose of his presence in the company of reputed thieves; and mere criminal intent might be punishable under some of these statutes while the general trend of judicial decisions was to construe restrictively the notion of attempted criminal act. While they recognized that such laws were in fact applied with proper restraint, some participants stressed that their provisions were vague, gave a wide discretion to the police and could lead to violation of human rights. The question was therefore whether the violation of human rights was justified by the social purpose. One participant suggested that laws which made it punishable for a previously convicted person to frequent a public place with the intention of committing any crime should be so amended as to punish the intent to commit certain categories of offences only, for instance, crimes of violence and crimes against children. It was claimed that if these laws were to remain on the statute book the police should work together with social welfare agencies and exercise their functions of deciding whether to prosecute on social welfare grounds.

44. One participant took the view that such laws were justified as they proved very useful for the prevention of crime and did not infringe upon the rights of law-abiding citizens. They did not aim at punishing the poor but at controlling the activities of idle or disorderly persons without lawful means of support and of known criminals or previously convicted persons. The apprehension by the police of idle or disorderly persons without lawful means of support was often made in their own interest, as the competent judicial authorities frequently committed the persons concerned not to prison but to special institutions where they were given proper care. As far as known criminals and previously convicted persons were concerned, society was justified in asking them, when found in suspicious circumstances, to prove that their means of support were lawfully obtained.

45. In some other countries, the fact of being found without visible and lawful means of support was not punishable in itself, but was one of the constituents of certain offences. In one of those countries, any vagrant who was reasonably suspected of being about to commit a crime against property might be required by a magistrate to furnish a bond as a guarantee of his good behaviour; if he did not furnish such a bond, he could be sent to prison for one or two years.

(iv) Movement and residence of certain classes of persons

46. It was generally agreed that few restrictions should normally be placed upon freedom of movement and residence within each country. It was considered permissible for the police to impose certain restrictions in order to enforce various traffic regulations. Some participants expressed the view that the police should keep themselves informed of, and supervise, the movements of previously convicted persons.

47. However, as was explained by the participant from Singapore, the criminal activities of secret societies were, in his country, so widespread and harmful that it had been found necessary to enact laws under which the competent minister may, with the consent of the Public Prosecutor but without trial, order the detention for a maximum period of one year of any person in the interest of public safety, peace and good order; or, for the same reasons, subject a person to the supervision of the police for a period not exceeding three years. Any person placed under such supervision was required in particular to reside within specified areas; to obtain the written permission of a senior police officer concerning any change of his residence; to keep the local chief police officer informed at all times of the house or place where he was residing; to present himself at the nearest police station at such times as might be specified; and to remain within doors between specified hours unless permission to the contrary was granted. Stringent administrative action of this kind was required in view of the gravity of the danger created by criminal societies and particularly because very few persons were willing to testify in open court against secret societies.

48. It was emphasized that persons subject to such measures were informed of the grounds upon which the order was based; that they had the right to make representations against such orders, and that an advisory committee including members of the legal profession reviewed any order and, within twenty-eight days from the issuance of an order, made a report and recommendations to the Chief of State. This advisory committee was empowered to compel witnesses to appear and to order the production of any relevant document. The person concerned had the right

to be represented by counsel before the committee. The Chief of State should consider the committee's report and might confirm, amend or cancel the order, as he deemed fit.

49. Since this legislation was enacted, the number of crimes committed by secret societies had been markedly decreasing.

50. Reference was made to the laws on probation under which, in many countries, the courts might, instead of imposing a sentence of imprisonment upon a convicted person, release him under certain conditions, in particular under the condition that he should reside and work where directed by the probation officer. It was pointed out, however, that the police, as a general rule, did not participate in the probation procedure which was essentially judicial in character. Parole was an executive action which might or might not bring the police into participation.

(v) Role of the police in the establishment of lists of jurors

51. A reference was made to the practice which was followed in various countries of entrusting police officers with the task of compiling and checking lists of persons qualified to serve as jurors. Such lists were later scrutinized and reviewed by the courts. The Seminar was informed that proposals had been made in New Zealand for the discontinuance of such practice: it was suggested that the courts themselves should compile lists of jurors on the basis of electoral rolls.

(b) Discretion of police authorities in making regulations, decisions or orders of a preventive character:

(i) Extent to which police authorities may restrict various freedoms by such regulations, decisions or orders, under the laws and under the general directives of executive authorities. What are the criteria regarding the legitimate purposes and scope of such measures?

(ii) Procedures to be followed by police authorities in making regulations, decisions or orders: prior inquiries and hearings of persons concerned; publication of regulations, decisions and orders; and notification to persons concerned. Should reasons for such regulations, decisions or orders be stated?

52. All the participants who spoke on those sub-items stated that, at least in normal circumstances, the police did not and should not possess the power to make regulations. Such a power should be retained by the legislative organs or delegated by them only to higher executive authorities, or, in certain fields, to municipal bodies elected by the people. The only exception which was mentioned concerned police regulations for the control of traffic. Before such regulations were made, interested persons were heard; and the regulations were always published.

53. Several participants pointed out that the police had often a wide discretion to issue orders or to take decisions of a preventive character, under the general provisions of the laws and of ministerial or municipal regulations. It was

essential to ensure that such powers were used bona fide and strictly for the purposes defined by law. Judicial control of police action was therefore quite fundamental.

(c) Review of legality and propriety of such preventive measures

54. As was mentioned in paragraph 53 above, various participants stressed that judicial control of preventive police action was essential to ensure the lawfulness and bona fide character of such action.

55. Some participants expressed the view that, as the powers of the police were granted by law, the legality of preventive measures taken by the police in order to enforce the laws could not easily be challenged, except, of course, in cases where police action was manifestly illegal.

56. According to certain participants, the propriety of preventive police action was difficult to control since it had to be considered in the light of the particular circumstances of each case. It was said that the early intervention of quasi-judicial bodies and the regular review of the policeman's action by superior police authorities could effectively guarantee the propriety of police action.

57. The participant from India gave a full description of the various procedures for review of the legality or propriety of preventive police action which were in force in his country. Besides their power to order the release of persons illegally or improperly detained, the high courts and supreme courts had supreme power to issue orders to any authority (i.e. writs of mandamus, certiorari, prohibition). As regards preventive detention, the constitution and the relevant acts provided that such a detention might not exceed duration of three months unless an advisory board composed of persons qualified to hold judicial offices reported that there was sufficient cause for extension. The person concerned received a copy of the detention order and might make representations against it. The courts had quashed many preventive detention orders either because they had found the grounds to be too vague to afford an opportunity for making effective representations, or because the order had been issued mala fide. The Defence of India Act, a temporary legislation enacted in 1962 to meet a threat of external aggression, provided for a more expeditious procedure; but it also contained safeguards against mala fide orders. A committee composed of officers not below the rank of district officer or magistrate was to review the orders. Few persons had been detained under the latter act and a number of them had already been released.

58. The participant from Pakistan stated that a similar procedure of review by an advisory board was provided for by the Public Safety Ordinance of Pakistan. The person concerned was supplied with a copy of the order containing the grounds for his detention, and he could make representations. The board was composed of a judge of a superior court nominated by the Chief Justice of that court, and of a senior civil officer nominated by the President of Pakistan or the Governor, when it was a provincial board. Except under this ordinance, police action was always open to review by the courts.

(d) The carrying out of preventive measures; extent of police discretion as regards, in particular, the use of force

59. It was recognized that the police should necessarily be granted some discretion in the carrying out of preventive measures.

60. Several participants stressed how difficult it might be for a police officer to decide when and to what extent force should be used in a given situation; the public in general expected policemen to prevent disorder but at the same time it was prompt to criticize the police for any possible excess of power. A more co-operative and understanding attitude on the part of the public in that field would greatly help the police and contribute to avoid many incidents.

61. A discussion took place concerning the stage or stages at which the police might be justified in using its powers of compulsion. There was no doubt that such intervention might, and should, properly take place with all possible speed when a felony was being committed. It was much more difficult to ascertain whether the police could intervene, for instance in ordering a meeting to disperse, when it had reasonable grounds to believe that a breach of the peace was about to occur, but no disturbance had yet been observed. The attention of the Seminar was drawn to a recent case in England where the police had ordered a meeting to disperse, not because of actual or probable disturbances on the part of persons attending the meeting, but on reliable information that a hostile party was about to come with the intention of attacking the meeting.

62. One participant suggested that the Seminar should lay down the amount of force which might properly be used by the police and the procedures to be followed in situations where the police had to intervene forcibly, as the words "minimum force" were inadequate. The participant from Singapore explained in detail the rules which were in force in his country as regards the dispersion of unlawful assemblies. Before the police actually opened fire, several warnings in various languages had to be made, and actual fire was always preceded by tear gas; shooting was not made indiscriminately but was aimed at the leaders and every effort was made to ensure that none would be killed; every order of the police officer in charge was recorded with a view to facilitating a posteriori control by higher authorities. Other participants similarly explained that shooting was used only as a last resort in situations of the utmost gravity and with all precautions to avoid loss of life; and that batons were used whenever possible instead of firearms.

63. The Seminar was informed that the new Code of Criminal Procedure enacted in New Zealand in 1961 contained several provisions regulating the use of force by the police, and by every person in certain cases. No more force should be used than was believed in good faith and on reasonable and probable grounds to be necessary and appropriate in the circumstances; the amount of compulsion being used should never be disproportionate to the gravity of the perils to be avoided; but every policeman was justified in carrying out the orders of those of his superiors which he was duty-bound to obey, unless such orders were manifestly unlawful.

64. Some participants were of the opinion that it was not desirable to introduce too rigid formulae in laws and regulations as the police might thereby be inhibited, to the detriment of the community.

65. It was noted that in most countries the courts could award damages to the victims of illegal or improper use of force by the police and inflict penal sanctions upon police officers in case of mala fide use of force. Some participants expressed doubts as to the deterrent power of such sanctions since, in their opinion, only blatant excesses could thus be punished. Other participants stressed that judicial control, however limited, was essential since it supplied police officers with the criteria they needed in the exercise of their discretion.

66. It was generally agreed that, besides judicial control and guidance, proper training of the police, strong leadership, and an effective system of supervision and control within the police corps, including the establishment of disciplinary bodies, were factors which could contribute significantly to the improvement of police behaviour as regards the carrying out of preventive measures and in particular the use of force.

(e) Human rights and preventive police action under a state of emergency or in similar situations

67. Several participants stated that in their respective countries the police had no more power to make regulations under a state of emergency than in normal situations. In extreme emergencies such as war or very serious internal disturbances, special laws or regulations sometimes granted to the police additional power and greater discretion to issue orders and to take restrictive decisions. Thus, in Singapore and the Federation of Malaya, under various emergency laws, the police could, on the basis of certain findings by the Chief of State and upon the order of the competent minister, detain any person in order to prevent him from acting in any manner prejudicial to the security of the state, the maintenance of public order or the maintenance of essential services; the Commissioner of Police might impose curfews; and any police officer not below the rank of inspector might command any assembly of ten or more persons to disperse.

