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SEMINAR ON NATIONAL AND LOCAL INSTITUTIONS FOR  
THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

(Organized by the United Nations Division of  
Human Rights)



Geneva  
18-29 September 1978

UNITED NATIONS  
New York, 1978

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Annex

DEDICATION AND PLEDGE AT GENEVA

## INTRODUCTION

### A. Organization of the seminar

1. In connexion with the observance of the thirtieth anniversary of the Universal Declaration of Human Rights, the General Assembly at its thirty-second session adopted resolution 32/123 in which it recommended among the measures to be taken at the United Nations level the organization of a special seminar within the programme of advisory services in 1978, at Geneva, at the world-wide level on the subject of national and local institutions for the promotion and protection of human rights. The report of the seminar, which is the first United Nations seminar to be held on this topic, was to be forwarded to the General Assembly.
2. The Seminar was held at the Palais des Nations, Geneva, from 18 to 29 September 1978.
3. The agenda for the seminar was prepared by the United Nations Secretariat. In drawing up the agenda the Secretariat took into account Commission on Human Rights resolution 23 (XXXIV) of 8 March 1978, in which the Commission decided that the Seminar should, as part of its task, suggest certain possible guidelines for the structure and functioning of national institutions, based on the provisions of the resolution and the annex thereto. The Secretariat also made arrangements regarding participation in the seminar.

### B. Participation

4. Invitations to nominate participants were extended to the Governments of Afghanistan, Austria, Barbados, Benin, Botswana, Costa Rica, Cuba, Ecuador, France, Gambia, German Democratic Republic, Germany, Federal Republic of, Guinea, Hungary, India, Ivory Coast, Japan, Jordan, Madagascar, Mexico, Mongolia, Mozambique, Norway, Panama, Portugal, Turkey, the Ukrainian Soviet Socialist Republic, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, the United States of America, the Socialist Republic of Viet Nam and Zambia. After notification had been received from some countries that they would not be able to nominate a participant, invitations were extended to the Governments of Australia, Greece, Guatemala and the United Republic of Tanzania.
5. Participants and alternates from the following countries attended the seminar in their individual capacity: Afghanistan, Australia, Austria, Barbados, Benin, Cuba, Ecuador, France, German Democratic Republic, Germany, Federal Republic of, Guatemala, Greece, Hungary, India, Ivory Coast, Japan, Jordan, Mongolia, Norway, Panama, Portugal, United Kingdom of Great Britain and Northern Ireland, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics and the United States of America.
6. Invitations to send representatives were addressed to the United Nations Centre for Social Development and Humanitarian Affairs, the United Nations Children's Fund, the United Nations High Commissioner for Refugees and the United Nations Institute for Training and Research. Specialized agencies having an interest in the subject-matter were also invited to send representatives.

7. The following regional intergovernmental organizations were invited to send observers: Council of Europe, League of Arab States, Organization of African Unity, Organization of American States.
8. The national liberation movements recognized by the Organization of African Unity and the Palestine Liberation Organization were also invited to send observers.
9. Non-governmental organizations in consultative status with the Economic and Social Council whose interests are related to the topic of the seminar were invited to send observers.
10. A list of those who attended the seminar may be found in the addendum to this report.

#### C. Opening of the seminar and election of officers

11. The seminar was opened on behalf of the Secretary-General of the United Nations by Mr. Luigi Cottafavi, Director-General of the United Nations Office at Geneva, who made a statement. A statement was also made by Mr. Theo C. van Boven, Director of the Division of Human Rights.

12. The following officers were elected by acclamation:

|                      |              |               |
|----------------------|--------------|---------------|
| Mr. Soli J. Sorabjee | (India),     | Chairman      |
| Mr. Alvarez Ruiz     | (Guatemala), | Vice-Chairman |
| Mr. John Bjørnebyé   | (Norway),    | Vice-Chairman |
| Dr. Jozsef Halasz    | (Hungary),   | Rapporteur    |

13. The Secretary-General was represented by Mr. Theo C. van Boven, Director, Division of Human Rights, and Mr. B. Pissarev, Chief, Section on Advisory Services and Publications. Mr. E. Palmer was Secretary of the Seminar.

#### D. Agenda

14. The agenda of the seminar was as follows:

##### A. Constitutional and protecting or remedial institutions

1. Legislative, executive and administrative institutions
2. Judicial and quasi-judicial institutions
3. Independent mediators: the Ombudsman and other similar officers or institutions
4. Political institutions: parties and party groups
5. Institutions in the field of development
6. Legal and social aid arrangements

##### B. Promotional institutions

1. Educational institutions
2. Human rights committees and other similar institutions

3. Non-governmental organizations
  4. Institutions for the dissemination of information on human rights
- C. Relations between national and local institutions and United Nations or regional human rights organs
  - D. Desirable areas of action at the United Nations or national and local level in the light of the discussion of the previous items
  - E. Guidelines for the structure and functioning of national institutions

E. Documentation

15. The following background papers were prepared for the seminar at the request of the United Nations Secretariat:

|                                 |   |
|---------------------------------|---|
| Background paper BP/1           | by Professor John P. Humphrey, McGill University, Montreal, Canada                |
| Background paper BP/2 and Add.1 | by Professor Surya P. Sharma, Kurukshetra, University, India                      |
| Background paper BP/3           | by Professor V. Kudryavtsev, Institute of State and Law, USSR Academy of Sciences |

16. The following working papers were prepared by participants:

|       |   |
|-------|---|
| WP/1  | John Bjørnebyé (Norway)                                   |
| WP/2  | Mario Alemán Salvador (Ecuador)                           |
| WP/3  | Niall MacDermot (International Commission of Jurists)     |
| WP/5  | Wolf Okressek (Austria)                                   |
| WP/6  | Civil Liberties Bureau, Ministry of Justice (Japan)       |
| WP/7  | Irene Maier (Germany, Federal Republic of)                |
| WP/8  | António Luiz Correia da Costa Mesquita (Portugal)         |
| WP/9  | Ricardo Brin Dosman (Panama)                              |
| WP/10 | Faleh el Taweel (Jordan)                                  |
| WP/11 | India   |
| WP/12 | Maureen R. Berman (International League for Human Rights) |
| WP/13 | Ivory Coast   |
| WP/14 | Leonard St. Hill (Barbados)                               |
| WP/15 | Niall MacDermot (International Commission of Jurists)     |
| WP/16 | V. N. Denissov (Ukrainian Soviet Socialist Republic)      |
| WP/17 | World Young Women's Christian Association                 |
| WP/18 | Angelika Zschiedrich (German Democratic Republic)         |
| WP/19 | B. Sodovsuren (Mongolia)                                  |
| WP/20 | Australia   |
| WP/21 | Erica-Irene Daes (Greece)                                 |

17. The participant of the United States of America made available to the seminar for reference purposes a number of documents listed in the addendum to this report.

18. The seminar also had before it a working paper prepared by the Secretariat (WP/4) entitled "Excerpts from United Nations material related to the question of national and local institutions for the promotion and protection of human rights".

## Chapter I

### CONSTITUTIONAL AND PROTECTING OR REMEDIAL INSTITUTIONS

19. This item was discussed at the second to sixth meetings, held from 19 to 21 September 1978.

#### 1. Legislative, executive and administrative institutions

20. In introducing this subitem Mrs. Erica-Irene Daes (Greece), discussion leader, pointed out, inter alia, that the subject under consideration should be examined against the background of the entry into force of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, and the fact that the activities of the United Nations in the field of human rights had now placed more emphasis on concrete action for the effective promotion and protection of human rights.

21. The vital force which preserved and developed a real democratic life was the force of freedom. Freedom carried with it the corresponding responsibility for the individual himself and for others, which made freedom itself amenable to social control. Consequently, the society has also the responsibility of providing individuals with the means of utilizing their freedom as effectively as possible. The interaction of these two axioms, the freedom and the responsibility of the individual on the one hand and the power and responsibility of the State on the other, has created in every democratic society a very delicate, difficult and complex legal problem in striking the balance between the two forces.

22. From a constitutional point of view in many democratic States all human rights were equally subject to the sovereignty of parliament, which may in theory abridge them to any extent it likes. In practice however, the situation was different. It would require a very daring parliament to make any violent encroachment upon human rights, except, perhaps, in exceptional and grave emergencies. Parliament, which was authorized to enact legislation, should in practice be limited in its power by the constitution or customary restraints. In certain common law countries the judiciary could by way of interpretation of the law make it necessary for the legislature to pay appropriate attention to the fundamental freedoms of the citizens and it was generally accepted that interference with the freedom of the individuals was unlawful. Most democratic States recognized the fact that a declaration of rights should be accompanied by the requisite safeguards and remedies, and that it was their responsibility to provide the necessary machinery to make these rights effective. Further, if national law was to adapt successfully to the future requirements of a modern peaceful world society, systems of law must be established which would protect the individual and ensure his participation in national and international life so that human values should be realized and fundamental freedoms safeguarded in particular from the abuse of power by States. Unfortunately, many States do not provide adequate machinery for the development of a body of law to foster and to protect effectively the rights and freedoms of the individual at the national level. Also, such States did not provide means for the prevention either of the abuse of State power or the adoption of arbitrary and discriminatory limitations and restrictions on the individual human rights and freedoms.



23. In examining the legal guarantee of the individual's freedoms in the hierarchy of legal norms, Mrs. Daes pointed out that provisions concerning the rights of the individual gain real significance only if they are included in the constitution, which possesses a hierarchically supreme position in the legal order, or which has added formal legal validity. Since from the technical point of view, constitutions, in particular their provisions on fundamental rights, function differently in different States, the fundamental rights may accordingly also differ in their legal structure and applicability. The hierarchical supremacy of the constitution depends on the historical political development of each country. The constitution of the United States of America had a great influence in the development of provisions relating to the individual's fundamental rights in other States and on the application of law in general. The hierarchical superiority of the constitutional provisions in the United States of America is also shown by the fact that the procedure for amending the constitution (it is necessary to obtain favourable votes from a vast majority of Congress and of states), differs so greatly from the procedure for enacting ordinary legislation, where a simple majority vote in each house is sufficient. The Constitution of the United States of America and its amendments gain their importance because the courts of this country are entitled to examine the constitutional validity of the laws enacted by the legislature. As the guarantor and interpreter of the Constitution the Supreme Court of the United States of America has played a central part in political and legislative activities.

