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THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES
QUESTION OF THE HUMAN RIGHTS OF PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

Comments on the study of the implications for human rights of recent developments concerning situations known as states of siege or emergency

Report of the Secretary-General prepared in accordance with resolution 1983/18 of the Commission on Human Rights

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INTRODUCTION

1. In its resolution 10 (XXX) of 31 August 1977, the Sub-Commission considered that a comprehensive study of the implications for human rights of situations known as states of siege or emergency would be conducive to the achievement of the same aims pursued by the United Nations with respect to human rights. It entrusted Mrs. Nicole Questiaux and Mr. Caicedo Perdomo with the preparation of a preliminary version of such a study, in the light of information provided by Governments on the legislation and jurisprudence applicable to such situations.

2. By resolution 5D (XXXI) of 13 September 1978, the Sub-Commission recommended that the Commission request the Economic and Social Council to authorize Mrs. Questiaux to continue the study of the subject. By resolution 1979/34 of 10 May 1979, the Economic and Social Council endorsing Commission resolution 17(XXXV) authorized the Sub-Commission to request Mrs. Questiaux to continue the study.

3. At the thirty-fifth session, the Special Rapporteur presented her final report with conclusions and recommendations (E/CN.4/Sub.2/1982/15). The Sub-Commission endorsed those conclusions and recommendations and decided to transmit the study to the Commission on Human Rights at its thirty-ninth session.

4. The Commission on Human Rights took note of the report and by its resolution 1983/18 of 22 February 1983 requested the Secretary-General to invite Governments, the relevant organs of the United Nations, the specialized agencies, the regional intergovernmental and non-governmental organizations concerned to submit to him their comments, if any, on the report of the Special Rapporteur; to compile these comments and to forward them to the Sub-Commission at its thirty-sixth session, in order for the Sub-Commission to propose to the Commission at its fortieth session measures designed to ensure respect for human rights under states of siege or emergency, especially of the rights mentioned in article 4, paragraph 2, of the International Covenant on Civil and Political Rights.

5. The present report is prepared in accordance with resolution 1983/18 of the Commission on Human Rights.

I. COMMENTS RECEIVED FROM GOVERNMENTS

AUSTRIA

[Original: English]
[28 June 1983]

6. Paragraph 68 of the study argues that, with respect to the guarantee of a certain minimum standard of human rights, norms of international law have been developed, which can be regarded as peremptory norms within the meaning of article 53 of the 1969 Vienna Convention on the Law of Treaties and from which, therefore, no derogation would be possible. This conclusion has Austria's full support. Furthermore Austria holds the view that an additional analysis should be made in order to circumscribe and define as closely as possible those rights from which derogations in situations of state of siege or emergency are deemed to be possible. In this connection the following method should be applied: Instead of the currently valid principle which allows for derogations of rights unless their inalienability is explicitly stated the international community should adopt the opposite principle thus allowing for derogations only in cases where the possibility for such derogations is provided for expressis verbis.

7. It would appear obvious that amendments to existing international instruments to this effect will not be achieved in the foreseeable future. However, the Sub-Commission on Prevention of Discrimination and Protection of Minorities might wish to consider this issue and strive for the elaboration of a list of those rights from which derogation is considered to be admissible in a state of siege or emergency. At a later stage such an enumeration might be embodied in a resolution to be adopted by the General Assembly.

8. In its conclusions the study under consideration proposes a minimum of inalienable elements which have to be safeguarded with regard to the right to a fair trial. Austria endorses these proposals and would welcome any further elaboration of such minimum elements. In addition it would appear appropriate to state in more general terms that, even in a state of siege or emergency, any form of punishment and in particular the execution of a death penalty presupposes the conduct of a trial. In this connection Austria wishes also to reiterate however, its general humanitarian interest in the abolition of the death penalty, particularly where political matters are concerned. Austria therefore supports the relevant proposal contained in recommendation B.3 (page 45) of the study under consideration.

9. Austria furthermore supports the demand for certain minimum guarantees for the treatment of detained persons as elaborated in paragraphs 187 to 190 of the study.

10. With regard to measures proposed for the development of the role of specialist international surveillance organs the Austrian Government wishes to express its view that primary importance ought to be attached to promoting universal adherence to the International Covenant on Civil and Political Rights. On this basis Austria endorses in particular the proposals specified in detail in recommendation A 1, 3 and 5 (page 44) of the study.