68. The participant from North Borneo referred to the legislation which had been enacted and applied in 1962 in North Borneo, and which was referred to in Working Paper No.6. Under this legislation, inter alia, the Chief Secretary might order the detention without trial of any person whenever he was satisfied that such action was necessary for the purpose of preserving public security. It was stressed that any person who was subject to a detention order had the right to make written representations to the Chief Secretary and to make objections to an Advisory Committee consisting of persons appointed by the Chief Secretary and presided over by a person qualified to be a judge of the Supreme Court. Except when the Chief Secretary considered it undesirable for reasons of public security, the committee's Chairman should inform the objector of the grounds on which the detention order had been made and furnish such particulars as were sufficient to enable him to present his case. Upon the recommendations of the committee, the Chief Secretary might take any decision he deemed fit. The legislation also granted to senior police officers wide powers of entry into private places and of inspection, search and seizure by night or by day.

69. Earlier in the discussion, in connexion with various sub-items, other participants had given information on the emergency laws of their respective countries (see for instance para. 57 as regards the Defence of India Act of 1962 and para. 58 as regards Pakistan).

C. Human rights, the police and the suspect: Investigation of crime

(a) Interrogation

70. For the most part, discussion was focused on the limits of police power to interrogate and, in particular, on the role of the police in relation to confessions and admissions. It has been found convenient, therefore, to deal with topics (ii) and (vi) after dealing with the other topics under agenda item III (a).

(i) Should a person be required to give his name and address to a policeman:

a. Where he is suspected of any offence?

b. Where he is a witness to a crime?

c. In any other circumstances?

71. It was generally agreed that there was no infringement of human rights when the police in the course of their duty to investigate a crime required persons who were connected with the crime, or acquainted with the circumstances of the crime to give their name and address. The giving of name and address, it was felt, did not infringe a person's right against self-incrimination because it did not inevitably follow that doing so would expose a person to a criminal charge. In fact, in identifying himself, the person might satisfy the police that he was an innocent man.

72. It was noted that the laws and practice of countries differed in that some made it an offence for a person to refuse to assist a policeman in the execution of his duty when called upon to do so in any circumstances other than where he was suspected of any offence or where he was a witness to a crime by refusing to give his name and address, while others did not impose any particular obligations or sanctions. All legal systems, however, recognized the right of a person under interrogation to remain silent, and under some systems a person was never obliged to give his name and address to a police officer.

(iii) Detention and interrogation. Should the police have the power to detain a suspect for a defined period for questioning? May the police keep the detained person incommunicado?

73. Most participants were of the view that detaining a suspect for a defined period for questioning amounted to arresting the person and in that case the police were duty-bound to produce the person before a magistrate promptly, or within a stated period of time (commonly twenty-four hours) so that further detention depended upon the decision of a judicial officer.

74. Some participants mentioned that a suspect might be detained by the police for twenty-four or forty-eight hours and thereafter the police had to inform the public prosecutor who could either himself order further detention or obtain such an order from the investigating magistrate.

75. All participants agreed that it was a basic requirement of human rights that a person must be informed of the offence or crime of which he was suspected when he was to be arrested or detained, and, further, it was unanimously agreed that to detain a person indefinitely for the purpose of questioning by the police should not be permitted because it infringed the liberty of a person who might be innocent. In some countries, if it was necessary to detain a suspect for the purpose of completing the interrogation or investigation, the police had to obtain the order of a magistrate or any other person having the power of a magistrate.

76. All participants agreed also that it was a breach of human rights for the police to keep any detained person incommunicado. It was noted that where powers to keep a person incommunicado existed they were invariably subject to prior authorization from the public prosecutor or from the examining magistrate.

(iv) Duties of police to facilitate notification to relatives and legal representative of detained or arrested person of the fact of detention or arrest

77. According to the statements of participants, notice of arrest or detention was given to relatives and other persons by the police of their own volition or at the request of the person restrained. This requirement for giving notice was rarely provided for in law and it was more a matter of the practice of the police. In countries where the continental system prevailed the giving of any notice of the arrest or detention to relatives or lawyers or other persons was generally subject to the interests of the preliminary proceedings. In both systems it was often the case that the wishes of the person in custody were taken into account in notifying any person of his arrest or detention.

78. Some participants thought that notification might be withheld where there was apparent danger of tampering with evidence, or fear of suppression of evidence or escape of co-offenders.

79. It was generally agreed that it should be the duty of the police to facilitate notifications to relatives or counsel of arrested or detained persons of the fact of detention or arrest.

(v) Should the police inform a person of his rights, including the right to remain silent, before interrogating him? Has the person to be interrogated by the police a right to be assisted by counsel?

80. It was the general view that a person had the right to remain silent and the police should inform him of his right before interrogating him, otherwise his human rights would be infringed.

81. Some remarks were made about informing other persons, other than the suspected and accused persons, of their right to remain silent who might thereby be given the false impression that they were not required to testify at all, which would make it difficult for the police to secure much-needed tesiimony for carrying on their investigation.

82. Certain participants reminded the Seminar that in their countries a statement made before a police officer was not admissible as evidence and therefore the question of informing a person of his right to remain silent did not arise. At the same time their countries fully recognized the right of a person to remain silent.

83. The majority of the participants were of the opinion that a suspect should be informed of his right to remain silent before he was interrogated. It was generally agreed that, if the suspect's statement was to be recorded and given as evidence in his trial, he must be informed of his right to be silent. Participants also felt that failing to inform a suspected person would amount to infringement of human rights, and they also agreed that not every memeber of society knew or was aware of this right.

84. Attention was drawn to the recommendations made by the technical organizations to the League of Nations in 1939 which were referred to by the Committee of the Commission of Human Rights in its study of the right of everyone to be free from arbitrary arrest, detention and exile (E/CN.4/826, para. 437). The technical organizations had made the following recommendations:

> "The interrogation should in all cases bear upon facts tending to establish the innocence of accused persons as well as on those likely to incriminate them. Accused persons should be afforded an opportunity of making a full statement, and also of referring to matters on which they have not been questioned. Accused persons must be invited to indicate by what evidence their statements can be substantiated, and the summoning of witnesses for the defence must be facilitated.
>
> "It is desirable that the law should expressly lay down the principle that no person may be required to incriminate himself. Should a person charged refuse to make a statement, it shall be for the court to draw whatever conclusions it may think fit from such refusal in the light of the other evidence adduced and his silence should not be regarded as in itself an indication of guilt."

85. Opinions differed concerning the right of a person being interrogated to be assisted by a legal counsel. Part of the reason for this difference in opinion stemmed from the varying laws and regulations. In some countries there was no right to counsel at the early stage of criminal proceedings. In some, a person after his arrest had even a constitutional right to assistance by his legal advisers. In some others legal counsel could be employed only after the initiation of the prosecution or after the preliminary investigation was completed.

86. A caution was uttered by one of the participants against the possibility of the legal profession being used as an adjunct of crime. He stated that, in those countries where there was a legal profession with high ethical and traditional standards, assistance by counsel, if required, could be considered as a human right. However, the function of counsel was merely to assist the person being interrogated and never to aid him to invent a story. There should be no right to be assisted by a counsel who had been a party to the crime.

87. It was the consensus that the right to counsel during interrogation by the police should be considered as a qualified human right where that statement was to be produced in court as evidence against the person making it, and should be allowed on condition that counsel did not hinder the investigating officer from getting the true facts from the person being interrogated. It was also agreed that, once a charge had been made against a person, his right to obtain legal counsel should be an unqualified right.

(ii) The limits of police power to interrogate:

a. Before decision to charge

b. Before arrest or charge

c. After inviting the suspect to come to the police station

d. After arrest or charge

(vi) Confessions and admissions. The general problem of "the third degree", of preventing techniques of interrogation which infringe human rights. The use of such techniques as blood alcohol tests, lie detectors and narco-analysis.

88. The participants from Australia, New Zealand and Hong Kong mentioned that in their countries and territories the police in endeavouring to obtain information concerning the author of a crime could question a person before a decision to charge or arrest him, but that there was no obligation on the person to answer the questions. There was also no limit on the interrogation of a suspect after he was invited to come to the police station. After a decision was made to charge a person the police had to warn him that he was not obliged to answer questions but that if he did so his answers might be used in evidence. After similar warnings an arrested person could also be interrogated. Questions asked of a person who was charged or arrested were subject to various rules concerning exclusion of answers given as a result of any inducement, threat or promise by a person in authority. And even in the case of voluntary statements the courts subsequently were empowered to ascertain whether the circumstances in which the answers were given were such that it would be unfair to allow them to be used against the accused.

89. In certain other countries the rules of the police were more limited in that the police were bound to inform the public prosecutor or the examining magistrate of their actions. The public prosecutor and the examining magistrate exercised wide supervisory ppwers over the police. Further it appeared from the statements that the police had nearly as much power of interrogation in these countries as in those mentioned above.

90. A number of countries and territories follow in essentials what are known as the Judges' Rules applying in the United Kingdom. Since these rules were constantly referred to and have often been discussed at previous seminars though no record of them appears in the reports of the seminars, they may usefully be quoted.

Rule 1. When a police officer is endeavouring to discover the author of a crime, there is no objection to his putting questions in respect thereof to any person or persons, whether suspected or not, from whom he thinks that useful information can be obtained.

Rule 2. Whenever a police officer has made up his mind to charge a person with a crime, he should first caution such person before asking any questions or any further questions, as the case may be.

Rule 3. Persons in custody should not be questioned without the usual caution being first administered.

Rule 4. If the prisoner wishes to volunteer any statement, the usual caution should be administered. It is desirable that the last two words of the usual caution should be omitted, and that the caution should end with the words "be given in evidence".

Rule 5. The caution to be administered to a prisoner, when he is formally charged, should therefore be in the following words: "Do you wish to say anything in answer to the charge? You are not obliged to say anything unless you wish to do so, but whatever you say will be taken down in writing and may be given in evidence." Care should be taken to avoid any suggestion that his answers can only be used in evidence against him, as this may prevent an innocent person making a statement which might assist to clear him of the charge.

Rule 6. A statement made by a prisoner before there is time to caution him is not rendered inadmissible in evidence merely by reason of no caution having been given, but in such a case he should be cautioned as soon as possible.

Rule 7. A prisoner making a voluntary statement must not be cross-examined, and no questions should be put to him about it except for the purpose of removing an ambiguity in what he actually said. For instance, if he has mentioned an hour without saying whether it was morning or evening, or has given a day of the week and day of the month which do not agree, or has not made it clear to what individual or what place he intended to refer in some part of his statement, he may be questioned sufficiently to clear up the point.

Rule 8. When two or more persons are charged with the same offence and statements are taken separately from the persons charged, the police should not read these statements to the other persons charged, but each of such persons should be furnished by the police with a copy of such statements, and nothing should be said or done by the police to invite a reply. If the persons charged desire to make a statement in reply, the usual caution should be administered.