24. Compared to the United States of America the hierarchical position of the Constitution in France is differently regulated. The French revolution gave birth to the modern concept of the Constitution. The representatives assembly became paramount in the structure, especially since it was born to express the revolutionary spirit of that time. The doctrine of the sovereignty of the people, did not empower the courts which had been bureaucratically organized, to determine the limits of the new legislative assembly. The parliament can amend the provisions of the constitution by a normal majority vote. The parliament can only interpret the provisions of the Constitution. However, this power is quite important because in using it the parliament acts as the supreme organ expressing the view of the people and could therefore give such an authoritative interpretation to the Constitution that the courts had to be satisfied with it. As a result the courts in France are not authorized to examine the constitutionality of the laws. The separation of powers was also regarded as prohibiting the courts from dealing with the constitutionality of the laws.

25. In other countries which have adopted the French system, theoretical and practical difficulties were encountered in determining the relationship between statutory laws and the constitution, especially regarding the provisions on the fundamental rights of the individuals. Some countries solved this problem by completely avoiding the possibility of a controversy. Others devised special arrangements intended to solve any controversy that might arise. A third group of countries have made the courts in one way or another the guardian of the constitution, of which Switzerland was one of the pioneers.

26. Although the constitutions and the laws of most of the States have provisions which protect human rights and fundamental freedoms, their effectiveness depends on the way in which they are administered. As the role of the State continues to expand due to the requirements of modern times, the power of the administration inevitably also expands. In order to control this over-expanding power of the State, some effective machinery has to be devised. This can be done by the legislature; by congressional committees; by ordinary or administrative courts; or by institutions such as the Ombudsman, the Procurator General, etc.

27. In principle, whenever law is the expression of the general will of the people and all citizens have the right to participate personally or through representatives in its formulation, the conflict between law and the freedom of citizen could be excluded. Under a constitution on which the legal function of the general will (volonté générale) prevails, there is no question that the legislative authority should be bound or restricted by the rights of the individual. In this case the individual rights are dependent on the fundamental principle of legality within the broad meaning of the term and the basic principle of the rule of law which requires legislative authorization for administrative action. In other words any action sine lege is forbidden. Law can only be a guarantor of freedom.

28. The rule of law should cover every interference with individual rights and fundamental freedoms. However in some cases the rule of law may result in weakening individual's rights, because it exposes them to the interference and the discretion of the legislative authority. That the legislature can sometimes threaten, restrict and annihilate the freedom of the citizen is admitted. In order to avoid this some constitutions contain provisions which restrict the power of legislature. As examples she mentioned the first 10 amendments to the Constitution of the United States of America which list the rights of the individual citizen and article 5 of the Declaration of the Rights of Man.

29. In order to prevent the arbitrary limitation of the freedom of the citizen by the legislature, she proposed the following measures: (a) legislative limitation or restriction of fundamental human rights should require constitutional authorization; (b) to the extent the same legislature is limited in imposing restrictions on human rights, the less danger there is for the limitation of the individual's freedoms; (c) the exercise of the fundamental rights and freedoms of the individual should not be impaired; (d) retroactive legislation should not be enacted.

29a. As the sovereign political organ of the State, the legislature has the right and obligation to control the administrative authority. To the extent to which the legislature issues directives, the following legal provisions should be made (i) provisions giving unlimited discretion to the administration, which is expected, but not legally bound, to have recourse to judicial consideration in its exercise thereof; (ii) provisions directing the administration to take certain matters into account when arriving at an otherwise discretionary decision; and (iii) provisions giving a series of its directions to the authorities.

30. The advantage of leaving so much latitude to the administration is that unforeseen circumstances could be properly treated and that the rules applied could be altered as conditions changed, provided that the subject-matter was one to which this approach was appropriate and the proper conditions and guarantees were respected. For instance, les lois-cadres (framework-laws) adopted in France and some other countries have this quality.

31. Executive and administrative authorities should be required to be consistent in their application of the law to different persons. These authorities should respect the letter and the spirit of the law and the basic principles of equality and non-discrimination. With regard to the question of delegated legislation, in particular, in times of emergency when speedy action was required, the legislature could delegate certain powers to the executive; although the executive was authorized to handle the details of such legislation, the legislature maintained its controlling power. In some countries standing committees composed of members

of the legislature were established to scrutinize the delegated legislation; to address questions to the administration and to safeguard the rights of the citizens and to prevent the abuse of power. A better control would be achieved if the legislation was also empowered to annul, not validate, or amend all actions of the administration. It was also pointed out that the language of the delegated legislation should be clear and simple so that it could be understood by everyone. Finally parliamentary or other commissions of inquiry could be established by legislature to protect human rights. It was further stated by Mrs. Daes that there are in the lives of nations exceptional situations, known as "State of Emergency", in which it is necessary to impose limitations or restrictions on certain rights of the individual in order to safeguard the security of the State. In this connexion and in order to prevent arbitrary derogation of certain fundamental rights the constitution should specify the cases in which a case of emergency may be declared or in the absence of such a constitutional clause, these cases should be defined by ordinary legislature. The constitution should also have provision which enables the legislature to annul the declaration of the state of emergency if it was not further justified by the political situation. Further, the constitution should specify those rights of the individual that cannot be affected by a declaration of a state of emergency.

32. Following the introductory statement, a discussion took place in which there was general agreement that the provisions in the Constitution recognizing the fundamental rights and basic freedoms of the individual were not sufficient to guarantee these rights. To be effective these provisions must be reinforced by the necessary legislation and the setting up of the appropriate institutions providing effective means of enforcement. Otherwise the constitutional provisions would remain meaningless. Legal guarantees and democratic safeguards were of capital importance to human rights.

33. Several participants gave a detailed exposé concerning the legislative, executive and administrative institutions in their respective countries. The seminar was informed about the organization, functions, responsibilities and activities of these institutions, particularly as they relate to the protection of human rights. The participant of the United States of America stated that the Civil Rights Commission which was established by Congress, examines complaints concerning the violation of human rights, the denial of basic rights and discriminatory actions. He noted that this machinery was found quite effective and could be recommended to other countries. In the executive branch there were a number of government bodies which deal with human rights questions, such as the social security for elders, government medication service, and safety and health care. Participants from the socialist countries stated that the fundamental rights and freedoms of the individuals were guaranteed by the Constitution which had the determining force over any other legislation in the country. The Supreme Council or any similar State organ is the only State organ which is authorized to enact legislation. The relation between the State and the individual is legally standardized. Individuals have the right to complain against officials while the State organs are subject to certain limitations in the discharge of their responsibilities. At the local level officials of the national and local government organs are elected by the people on the basis of universal suffrage. Special organizations were set up to examine the constitutionality of the local regulations.

34. It was asserted by a participant that in a truly democratic society all people must have equal opportunity and must be able to freely express their choice, without endangering the fabric of the society. Until each stage of development has been reached, a society is not free.

35. The view was expressed by some participants that the concept of human rights should not be a static concept. It should not be limited to the development of legislature, but it should contain a programme of new ideas. The concept must in future be oriented, it should include ideas for further development, directed towards the continued improvement of the life of the human being.

36. The view was expressed that in the final analysis human rights do not depend solely on the legal provisions but on the political will of the government and the people themselves. The people should be encouraged to participate in the law-making process of the country. It is a formidable task to popularize human right. People should not only be made aware of their own basic and fundamental rights, but they should also respect and understand the rights of other people. In this connexion it was pointed out that an important role could be played by education and information services in mobilizing public opinion towards a better understanding of human rights and their observance.

37. The seminar was reminded that the process of safeguarding human rights was necessarily a slow-going process which would take a long time before one could expect any result. This was in brief an endless process. Therefore the seminar should avoid adopting conclusions which could create false expectations.

38. Some participants called the attention of the seminar that in examining the institutions for the protection of human rights it should also consider the limitations of the existing institutions. Some of the problem areas which were mentioned for consideration by the seminar included: the activities of the human rights monitoring groups, the activities of which might embarrass the government; the rights of the women, the freedom of the press, questions relating to national security, and the interference of privacy; the abuse of power by a foreign authority which could have adverse effects on the human rights of the people of another State.

39. The view was expressed that most of the countries which became independent after the war have included in their constitution provisions concerning the basic freedom and fundamental rights of the individuals. However, in spite of these provisions in the Constitution, the legislature had sometimes enacted legislations which were contrary to the letter and the spirit of the provisions of the constitution relating to human rights. This was mainly due to the lack of experience of the legislators in these countries and also of their inadequate education in the field of their competence, and since machinery to control the work of the legislature was non-existent, the legislature remained unchecked. As a result the provision in the constitution remains empty words and the law of the jungle prevails. It was therefore suggested that the seminar should adopt a recommendation to encourage the establishment in these countries of appropriate institutions to challenge the validity of the legislation.

40. Stress was laid by some participants on the importance of the full participation of all the population in the law-making and decision-making process of a given country, with the maximum participation of the people in the legislature, the executive and the judiciary, conflict between these three powers could be minimized and the human rights of the individual could be better protected. The membership of the legislature should include persons of all disciplines as the organ is required to enact legislation relating to all subject matters such as science, culture and the protection of human rights. In this connexion it was also pointed out that minority groups since they form a part of the society should be given ample opportunity to take part in the political, social, economical and cultural life of the country.

41. The view was expressed that the relationship inherent in any human right is essentially one between an individual or individuals and the State. At the present stage of development of human rights the emphasis has been placed on the protection of human rights of the individuals against the abuse of power by the State. Too little attention has been given to the relations between individuals themselves who in observing their basic rights might violate the rights of others. It was suggested that the seminar should pay more attention to this problem.