CHAD

[Original: French]
[27 June 1983]

11. The study of Mrs. Questiaux, Special Rapporteur on this question, is sufficiently clear as are its recommendations, which if implemented in practice by the countries concerned would be useful for international surveillance. Consequently, Chad entirely approves the study that has been prepared and does not consider it necessary to comment except to support it, particularly with regard to two points.

12. First, a state of siege or emergency as such must not serve as a legal pretext for the authorities concerned to misuse the so-called "provisional" powers vested in them because of exceptional circumstances, to violate human rights in a flagrant and shameful manner, or to encourage and perpetuate such a crisis situation.

13. Therefore, it is necessary to ensure that at the international level sanctions are adopted against all who would prevent the enjoyment of human rights, so as to preserve the inalienability of those rights as they are defined by article 4 of the International Covenant on Civil and Political Rights.

14. Secondly, in view of the disregard for or reduction of the power of the judiciary in the event of a state of siege or emergency, Chad would wish that under such conditions the competence of the courts should henceforth be fully recognized so as to ensure effective supervision of its consequences.

MEXICO

[Original: Spanish]
[30 June 1983]

15. Article 29 of the Federal Constitution provides:

> "In cases of invasion, grave disturbance of the public peace, or any other emergency which may place society in grave danger or conflict, only the President of the Mexican Republic, with the concurrence of the Council of Ministers and with the approval of Congress, or if the latter be in recess, of the Permanent Committee, shall have power to suspend throughout the country or in any particular place, such guarantees as may be a hindrance in meeting the situation promptly and readily; but such suspension shall be made for a limited period of time by means of general prohibitions and shall not be directed against a particular individual. If the suspension occurs while Congress is in session, Congress shall grant such powers as it may deem necessary to enable the Executive to meet the situation; if the suspension occurs during a recess, Congress shall be convened without delay for the purpose of granting such powers".

16. As can be seen, this article observes the substantive guarantees mentioned in paragraph 41 of the study: the principles of exceptional threat, proportionality, non-discrimination, and inalienability of certain fundamental rights.

17. The principle of exceptional threat is observed, since the guarantees may be suspended only in cases of invasion, grave disturbance of the public peace, or any other emergency which may place society in grave danger or conflict.

18. The principle of proportionality is complied with, since the only guarantees that may be suspended are such guarantees as may be a hindrance in meeting the situation promptly and readily and the suspension is for a limited period of time.

19. The principle of non-discrimination is ensured, since the suspension of guarantees is made by means of general prohibitions and is not directed against a particular individual.

20. As to the principle of inalienability of certain fundamental rights, it should be noted that, under article 29 quoted above, only such guarantees as may be a hindrance in meeting the situation may be suspended. Consequently, and in keeping with the essence of that provision, there has never been, nor can there be, any suspension of such guarantees as those contained in article 22 of our Magna Carta, which prohibits punishments by mutilation and infamy, branding, flogging, beating, torture of any kind ... and any other unusual or excessive punishment. The same goes for article 2 of the Constitution, which prohibits slavery.

21. The study in question also mentions other principles such as that of provisionality, in the sense that suspension cannot be justified for longer than required by the sole concern for a return to normality. This is covered in the aforementioned article 29, in that the suspension of guarantees is for a limited period of time.

22. As to the person who decrees the suspension of guarantees, it is only the President of the United Mexican States, with the concurrence of the heads of the Ministries, the Administrative Departments and the Office of the Attorney-General of the Republic, and with the approval of Congress, or if the latter is in recess, of the Permanent Committee.

23. With regard to the territorial aspect, the guarantees may be suspended throughout the country or in a particular place. Mexican law does not permit a permanent state of suspension.

24. The right of the accused to be defended is a right regulated at the level of the Supreme Law, since article 20, section IX, of the Constitution states that he shall be heard in his own defence, either personally or by a person whom he trusts, or by both; as he may desire and that if he does not wish to appoint a defender, the court shall appoint one ex officio.

25. The Supreme Law further states that trials not only in criminal matters but in any branch of law shall be public, save for exceptional cases, such as offences against public morality or trials in which public morality is attacked.

26. For the reason already given, there are no extraordinary tribunals, inasmuch as article 13 of the Constitution provides that no-one may be tried under privative laws or by special courts.

27. As regards detention incommunicado, article 20, section II of the Constitution states that the accused may not be compelled to testify against

himself; thus, detention incommunicado or any other measure having the same effect is strictly prohibited. Administrative detention may not exceed 36 hours.