Rule 9. Any statement made in accordance with the above rules should, whenever possible, be taken down in writing and signed by the person making it after it has been read to him and he has been invited to many any corrections he may wish.

91. These rules relate to interrogation of persons by methods which fall short of violence, threats or promises of material reward by the police which are excluded under the general rule that a statement by an accused person is not admissible in evidence against him unless it is shown by the prosecution to have been a voluntary statement and not obtained from him either by fear or prejudice or hope of advantage exercised or held out by a person in authority, including a policeman.

92. The Judges' Rules and the general requirement that a statement should be made voluntarily were observed for instance in Australia, Hong Kong and Sarawak. They were also valid in New Zealand where there was also the following provision of Section 20 of the Evidence Act:

> "A confession tendered in evidence at any criminal proceeding shall not be rejected on the ground that a promise or threat or any other inducement (not being the exercise of violence or force or other form of compulsion) has been held out to or exercised upon the person confessing, if the Judge or other presiding officer is satisfied that the means by which the confession was obtained were not in fact likely to cause an untrue admission of guilt to be made."

93. It was mentioned by a participant from New Zealand that the last words of the section were generally applied to exclude cases where there was pressure or threat or other inducement, so that the effect was to follow the Judges' Rules.

94. The participant from the Philippines mentioned that in principle the Judges' Rules also operated in the Philippines but that recent court decisions appeared to allow admission of confessions extracted through force as evidence against the accused as long as the confession was not proved false. He thought that if these decisions were to be upheld in the future they might have the effect of abetting the use by the police of the "third degree".

95. Another system which was common to certain countries and territories was that derived from the Criminal Procedure Code and the Evidence Act as applying in India. The pertinent provisions of the Code and the Act were summarized by the Indian participant as follows:

> "By Section 162 of the Code of Criminal Procedure a mandatory provision has been made laying down that no statement made by any person to a police officer in the course of an investigation shall, if reduced to writing, be signed by the person making it. Formerly when any person whose statement has been reduced to writing by the police officer was called as a witness for the prosecution, the accused alone could use that statement for the purpose of contradicting such witness under Section 145 of the Evidence Act, 1872. The amending Act No. 26 of 1955 has extended this privilege to the prosecution also. Section 162 as thus amended, however, places a limitation on this new right of the prosecution that such statements can be used by the prosecution only with the permission of the court. No such permission is needed in the case of an accused. The object of Section 162 is to ensure that it should not be open to the police in a criminal prosecution to give evidence of admissions which were either not in fact made or obtained

by improper means. Section 162 is designed to keep out evidence which is not of a free and fair nature but may have been induced by some form of police duress that is by what is called third degree methods. The general provisions of the Evidence Act contained in Section 157 are controlled by the special provisions of Section 162 of the Code of Criminal Procedure. Section 163 of the Code is also important in this connection. It provides that no police officer or other person in authority shall offer or make, or cause to be offered or made any such inducement, threat or promise as is mentioned in the Indian Evidence Act, 1872, Section 24. Section 24 of the Evidence Act should be considered in this connection. Under that section any confession made by an accused person is irrelevant in a criminal proceeding if the making of the confession appears to the court to have been caused by any inducement, threat or promise having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the court, to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him. Then Section 25 of the Evidence Act clearly lays down that no confession made to a police officer shall be proved as against a person accused of any offence and then Section 26 provides that no confession made by any person while he is in the custody of a police officer, unless it be made in the immediate presence of a magistrate, shall be proved as against such person. All these provisions are directed against violence and excesses of the police.

"With the similar object of preventing police officers from committing excesses in the course of investigation it is required by Section 172 of the Code of Criminal Procedure that every police officer making an investigation shall day to day enter his proceedings in the investigation in a diary, setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him and a statement of the circumstances ascertained through his investigation. This mandatory requirement for recording the proceedings of the investigation in a diary acts as a salutary check upon the police. Then under Section 173 every investigation is required to be completed without unnecessary delay and as soon as it is completed the officer in charge of the police station is required to forward, to the magistrate empowered to take cognizance of the offence on a police report, a report in the prescribed form, setting forth the names of the parties, the nature of the information and the names of the persons who appear to be acquainted with the circumstances of the case and stating whether the accused (if arrested) has been forwarded in custody or has been released on his bond, and if so, whether with or without sureties.

"All these provisions of the law are designed to protect the legitimate rights not only of the innocent but also of those charged with crime."

96. The participant from Singapore mentioned that in Singapore both the Judges' Rules and the provisions as applying in India were concurrently available to the police, but in fact the police had preferred the practice of having confessions made before magistrates.

97. The participant from North Borneo explained that the Indian system had been followed until recently in North Borneo and Sarawak but had been abandoned as it hampered police investigation. Sarawak had gone over to the Judges' Rules in their entirety. North Borneo continued the exclusion of confession to the police but had made all other statements admissible as evidence in court.

98. The participants from Cambodia, Iran, Japan and the Republic of Korea mentioned that their laws and practices emphasized that confessions to be admissible must be made voluntarily; that "third degree" methods and any kind of coercion or deception were strictly proscribed and subject to severe sanctions; that confessions were sometimes made before public prosecutors or examining magistrates rather than the police; and that the general rule was that confessions might not be accepted in themselves as sufficient proof of guilt.

99. All participants agreed that in the interests of maintaining peace and order in society, to bring the real criminals and offenders of the law before the court for trial, the police should be given as wide powers as possible to interrogate. The Seminar recognized the difficulty of reconciling the desire to ensure that fetters did not prevent investigation of crime with the desire to protect human rights. In the circumstances the guiding rules cannot be left to internal police rules but there must also be rules from without - whether in the form of Judges' Rules or legislative provisions.

100. All participants agreed that the use of "third degree" methods was to be deplored and should never be permitted as it was a clear infringement of human rights.

101. Turning to scientific techniques such as blood alcohol tests, lie detectors and narco-analysis, many participants mentioned that in their countries and territories such techniques were rarely if ever used. Doubt was expressed by some participants as to the usefulness and accuracy of these techniques. It was mentioned that narco-analysis had never been used in interrogations within the countries participating in the Seminar. It was said that scientifically it had not yet been demonstrated that narco-analysis was helpful even in the case of persons who were willing to be subjected to it, let alone those who were unwillingly subjected to it. The use of narco-analysis moreover was considered as an invasion of the right to privacy. Lie detectors were used with the consent of the suspect in Japan and the Republic of Korea provided their use did not infringe the suspect's right to keep silent. Blood alcohol tests were stated to be reliable from the scientific point of view and were thought to be perfectly legitimate where the consent of the suspect had been obtained previously to the test. It was suggested, however, that certain safeguards might well be laid down for blood and urine analysis. There might be provision for independent examination by a pathologist, for a sample to be made available to the defendant, and, if scientifically possible, for a sample to be retained until the case came to the court so that if any objection was raised, the sample could be examined by some independent authority nominated by the court.

102. Participants generally agreed that confession and admission made by a suspect, whether to the police or to a magistrate (see paras. 88 to 93), could be used and admitted as evidence if the trial judge was satisfied that they were made voluntarily and without threat, inducement or promise, or any other form of deception. To make it admissible otherwise offended the sense of fairness and justice and infringed fundamental human rights.

103. One suggestion was that a distinction should be drawn between interrogation as a method of carrying out normal police duties, such as their duties to protect the life and property of a member of the community and an interrogation the purpose of which was to provide evidence against, or possibly for a person being interrogated in court. In the latter case, that is where the interrogation is designed to produce evidence before a court of law for or against a person being interrogated, it was not only desirable but essential that strict rules should be observed for the purpose of ensuring that any statement made by such person was a voluntary statement, and for this purpose an adherence to the Judges' Rules would ensure that any statement which was used for the purpose of evidence before it was admitted was subject to the satisfaction of the court that it was a voluntary statement. In the other category, that is the category where the interrogation was primarily designed to protect the members of the community, the police should keep within the ordinary law to which they were subject. They must refrain from assaults, from threats occasioning fear and from unauthorized detention. But the purpose of this type of interrogation was not to produce evidence admissible in court, but perhaps to protect the life of a member of the community. For instance, the police might have in their control a person whom they had arrested on suspicion of being responsible for kidnapping, and had reason to believe that he knew where the kidnapped person might be found. In those circumstances it could hardly be argued that the right of the person being interrogated should have precedence over the right of the victim and, therefore, for purposes of this type of interrogation the police should not be inhibited from interrogating the suspect even perhaps to the extent of entrapping him, so long as the victim remained a prisoner and that person was the only one who could lead the police to that victim and perhaps save his life.

104. Some participants urged the use of tape recorders and stenographers for the purpose of recording statements of confession of a suspect or of an accused person in order to have before the court an actual full and true record of the conversation between the two parties. This procedure appeared to most participants to be an ideal. From the point of view of the police and the investigation of the crime, however, it was found that it would not be practicable in many circumstances and in many countries. Tape recorders would not be available at all times when interrogation was to take place, for example during conversations on a journey. Moreover, there was no guarantee against the possible editing of the tape record.

105. Special importance was voiced concerning the need for mutual and better awareness amongst the public and the police concerning human rights and the duties of the police in connexion with the investigation of crimes. Attention was drawn to the remarks of the Chief Constables made before the Royal Commission on the police in the United Kingdom (Cmnd. 1728, para. 361):

"The successful maintenance of law and order depends as much upon the existence of police confidence in public support as the public trust in the police. The task of the policeman today is more difficult and complex than ever before and provided he acts reasonably and conscientiously he is entitled to expect the full support of the public and the court. Unfair criticism carried too far and a failure to understand the difficulties that daily beset the police must in the long run cause even the most loyal and conscientious officer to lose confidence in himself and interest in his duties. It is, therefore, vital for both the public and the police that a mutual regard each for the other should be reaffirmed and maintained."

106. Although there were some differences of opinion regarding the ways and methods of limiting the power of the police to interrogate suspects and to investigate crimes, it was agreed that the area of discretion left to the police in carrying out their duties of investigation should be ample but not too wide. The main problem was to find the best method to exercise control over the police and to see that the human rights of the individual as well as the rights of society were safeguarded. It was recognized that in the investigation of a crime the police should be guided by not only legal restrictions, but by their good sense and fair play in order to exercise their discretionary powers properly. A good police officer should always bear in mind the principle that he had a duty to solve a crime and at the same time not to violate the individual's human rights. It was also emphasized that a good police force would not exist unless it was properly chosen and recruited from persons with good education, who were given proper training with a view to inculcating moral integrity. There was room, therefore, to believe that where the prerequisites of a good police force existed, police officials could be trusted with power which, in some countries at present, was reserved for magistrates only.

107. All participants emphasized that a proper balance must always be kept in the laws and practice of countries between the right of a person to be presumed innocent until found guilty, his right to remain silent and not to be subject to self-incrimination, and his protection against treatment which might tend to impair his free-will, and on the other hand, the interests of society, the need for proper investigation of the crime and the requirement of adherence to rules and integrity in carrying out these rules by the police and other authorities. It was recognized that the whole area of investigation of crime involved the preservation of a sense of justice which must permeate the activities of the police and which must be supported by the community at large.