## 2. Judicial and quasi-judicial institutions

42. In introducing subitem A.2 Mrs. Erica-Irene Daes (Greece) called the attention of the seminar to article 8 of the Universal Declaration of Human Rights which provides that everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law. She pointed out that the available judicial remedies for violation of human rights were different in various countries depending upon their legal system. In countries with the continental legal system the review was the responsibility of the administrative tribunals which were separated and distinct from the judiciary. In countries with the common law system, the Anglo-American system, the judicial review was essentially based on a review by the ordinary courts through appropriate proceedings and in these proceedings the so-called prerogative writs, i.e. writs of prohibition, certiorari, mandamus and specially Habeas Corpus played a very important role. In addition these countries provided the statutory appeal to the supreme court for orders and decisions of administrative organs acting in a quasi-judicial capacity. Hence, in common law countries, the review is carried out through judicial control, the effectiveness of which depends on an independent judiciary. In this connexion she proposed that the seminar adopt a recommendation concerning the independence of the judiciary and the tribunals. In order to be effective the judges and the members of the tribunals should be independent from the executive and their members should also be independent persons. To ensure their independence judges and members of the tribunals should be provided with sufficient remuneration, a security of tenure and adequate staff. The law to be applied by the tribunal should be laid down by the supreme court and not by the executive. Mention should also be made of another method of review which exist in both countries with common law system or continental system; namely the disciplinary tribunals with legislature or executive supervision.

43. In the socialist countries, in particular in the Union of Soviet Socialist Republics, the principal role in the defence of the rights, freedoms and legal interests of the citizens is played by the judiciary. In accordance with its Constitution justice can only be administered by the courts. This is an important guarantee of socialist legality and democracy and of strict respect for the rights and interests of the people. For a comprehensive analysis of the Soviet judicial system she referred to background paper (BP/3) prepared by Professor Kudrvavtsev.

44. In France and in other countries which uses this system, there are two different courts, the ordinary and the administrative courts. The ordinary courts administer justice between citizens, while the administrative courts handle cases between the States and the citizen. The administrative courts have a system of case law which has been developed by the judges. On the basis of experience the French system of two separate courts have provided the citizen with a much-needed protection of his fundamental rights.

45. The Conseil d'Etat which exist in many countries besides France, e.g. in Greece, has the supreme specialized jurisdiction in administrative matters. The power of annulment vested in the Conseil d'Etat covers illegal administrative acts and discretionary acts if the Conseil finds that these acts violate the principles of law; for example, if certain powers are not exercised for the purpose intended by the law (détournement de pouvoir). The Conseil d'Etat has dual function of sending advice and of adjudicating in contentious-administrative cases. In its advisory capacity, it examines all Government bills, decrees, regulations and statutory instruments, which were required by law to be submitted for its scrutiny. Where a conflict of jurisdiction might exist, the issue was resolved by a parity Tribunal des Conflits consisting of members of the Conseil d'Etat and of the Cour de Cassation.

46. The French system drew a distinction between personal fault or negligence and functional fault or negligence. In the former case, the offending official was liable personally and must be sued in the ordinary courts, but in the latter case, the public authorities could be liable to pay compensation for the damage caused.

47. Within the administration itself the discussion leader stated that there was some kind of a hierarchical review. Reference was made to the recours gracieux, which is a recourse to the wrongdoer himself. She pointed out that this was a very effective remedy since the official concerned was not likely to wish to change his decision. More important is the recourse to the higher authority, that is to say, the recours hiérarchique, but that higher authority may not likely upset the decision of the lower authority and may indeed have been responsible for the instructions in accordance with which the decision was made. Finally, she mentioned the Constitutional law courts which were established in various countries, including Austria and Federal Republic of Germany, after the Second World War and which were entrusted with special competence in dealing with matters relating to the violation of human rights.

48. Further, Mrs. Daes stated that the rule of personal responsibility constitutes a protecting and remedial guarantee of human rights. Thus, civil liability for infringement of human rights of the individual should be afforded in the following three ways: (a) by making only the official liable; (b) by making only the State liable; and (c) by making both liable, i.e. the official and the State.

49. The criminal responsibility of the official is also an effective indirect means of control of the administration because a verdict of guilt might also have civil and administrative consequences and would have a deterrent effect.

50. In addition to the rule of personal responsibility, there should exist State responsibility.

51. The independence of judiciary was considered by many participants as the most important guarantee of human rights. It was essential that the persons responsible for applying and interpreting human rights, and for supervising other authorities, should be protected from pressures and approaches from all other authorities, groups or individuals. To maintain the independence of the judiciary necessarily implied certain legal guarantees. A number of basic conditions were advanced by participants who took part in the debate to ensure this independence. There was general agreement that judges should have a security of tenure and should be provided with sufficient remuneration which should not be altered to his disadvantage. In addition, it was, among others, suggested that judges should (a) not take part in

political and commercial activities; (b) should be irremovable, except in cases of physical and mental disability; (c) should be provided with adequate and competent staff to discharge his function; (d) should not be provided with personal privileges; (e) should be elected or appointed from independent lawyers. Different opinions were expressed with regard to the appointment of judges for life. In the United States of America, for example, judges at the federal level were appointed for life, but they were subject to impeachment; at the State level, they were elected for a number of years and were capable of re-election, however if necessary special elections could be called to decide whether or not he should be allowed to serve until the end of his term. In Australia, in accordance with an amendment to the Constitution, judges should retire at the age of seventy-five. Because of the importance of the independence of the judiciary in protecting human rights, it was suggested that the seminar adopt a recommendation on this subject.

52. The view was expressed that the separation of powers between the legislative, executive and judiciary was one of the means to prevent the abuse of power. However, each of these three powers could violate human rights. The legislature could enact legislation which was contrary in letter or spirit to the Constitution. In many countries there are constitutional courts which should examine the constitutionality of the legislation. The executive was also not immune from abusing its authority. Administrative courts were established to control its activities. The judiciary could also make decisions which violate human rights, such as the unjustifiable detention. So as to minimize the occurrence of this situation, the independence of the judiciary was essential.

53. It was pointed out by one participant that the concept of law should not be static. The legislature as well as the legal institutions should reflect the actual conditions of the country and the needs of the people. Because of the continuous and rapid changes in the society the law should be adjusted to these social modifications. For example, as a result of the advancement in the field of technology, human rights could be violated in a very subtle manner - this was particularly true with regard to the possible arbitrary interference with the privacy of the family, home or correspondence of the individual. This question merited a special study by the seminar.

54. The participants of the Federal Republic of Germany and the Ukrainian Soviet Socialist Republic informed the seminar that the principles embodied in the International Covenant on Political and Civil Rights and the International Covenant on Economic, Social and Cultural Rights were to be found in their countries' national legislations. In the Federal Republic of Germany the rights contained in the International Covenants as far as they are formulated as self-executing were accepted as individual rights to be applied in a direct manner. Every judge in the country was obliged to apply human rights and to examine the legal cases in the light of the basic and fundamental human rights.

55. The important role of education in making people more aware of their basic human rights was stressed. While no one could be denied the necessity of setting up national institutions to protect the human rights of the citizens, it would be useless for the people themselves to remain ignorant about their basic freedoms and fundamental rights. As pointed out by several participants, the law of the country should be brought close to the people, who should be encouraged to participate as actively as possible in the law-making process. It was suggested that the study of human rights should be included in the curriculum of the educational institutions. The press and the mass media should also be mobilized to

make the people more conscious of their basic rights and to give them a better understanding of the organization and the activities of the various institutions which were devised to protect human rights. While it was basically the duty and the obligation of the State to inform and educate the people, the non-governmental organizations concerned with matters of human rights could also play an important role in the dissemination of information on human rights.

### 3. Independent mediators: The Ombudsman and similar officers and institutions

56. The item was discussed at the 4th meeting held on 20 September 1978. It was introduced by Mrs. Erica-Irene Daes (Greece). Mrs. Daes suggested that the item should be analysed in depth so as to reflect as much as possible in the seminar recommendations of the various experiences and views expressed by representatives.

#### The Ombudsman

57. Mrs. Daes said that the Ombudsman system, originated in Sweden, has now been adopted with some modifications to suit local needs and political systems, by a number of countries. An Ombudsman is a public official, often elected and answerable only to parliament, whose function it is to represent an individual in cases where the right of the individual under the law may have been infringed upon or abused by the State or other public authority. He has extensive powers to receive and investigate individual complaints as well as complaints through the press and other media. He also has power to initiate investigations personally and inspect public institutions such as courts and prisons to ascertain whether breaches of individual rights may have occurred in them. His other powers cover inspection of public prosecutor's and court records so as to avoid delays in bringing individuals to trial. He can also institute criminal proceedings against public officials for breach or abuse of public authorities entrusted to them.

58. The Ombudsman is a most useful official in cases where an individual citizen, because of economic factors, may not secure resort to court of law in seeking redress for an unlawful act done to him. Mrs. Daes considers the Ombudsman system especially important in an expanding sphere of welfare agencies whose experiences in dealing with human rights are not yet as developed as, for example, those of law courts. Thus, to ensure unification of function, justice and public trust an Ombudsman assumes an independent supervisory role over courts as well as administrative bodies in order to leave no gaps in protective mechanism for individual rights.

59. The system places emphasis on matters affecting individual rights and freedoms as well as freedom of the press, of assembly and of speech which may be abused by those in positions of power.

60. She proposed the recommendation by the seminar in its report of the Ombudsman system.

#### The Procurator

61. The system of Procurator as an independent mediator has been adopted by the Union of Soviet Socialist Republics and the socialist countries of Eastern Europe. The 1977 Constitution of the Union of Soviet Socialist Republics recognizes the office of Procurator whose primary function is to safeguard and protect the lawful rights of citizens at all levels of administration. He is invested by the



constitution with supervisory powers over strict and uniform observance of laws by State organs such as government ministries, State committees, departments, enterprises, institutions and organs, executive administrative bodies of local soviets, collective farms, co-operatives and other public organizations, officials and citizens. Like the Ombudsman system, any citizen may lodge with the procurator complaints for infringement of his rights and seek redress against any State organ or official. He also has the right to institute disciplinary, administrative or criminal proceedings against any person guilty of breaches of the law. One of his fundamental duties being the prevention of crime. The safeguard of the citizen's right from unlawful or unjustifiable infringement as well as seeing to it that the organs of enquiry or preliminary investigation strictly adhere to the established statutory procedure.