28. With regard to prison life, article 18 of the Constitution, referring to the penal system, states that its objective is the social rehabilitation of the offender by means of work, training for that purpose and education.

29. As to the proposals concerning the period of imprisonment, I should like to state the following:

(a) All trials are public, except those which deal with offences against public morality or in which public morality is attacked, and in such cases they are held in camera, but in the presence of the accused and his counsel. As soon as there is an investigation, that fact is recorded in a register called the "Government Book"; and the same occurs upon remand in custody;

(b) Article 20, section II, of the Constitution prohibits detention incommunicado; in addition, our legislation provides for ordinary and extraordinary remedies;

(c) Under article 20, section IX, of the Constitution, the accused may appoint a defender immediately upon arrest, and is entitled to have him present at every stage of the proceedings, but he is also obliged to ensure his appearance as often as required.

30. Under our law, the person presumed responsible chooses one or more legal defenders, and communication between the accused and his defender is permitted at all times.

(a) The last paragraph of article 22 of the Constitution prohibits capital punishment for political offences; it can only be imposed for high treason committed during a foreign war, parricide, murder by treachery, with premeditation or for gain, arson, kidnapping, highway robbery, piracy and grave military crimes. However, there is no capital punishment at present since none of the criminal codes now in force in Mexico provides for the death penalty, so that it can be stated that it no longer exists. Although purely as a matter of law there is still capital punishment under article 22 of Mexico's Supreme Law, it remains only in the Code of Military Justice. However, this Code, which retains capital punishment for grave military crimes, is a dead letter as far as imposition and execution of that punishment is concerned. In practice, it has not been carried out for decades;

(b) Article 14 of the Constitution bars retroactive application of a law to the detriment of any person.

31. For the purposes of the principle of notification mentioned on page 13 of the reference document, the international commitment should be entered into through a treaty which, under article 133 of our Constitution, forms part of the Supreme Law of the land. As may be observed, many of the points advanced in the study are already included in our law. Obviously, the study on the question of the human rights of persons subjected to any form of detention or imprisonment is a valuable legal contribution.

TURKEY

[Original: English]

[1 July 1983]

State of emergency in the 1961 Constitution

32. Articles 123 and 124 of the 1961 Constitution set out the principles of the emergency administration in Turkey. Article 124 (para. 1) empowered the Council of Ministers to proclaim an over-all or partial state of emergency not extending beyond a period of two months, in the presence of the following conditions: state of war, emergence of a situation which might lead to a war, upheavals, emergence of a forceful and active rebellion against the country and the Republic or irrefutable indications of widespread terror activities launched from inside or outside which would endanger or aim at destroying the indivisibility of the country or the nation. The use of this power by the Council of Ministers was also subjected to approval by Parliament. The above-mentioned articles 123 and 124 pertained, respectively, to states of emergency and martial law.

33. Article 123 provided for the enactment of a law regulating states of siege which was never adopted. The draft law on the state of siege, prepared in pursuance of this very objective, and also in accordance with article 121 of Turkey's new Constitution (9 November 1982) is still being discussed in Parliament.

34. Article 124 of the 1961 Constitution, on the other hand, was implemented by the enactment of Martial Law No. 1402 (13 May 1971), which replaced the previous Martial Law No. 3832 (25 May 1940). Some articles of Martial Law No.1402 were later found unconstitutional by the Constitutional Court. This decision, rather than making the legislation more complex (as suggested in the study, paras.123, 124) in fact provides evidence of the supremacy of the Constitution and the principles of the democratic state of law. These principles and their supremacy have been adopted as major commandments in the 1982 Constitution, as well.

35. Some articles of the 1961 Constitution have been amended by Law No.1488 of 29 September 1971 in order to safeguard the freedoms embodied in the Constitution against terrorist activities designed to serve extreme fanatic and ideological objectives. These amendments were enacted with the sole purpose of defending the Constitution against situations not foreseen earlier. 1/

36. Among these amendments, article 32 emphasises the principle of a "legal judiciary" which provides that the duties and responsibilities of the courts and judges should be established by law. This Constitutional principle was given special emphasis obviously with a view to ruling out any arbitrariness in the establishment of courts.

1/ Dr. Ernest Hirsch, Professor at the University of Berlin and specialist in Turkish Constitutional history has studied these developments in depth, and at a conference he gave in Bonn on 23 November 1971, concluded that the amendments introduced to the Turkish Constitution in 1971 were designed to safeguard the Constitution against extremist pressures and that they were entirely in conformity with the European Convention on Human Rights (especially articles 8, 9, 10, 11 and 15).