(b) Powers of arrest, with and without warrant. Should there be a right of resistance to unlawful arrest?

108. It was agreed that arrest should in principle be ordered by the judicial authorities, but that in various circumstances, where the risk of mistake was minimal and the need for swift action was great, police officers should be permitted to arrest a person without judicial warrant. For example, in all countries, police officers might, and sometimes should, so arrest persons who, in their presence, committed a criminal offence (arrest in flagrante delicto); those who deliberately obstructed the police in the execution of its duties; and fugitives from justice.

109. It was noted that in several countries the right of police officers to arrest a person without warrant extended to other cases, for instance, in respect of any person who was reasonably suspected of having been concerned in any offence of a specified gravity; or when a person was found in possession of objects which might reasonably be regarded as stolen property and who might reasonably be suspected of having committed an offence involving such property; or in respect of any person found in suspicious circumstances which gave grounds to believe that he was about to commit a serious offence.

110. All participants agreed that all cases where arrest without warrant was permissible should be laid down in the law; and that arrested persons should be brought before a judicial authority as soon as possible after the arrest.

111. Various opinions were expressed as to whether there should be a right of resistance to unlawful arrest.

112. It was suggested, as a tentative definition, that an arrest was unlawful in case of mistaken identity; or if it was made on grounds other than those provided by law; or when some procedural requirement was not met.

113. Some participants held the view that resistance to arrest in many such cases was justified, in accordance with the basic principle that no one should be required to subject himself to an unlawful act. The right to liberty was so fundamental that it should be protected even at the risk of letting a few criminals go free. This was the philosophy underlying the Common Law as it was applied in certain countries such as England, Australia and New Zealand. The fact that ex post facto remedies were available did not render the right of resistance superfluous since, in many countries, such procedures were cumbersome, expensive and ineffective. It was agreed that the amount of force to be used in resisting unlawful arrest should not be greater than was reasonably necessary in the circumstances; and that the person resisting arrest should not aim at killing or wounding his opponent except in self-defence against armed aggression clearly designed to kill.

114. The majority of the participants, however, felt that the attendant risk of violent conflicts between citizens and the police was too great to allow for the right of resistance. Such conflicts might easily develop as there was sometimes much uncertainty at the time of arrest as to the lawful character of police action, and the officers concerned insisted on effecting arrests which they thought in good faith to be lawful. It was also regarded as unrealistic to expect that arrested persons would always limit their resistance to the minimum. For the sake of maintaining peace and order in the community, resistance to arrest should not be encouraged. In fact it was specifically prohibited and made punishable under the

penal codes of various countries. Reference was made to the United States Uniform Arrest Act. It was incumbent upon the judicial authorities alone, after the arrest, to determine whether it had been lawful or unlawful. Ex post facto remedies and sanctions - civil action for damages, penal sanctions against police officers - were generally considered by those participants as providing effective deterrents and affording sufficient compensation to the victims; although some expressed the view that the state should be held vicariously liable for the damages arising out of unlawful police arrest in countries where such a provision was not yet enacted.

115. While sharing most of the views expressed against recognition of the right of resistance, a few participants admitted that such a right might perhaps be granted in certain cases only; when the unlawful arrest was made without a warrant; or when it was manifestly unlawful, or regarded as such by all persons present; or when excessive force and brutality was being used by the arrestor.

116. It was generally agreed that, whatever the correct legal position might be, and even in countries where the right of resistance was provided by law, the victims should rather, in their own interest, obey the orders of the police and seek afterwards whatever remedies were available.

(c) Powers of search and seizure, with and without warrant. Protection of privacy of the individual from invasion under general warrants.

117. As in the matter of arrest, it was recognized that, while searches and seizures should normally be authorized by a judicial authority, there were cases - for instance, searches made in cases of arrests in flagrante delicto - where the police should be free to take such action without judicial warrant.

118. In all cases, searches and seizures should be made for the purpose of obtaining specified objects which were needed as evidence, and in accordance with well-defined procedures.

119. It was agreed that general warrants constituted a serious threat to privacy, and should be prohibited save in exceptional circumstances.

120. The question was raised as to the admissibility as evidence of the fruits of illegal searches and seizures.

121. The majority of participants declared themselves in favour of the decisions taken by the English courts and applied in the courts of many participating countries according to which the unlawful character of searches and seizures did not render the fruits thereof inadmissible as evidence, the only criterion to be applied being the relevancy of the evidence to the case.

122. It was noted, however, that in the United States the courts had ruled to the contrary, holding that no article obtained as a result of illegal searches or seizure was to be admitted as evidence.

123. The suggestion was made that the proper solution might be, as in Scotland, to give the courts discretion to either admit or reject the fruits of illegal searches as evidence, taking into account the importance of such evidence on the one hand,

and the seriousness of the illegality on the other. This was not acceptable to several participants on the grounds that the prosecutor had need to know what case he had and because it would lead to interminable argument.

(d) Wire-tapping and similar investigative techniques. In what circumstances is wire-tapping permissible in the detection of crime and in what ways should the practice be circumscribed?

124. Indiscriminate and uncontrolled wire-tapping was unanimously condemned and was considered by all participants as a serious infringement of human rights, in particular of the right to privacy as proclaimed in Article 11 of the Universal Declaration of Human Rights. No one denied, however, that cases existed where this technique of investigation had to be resorted to in the interest of the community. It was emphasized that communications by telephone undoubtedly facilitated the preparation of crimes, and that the police would be at a great disadvantage if they were not allowed to use the technique of wire-tapping in certain circumstances. The recommendations contained in a report issued in 1957 by a special committee of the Privy Council in the United Kingdom were mentioned in that connexion and were approved by several participants: "In the first great field where the power has been and is exercised - that of national security - we feel no doubt at all in recommending that the powers of interception should continue to be used subject to the conditions and safeguards which we have set out at length in Part II and in the summary of conclusions." ... "We now consider the exercise of the power by the Secretary of State in cases of serious crime, which is the second great field of activity" ... "We feel that to announce the abandonment of this power now would be a concession to those who are desirous of breaking the law in one form or another, with no advantage to the ordinary citizen or to the community in general. If the police were to be deprived of the power to tap telephone wires in cases of serious crime, the criminal class would be given the use of the elaborate system set up by the State and use it to conspire and plot for criminal purposes to the great injury of the law-abiding citizen."

125. Some participants pointed out that investigative techniques, such as the interception of radio messages or of visual messages, were generally regarded as proper, and they wondered why wire-tapping alone should be prohibited. The view was expressed, however, that certain techniques of surveillance involved, more than others, an invasion of privacy, and that the recording of conversations in the home or on the telephone were particularly objectionable in that respect.

126. The discussion mainly concerned the definition of the circumstances in which wire-tapping was permissible, and the procedures under which the police might be authorized to listen to, and record, telephone conversations.

127. In the view of some participants, wire-tapping was so nefarious a practice that it should be tolerated only in the interests of national security. The Telephonic Communications (Interception) Act of Australia (1960) was mentioned as one enactment which was based upon such a premise: it admitted of wire-tapping only when the telephone was being used for purposes prejudicial to the security of the State.

128. Most participants were, however, of the opinion that wire-tapping might be justified not only for security matters but also in respect of serious crimes.

129. The majority of the participants considered that wire-tapping for the purposes of criminal investigation should be permitted only by law and only to combat particularly heinous crimes which were perpetrated in so clandestine a manner that the use of such a technique was absolutely necessary; plots against the security of the State, kidnapping, narcotics-trafficking and blackmail were frequently mentioned as examples.

130. As regards the procedures under which wire-tapping might be permitted, it was generally agreed that such permission should be granted by a public authority and not by the police. There was no dissent from the view that wire-tapping should be used only for the purpose specified in the authorization, and that those parts of recorded conversations which contained private matters irrelevant to the case under investigation should never be divulged. Opinions differed as to which should be the authority competent to issue the warrant, and as regards certain other procedural questions.

131. Some participants suggested that only a superior judge should be authorized to issue a warrant for wire-tapping, upon presentation of an affidavit by the Attorney-General or a senior police official giving grounds and particulars in support of the request. Hearing of the application would be made in camera and ex parte.

132. The majority of the participants expressed disagreement with the advisability and propriety of vesting such power in the judiciary. It was emphasized that judges were not in a position to evaluate the requirements of the security of the State, and that the judicial process, which involved in particular revealing the names of informers, was not appropriate for the consideration of such cases. At least as regards the protection of the security of the state, high executive authorities were the only proper persons to authorize wire-tapping. Further objections, applying to the detection of crimes as well, were made to the proposal concerning authorization by the courts: such a procedure was cumbersome and did not allow for the speedy action which was essential in order to detect various offences, such as kidnapping; associating judges in such a manner with the investigation of crimes might creat certain doubts as to their impartiality at the time of trial and adjudication.

133. Some of the participants were in favour of granting authority to a Minister of State, to a public prosecuter or to other officials who in various countries enjoy security of tenure to a considerable extent. Some held the view that the power to authorize wire-tapping should never be delegated, while others admitted of such delegation in urgent cases to the immediate subordinates of the official concerned.

134. There was also some discussion concerning the admissibility as evidence of conversations recorded by wire-tapping. One view was that such evidence should be admissible at trial unless it was decided, at the hearing, that the authority should be set aside as unlawful, improper, or unnecessary. Another view was that the records of conversations themselves should not be admitted as evidence at trial since they could easily be tampered with; but that evidence obtained as a result of leading information recorded by wire-tapping was proper.

(e) Entrapment - the use of the agent provocateur. To what extent should it be proper for police to facilitate the commission of a crime in order that they may bring about a prosecution? Should a person be entitled to rely on an assurance given by a policeman as to his rights and duties?

135. All participants agreed that while entrapment is a dubious practice from an ethical viewpoint, it is necessary in certain cases where the criminal law required evidence of contacts between two persons for illicit purposes. Bribery, narcotics peddling, smuggling, blackmail and extortion were frequently mentioned as examples of such offenses.

136. Some participants stressed the lack of reliability of the evidence so obtained: when the only evidence was given through entrapment it might be difficult to ascertain whether the accused had acted criminally or had committed a mistake in good faith. In various countries, therefore, the courts were extremely circumspect in admitting as evidence the fruits of entrapment, and they usually required corroborating evidence.

137. The Seminar emphatically condemned any practice whereby any person was encouraged or incited to commit a crime. This was regarded by all participants as a gross injustice and as a complete denial of the preventive role of the police. It was pointed out that, in the United States of America, the government was estopped from prosecuting when the accused had been induced by the police to commit an offence.

138. As regards the last question which was the subject matter of sub-item (e), it was agreed that, in all cases, police officers had the duty to tell the truth.