62. The office is headed by a Procurator General appointed by and responsible to the legislator with ultimate power of resort to the Supreme Soviet in case of dispute between Government organ and the office.

#### General comments

63. The seminar generally agreed that local practices and systems differ from country to country with regard to the role of independent mediators. Some representatives pointed out that differences often occur not only from the economic and social system but also to be taken into serious account were the experiences in particular of the developing countries whose economic and other developmental problems have been seen to outweigh the necessity for the establishment of the institution of independent mediators. In most developing countries there is a lack of money and shortages of staff for effective use of such institutions.

64. It was recognized that due to these difficulties among others, developing countries have devised similar institutions with modifications to suit their respective needs and experiences. In India an Office Lokpal (Protector of the People) is being set up to inquire into allegations of misconduct against publicmen, which, inter alia, includes a member of the Council of Ministers for the Union and a member of either House of Parliament. Misconduct has very wide connotations. Lokpal will have an independent investigating machinery and will report to Parliament. In a number of states, the offices of Lakayuktas (Commissioners of the People) are functioning to enquire independently into acts of corruption and other abuses of authority by public officials.

65. One representative pointed out that in Africa independent mediators are not a priority factor considering the ever pressing need to establish sound and stable institution to combat such overriding problems as hunger, literacy, disease and economic development and to strengthen as well as maintain national independence. He drew the attention of the seminar to the fact that most African States have written constitutions which have incorporated in their provisions the Universal Declaration of Human Rights, independence of the judiciary and a number of statutory provisions are available to safeguard individual freedoms and rights. He also said that some parts of Africa are still fighting wars of liberation and have yet to realize through self-determination and independence the meaning of liberty, freedom of individual rights and justice.

66. One representative stressed the significance of the office of the Ombudsman which he said was a dynamic concept in the safeguarding of lawful rights of citizen against unwarranted abuse by State. The system has been adopted by a number of

countries mainly because of its practical usefulness. He suggested that in its recommendation the seminar should consider, for the purpose of protecting human rights, the adoption by as many countries as possible of the system of Ombudsman.

67. Many representatives expressed the view that there is, these days, critical need in many countries for the system of independent mediators whose duties fill the gaps in the judicial and administrative systems and governmental structure for the protection of human rights and ensure the exercise of the basic freedoms.

68. Most representatives stressed the fact that despite the difference in the powers that States give independent mediators, the office is necessary for the protection of individual rights. In some countries Ombudsman has both powers of investigation and prosecution. In others he has only an investigatory power without the corresponding power to prosecute. It was thought necessary for its public benefit, to have the Ombudsman invested with as widely spread powers as possible so as to cover all levels of Government.

#### 4. Political institution : parties and party groups

69. The item was discussed at the fifth meeting held on 20 September 1978. It was introduced by Mrs. Erica-Irene Daes (Greece).

70. Mrs. Erica-Irene Daes reiterated the significance of political party in a democratic society and its influence in the protection of human rights. She stated that for human rights to be meaningful the concept of self-determination should, as much as possible, be universally implemented. She stated that the best safeguard for the protection of individual political rights is in an enlightened democracy, an elected parliament, free and independent political parties, public discussion, freedom of the press, radio, television and educated public opinion.

71. Elaborating on these essential elements of an enlightened democracy she said that political institutions must have a parliament with responsible opposition; free press not controlled by government; a constitution spelling out guarantees and limitation of powers; independent political parties serving a democratic society; independent and responsible intergovernmental organizations; mobilization of youth movements, intellectual associations and volunteer associations; trade unions and employers' organization are both important instruments for the protection of human rights.

#### General comments

72. Various representatives explained the system of political parties operating in their respective countries. Discussions were mainly centred upon a single party or multiple party system as well as the methods used in political party elections and qualifications for party membership. The participant of the United States of America discussed the advantages of the multiparty system in the protection of human rights and the disadvantages of a single party system. He questioned whether a political party can be independent and perform its democratic function in a State with only one party. He stressed that an opposition party is needed in combination with the free and uncensored press. Some participants pointed out the role played by special interest groups in influencing adversely the national or local party elections by direct financial contribution to party fund. Some other participants expressed the view that one-party or multiparty systems should not be the criterion for judging the degree of democracy in certain States and of situations in respect of human rights.

73. Some participants expressed the opinion that the best way, particularly in developing countries, to protect individual rights and ensure the elimination of corruption in a party election was the establishment of a one-party system. Other representatives thought that a multiparty system was best suited and worked better in industrialized countries where advanced form of party machinery had long been established. One participant drew attention to the limitations of party political systems which could not always effectively express the will of the people at all times in the flux of the development of human rights in a democratic State.

74. The right of a sovereign State to have a political system of its choosing was recognized. It was generally stressed that for the purpose of protection of the individual rights, no contemporary democratic system can function without a political party with free system of elections. Individual rights can be grossly violated in the absence of free elected representatives whose important duty it is to reflect the will of the people. Political parties must therefore function for the benefit of everyone in accordance with the constitution and statutory laws.

75. It was further pointed out that enlightened democracy must be based on free flow of communication, education of public opinion through free and unhampered press if the protection of the individual rights under party organs were to be realized. Contribution by special interest groups to party funds was found undesirable and should, wherever possible, be discouraged.

#### 5. Institutions in the field of development

76. In introducing this subitem, Mrs. Erika-Irene Daes (Greece) stated that the subject was mainly related to the realization of the economic, social and cultural rights of the people, and reminded the seminar of articles 1 and 2 of the Declaration on Social Progress and Development which declares that all human beings shall have the right to live in dignity and freedom and to enjoy the fruits of social progress and development, which in turn shall be founded on respect for the dignity and value of the human person and shall ensure the promotion of human rights and social justice. She underlined the fact that the complex society of today called upon States to harmonize the interests of individuals with those of the community as a whole. The States, as a result, felt obliged to take over many obligations formerly confined to the individuals and the family, including the adequate provision of food, housing, clothing, education and health protection. Partly they are guaranteed by securing to all the right to employment, to fair wages, to family allowances, pensions and unemployment compensation. In this connexion she pointed out that the prevailing view today was that only through State action and planning could the effective enjoyment of economic, social and cultural rights be realized for all members of society. The modern concept of the functions of the State, in relation to development and human rights was expressed in many international instruments, including the International Covenant on Economic, Social and Cultural Rights and in particular the Charter of the United Nations by which Members had pledged themselves to take joint and separate action to promote higher standards of living, full employment, conditions of economic and social progress and the development of universal respect for and observance of human rights and fundamental freedoms.

77. In the light of the preceding observations and in order to pursue economic and social development in a vigorous and orderly manner, she proposed the following measures and institutions in the field of human rights:

(a) the establishment and strengthening of appropriate social institutions as agents of social change should be recognized as an essential feature of national policy for development. Such a policy should provide, in particular for the rights and obligations of employers and workers, in all sectors of the economy, in the establishment of organizations of their own choosing, which would enable them to defend their interests, to bargain collectively and to make suggestions in economic and social decisions that concern them, at every level of society and more particularly in the elaboration of development plans or programmes;

(b) the creation and effective operation of co-operatives as instruments likely to contribute to economic development and to ensure an authentic popular participation in economic and social development efforts;

(c) the creation of national commissions and governmental organs which will contribute to the implementation of national policies relating in particular to population growth, population structure, internal population distribution and international migration;

(d) the non-governmental organizations in every country have also a key role to play in the field of development. For example, living "clean" is no less important a social right than living long. Hence, the degree to which the physical environment of the community remains ecologically balanced directly affects the realization of a vital social right, that is, the right to health. There are hard facts and figures as regards the extent of air, water and soil pollution in various parts of the world;

(e) the adoption of educational systems and the establishment of schools, including training schools, etc., in particular in the less developed countries which should be geared to the requirements of speeding up economic and social development;

(f) the creation, where possible, of regulatory agencies which will have the competence and the power to regulate the economic activities of individuals and business. The goal of this regulation is the interest of the society. This pattern of institution exists in the United States and a full description of it may be found in pages 35-36 of Background Paper 2 (BP/2);

(g) the establishment of public corporations has already proved a key factor for development. In Greece, immediately after the Second World War, during the battle of survival of the nation, among the first institutions which were adopted, was the establishment of public corporations, such as the Public Power Corporation and the Public Corporation of Petrol.

78. In concluding her introduction, Mrs. Daes reminded the seminar that national institutions in the field of development differed greatly between those of the developed and less developed countries, and between countries of different political, economic and social systems.

79. General observations were made concerning planning aimed at improving the economic, social and cultural conditions of the people. The vital importance of planning in development efforts was recognized by participants who took part in the debate on this subitem. It was stated that any organization required planning. The view was expressed by one participant that planning should be a dynamic process

which should be responsive and capable of adjustments and changes. It should not be centralized but should be kept close to the people. Continued interaction should be maintained between the central organization, the local groups and the individuals. As an example he mentioned the close co-operation which existed in his country between the Planning Commission - the Planning Boards, and Planning Committees and the people. Another participant stated that State Planning, in order to be successful should be a co-operative action and should take into account the needs of the people, and should not be imposed on the people. Still another participant pointed out that planning should be a democratic process, all the population of the country should take part in it. He warned the seminar that in order to achieve its goal, planning should be preceded by a most careful evaluation, taking into account the needs of the people and the limited resources of the country. He added that on the basis of experience in his country, the plan should be realistic and not to be too ambitious.