37. The terms of reference of military courts were defined, in line with the above-mentioned principles, in articles 13, 15 and 23 of Law No. 1402. Furthermore, State security courts were established, in accordance with article 136 of the 1961 Constitution, for crimes committed against the Republic and related directly to State security.

38. In implementation of this legislation, military courts and State security courts were established in accordance with amended article 15 of Martial Law No.1402 (in localities where martial law was proclaimed, to deal with cases related to martial law), and amended article 136 of the 1961 Constitution respectively. With the establishment of these courts, the judicial procedure was speeded up, preventing an extension of the period of temporary custody. The principles of judicial independence and judicial immunity prevailed in the work of these courts.

State of emergency in the 1982 Constitution

39. The military intervention of 12 September 1980 was undertaken following the build-up of acute terrorist and anarchist activities seriously threatening the country with division and collapse. The National Security Council, faced with no other choice to save the country from this situation and restore peace, security, law and order, took over the legislative and executive functions on a temporary basis, and extended martial law, which was already in force in some areas, to the whole of the country.

40. The Secretary-General of the Council of Europe was immediately informed of the situation by a letter of derogation. The Secretary-General was also kept informed of the consequent measures taken within the framework of relevant laws. During that period, the essential principles of the "independent judiciary", "judge's immunity" and the "natural judge" were preserved. Despite pressing conditions, extraordinary courts were not established.

41. All the restrictions upon rights and freedoms corresponded to the requirements of the prevailing conditions but never exceeded those requirements. No restrictions were brought upon those rights for which relevant international instruments did not recognize derogation. Finally, the restrictions were implemented with no discrimination. It is also important to note that the restrictions are being gradually lifted with the improvement of the adverse conditions.

42. State of emergency provisions in the 1982 Constitution have been set out in three categories:

(a) National disasters and grave economic depression (article 119),

(b) Widespread terror activities and serious disruption of public order (article 120),

(c) Martial law, mobilization, war (article 122). Measures provided in article 122 are to be taken in states of war or situations which could lead to a war, civil war (rebellion), or the danger of division of the nation or the country.

43. The Council of Ministers under the presidency of the President of the Republic, is empowered to proclaim states of emergency, martial law, mobilization or war throughout the country or in part of it, for a period not exceeding six months.

This decision shall be published immediately in the Official Gazette, and submitted to the Grand National Assembly (Parliament) on the same day for approval. The Grand National Assembly is empowered to lift the state of emergency, or extend it by periods not exceeding four months. (The four month restriction does not apply in the case of war).

44. In all these states of emergency, the Council of Ministers, meeting under the presidency of the President of the Republic, is empowered to enact decrees with the force of law on matters relevant to the state of emergency. These decrees shall be immediately submitted to the Grand National Assembly for approval.

45. As mentioned above in paragraph 33, a draft law on states of emergency has been prepared in accordance with article 121 of the 1982 Constitution. This draft law is still under consideration in the Parliament.

Right of defence

46. Allegations concerning restrictions on the right of defence, made in paragraph 164 of the study, are groundless. The miliary courts which function under martial law are established according to Law No.353 on the Establishment and Proceedings of Military Courts (dated 25 October 1963). Articles 83 and 85 of the said Law rule that the accused shall be duly informed, during preparatory investigations, of the accusations laid against him and be allowed to have one or more defenders. Article 118 of the same law rules that the Public Prosecutor's accusations shall be communicated to the accused, before the commencement of the trial. Articles 40-45 lay down the procedure whereby the accused can request the removal of the judges of military courts. In military courts, just as in other courts, decisions are reached following consideration of the testimony of witnesses, as well as of all relevant evidence and all the arguments offered by both the defence and the prosecutor. These courts are normally constituted of two military judges and one military officer, 2/ who reach decisions on a majority basis. Their decisions can be appealed before higher courts, unless they concern imprisonment for periods of less than six months and fines.

UNITED KINGDOM

[Original: English]
[27 June 1983]

47. The United Kingdom considers that in peacetime a state of emergency in the United Kingdom can be proclaimed and regulations made under the Emergency Powers Acts of 1920 as amended by Section 1 of the Emergency Powers Act 1964 in order to secure the essentials of life. It is written into the 1920 Acts that the regulations made under the Act must not affect the rights of individuals under existing criminal procedure, or confer any right to punish by fine or imprisonment without trial.