D. Human rights, the police and the accused: Prosecution and evidence given by the police

139. During the discussion it became evident that there were divergent laws and practices in the countries and territories of the participants. In particular in countries where the continental system applied the police usually played no part in prosecution of cases. In the light of this divergency no hard and fast rules could be laid down. It was generally agreed, however, that where police had a role to play in prosecutions, fairness, impartiality and complete disinterestedness on their part must be the paramount consideration. Indeed these requirements should apply to all who were concerned with matters of prosecution and evidence if the rights of the suspect and accused to a fair trial and to be presumed innocent until proved guilty were to be safeguarded.

(a) Should a discretion whether to prosecute lie with the police, and if so, in what cases? Effect on police morale of decisions not to prosecute

(b) Should the police conduct prosecutions? If the police were allowed to conduct prosecutions, to what extent and in what manner should they be subject to control or supervision by the public prosecutor or other authorities? If the police were not so allowed, what should be the relationship between the functions of the police and those of the prosecuting authorities?

140. Participants from countries following the continental system mentioned that free discretion as to whether or not to prosecute a case is not allowed to the police but is left to the discretion of the public prosecutor. Even in case of some minor offences where senior police officers could prosecute the public prosecutor was entitled to take over the prosecution or the defendant could ask for a formal trial. This system had the merit that prosecution was left in the hands of persons who had technical and legal knowledge and were better equipped than the police to conduct and supervise over prosecutions.

141. In countries following the Anglo-American or common law system the police normally conducted prosecutions for lesser or minor offences in courts of summary jurisdiction. They also usually conducted preliminary proceedings in magistrates courts in more serious or indictable cases with a view to committal for trial in superior courts. The conduct of prosecutions in these superior courts, including committal proceedings if so decided, was reserved for public prosecutors or Crown law officers. This showed that except for summary jurisdiction cases and the initiation of proceedings with a view to committal of cases to superior courts, the decision to prosecute rested with law officers or magistrates. In some countries and territories only police officers above the rank of inspectors were authorized to conduct criminal prosecutions. The control and supervision over them by state law officers varied. In some countries the public prosecutor had general direction and control of all prosecutions and the police were required to abide by his directions as to whether and how to prosecute. In others the police were left with the decision as to prosecutions and only sought advice from the law officers. Most participants thought that the former procedure provided the greater protection for human rights as it was the petty cases in which the larger proportion of the public were involved. Generally where policemen themselves were being prosecuted it was the practice in some countries, such as the Federation of Malaya, to have the prosecution conducted by a police officer from another district or by the state legal officers. There were also cases where discretion to prosecute for certain offences rested with persons other than the police or with other departments of government, and for some offences authorization had to be obtained from the appropriate ministry, the Attorney-General or equivalent offices.

142. It was indicated that in New Zealand the broad policy was that every citizen had a right to institute a prosecution himself and from this stemmed the right of the police to institute prosecutions. Exactly the same discretions existed for a citizen and the police. When in fact the police refused to prosecute on a complaint, the individual concerned could initiate proceedings with the difference that in case of indictable offences the Crown would normally take over the case. In every indictable case, however, the Attorney-General had power to enter a stay of proceedings. There was no public prosecutor in New Zealand. The police conducted their own prosecutions in the lower courts and were controlled by the officer in

charge and by the Commissioner. Police also took the preliminary hearings of indictable cases and where the offender was committed for trial at the Supreme Court the police prosecutor sent the file of the case to the Crown Prosecutor who was a local lawyer employed by the Government to prosecute in the Supreme Court. There was no difficulty in training police officers to conduct prosecutions efficiently in the lower courts. There had also been no serious criticisms or demands for this procedure in New Zealand to be changed.

143. The participant from the Philippines mentioned that the system in his country was one which included features of both the continental and common law systems: cases of misdemeanour were usually prosecuted by police but in case of felonies the public prosecutor took over the case after its presentation.

144. Ideally, it was said, prosecution should be left to prosecuting authorities with legal knowledge and special training and experience in criminal trials. But shortage of lawyers, their unavailability in all areas of a country or territory, and considerations of finance made it impracticable in many countries for professional lawyers or public prosecutors to conduct every prosecution. It was often the case therefore that prosecutions of minor offences were left in the hands of non-lawyers, including policemen.

145. According to some participants the control in cases where the police could prosecute should relate to their proper performance of regulations and to the sufficiency of evidence. It was mentioned that proper training and knowledge of legal matters was given to the police in most countries. It was pointed out that in certain countries the police had a trained unit to present the prosecution, they were subject to control and supervision by their senior police prosecutor, or by such other senior police officer, or the Attorney-General or State legal officer, as the circumstances might demand. It was not left for the police alone to determine arbitrarily that because there had been an arrest, because there had been a proceeding commenced by summons, that the matter must still be presented to the court. There might well be a number of circumstances to indicate that the matter not proceed further, and to that extent the police prosecutor must be the subject of the control of his administrative heads of his department, in addition to his Attorney-General, public prosecutor or such other person who might have some authority or some power of discretion in the matter.

146. It was suggested that irrespective of the system which applied there should be some built-in safeguards in order to avoid prosecution against an innocent person. There might well be provision for legal advisers within the framework of the police force who were not members of the police force or of the state legal offices but who were neutral in outlook and able to decide upon the legality of the case with the police. Or there could be provision for supervision of police prosecutions by senior officers of the police not connected with the case. And irrespective of outside control there should be an obligation on the police to examine and re-examine a case before deciding to prosecute. However, some of these suggestions were criticized on the grounds that they might hamstring the police in allowing one person to decide on a case and that they assumed that the police were incapable of exercising proper responsibility. The latter was not borne out in practice. There had seldom been judicial criticism of police prosecutions and even seldom any public reaction except in traffic violation cases.

147. Although participants recognized the differences in their systems there was no objection to police being in charge of certain prosecutions particularly for minor offences. At the same time it was emphasized that there were more minor offences than serious ones and the human rights of the individual to a fair trial should be clearly safeguarded. In serious cases it seemed proper to leave the prosecution to other than the police and in the hands of legal officers because they not only required an independent outlook but also raised legal questions.

148. When the police were not allowed to conduct prosecutions the relationship between them and the prosecuting authorities was, according to the statements of participants, one of mutual co-operation whether under the continental or other systems. Of course, under the former the police invariably acted under the supervision of the public prosecutor who might also ask them either himself or at the behest of the juge d'instruction to carry out further inquiries. It was suggested that there be no reticence on the part of the police officer to discuss any aspect of the case, nor to render any assistance possible, whether it be for the police side of the matter or for the defendant.

149. Irrespective of whether the police had any discretion whether to prosecute or not it seemed to many participants that if the police were properly trained their morale should not be affected by decisions not to prosecute. It was admitted that some of the police would no doubt feel that they had wasted their time in gathering evidence and in investigation if no prosecution followed. It might also happen that decisions of public prosecutors not to prosecute often discouraged the police, since the decisions might not always be justifiable. Less likely to affect the morale of the police were cases where decisions were taken by magistrates and judges in open court. Attention was drawn to abuses which sometimes occurred particularly in prosecution of traffic violations under the practice of what was referred to as "the fix" when some influential citizens interferred and asked senior police officials for withdrawal of prosecutions. In such instances there could be resentment by the ordinary policeman that some favour was being done by his superiors. Another example of adverse effect on police morale, which was mentioned, related to anti-corruption cases when there might well be sufficient evidence to prosecute but the appropriate government authority whose sanction had to be obtained by the police decided not to prosecute. It seems desirable to have proper consultation between the police and the authority empowered to decide upon prosecution and for such authority to give reasons for its decision not to prosecute. It was considered to be helpful if decision on prosecutions was placed in the hands of someone of undoubted impartiality. An example of this was the office of the Public Prosecutor in Singapore, a civil servant who was removable only in the same manner as a judge. Experience in the countries with such a system showed that it gave the police confidence in the authorities and better understanding of the situation. Many participants thought, however, that the police knew their status and position as well as their relationship with those who decided upon prosecutions and there was no need to over-emphasize the effect on police morale of decisions not to prosecute.

(c) Should the police advise a prisoner on such matters as how he should plead, the probable time of hearing, and the probable sentence?

150. From the statements of participants it was clear that in most of their countries and territories there was no objection to the police informing the prisoner of the probable time of hearing and the place of hearing of his case. Otherwise it was rarely allowed to the police to advise a prisoner on such matters as how he should plead or on the probable sentence which might be inflicted on him. In some countries

the police did so without any authorization. One participant mentioned that because in his country the police were regarded as servants of society they could furnish the prisoner with legal advice provided such advice did not bring about any deviation in the course of the prosecution. In some countries, it was said, the police were specifically instructed against rendering to a prisoner any advice under any circumstances. As regards advice to a prisoner of the probable sentence he might be subject to, participants considered any such advice by the police to be an unwarranted interference by them with what was a judicial function.

151. It was emphasized that in such matters as pleading and the probable sentence the prisoner should consult his legal adviser or such person as he might desire to seek advice from. He might, however, be informed of how he could seek such consultation, and in particular about any facilities for legal aid to which he might be entitled. The police should not put themselves in a position where they could be accused of giving false advice or of giving advice for ulterior motives, or affecting the free will of the prisoner in any way.

(d) The role of the police in prosecuting. What should be the function of the police in relation to:

(i) The presentation of evidence, including corroborative evidence by policemen?

(ii) Evidence favourable to the accused?

(iii) An accused "known" to be guilty against whom there is little evidence?

152. Where the continental system operated it was stated that the police collected all evidence and sent it to the public prosecutor who was bound to present all the evidence. In systems where police undertook prosecution, it was mentioned that they should elicit the plain facts relating to the offence and avoid any suggestion of exaggeration, colouring or bias. The rules of conduct which governed legal counsel should apply equally to the police.

153. According to the statements of participants, the function of the police in relation to evidence favourable to the accused was for them to put all genuine evidence whether it assisted the case or not and to make available statements of witnesses they did not wish to call. As one participant stated, all evidence should be put forward to the court firmly, fairly and fully. Another participant mentioned that the police had to avoid any discrimination and were duty bound to collect and present all evidence. It was suggested that a good guide was provided by the following provision of the Standing Orders to the Police Force of Victoria in Australia: "Members must remember that the object for which they give evidence is the furtherance of justice - justice to the prisoner just as much as justice upon him; they have no personal interest in his being convicted or acquitted, for though crimes prevented or offenders detected and arrested or otherwise brought to justice are no doubt proofs of energy and efficiency on the part of the members concerned, the result of the trial does not in any way reflect upon their worth. He must tell the court the clear, plain, unvarnished, unbiased truth, and present the facts impartially. No member is entitled to suppress evidence in favour of the accused. It is his duty on all occasions to lay fairly before the court all facts relevant to the case. He fails in his duty if he omits to adduce any fact favourable to the accused."

154. As regards instances where an accused was "known" to be guilty but there was little evidence against him, some participants said that in their system the police did not prosecute and it was for the public prosecutor and the judge to decide whether a case should be dropped because of little evidence. In other countries the rule was that the prosecution must present such evidence as would satisfy the court beyond all reasonable doubt of the guilt of the accused and, therefore, if the police had little or no evidence to substantiate their case, they would not institute a prosecution. The view was expressed that the police should carry out their duties conscientiously with regard for impartial administration of criminal justice and not be influenced by public outcry against a suspected person or by their own opinions as to his guilt if there was little evidence for prosecution. It was the duty of the police to tell the court that there was no case. One suggestion was that if the facts were such that they showed that no reasonable judge could convict on their basis then there should be no prosecution.