80. It was pointed out that in order to achieve the expected results, development efforts of the State should be supplemented by endeavours on the part of voluntary organizations. Special efforts should be made to encourage the voluntary efforts of these organizations. Campaigns should be launched to encourage the active and positive involvement of the people in these development enterprises. People should be informed and made aware of aims and goals of the development plans. In this connexion, it was suggested that the seminar could adopt a recommendation requesting the United Nations to take the necessary measures in disseminating as wide as possible information concerning national development plans aimed at improving the economic, social and cultural conditions of the people.

81. One participant referred to the international assistance which was provided to the Governments of developing countries in implementing their development plans. In his opinion, while foreign expertise was sometimes needed, the indigenous experts should not be ignored, they should participate fully in the drawing up as well as in the implementation of the plans. This would avoid the imposition of international standards which could not be applied locally. In this connexion it was suggested that the seminar adopt a recommendation which would encourage Member States in the setting up of true development institution in their respective countries.

82. Some participants described the development efforts which had been carried out and which were being done in their countries. The seminar was informed by one participant that in his country the efforts were mainly aimed at the removal of discrimination, inequalities and poverty. To this end a number of organs were created such as the Monopolies Commission and the Food Corporation to afford protection to the underprivileged sections of the population. He also mentioned the establishment of the National Committee for Women the purpose of which was to attempt to remove the social and economic injustices of women in his country.

83. It was pointed out by one participant that the problems of development in his country were overwhelming due to demographic problems, scarcity of available natural resources, scarcity of knowledge and information, shortage of technical skills and know-how and lack of the necessary funds. In spite of these difficulties the Government had been able to set up the necessary machinery and at present there exists in his country an integrated chain of development institutions covering every field of activity. On the basis of his country's experience he believed that the task of national development should not only be the responsibility

of the Government concerned but it should also be the concern of the world community. In this connexion he suggested that the seminar adopt a recommendation which would ask the United Nations to encourage and intensify international co-operation in the field of development aimed at the improvement of the economic and social conditions of the people throughout the world.

84. The view was expressed that the seminar should not overlook the fact that in countries where the populations were still struggling for the attainment of their independence the main task was to realize their right of self-determination. This did not only apply to the Non-Self-Governing Territories such as Namibia and Zimbabwe but also South Africa which is ruled by an alien, illegal and minority régime and where the indigenous population was still subjected to a policy based on racism and racial discrimination.

85. In these Territories one could speak about economic, social and cultural development, only after they have been liberated. Therefore it was suggested that the seminar should adopt a recommendation condemning the perpetual violation of human rights in these Territories and appealed to the world community to continue and intensify its assistance to the liberation movements.

#### 6. Legal and social aid arrangements

86. In introducing this subitem, Mrs. Erica Irene Dues (Greece) stated that the legal and social aid arrangements play a key role in the protection of human rights and fundamental freedoms. She also pointed out that the legal profession and in particular the advocates before every national court played a significant role in the protection of human rights. It was the sacred task of every advocate to protect the rights of his clients without any discrimination. It was also a moral task of every lawyer to make his contribution to the efforts of protection of human rights and fundamental freedoms through their statements, lectures, publications and writing in general.

87. Like judges, lawyers should also be completely free and independent. Governments, regardless of their political, economic and social system, should facilitate the role of lawyers in particular in trials of a controversial political nature. Detainees and prisoners shall be free to choose their own barrister and Governments should facilitate the task of the advocates by allowing them access to all relevant documents of the case concerned. In this connexion she emphasized the importance of the draft body of principles of all persons under any form of detention or imprisonment, which was adopted by the Sub-Commission on Prevention of Discrimination and Protection of Minorities, some days ago.

88. Free legal aid should be granted to individuals with limited means and resources, in particular, in the less developed countries. It could be provided by the competent authorities, the local bar associations or other commissions established for this purpose. The existence of a competent and courageous bar would be an important factor in the protection of human rights. Lawyers should be actively concerned with the promotion and adoption of measures which would help to eradicate poverty, ignorance and inequality in society, because as long as these evils continue to prevail, the civil, political, economic and social rights of a number of people would be jeopardized. Finally, she suggested the creation of a commission composed of distinguished lawyers, which would constitute a post of the

administration and which would advise the administration as well as the legislature in matters relating to the elaboration of bills, acts and other legislation concerned with human rights, ratification of international instruments on human rights, social development, etc.

89. There was general agreement with regard to the important role played by legal and social aid arrangements in the protection of human rights. The provision of legal aid was particularly indispensable in countries where poverty and illiteracy still prevail. In these countries the capacity of the average citizen to approach the court was very limited. Legal aid should not be considered as an act of charity but as a serious commitment of political democracy. The people should not be left out from the operation of the legal system of the country. It was pointed out by one participant that there were three possibilities of providing legal aid. The person himself could take the initiative, or an organization could be set up to help him or the State itself could consider it as its task to provide legal assistance.

90. The seminar was reminded that while no one could deny the usefulness of legal aid services, adequate supervision was necessary so as to avoid abuses of these services.

91. Several participants who took part in the discussion informed the seminar how legal aid was provided in their respective countries. In France legal aid was inherent in the French legal system. However, because of limited funds made available for this purpose, in some cases the State could only provide partial aid to the citizen. Free legal consultations could be obtained in many places scattered throughout the country. Clients could ask for advice and assistance not only on legal matters but on social problems as well.

92. In the Union of Soviet Socialist Republics the economic and social rights of the people, as entrusted in the International Covenants, are guaranteed by the State. Health and medical care and elementary and secondary education are provided by the State free of charge. It also provides social security and old age pension. It should be noted that workers do not contribute to the pension fund. Legal aid is provided by public organizations free of charge. Public notices inform the citizens where to obtain legal assistance. The system is comparable to that in France. Lawyers have the duty not only to provide legal assistance to the citizens, but they are also required to give lectures to the people on certain legal problems of interest to them. The citizens themselves are also encouraged to attend these lectures.

93. In Australia also there are government-funded legal aid services at both the federal and State levels. In addition most States have legal aid schemes administered by law societies. Currently there is a move to bring the services together in a comprehensive scheme.

94. Mention was made of the system of easily accessible legal aid, where students at law schools under proper guidance were called upon to assist in sending legal assistance to needy people. In Norway, a system of free legal advice provided by students known as the Law Bus has been in operation for the last 10 years. A number of law students were transported by buses to difficult places in the country to provide legal advice to the people. Buses with senior level law students were stationed according to a determined schedule at different places in the most populated parts of the metropolitan area in order to provide free legal advice to

the people. The number of citizens taking advantage of this legal aid service has been increasing. Similar systems also exist in Guatemala. In Guatemala the students have been particularly active in helping citizens since the aftermath of the earthquake in 1973 which created numerous legal and social problems.

95. The view now expressed is that in many countries efforts to protect the human rights of the citizens have encountered numerous problems as a result of the non-co-operation of the lawyers who instead of providing aid to the citizens were more concerned about their own interests. This is particularly true in the less developed countries where the number of lawyers is limited and where the people are not well informed and fully conscious as yet of their fundamental rights. In this connexion, it was suggested that the seminar adopt a recommendation urging that members of the legal profession in all Member States in the description of their function should pay special attention to the interest of the people. At the same time with the assistance of the United Nations, Member States should set up appropriate machinery designed to provide legal aid to the people and to inform them about their fundamental rights.

96. It was pointed out by some participants that in order to be better understood the laws should be written in a simple language. Experience has shown that the language used by legislators in many countries was so complicated that even in countries where there was practically no illiteracy, people were unable to have a good understanding of the laws by which they had to abide. Thus the clarity of the language of legislation was considered essential for a better realization and protection of human rights. To this end it was suggested that the seminar adopt a recommendation to ask the legislators of Member States, through the United Nations, to try to utilize simple language when drawing up legislations.

97. In the light of the discussion one participant suggested that an international law committee be established which could provide legal aid to anyone everywhere. The advantage of this kind of legal aid service would be tremendous even if the direct presence of the lawyer was not possible. In this connexion, the United Nations could be asked to provide the necessary machinery for its enforcement.

98. Attention of the seminar is called to the existence of the international organization called the International Legal Aid Association (ILAA) which provides legal aid to all people throughout the world.

## 7. Summary of discussion

99. Following the conclusion of the consideration of this item the discussion leader, Mrs. Erica-Irene Daes (Greece) summed up the discussion as follows:

(a) All participants addressed themselves to the question relating to the constitutional and protecting or remedial institutions that were relevant to the protection of human rights. It was pointed out that public consciousness necessary for the realization and defence of human rights must begin at home and at the national level. No doubt the best safeguard for the protection and respect of human rights is an enlightened democracy.

(b) The view was expressed that every democratic State was required to give expression to the freedom of the individual in the form of concrete rights which should be protected by an adequate and effective system of law. The



following were considered among the best guarantees of human rights: a representative democratic elected parliament; free political parties; the inclusion of provisions of human rights in the constitution; popularization of constitutional and other rights; independent judiciary; public discussions; a free and independent press; fair operation of radio and television systems and a well-informed public opinion.

(c) It was stressed by some participants that mere declaration of rights, which were not accompanied by requisite safeguards and remedies, amounted to their denial and it was the responsibility of the State to equip those who were supposed to enjoy the rights with the means to make them effective.

(d) It was stated by one participant that the consideration of this item involved a philosophical inquiry into the means of forming a just society. In discussing human rights as a moral imperative there was a danger of ignoring the process by which laws come into being. Human rights were individual and personal relations and could not be imported wholesale into a society. Some other participants stated that human values and human rights should be safeguarded in particular from the abuse of power by States. It was emphasized that the concept of human rights was not static but a dynamic process which should be developed and protected.

(e) Human rights provisions in the national constitution should have a hierarchically superior position in the legal order so that they would have a binding effect on the legislators.

(f) It was emphasized that since human rights were considered to be binding on the State and in particular on the legislator, measures should be taken in the field of civil and penal law to make the observance of these rights possible between individuals as well as between individuals and bodies established under private law. It was also emphasized that law should be the only guarantor of freedom. The vital force for development of democracy is the participation of people in public and in State affairs. It was also stated that a basic guarantee of human rights is the existence of necessary social and economic conditions of life.