2/ Articles 2 and 5 of the annex to Martial Law No. 1402 make it possible for civilian judges and public prosecutors to be assigned to Military Courts. Currently 119 civilian public prosecutors and 154 civilian judges are assigned to military courts. Furthermore, 18 prosecutors of the Republic and 27 civilian judges are assigned to the High Military Court of Appeal.

URUGUAY

[Original: Spanish]
[14 June 1983]

48. As a general comment, the study in our view goes beyond the objective which was set for it and which the Special Rapporteur stresses in paragraph 8, where she states: "In connection with the consideration of these matters at its twenty-ninth session in 1976, the Sub-Commission, underlining the importance of the matter, took the view that the question of the human rights of persons subjected to any form of detention or imprisonment in situations of public emergency or a state of siege should be examined in depth."

49. No doubt, the voluminous information submitted by various sources - mainly non-governmental organizations, which are quoted repeatedly - led the Special Rapporteur to include in her study elements which are of little relevance and which contribute nothing to the question which is the subject-matter of her study and which, by the way, is indicated by the very title of the agenda item "Question of the human rights of persons subjected to any form of detention or imprisonment".

50. The methodology adopted in the study calls for reservations on our part, since examples are cited selectively and a large number of countries are omitted, consideration being centred mainly on a few countries in Latin America.

51. To achieve the necessary objectivity, a study of this kind should have avoided mentioning countries or at least should have based in detail concrete observations on national situations. On the contrary, the study contains assertions for which no element of proof is furnished and which should have merited further investigation including consultation with the government concerned.

52. Examples of this approach, which is deserving of our criticism and which weakens the objectivity of the study, appear, as regards Uruguay, in paragraphs 139-145 and 164-165.

53. In paragraphs 139-145, the study dwells on considerations regarding a draft Constitution which, in the judgement of the Special Rapporteur, "though recently rejected by popular vote, deserves attention".

54. In view of the fact that none of the opinions developed in those paragraphs is relevant to the situation of persons subjected to any form of detention or imprisonment, it must be asked what is the point of devoting seven paragraphs of the study to a draft which the Government of Uruguay submitted to the Uruguayan people for consideration, in free and exemplary elections whose results were respected.

55. That having been said, attention is also drawn to the fact that in paragraph 144 use is made of inverted commas around two words, giving them a subjective and even pejorative meaning, which is rejected.

56. In paragraph 164, under the subheading "Restrictions on the publicity of deliberations", the following is stated: "In the report mentioned above (see

foot-note 34), the Inter-Parliamentary Union cites the case of a Uruguayan senator and two deputies who were allegedly tried in camera and on the basis of written proceedings". This reveals a clear unawareness of the guarantees of due process extended by Uruguayan justice, and constitutes a clear example of what is mentioned in paragraph 51 above.

57. Lastly, in paragraph 165 of the study, under the heading "Extension of the factors that constitute complicity", there is the following statement: "For example, Uruguayan legislation provides for punishment of assistance to political prisoners by placing it in the same category as complicity". This is another tendentious assertion made in vague and imprecise terms which make comment difficult.

58. First of all, attention must be drawn to the mistake of using the expression "political prisoners", a concept which our country has described as inappropriate for reasons already widely known, namely because those concerned are persons tried for the commission of physical acts specifically defined as offences in Uruguayan penal legislation.

59. With regard to what is sought to be insinuated thereby, it should be stated, notwithstanding the vagueness from which the text suffers, that if the intention is to refer to conduct involving aid or assistance to an association for criminal purposes or to a subversive association, such conduct is defined as an offence in itself by article 152 of the Uruguayan Penal Code and therefore, in the case in question, it is not a matter whatever of "placing" anything "in the same category".

60. The objective legal description of the above offence is the fact of providing assistance to the association likely to promote its activities, continued existence or impunity, other than cases of participation or complicity (Fernando Bayardo Bengoa, Derecho penal uruguayo, tome IV, vol. I, pp.145 ff, Montevideo 1971).

61. Where there is a presumption of participation in a crime or of actual complicity, the relevant provisions of articles 61 and 62 or 197 of the Ordinary Penal Code apply. It should be noted that these provisions go back to the very beginnings of Uruguayan penal legislation. In Uruguay, analogy does not exist in penal matters, the principle of nullum crimen sine lege being strictly applied.