(e) Should police officers serve as judges or magistrates and should there be policemen on duty in the courts? What should be the magistrate's attitude to the police prosecutor and to evidence given by police officers?

155. There was little discussion of this topic. Those who participated in the discussion considered that the principle of separation of powers between various branches of government and the need to safeguard the right of everyone to a fair and impartial trial required that a policeman should not serve as judge or magistrate. It was urged that a policeman should not be a judge in his own case. It was also urged, however, that a policeman who witnessed a traffic violation might even be authorized to fine the driver and collect the fine on the spot, subject to the right of the accused to demand a formal trial.

156. Whether a policeman should be on duty in the court or not depended, according to the statements made, on the tasks assigned to the policeman and whether he acted independently in any way or was under the supervision of the magistrate or judge of the court. It was thought that in most countries and territories the police were in court not as policemen performing their duties as such, but to maintain order at the direction of the court. Attention was drawn to the following conclusion drawn by the Royal Commission on the Police of the United Kingdom in 1962 (Cmnd. 1728, para. 375):

> "We agree with witnesses that anything which gives a mistaken impression of the respective functions of the police and the Court is better avoided... We also agree with suggestions made to us by the Magistrates Association and others that civilian ushers should, wherever possible, replace police officers in Magistrates Courts, with the additional advantage of saving police manpower".

157. It was further stated that the attitude of the magistrate to the police prosecutor and to evidence given by police officers should be the same as his attitude towards a lawyer or counsel and a witness in court, no more and no less. Any other attitude would be prejudicial to a fair trial.

/...

(f) Should police documents e.g., the watch house arrest book and police notebooks be privileged from production in court, and, if not, in what form should they be produced?

158. Some participants mentioned that in their countries no police documents which related to a case were exempted from production in court. Even in the case of documents where production might divulge state secrets, or adversely affect public interest or the security of the state, some participants intimated that authorization of the government department concerned could be obtained, at least of those parts of the documents which were relevant to the case. Some participants considered that a proper balance should be kept between the necessity of keeping the secrets of police investigation and also protecting the secrets and privacy of third persons as well as guaranteeing the smooth operation of police functions.

159. It was suggested that the proper test was whether a watch house arrest book or police notebook or record of statement by a witness was material to prove or disprove the guilt of a person charged. If it was, then it should not be subject to police discretion or privileged from production. The magistrate or judge should have the right to look at the documents in advance to determine whether they assisted in proving the guilt or tended to show innocence. The judge should decide on the question of admissibility in order to avoid any requests by the defence where the latter was seeking to direct attention away from the real issue and sought to get discovery of the documents which were on file but not required by way of evidence in court (referred to as "going on a fishing expedition").

160. It was suggested that, together with the judgement of the magistrate or judge about production of a document, it should also be a requirement that where necessary in the public interest or for the security of the state, police should be permitted to submit certified copies of the documents concerned instead of the original and to submit only the extracts relating to the case concerned; the choice of the extracts to be submitted being left to the judgement of the court.

E. Human rights and police discipline: Control of and remedies against abuse or excess of police powers

161. It was generally agreed that the effectiveness of remedies against abuse or excess of police powers should not be achieved to the detriment of the human rights of the policeman. Like every other citizen, he was entitled to a fair trial.

(a) What should be the civil liability of the policeman and of the state in respect of abuse or excess of the policeman's powers?

162. It was noted that, while most countries authorized actions to be brought against the state for wrongs committed by its officers in the course of their duty, in some countries such as the Philippines and in several states of Australia, civil liability for damages arising out of illegal or improper police action was solely that of the policeman concerned; but in fact the Government normally stood behind the police, so that in practice the citizen would not normally suffer if the dependent was without means to satisfy a judgement. The present position is based upon the principle that the state is not liable for acts of officers done pursuant to a discretion vested in them personally by law. In support of that system, some participants said that it provided an effective deterrent against abuse or excess of police power, and that such a deterrent might be far less powerful if the state were to be held solely or primarily responsible. It was also feared that a system of state liability might encourage litigation on trivial grounds.

163. Some participants questioned the propriety of subjecting the state to civil liability when policemen acted clearly outside the scope of their functions, and in many cases where they were granted discretion by law, for instance as regards arrests without warrant. In such cases, according to those participants, it could not be maintained that the policeman acted upon instructions of the Government, and state liability was not justified.

164. In the Republic of Viet-Nam, as in various other countries whose laws were patterned on the continental system, the state might be sued only when police action revealed the existence of a "Service fault" (faute de service), i.e. in the case of negligence or of over-zealous action by the police in the carrying out of their duties, without malicious intent or bad faith. In case of "personal fault" (faute personnalle), where malice or bad faith were apparent, for instance when the victim had been tortured, the state was not liable.

165. The majority of participants were in favour of a system of primary state liability in all, or most, cases of abuse or excess of police power. An ever-increasing number of countries, in particular Japan and New Zealand, had laws to that effect. The human right involved was the right of the person injured to receive compensation therefor, a result which might not always be achieved where only individual policemen might be sued. State liability might and should be established within the framework of every legal system and regardless of any artificial legal theory. It was often impossible to determine which particular policeman was responsible, as excess or abuse of police power might be the result of collective action; besides, it was said by some participants that civil liability of the employer was not necessarily, in modern times, dependent upon proof of a fault committed by the employee. The theory according to which policemen were not servants of the state was no longer valid since police officers were in most countries subordinated in some manner to the Government and they were all paid out of public funds.

166. It was stressed that, under a system of state liability, each policeman might still be deterred from committing abuses. Most participants suggested that provision should be made for suing the policeman as well as the state, preferably in a joint action. They recognized that the state should have, after the suit, a recourse against the policeman for recovery of part of the damages. Several participants felt, in that connexion, that the sum to be paid by the policeman to the state should be assessed in proportion to the seriousness of his misconduct, not on the basis of damages awarded; assessment should be made preferably by an independent tribunal. Criminal and disciplinary sanctions might also constitute effective deterrents.

167. Various participants pointed out that, in countries where a system of primary state liability was established, experience did not show that the number of trivial claims had increased.

(b) What should be the criminal liability of the policeman in respect of abuse or excess of his powers?

168. It was recognized that policemen should be subject to criminal penalties at least in case of serious intentional faults and of malicious action. For example, the laws of many countries provided penal sanctions for police officers who committed abuses in arresting or detaining a person, who subjected an arrested person to violent treatment in order to extract a confession, or who knowingly charged innocent persons with an offence.

(c) Desirable forms of disciplinary machinery

(d) Police disciplinary boards. What should be the position with regard to:

(i) their composition;

(ii) their jurisdiction;

(iii) the publicity or otherwise of their proceedings where a private individual is the complainant; and

(iv) press reporting of their proceedings?

169. The consensus was that while disciplinary procedures need not embody all the rules which were applicable in criminal cases, certain fundamental rights should be granted to the policeman concerned. Several participants mentioned in that respect the rights to be heard, to receive the assistance of counsel, to compel the appearance of witnesses and to cross-examine them, as well as the right to appeal in all cases. The practice followed in some countries to use as evidence the contents of reports which the policeman concerned was ordered to make was considered by some participants as not being consonant with the right to protection against self-incrimination.

170. Misconduct by a policeman might also be a criminal offence. It was noted that aggrieved persons often preferred to submit a complaint to the departmental authorities rather than to the public prosecutor, as disciplinary proceedings were less expensive and more expeditious than court proceedings. In most countries certain procedures existed, under which the police authorities might refer the case,

after inquiry, to the public prosecutor. It was said that the police authorities might sometimes be too hasty in applying such a procedure, lest they be accused of undue leniency if the matter remained in their hands.

171. In certain countries a criminal conviction did not render disciplinary sanctions applicable as a matter of course; convicted policemen must still be afforded full opportunity to submit their defence at disciplinary proceedings.

172. Several participants stated that, in their countries, disciplinary proceedings were conducted before certain boards or tribunals, some of which included, besides senior police officers, qualified representatives of the public, while some others were presided over by a magistrate or placed under the supervision of the judiciary. Such machinery was generally regarded as giving sufficient guarantees of independence and impartiality. The view was expressed, however, that disciplinary proceedings before an organ composed of several persons might be too cumbersome.

173. While those boards were to decide on the question of misconduct they did not have the power to inflict disciplinary penalties. Such a power was exercised only by the appointing authority - the Chief Commissioner or the Minister - upon receipt of the board's recommendations and of any plea for mitigation which the policeman concerned might submit.

174. It was generally felt that publicity and Press reporting of disciplinary proceedings were not advisable as they might impair the morale of the police force. Publicity might, however, be admitted when public opinion was aroused on account of serious misconduct by a policeman. One opinion was that publicity should not necessarily be admitted when a private person was the complainant but no one denied that the aggrieved person should be informed of the results of the inquiry.

(e) The Ombudsman; civil liberties commissioners or bureaux

175. The Seminar heard detailed statements concerning review of police action by the Parliamentary Commissioner (the Ombudsman) in New Zealand, and by civil liberties commissioners and bureaux in Japan.

176. In accordance with a New Zealand Act of 1962 a Commissioner was to be appointed for a three-year term by Parliament for the purpose of investigating various cases of abusive or erroneous administrative action. This official was responsible to, and removable only by Parliament.

177. The Parliamentary Commissioner might inquire into any matter which was handled by the Administration, including the police, but judicial acts as well as certain policy decisions of the executive were outside the scope of his functions. He might not take action on any case in respect of which judicial recourses or other adequate remedies were available.

178. Inquiries were initiated either upon the receipt of complaints or ex officio. At the discretion of the Commissioner, complaints might not be acted upon if he considered them trivial or vexatious, or in certain other circumstances.

179. The Parliamentary Commissioner had extensive powers of inquiry. As a result of his investigations the Parliamentary Commissioner might not reverse or modify administrative decisions. He could make recommendations to the departments concerned;

and, if no adequate remedial action were taken, he could report to Parliament on the matter. He should at any rate report annually to Parliament on his activities in general. The Commissioner's reports might under certain conditions be published.

180. It was pointed out that this institution was to a large extent modelled upon the Ombudsman systems which were well-established in Scandinavian countries and particularly on the Danish institution bearing that name. The views expressed and conclusions reached at the Human Rights Seminar on Judicial and Other Recourses against Illegal or Abusive Exercise of Administrative Authority (Kandy, Ceylon, 1959) had greatly enhanced the interest of the New Zealand Government in the matter.

181. The proportion of complaints upon which the Parliamentary Commissioner had taken action during the six-month period since the law was enacted was rather small. This should not be regarded as casting doubts upon the usefulness of the institution, as the number of cases requiring such remedial action was not expected to be great in countries where the population was small and homogeneous and the rule of law was well established. It was said that the main purpose of the institution was to make every citizen fully confident that he could always rely on an impartial authority to investigate his grievances when no other remedy was available.