(g) The importance of the fundamental principles of the rule of law and legality with respect to the protection of human rights was also underlined.

(h) Some participants stated that any legislative limitation or restriction of fundamental human rights should require constitutional authorization. The more the legislature is limited in imposing restrictions on human rights the less the danger for the annihilation of individual freedoms exists.

(i) On the basis of the views expressed by some participants, Mrs. Daes suggested that the following principles be taken into consideration in the formulation of the guidelines:

(1) The vital force which preserves and develops a real democratic life is the force of freedom of the individual and the participation of people in public affairs and the administration of State affairs.

(2) The best safeguard for the protection of human rights is an enlightened democracy.

(3) The relationship inherent in any human right is essentially one between an individual or individuals and the State. Therefore the primary and prior responsibility for the achievement of the protection of human rights falls at the national level, duly taking into account the principles recognized by the international community.

(4) The public consciousness necessary to achieve and defend human freedom must begin at the national level.

(5) The development of consciousness about one's own rights and rights of others should be encouraged.

(6) Contribution should be made to the dynamics of human rights concepts through the fostering of political participation of the public.

(7) Human rights shall be incorporated into national constitutions in such a way that they have a binding effect also to the legislator.

(8) The Constitution should also provide all individuals with direct remedial institutions against any unlawful decision of the executive and a means to invoke the unconstitutionality or illegality of an administrative order.

(9) In common-law countries in which written constitutions do not exist the chief protector of human rights should be the legislature and the judiciary.

(10) The separation of the three powers, legislative, executive and administrative will contribute to the effective protection of human rights.

(11) Legislature should not only make the laws by which human rights are protected, it should also be an instrument of implementation.

(12) The legislative activity in the field of human rights should take into account the level of political, economic and social development of a particular State.

(13) Measures should be taken in the field of penal and civil law to enable the observance of human rights.

(14) Human rights should not be only declared in legal instruments, but they must be also insured by political, economic and social guarantees.

(15) Constitution or special law should specify the rights of the individual that cannot be affected by a declaration of a state of emergency.

(16) The law of every State should be in conformity with the letter and spirit of the United Nations instrument in the field of human rights and international law.

(17) The principles of equality and non-discrimination should be observed by the legislative, executive and administrative authorities.

(18) The executive and administrative authorities and organs should strictly respect the law.

(19) The legislative control of the administrative authority should, inter alia, include:

(a) the extent to which the legislature issues directives to the administration;

(b) the question of delegated legislation and

(c) the parliamentary and other commissions of inquiry.

(20) Human rights and fundamental freedoms should be safeguarded in particular from the abuse of power by legislative, executive and administrative authorities and from imposition of arbitrary and discriminatory limitations and restrictions.

(21) The legislature should abstain from enacting retroactive legislation.

(22) The laws and orders should be drafted with care and clarity with special attention to the interest of the individual who should know and protect his rights. The same applies to the legislation related to the rights between individuals, as well as between individuals and bodies established under private law, and individuals and the State.

(23) The right to self-determination is a paramount and indispensable condition to the promotion and realization of human rights and fundamental freedoms. All Governments are urged to do everything in their power to support the implementation of the right to self-determination everywhere and in particular those parts of the world, such as Zimbabwe, Namibia and South Africa.

(24) The essential requirements of human rights involve representation on the basis of adult and adolescent suffrage in a democracy.

(25) In the development of institutions for the protection and promotion of human rights the importance of the individual and the creation of opportunities for his realization of an expressed choice should not be overlooked.

(26) The individual should be entitled to invoke directly the rights incorporated in the Universal Declaration on Human Rights and the International Covenants on Human Rights. In States with other legal systems the individual should be entitled to invoke the relevant provisions of national laws corresponding to international obligations of those States in the field of human rights.

(27) The control of administrative action through scrutiny by members of the legislature should be encouraged.

(28) Special safeguards should be provided against arbitrary derogation from human rights in particular in a state of emergency.

(29) The courts should have the power to annul the declaration of a state of emergency where the formalities required to validate such a declaration have not been complied with.

(30) The independence of the judiciary and of the tribunals should be guaranteed, since it constitutes a basic safeguard for the effective protection of human rights. To secure the independence of the judiciary and the tribunals, they should be supported by adequate salary, independent staff accommodation and security of tenure. The impartiality and objectivity of the judiciary and tribunals is a necessary requisite for the effective protection of human rights. An important safeguard of the independence of the judiciary is its election by people on a democratic basis.

(31) Special protection should be recognized for the rights of persons belonging to minorities or other groups such as indigenous peoples, migrant workers, etc.

(32) Independent mediators, such as the Ombudsman, or parliamentary commissioner for the protection of human rights or commissioner, or procurator, or civil rights commission, or special commissions of inquiry, or special human rights commissions, or similar organs, should be appointed or established as an additional guarantee for protection of human rights.

(33) The independent mediator, Ombudsman or Commissioner, or Procurator, should, inter alia, be entitled to make periodic inspections of government offices and other administrative bodies in order to suggest appropriate improvements in their administrative procedures. Also, he should be given the right to make periodic trips to rural areas to inform the public of his functions and to receive complaints. The jurisdiction of the independent mediator should be as wide as possible and they should operate at all levels of government.

(34) Judicial and other remedies should be provided, such as:

(a) hierarchical review within the administration itself;

(b) review by various boards and other authorities including constitutional law courts, administrative courts (e.g. Cc d'Etat) and administrative tribunals.

(35) The rules of state and personal responsibility should legally be recognized. The administration should be completely responsible for the acts of its agents.

(36) Political parties should be free from special interest and independent, in order to perform their proper functions in a democratic society. The existence of various and democratic organized parties in a society is a direct guarantee for the basic rights of all citizens. One-party, two-parties or multi-party systems should not be the only criterion for judging the degree of democracy in a State in respect of the protection of human rights.

(37) Judges, advocates and private lawyers should be free from governmental influence and their independence should be preserved. Specific

measures should be adopted to protect advocates who defend unpopular clients or cases or taking part in controversial political trials from threats or harassment.

(38) Every national legal system must provide for adequate legal aid for the poor and needy, preferably in all cases but necessarily in all criminal cases and human rights violation cases. No lawyer should be forced upon a litigant against his will. Law students should be associated with legal aid and guidance.

(39) The specialized agencies and intergovernmental organizations such as the Office of the High Commissioner for Refugees should be supported in the field of human rights.

(40) Press and mass media should be free and independent in accordance with the national laws and international agreements in order to fulfil their important functions.

(41) Legal service programmes should be formulated on the basis of making the poor people understand their rights.

(42) It was generally noted that The Ombudsman system is being increasingly adopted by a number of developing countries, with modifications to suit local needs. Some countries use commissioners or committee systems. On this subject:

(a) Most representatives proposed the adoption of Ombudsman system in the seminar recommendation;

(b) One representative proposed a system for the independence of lawyers in the same way as the judges are accorded independence:

(c) One other representative proposed recommendations by the seminar to reflect the role of non-governmental organizations in independent mediation.

(43) The creation of national workshops might be most relevant to developing countries for the purpose of (a) raising the standard of education; (b) offering special orientation in human rights subjects, which UNESCO could be asked to supervise.

(44) Bar associations should form committees whose lawyers can act as counsel or defence lawyer in foreign countries who are denied proper access to legal representation. This would be particularly effective if there exists any international agreement.

(45) The Division of Human Rights, together with other competent bodies of the United Nations, should undertake a comparative study of the structure and activities of certain human rights agencies of a quasi-judicial or quasi-administrative character.

(46) A study should also be undertaken by the competent United Nations bodies concerning the abuse of power of the multinational corporations which impede the protection of human rights.

## Chapter II

### PROMOTIONAL INSTITUTIONS

100. The item was discussed at the 7th to 9th meetings held on 21 and 22 September 1978. The item as a whole was introduced by Ms. Leah Levin (United Kingdom). In her introduction, Ms. Levin stated that human rights have to be promoted and safeguarded in everyday terms in order that they be endowed with substance and meaning. Promotional institutions play a significant role in fostering the process of political participation and act as the vehicles through which people can be informed and made aware of their rights and those of others. These institutions promote the mobilization of public opinion and can help towards the co-ordination of thinking on human rights. In considering the means whereby human rights can be protected and promoted it is necessary to take into account the problems faced by different societies in the context of their social and economic realities. Thus throughout the Third World poverty and illiteracy impose their own limitations upon the fulfilment of human rights and human dignity. The converse of the fulfilment of rights is the deprivation of rights and the exploitation and oppression of people and peoples, denial of the right to self-determination in its fullest meaning, discrimination. Thus, full knowledge and awareness of human rights carries with it also a concern with the deprivation of human rights of others and a responsibility to be involved in the achievement of these rights not only for oneself but equally for others.

101. With respect to educational institutions, Ms. Levin stated that the essential ingredient in the realization and implementation of human rights is the awareness of them. In this regard educational institutions related to the needs of different societies can fulfil an important role. Methods, contents and curricula for human rights education must be developed and should be adapted to national and regional realities. Thus human rights education should be part of primary and secondary school curricula and an essential component of teacher training and also of school education. At university level it is conceived as both part of the teaching of separate disciplines as well as a separate course. Non-governmental organizations, trade unions, churches, play an important role in the field of adult education. An alert and educated public opinion and the involvement of the private citizen are basic elements in the promotion of human rights. Human rights education should be provided for special professional groups and particularly in the law enforcement sector. Special courses should be included in police and military training. Military training should also include human rights education. Special attention in this field should also be paid towards protecting and promoting the rights of groups particularly exposed to discrimination. These are areas that require both special national and local institutions. Literacy is an essential basis and the promotion of literacy through national and international institutions a high priority.

102. Concerning human rights committees, Ms. Levin stated that they exist in various countries, differing in their role and structure, and in most instances are government-sponsored. It is important that participation in these bodies

should be representative of a cross-section of opinion. Such committees can perform an important role in education, training, research, and in identifying new areas of human rights concern. Furthermore, they could act as advisory and review bodies to Governments on matters of human rights.