62. The Uruguayan authorities have instructed their representatives in the relevant international bodies to make themselves available to the Special Rapporteur for the purpose of helping her to clarify such aspects, in a desire to provide the fullest possible co-operation and at the same time to avoid the unjustified damage which assertions such as those commented on do to the country's image.

II. COMMENTS RECEIVED FROM UNITED NATIONS ORGANS

CENTRE FOR SOCIAL DEVELOPMENT AND HUMANITARIAN AFFAIRS

[Original: English]
[23 June 1983]

63. We pay tribute to the Special Rapporteur for the excellent preparation of this study which touches an unexplored sensitive area in the field of human rights. The focus given by the study to the various aspects of the problem has relevant and practical value when discussing human rights in the current world situation. I believe it could help to establish an effective relationship between theory and practice in concrete ways.

64. When the report was received, our initial expectation was to find a description of the living conditions of people under the difficult circumstances in question, with a paragraph somewhere in it devoted to a description of particular situations in which women are concerned. It is worthwhile mentioning that it would have been of interest to us to have an analysis of the principle of non-discrimination based on article 4 of the International Covenant on Civil and Political Rights, which stipulates that measures of derogation shall not involve discrimination based solely on the ground of race, colour, sex, language, religion or social origin. Unfortunately the report contains only a comparative analysis of related articles from the various conventions applied in such cases, with no examples of discrimination brought against people.

65. I wish to emphasize the consideration which has been given by relevant bodies to the question of protection of women and children in emergency and armed conflict, an item on the agenda of the Commission on the Status of Women which is closely related to the Special Rapporteur's study. Economic and Social Council resolution 1687 (LII) requested the Secretary-General to prepare and submit to the Commission on the Status of Women, at every other session, a report on the condition of women in the above circumstances. In 1974 the first report (E/CN.6/586) was submitted to the Commission on the Status of Women and as a follow-up to the recommendations made by the Commission, the General Assembly, by its resolution 3318 (XXIX) of the same year, adopted the Declaration on the Protection of Women and Children in Emergency and Armed Conflict.

66. In 1978 another report on the subject was submitted to the Commission on the Status of Women (E/CN.6/612 and Corr. 1). The Commission at that session adopted resolution 7 (XXVII) under the same title in which it called upon all States and parties to armed conflicts and in emergency situations, to accord special protection to women and children in accordance with relevant international provisions applicable in armed conflicts. It also urged all States to consider the additional protocols which extend to the protection of the civilian population, particularly the protection of women and children. Although this item will remain on the Commission's agenda, the information available to the Secretary-General in preparing these reports is not as comprehensive as that available to the Special Rapporteur. It is within this context that I suggest special consideration be given by the Sub-Commission to our comments. Aware of the mandate and the scope of the subject entrusted to the Special Rapporteur, our observations herein are made in the hope of enhancing the scope of the study to include the living conditions of people under such circumstances, the violation of human rights and the protection required therein.

67. As regards crime prevention and criminal justice, I welcome the emphasis of the study on a number of important questions, notably the intensification of repression resulting from modification of the rules governing competence (paragraphs 166-170) and the effects of states of emergency on detained persons (paragraphs 171-202). In particular, the recommendations contained in paragraph 203 with respect to criminal justice are of great significance, particularly those pertaining to the right to a fair trial, the period of imprisonment, the abolition of capital punishment and the non-retroactivity of criminal laws.

III. COMMENTS RECEIVED FROM SPECIALIZED AGENCIES

INTERNATIONAL LABOUR ORGANISATION

[Original: English]
[26 May 1983]

68. The basic position adopted by ILO supervisory bodies on the relationship between emergency measures and the observance of ILO standards is mentioned by the Special Rapporteur in paragraphs 57 and 71 of her report. The only point which may usefully be added is that the criteria mentioned in paragraph 71 as limiting recourse to emergency powers under the provisions of the Forced Labour Convention have also been referred to by ILO supervisory bodies in regard to other rights. Thus, in the recently published survey on freedom of association and collective bargaining, the Committee of Experts on the Application of Conventions and Recommendations pointed out that civil liberties, which are essential for the effective exercise of trade union rights, may be restricted under emergency powers only in circumstances of extreme gravity constituting a case of force majeure and subject to the condition that any measures affecting the guarantees established in ILO Conventions relating to freedom of association should be limited both in extent and in time to what is strictly necessary to deal with the particular situation (Report III (part 4B), International Labour Conference, sixty-ninth session, 1983, para. 72).