182. In Japan, the Civil Liberties Bureau of the Ministry of Justice and the system of Civil Liberties Commissioners were established in 1947 and 1948 respectively. The Bureau was composed of officials of the Ministry; while the Commissioners - numbering about 8,500 - were citizens of high moral and educational standing who were appointed for a term of three years by the Minister for Justice upon the recommendation of mayors of cities, towns and villages.

183. The functions of the Bureau and of the Commissioners were, in particular, to investigate cases of violation of human rights: for instance cases of undue physical restraint or improper search or seizure by the police. Inquiries were initiated usually upon the receipt of complaints, numbering about 7,000 annually, but they might also be made motu proprio.

184. The organs concerned had no authority to carry out compulsory investigations. Although they could demand that court proceedings be instituted if they had reason to believe that the matter might fall within the purview of Criminal Law, in most cases the Bureau and the Commissioners limited their action to giving advice or warning to the Administration, and to extending their assistance to the victims, for instance in the form of legal aid. It was said that the Bureau's and the Commissioners' recommendations carried considerable weight with the Administration, and that such a system played therefore a very important role in the protection of human rights.

185. Several participants expressed their interest in those institutions, particularly if they could be used to combat corruption within the police. Others were of the view that the Attorney-General or Public Prosecutor established in various countries within the geographical area of the Seminar might be considered as performing, with independence and impartiality, some of the functions of the Ombudsman or of the Civil Liberties Bureau and Commissioners in relation to excess police powers.

F. Human rights and the administration and training of the police

186. In discussion, participants recognized differences in emphasis in their respective police systems between forces, as in Australia, which were basically a citizen constabulary modelled on that of England, and paramilitary forces, as in Indonesia. It was, however, thought that the principles on which agreement was reached applied to both types of force.

(a) The inculcation of respect for human rights by police administration and training

187. The inculcation of respect for human rights by police administration and training was considered by the Seminar to be essential since the police had powers to apprehend persons, to prevent them from acting in certain ways, and to undertake many other activities which were apt to infringe upon different human rights of persons.

188. It was said that the individual responsibility of a policeman, and particularly of a police officer, was more onerous than any delegated to, or assumed by, a member of any comparable profession or occupation, and his burden was much greater than that of any other public servant. Responsibility of this kind, to be properly and reasonably exercised, demanded high moral standards and an accurate exercise of judgement. Therefore a policeman should possess a combination of moral, mental and physical qualities not ordinarily required in other employments so that he might act with authority, common sense, courage and leadership, with the greatest respect for the liberty of the person. In all this police administration and training played a vital part.

189. Participants mentioned that training given to the police invariably laid stress on human rights. Police were taught for instance that in the preservation of law and order their duty was to serve, and not to suppress, the law-abiding citizen. A policeman's aim should be not to send a person to prison but to keep him out of prison. Usually it was pointed out to trainees that successful police work depended upon the support and goodwill of the general public, and that it must be the endeavour of every policeman to merit and retain public confidence, for which respect for human rights was essential.

(b) (i) The relation to human rights of aspects of recruitment such as the age, background and quality of recruits

190. It was agreed that all aspects of recruitment were important in order to have an efficient and conscientious police force which was aware both of its functions and the human rights of the people. Otherwise the police would not be equal to their task and would tend to violate human rights.

191. There was some difference of opinion concerning the age at which recruits to the police should be taken. According to the statements of participants, a minimum age was usually provided for a recruit, which varied in different countries from sixteen to twenty-four; the minimum age was often higher for recruitment to other than the lower level. The aim was to obtain persons of sufficient maturity, physical standard, good character and discretion. Intelligence and education were also important. Educational qualifications for recruits varied according to the rank to which recruitment was being made, but often, it was noted, the educational qualifications for the lowest ranks were deplorably low. This could not be

avoided in a number of countries, however, until the general educational standards of the people in those countries as a whole had made more progress than at present. Because of this, training of recruits and their further education while they were in the police force was considered essential.

192. Some participants emphasized the need to avoid political considerations from affecting recruitment. Others considered that in choosing candidates great care should be exercised against recruiting persons with a potentially domineering attitude towards the community, since people with this attitude were often attracted to police service but were not suitable for a police force which must have constant regard for human rights and the interests of the community.

(ii) The relation to human rights of training programmes at various levels of seniority and experience

193. From the statements of participants it appeared that in all countries and territories police training programmes included training at the recruitment stage, in-service training, refresher courses, detective courses, prosecutors' courses, potential officers' courses and officers' courses. It was suggested that greater use should be made of scientific advances by having police laboratories and by giving training in finger-printing and identification. It was agreed that every effort should be made to have training programmes at various levels of seniority and experience, and as far as possible the programmes should be wide enough to cover subjects other than those relating to police regulations, police functions and the law; they should extend to such subjects as social problems, political science, psychology, elementary science and physical education.

194. Some discussion took place concerning the cadet system as it operated in certain countries. It seemed to some participants that it was necessary to choose certain qualified persons, even at an early age, for cadet training, to allow them ample time for their training in all the variety of fields in which they would be operating. On the other hand, it was thought that long and exclusive training in police centres tended to build up a police mentality out of touch with the community. It was better therefore to recruit persons at a more advanced age when they had already gained experience of living in a community and understanding the interests of that community. It was mentioned that normally the training given to cadets went beyond the narrow limits of police requirements and covered general education and understanding of the community; the emphasis was equally on developing character and making recruits versatile.

(iii) The relation to human rights of the inculcation of moral values and esprit de corps

195. The fostering of moral values and esprit de corps was generally regarded as an essential basis for public confidence in, and respect for, the police. Since the police played an important part in respect to the morality of the people in general, they should be required to understand well what morality was and to act morally themselves. It was the duty of the police to set a moral example to the people. Participants mentioned that police were being constantly educated and trained to have self-confidence, self-discipline and integrity and to display moral rectitude in their conduct.

(iv) The relation to human rights of the extent and standard of training of the police in law

196. Participants pointed out that training in law was a primary goal in all police training in their countries and territories. The standards of training in law depended upon the rank and functions of the policeman or police officer. Usually training of the police in law rested with senior police officers but often non-police professional teaching was provided for, and frequently selected officers received special legal training in outside colleges and universities. It was generally agreed that training in criminal law, procedure, and evidence should be given at all stages of police training and that senior police officers should have a wider training in law. It was also agreed that the study of criminology was important to help the police in their preventive functions.

(v) The relation to human rights of the training of the police in law and social problems by teachers who are other than senior police officers

197. Some participants mentioned that law and social problems were taught to the police by persons outside of the police force such as professors, social workers, governmental department heads, and eminent individuals. It was considered that because police service was so closely connected with leading, helping and servicing human beings, careful and imaginative education and training in human relations was probably as important as training in law. The aim of such training was to place the policeman in a professional relationship with the citizen similar to the relationship which a medical practitioner or other professional provider of service maintained with people who needed his aid. Modern functions of the police made it necessary for members of the police force to be sent out for training to technical colleges, universities and institutions dealing with social problems in order to widen their horizons and to equip them for proper execution of their duties and role in the community. An insight would then be gained by the police and they could thereby avoid undesirable psychological and other social effects from arising out of their actions. Accordingly it was generally agreed that training of the policeman in law and social problems by teachers who are other than senior officers was most desirable.

(c) (i) The value of a knowledge of the work of, and collaboration with, other social agencies

198. It was urged that a knowledge of the work of, and collaboration with, other social agencies was of the utmost value to the police because they were concerned with problems of a social and psychological nature both when apprehending offenders and in the treatment of offenders as well as in the treatment of persons who were under sentence or had served their sentence. In particular, juvenile crimes and juvenile offenders required to be dealt with in a manner which often differed in important respects from those of adults. Child welfare societies and institutions should be allowed to play a greater part at all stages of police activity and particularly in connexion with prosecution, sentencing and rehabilitation. Sympathetic consideration of ethnic, cultural and other problems of migrants was urged and it was suggested that professional experts and other selected persons might be closely associated with the police in such matters. It was desirable also to have advisory groups consisting of professional men, trade union leaders and representatives of government departments to assist the police.

Collaboration between social agencies and probationary and parole officers was equally desirable.

199. It was mentioned that the policeman came in contact with people who were not always in a normal state of mind and therefore needed a good deal of understanding. People often came to the police when they were in trouble and were emotionally upset. It also happened that when police visited ordinary citizens they frequently caused consternation by their sudden appearance at the front door. It was therefore very necessary that all policemen should be trained to handle these situations and to have an awareness of the impact which their presence had on people. The police had to dispel fears and to show understanding and tolerance and to realize that social readjustment and rehabilitation were often a slow process requiring patience and close co-operation with social agencies. Knowledge of the work of social agencies and collaboration with them would go a long way in helping the policeman in these matters. At the same time much research was needed to produce suitable training in human relations for the police.

200. Many participants gave information of the collaboration already in effect in their countries between the police and social agencies and referred to numerous agencies and organizations which were consulted or which had been asked for assistance. Attention was drawn also to the suggestions made by the 1960 United Nations Congress on the Prevention of Crime and the Treatment of Offenders.

201. It was generally agreed that a knowledge of the work and collaboration with other social agencies was most desirable. It was also urged that social agencies and organizations dealing with matters with which the police were concerned should, in their turn, co-operate and assist the police.

(ii) The value of adequate Government support of the police in staffing and training matters

202. Adequate government support of the police in staffing and training matters was considered necessary in order that the police could perform their duties with the utmost success. Those participants who spoke on this topic mentioned that adequate financial support was usually forthcoming from their governments. It was noted, however, that in some countries financial support from the Government was so meagre that the salary of many levels of the police were low, with the consequence that efficiency and morale of policemen belonging to these levels were adversely affected.

(iii) The value of establishing a "profession" of police officer, with common standards and mobility between the police forces

203. Some participants referred to the efforts made in their countries to establish the police force as a profession. Certain participants noted that there was little movement towards common standards and mobility of police forces. In some countries, however, an approach to professional standards was becoming common amongst the police at high levels. It was agreed that modern police had progressed beyond the purpose for which a police force was inaugurated by Sir Robert Peel in 1829, and there was a need for elevating the police force to the status of a profession.

(d) Should a policeman be permitted to hold a second job - if so, of what kind?

204. The holding of a second job by a policeman was generally opposed because it was considered that he must devote himself fully to the tasks assigned to him as a public servant most impartially and effectively. It was said that there was no room in the police force for a divided loyalty. It was suggested that the standard of pay for a policeman should secure his livelihood and should not be such as to make it necessary for him to look for another source of remuneration. It was observed that with few exceptions, where special permission to hold another job was sometimes granted, the participating countries and territories did not permit a policeman to hold a second job.

(e) Should each country devise and promulgate a police code of ethics?