103. With regard to non-governmental organizations, Ms. Levin pointed out that such organizations have played an historical role and continue to do so in the fields of promotion and protection of human rights, and with very few exceptions their work is remarkable for its accuracy and responsibility. Apart from their considerable educational role, the role of non-governmental organizations act as watchdogs in respect of violations of human rights, contribute to the implementation and promotion of international standards of human rights. In the national context, the private citizen can most effectively act through non-governmental organizations. In order to strengthen their contribution to the promotion of human rights in the national context there should be effective consultation with governments. The over-all contribution of non-governmental organizations could be greatly enhanced by creating institutions or means whereby they could consistently draw upon one another's expertise or other resources. In those parts of the world where non-governmental organizations are little known, institutional means could perhaps be considered to foster the development of these organizations.

104. With respect to dissemination of information on human rights, Ms. Levin indicated that while most non-governmental organizations and other institutions concerned with promoting human rights are engaged with information activities in their own fields, there is a need for effective institutional means to promote communications and assist in the dissemination of information such as the texts of the international instruments for the protection and promotion of human rights, which should be freely available in all languages. Furthermore, the media has a very important role to play in the dissemination of information on human rights.

#### 1. Educational institutions

105. During the discussion of the item, some participants drew the attention of the seminar to certain relevant points in the final report of the International Congress on the Teaching of Human Rights, sponsored by UNESCO and held in Vienna from 12 to 16 September 1978. They stated that the principles that should guide the teaching of human rights should be based on the principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenants on Human Rights, and other international human rights instruments. They stated that consequently, equal emphasis should be placed on economic, social, cultural, civil and political rights as well as individual and group rights. The indivisibility of all human rights should be recognized. The concept of human rights should not be formulated in traditional or classical terms but should include the historical experience and contributions of all peoples particularly in relation to the major contemporary problems such as self-determination and all forms of discrimination and exploitation. Care should be constantly taken to create awareness about the close relationship between human rights, on the one hand, and development and peace, including, inter alia, disarmament, on the other hand. Human rights must be taught at all levels of the educational system and out-of-school sector. States should strive to improve and broaden human rights education and teaching and co-operate to this end.

106. With regard to programmes for the teaching of human rights, such curricula should be adapted to national and regional realities provided, however, that the universality of the rights proclaimed in the principal international human rights instruments, particularly the Universal Declaration of Human Rights and the International Covenants on Human Rights, are acknowledged. It was stated that this adaptation of curricula to national and regional realities can only be done by national and regional institutions competent in this field. It was pointed out that the Congress recommended that an international clearing house for information and research on human rights be established. The task of preparation and publication of teaching materials should be entrusted to national and local organizations. The International Congress on the Teaching of Human Rights had recommended that United Nations Educational, Scientific and Cultural Organization should assist in the establishment in every country of a centre of specialized higher studies in the field of human rights, if so requested. The United Nations Educational, Scientific and Cultural Organization should also assist with the creation of regional and subregional centres for teaching and research in human rights as well as to encourage the establishment of an association of human rights teachers. Encouragement should be given to the establishment of institutes for the teaching of human rights by associations of the legal profession. The Congress also recommended that the guidelines for local and national human rights institutions to be drawn up by the seminar, specifying the role of these institutions in the planning and implementation of human rights education and training. The Congress also requested the Director-General of the United Nations Educational, Scientific and Cultural Organization to ask Member States to consider the possibility of establishing, within the framework of the United Nations Educational, Scientific and Cultural Organization's programme and with the support of the United Nations General Assembly, a voluntary fund for the development of knowledge of human rights through teaching and information.

107. One participant expressed the view that the realization of human rights is a problem which depends mainly upon what citizens know about their fundamental rights as well as how well they are informed about the guarantees of implementation of their rights. In this connexion the seminar was informed that special sociological and juridical research work was carried out in the Hungarian People's Republic by the Institute of Legal and Political Sciences, to find out what the citizens and different employees of administrative organs knew about legal problems. He expressed the opinion that this research work had inspired the Government to intensify the legal and juridical teaching activities in different educational institutions, from refresher courses for leading officers and employees of State organs, co-operatives and economic bodies down to the primary schools and including television and radio programmes.

108. It was stated that one imperative requirement of education in a community of diverse interests and different potentials, was to impart a knowledge of the democratic process which is the cornerstone on which all human rights are founded. Education should be adapted to the level and capacity of the recipients. Ideally, human rights should be incorporated in the school's curriculum as part of national or tribal history: this would create an awareness of the place of the individual in the community and permit the identification with his truly indigenous culture which is vital to his or her survival and human dignity wherever he or she may be.



109. The view was expressed that the embodiment of rights and freedoms in legislative form has an important educative value; it can make people more aware of their rights and make infringements of rights more obvious and conspicuous. The importance of education programmes designed to change attitudes that result in the denial of rights was recognized.

110. Several participants stressed how important a role educational institutions can play in the development of respect for human rights as a necessary complement to the legal measures taken by the various countries. Any measure in the legal sphere must be compatible with public opinion. Measures should be taken to disseminate knowledge of human rights as well as of the facilities that exist for claiming and enforcing these rights. The laws dealing with the organization and regulation of school education should provide for teaching and education methods that develop the necessary understanding of the relevant problems and encourage young people to deal with these problems in an objective and open-minded manner. The teaching of human rights should be an integral part of all levels of education. The view was expressed that this principle should also be underlined in discussions of the seminar.

111. The view was expressed that the teaching process must be pervaded with a sense of respect for human rights. School can provide the most effective means of fostering such respect. Human rights should be made a compulsory subject at every level. Principles of the Universal Declaration expressing respect for human rights should be inculcated in every child so that he develops a sensitive conscience which would cause him to be repelled by violations of human rights anywhere in the world.

## 2. Human rights committees and other similar institutions

112. It was stated by one participant that the United States Commission on Civil Rights was established to check on human rights abuses. The participant pointed out that it was the independent nature of this body which made it so effective in its role of promoting human rights. The Commission functioned independently and submitted reports directly to federal agencies and the United States Congress.

113. One participant called the attention of the seminar to the composition of the German Democratic Republic's Committee on Human Rights. The fact that a great number of workers are represented on this Committee demonstrates that promoting the rights of citizens is not the reserve of a small number of versed intellectuals, but increasingly determines the thoughts and actions of the workers. Every year more factory representatives ask permission to speak at the sessions of the German Democratic Republic's Committee: they are interested in getting, or are instructed by their colleagues to get detailed information on the international situation regarding the promotion of human rights. The participant expressed the belief that the permanent efforts of a State to realize and respect the rights of the citizens have to include a guarantee that scientific deliberations affecting human rights will no longer be conducted in a vacuum but will draw lessons from practice - from the practical situation of the country in question as well as from international practice - in order to produce, in turn, useful results in practice. Close co-operation between the German Democratic Republic's Committee on Human Rights and, among others, representatives of universities and members of the Academy of Sciences are a guarantee of such an exchange. Co-operation with scientists gives the Committee the opportunity to combine practical requirements

and theoretical knowledge. Employment of this kind of theoretical knowledge determines the quality of the analyses and of statements or reports for submission by the German Democratic Republic's Committee to the United Nations.

114. The seminar was informed by the representative of the Organization of American States that the Inter-American Commission on Human Rights had ample competence to examine the human rights situation in countries where repeated violations occur: to request pertinent information from the Governments concerned, and, when it deems it necessary, to request permission to visit their territory: to make the recommendations it considers advisable: and, finally, to prepare appropriate reports. The Commission submits an annual report to the General Assembly of the Organization of American States containing a statement on progress achieved by Governments in achievement of the objectives set forth in the American Declaration on the Rights and Duties of Man: a statement of the areas in which measures should be adopted in order to secure improved observance of human rights: and the observations which the Commission may deem appropriate with respect to the communications it has received, together with any other information available to it. An important aspect of the work of the Commission is related to the examination and processing of communications or complaints. The Commission has also worked, on the promotion of human rights; it has organized seminars, issued publications and awarded fellowships for post-graduate work in the specific field of human rights. The Commission has also established a programme for the teaching of human rights at the primary, secondary and university level. The Commission and its secretariat have already begun the preparation of the materials for such a programme. It was also stated that perhaps the greatest impact of legal developments and the activities of the Commission, in the long-term at least, has been the development of a growing awareness of human rights in the hemisphere.

115. The view was expressed by one participant that formal administrative machinery needs to be established to investigate infringements of human rights and to attempt to achieve settlement of issues by conciliation. In Australia, the view has been taken that it is not sufficient to rely merely on legal remedies and judicial review as a means of enforcement and that the administrative machinery should be established to investigate, on a systematic basis, infringements of rights. In this connexion, some of the functions for a human rights commission or committee that have received attention in Australia in recent times were brought to the attention of the seminar. The participant expressed the opinion that firstly, such a commission should examine laws to ascertain whether such laws are inconsistent with or contrary to human rights and fundamental freedoms. It should report the results of its examinations to the Government. The commission may review proposed as well as existing laws, it should advise the Government on what action, if any, needs to be taken by the Government in order to comply with international human rights instruments. It should promote an understanding and acceptance of human rights, co-ordinate research and educational programmes undertaken by government agencies in the area of human rights. It has been proposed that the commission should be empowered to inquire into any act or practices that breach human rights and to endeavour to settle those matters. The commission could carry out its investigations in an informal way with no set procedures. It should, however, have power to convene meetings between parties to a dispute and to compel the attendance of necessary witnesses and the production of relevant documents.

116. One participant stated that every Member State of the United Nations should have a human rights commission, and that if a consensus of such commissions so decided, appropriate and prompt action should be taken by a majority vote of the General Assembly to avert the incidence or continuance of any action prejudicial to the enjoyment of fundamental human rights.