205. Those who participated in the discussion considered that it was certainly desirable to have rules of ethics for the police, and they mentioned that usually there was no distinct code of ethics promulgated for the police but in each country and territory laws, regulations, police guides and manuals set out what could be considered as rules of ethics to be followed by policemen.

206. It was suggested that since the fundamental functions and responsibilities of the police did not greatly differ from country to country universal ethical standards based upon humanity and justice could be established for the police.

207. It was stated, however, that it was essential for the police to be part of, and associated with, the community of each country. Therefore, the moral code and standards of behaviour of the community and the police should be the same. If ethical standards other than those in a country's police laws and manuals were laid down, for instance in an international code, the policeman would be removed from the community to which he belonged, which was not a desirable state of affairs. To create an elite corps with different moral standards from those of the community would contradict the basic view that the police were merely a section of the public doing what any member of the public might do, with the only difference that they were paid to do it. Therefore, it was preferable to leave codes of ethics to be provided for by each country or territory, and it was undesirable to have an international code of ethics.

208. On the other hand it was argued that what was being suggested was not a delineation of the functions and powers of the police or the dissociation of the police from the community of the country, but the setting forth of certain moral and ethical standards which were common to all civilized communities. A narrow nationalistic view adopted by countries with high standards would lead to the same line being taken as by dictatorially minded Governments such as that of Hitler, who with an entirely different set of ethics had grossly violated human rights. Attention was drawn to the many international organizations which had been formed, including such organizations as the International Criminal Police Organization and the International Federation of Senior Police Officers, and to professional standards that had been established, for instance, for the medical and legal professions. Reference was also made to the code of ethics adopted in 1957 by the International Association of Chiefs of Police.

209. The Seminar adopted the latter view and agreed to the proposal of the participant from the Republic of Korea to ask the Secretary-General to request the Commission on Human Rights to consider the question of a universal police code of ethics and the methods by which such a code could be prepared and adopted.

(f) Should there be collaboration between the South East Asian countries in police training?

210. Collaboration between South East Asian countries, including Australia and New Zealand, in police training was whole-heartedly welcomed by all members of the Seminar.

211. Certain participants informed the Seminar of the exchange of police personnel for training purposes which was already going on within their countries, and the working papers submitted by most other participants reflected the same situation. It was thought that it would be beneficial for each country and territory participating in the Seminar to exchange police training programmes for the purpose of improving the standards of police operation and of furthering the protection of human rights. It was suggested that an Association of Police Chiefs might be set up for the region in order to exchange professional information and to improve methods and techniques of police law enforcement in each country.

212. The participant from the Republic of Korea proposed, and the Seminar agreed, to request the Secretary-General to make available fellowships under the United Nations Programme of Advisory Services in the field of Human Rights, for exchanges and collaboration in police training between the countries participating in the Seminar.

G. Human rights and public relations of the police

(a) The attitude of the public to the police

(i) What should be the aims in this regard, and what are the best methods of achieving them?

213. The police should not be regarded as a body distinct from, and hostile to, the public but as an impartial and vigilant protector, in spite of the fact that the role of the police could at times be unpopular.

214. A brief discussion took place concerning the best methods of achieving this aim. The importance of selective recruitment and of adequate training was noted, as well as the necessity for the police to be invariably courteous in the exercise of their duties. It was stressed that complaints by the public concerning abuse or excess of police power should be thoroughly investigated.

(ii) Circumstances which might cause deterioration of public respect for police:

a. Any tendency of policeman to consider himself as being above the law, or to disregard human rights

215. It was said that instances where policemen showed a tendency to consider themselves as being above the law, or to disregard human rights, were not frequent, but that such occurrences were prejudicial to the good reputation of the police out of all proportion to their frequency.

216. The view was expressed that, in order to combat such a tendency, it was important to place less emphasis on the para-military features of police training and discipline, and to promote practical training of the police in such fields as public relations and psychology. A change away from the idea of a police "force" to a police "service" was considered desirable.

(b) Secrecy of police rules and regulations

217. All participants stated that there were no secret police rules and regulations in their countries and that there should be none. The role of the police was to implement laws and regulations which should be published.

(c) Duty to enforce a law which might be regarded as bad or unrealistic

218. It was emphasized that when the police had to enforce a law which was regarded by the public as a whole, or by important sections of the public, as bad or unrealistic, this might well cause deterioration of public respect for the police.

219. Some participants drew attention to the fact that the progress of legislation could never be as rapid as that of social reform; and that, during this time-lag, the role of the police in enforcing obsolete laws was a difficult one.

220. The view was expressed that one solution might be to remove, or to keep to a minimum, penal sanctions in case of violations of various laws and regulations of an economic, commercial, industrial or technical character; and to restrict as far as possible the role of the police to the prevention and detection of activities which were generally regarded as criminal by the public. It was hoped that the police might, then, have to enforce a smaller number of unpopular laws than was the case at present.

221. It was noted that some offences, such as attempted suicide, adultery, abortion or euthanasia were rarely prosecuted in various countries.

222. The suggestion was also made that the situation in that respect would be improved to some extent if the police made the public understand that they were not the authority responsible for the enactment of unpopular laws.

(d) Use of police to enforce industrial laws

223. Many participants thought that industrial laws should be enforced, not by the police but by special organs, and in accordance with special procedures. Nevertheless, the police should intervene, as in other situations, in order to prevent any breach of the peace or to restore public order.

(iii) Methods of increasing public respect for and confidence in the police

224. It was thought that the police themselves could, and should, take the initiative in that respect. It was noted, for instance, that the establishment of recreation centres and the organization of games where both policemen and the

general public were invited could give good results in that connexion. In various countries the participation of the police in procedures of conciliation and settlement at the village level was welcomed by the public. In Singapore an annual "Police Week" had been instituted, during which all police stations were open to the public and explanations were given on all aspects of police work. A police cadet corps had also been established in 1961; the students, recruited on a voluntary basis, were especially trained to foster a better understanding by the public of the duties of the police.

(b) The use of mass media to publicize the police

(i) The police, the public and the Press

(ii) Television

(iii) Police publications

225. It was stressed by all participants that very great progress might be achieved towards better knowledge and understanding of the police through the appropriate use of mass media such as the Press, radio and television.

226. It was pointed out that the police should see to it that its activities were not reported by mass media in a distorted manner, since distorted Press reporting could greatly damage the good relations between the public and the police.

227. Furthermore it was agreed that efforts should be made, as in Japan, to establish public relations sections within the police corps. News releases should frequently be handed over by such agencies to the newspapers and to radio and television stations.

228. It was noted that in various countries such as Pakistan, periodical publications were issued by the police for the dual purposes of educating policemen and of increasing public knowledge of police activities.

(c) The role of the police association (trade union)

229. It was agreed that policemen should, as other workers, have the right to form professional associations, but not the right to engage in various trade union activities such as strikes. Examples were given of such associations which played a useful role in making representations to the Commissioner as regards conditions of service, in providing for welfare benefits, and in fostering mutual help, for instance by the provision of legal aid. Membership in those associations gave to the policeman a feeling of security and solidarity, which was one of the prerequisites of good relations between the police and the public.

(d) The police and civil summonses

(i) The effect of policeman serving summons in a civil (debt) case

(ii) The impression made on the debtor and on the public

230. Several participants thought that the police should not be used for serving summons to debtors, as this often made them appear as the oppressor of the poor. Yet, in various countries, the police had to serve such summonses.

(e) The police and punishment

(i) The value of police "warning" as a technique of treatment of juvenile delinquents

231. It was thought that such "warnings", made with tact and understanding, might be of great value, especially if they were made in Police Boys' Clubs or in other places where young persons could be approached on a friendly and informal basis.

(ii) Should ex-prisoners have to report to the police?

232. It was felt that the obligation for ex-prisoners to report periodically to the police, as it existed in some countries as part of the institution called "police supervision", could create difficulties for the persons concerned. It was not easy for them to find and keep employment, as their employers, after noticing their periodic visits to the police station, discovered that they had been previously convicted and frequently dismissed them. The courts, in placing a person under the supervision of the police, should take this consideration fully into account.

(iii) Should the police give information about prisoners, e.g. to employers?

233. An Australian participant suggested that, as a general rule, there was an obligation of secrecy upon the police in relation to ex-prisoners but that general rule was not unqualified and must be adapted to special circumstances. Eight propositions were submitted:

(1) It is essential that all members of the police should appreciate the need for adequate and proper facilities to enable ex-prisoners to obtain work and shelter immediately on release from prison; unemployed ex-prisoners have their chances of rehabilitation markedly reduced and the possibility of reversion to criminal activity increased;

(2) Any arbitrary police action by giving information to employers which prevents the man who wishes to be rehabilitated from obtaining or keeping work or shelter would amount to a serious invasion of that prisoner's human rights;

(3) As a general rule, police officers should not give unfavourable information to employers about ex-prisoners;

(4) There may be circumstances where, having regard to the rights and freedoms of others, it is proper that such information should be furnished, as where it appears that the ex-prisoner may use his employment for criminal purposes;

(5) On no account should any police officer give such information without reference to an appropriate superior and without express authority for furnishing such information;

(6) Information adverse to an ex-prisoner should only be authorized if there be grave and weighty reasons for doing so and should be authorized only to the extent necessary for the purpose of preserving the rights and freedoms of others;

(7) It is recognized that police not infrequently obtain employment and accommodation for ex-prisoners and assist them in other ways. It would be undesirable to prevent the prudent work of the police in this regard; for example, a favourable word from a police officer may obtain employment for an ex-prisoner which might rehabilitate a man, whereas if the police officer said nothing the man might not get the job and might not be rehabilitated;

(8) Where there is an adequate parole and probation service, with a due sense of its responsibility, and the person concerned is a parolee or probationer, information about the ex-prisoner should only be furnished after consultation with the parole or probation service.

234. These principles met with the general approval of the other participants but it was also recognized that the police were duty-bound to give information concerning previous conviction in respect of persons who were seeking government employment, at least as regards employment involving the national security.

235. Several participants stressed the need for close liaison between the police and parole and probation officers. In particular, it was necessary that persons who were under parole or probation should be subject to police action only after consultation with their parole or probation officers.

III. STATEMENTS BY OBSERVERS FROM NON-GOVERNEMTAL ORGANIZATIONS

236. The participants at the seminar noted with appreciation the presence, and interest, of many observers from non-governmental organizations having consultative relationship with the Economic and Social Council.

237. The following observers from such organizations made statements at the seminar (see para. 5 above for the list of observers and of the organizations they represented): Miss Shirley Andrews, Miss E.V. Barnett, Sir John Barry, Mrs. G.N. Frost, Mr. Stanley W. Johnston, Miss Margaret H. Kelso, Miss Veronica Pike, Mr. S.H.W.C. Porter, Mr. Geza Santow, Father W.G. Smith, S.J., Mr. Julius Stone, Dr. Richard Ramsay Webb, Mr. R.W. Whitrod.

IV. ADOPTION OF THE REPORT

238. The present report was adopted unanimously by the seminar at its final meeting on 13 May 1963.