117. The view was expressed by one participant that in countries where human rights are well protected by a strong and independent judiciary and where human rights can be invoked directly in the courts by the individuals concerned, the main function of a national human rights commission should be advisory: examining drafts of laws and relevant regulations. Other important tasks in such a case would be to draw attention to and advise on the recommendations of international bodies in the field of human rights with a view to their implementation in the national legislation; and to review the existing guarantees for human rights in the national legal system with a view to proposing changes demanded by developments in the field, taking into account the national and international needs and standards.

118. Some participants said that such a commission should consist of experts with high reputations including judges of the supreme courts, university teachers and lawyers, as well as high-ranking officials of the administration; members of parliament could give the commission the benefit of their experience in judging the practical prospects of changes of legislation resulting from its recommendations. They would further have influence on draft legislation by the parliament when it is put forward on the recommendation of the commission. The appointment of the members of the Commission should fall within the competence of the Government, but they must be fully independent once appointed.

119. The seminar was informed that in the Ukrainian Soviet Socialist Republic the function of supervision and defence of human rights are public and are successfully carried out by such organizations as trade unions, youth league co-operative association, cultural, technical and scientific societies and other voluntary associations. Each of these organizations deals with human rights problems in its respective field. These organizations also have the right to initiate legislation. All the related rights of public organizations are laid down in the Constitution of the Ukrainian Soviet Socialist Republic; that experience might be helpful in similar conditions in other countries.

### 3. Non-governmental organizations

120. The view was expressed that one of the main responsibilities of non-governmental organizations is to contribute to public consciousness and awareness of human rights and fundamental freedoms, as elaborated in national and international instruments. In a number of countries legal aid is provided by non-governmental groups which also seek to focus attention on the existence of remedial aid for those who need it.

121. Several participants stated that different societies face different problems, and human rights must be viewed through the prism of a nation's unique historical and cultural circumstances. Non-governmental organizations operating within a national context also reflect these diversities. The attention of the seminar was drawn to the roles that non-governmental organizations now play in a number of nations, namely, to act as source of relevant information for the Government and

people of a nation regarding matters connected with human rights, to advise on questions referred to them by Governments, including the status of legislation, judicial decisions and administrative arrangements for the promotion of human rights. The attention of the seminar was also drawn to the possibility of adopting a recommendation on the creation of a resource centre on the non-governmental organizations activities.

122. One participant pointed out that in developing countries in particular non-governmental organizations had financial problems which raised the point whether non-governmental organizations should accept government help or grants. The participant was of the opinion that they should not, since they would in so doing render themselves subject to pressures difficult to resist and also their credibility and impartiality the public might consider suspect. The participant also drew the attention of the seminar to the case of two non-governmental organizations in India: the "People's Union for Civil Liberties and Democratic Rights" and "Citizens for Democracy". The objective of the former was declared to be the articulation of positive values of democracy, civil liberties and integrity in public life. It affirmed its resolve to build up a massive public opinion for the restoration and widening of civil liberties and democratic rights by adopting peaceful and legitimate means. The aims and objectives of the latter were declared to be to strive to bring together all those who cherished democratic values in all spheres of life - social, economic and political, and take active steps to preserve, defend and strengthen democracy.

123. One participant urged that the right of non-governmental organizations to speak out on the protection and promotion of human rights be reaffirmed. The United States participant discussed how non-governmental organizations, due to their activities, faced difficulty in 1977 during the accreditation renewal process before the Economic and Social Council. He pointed out that some countries, who were the subject of criticism by some non-governmental organizations, were urging non-renewal thereby attempting a chilling effect upon non-governmental organizations. The participant of the United States of America also spoke about how non-governmental organizations have stressed that the right to leave any country and return was a key point of the Universal Declaration of Human Rights and should be respected by all countries. The participant noted that the United States Congress was presently considering legislation establishing an institute for human rights. The participant further urged that the role of non-governmental organizations must be advanced and ensured within national institutions. Through the efforts of non-governmental organizations not only are government blemishes and excesses shown, but the promotion of human rights is enhanced. Another participant spoke of the increased number of non-governmental organizations in the United States of America in all walks of life.

124. It was suggested that the United Nations should encourage measures to increase the international effectiveness of non-governmental organizations and should, for example, provide assistance with the granting of visas. The final recommendations of the seminar should be made readily available to non-governmental organizations.

125. The participant of the USSR, supported by the participant from the Ukrainian SSR stated that non-governmental organizations should act in the spirit of supporting the ideas of peace, peaceful coexistence and non-interference into the internal affairs of foreign States.

#### 4. Institutions for the dissemination of information on human rights

126. The seminar was reminded that the preparation and adoption of international instruments providing and defining basic standards for the protection of refugees is only a first step in the process of the achievement of fundamental human rights for refugees; it was necessary to ensure that these standards are implemented and translated into effective day-to-day practice through the adoption of the appropriate national legislation. In this regard the promotion and dissemination of basic human rights of refugees by adequate means (national legislation, education, teaching, information, publications) at national and international levels were very important. It was pointed out that the United Nations High Commissioner for Refugees, gives its active support to action in the field of the promotion, protection and dissemination of fundamental human rights, in particular the right of refugees to protection. In this respect, the United Nations High Commissioner for Refugees is already co-operating with certain academic institutions working in this field, such as the International Institute of Human Rights and the International Institute of Humanitarian Law, which have already organized and included in their programme special meetings and lectures on the international protection of refugees. The United Nations High Commissioner for Refugees proposes to organize several meetings in university centres in Europe, Africa, Latin America and Asia in order to discuss how to introduce special aspects of the protection of refugees into general subjects of international law. Furthermore, the United Nations High Commissioner for Refugees, in co-operation with the Division of Human Rights, is preparing special publications with a view to further promoting human rights instruments relating to the protection of refugees.

127. It was observed that the public must be informed and educated by all available means, and especially by a wide use of the mass media.

128. It was stated that spreading and inculcating the idea of universal respect for human rights are an important daily task of human rights bodies. Consideration should be given to the opening of special offices for consultation on human rights problems in various localities to organizing radio and television broadcasts, arranging lectures and discussions and the distribution of publications, posters, etc.

129. It was suggested that Governments and human rights institutions should publish and distribute nationally and in their own language the State reports on the implementation of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights in order to enable their populations to keep a watch on the activities of their Government relating to the real human rights situation in their country. The United Nations should as well make these reports available to the international public, the mass media and others, and so encourage international discussions on the situation of human rights in all Member States.

130. One participant suggested that while educational and other institutions have a very important role to play in teaching human rights, it was equally necessary to create an awareness of human rights by extensive coverage through information systems of instances of isolation of human rights. Information systems should function as freely as possible, possibly by having more than one system or by handing over government-controlled media to independent management. Other solutions could be found but, whatever their nature, would have to be worked out

within each country for itself. Non-governmental organizations also have an important role to play, not only in ensuring the dissemination of information on their own, but in keeping information systems informed of violations of human rights.

131. The view was expressed that the publication of documents in African languages would help liberation movements, popularizing the work of the United Nations in respect of human rights and the maintenance of peace, and also in explaining how apartheid and racial discrimination run counter to the aims and principles of the United Nations. Churches and other social organizations should also give publicity to human rights questions, especially in view of their ability to contact all sections of black populations, encouraging the enjoyment of human rights and claiming the right of the black people to self-determination.

132. The view was expressed that information on human rights should be provided in a clear and intelligible form accessible to everyone. Governments should appoint people to provide such information to communities, especially in rural areas. The United Nations, assisted by non-governmental organizations, should devise audiovisual and other means of making information accessible to all peoples and countries, especially developing countries.

133. A proposal was made that the United Nations should study the nature and methods of the control exercised by monopolies over the media and over information on human rights, and how the United Nations could assist the many people in different countries which as a result of colonialism, neocolonialism and various forms of racial discrimination were the victims of illiteracy and ignorance and were thus deprived of the means of understanding their circumstances in terms of human rights. Measures must also be adopted to disseminate information on human rights in order to clarify that colonialism, neocolonialism, apartheid, and racism are the causes of most violations of human rights in many countries.

##### 5. Summary of discussion

134. Ms. Leah Levin (United Kingdom), the discussion leader, summed up the discussion as follows. Participants emphasized the way in which the activities of these institutions are interrelated and indicated how the role of each can complement the effectiveness of the other. Promotional institutions were seen as an indispensable factor in the protection of human rights, legal provisions alone being recognized to be inadequate to ensure the observance of human rights. Promotional institutions ensure that citizens are made aware of their rights and those of others, mobilize public opinion and provide channels for the expression of such opinion. The institutions vary according to the nature and problems of the societies concerned and the social and economic realities of each situation.

135. As regards subitem 1 (Educational institutions), during the discussion it was emphasized that the objective of such institutions should be to foster universal respect for human rights to create in the first instance an awareness of human rights and inculcate knowledge of their applications. Education in human rights suffers from "underdevelopment" in all countries, and a concerted effort on the part of Governments, intergovernmental and non-governmental organizations was called for in this field. Education for human rights should be a life-long process commencing from childhood and continuing throughout formal education institutions and informal out-of-school education.

136. Regional, national and local programmes of human rights education should be designed to create an awareness of rights and it should involve individuals and societies at grassroots level. In the developing countries this would provide an effective means of involving the population in the general development process. Systematic programmes of education and research should include measures to change certain attitudes which result in the denial of rights, such as discrimination and prejudice. Education and training in human rights should be concerned with protecting and promoting the rights of particularly vulnerable minority groups by helping them know their rights, as well as creating an awareness of their rights among the community at large.

137. Education should be designed to familiarize all citizens with the law, and courses especially adapted for this purpose. Human rights should be included in the continuing education of professional groups, particularly in the sectors dealing with the administration of the law and law enforcement. Special courses should be made part of police and military training. Professional organizations have a responsibility for developing codes of ethics in their own professions, and for making them widely known.

138. Human rights education should essentially include information about the implementation of human rights as well as about violations of human rights and this information should be widely disseminated through the media and other means.

139. Regarding subitem 2 (Human rights committees and other similar institutions), many participants recognized that such institutions could be instrumental in furthering the activities of other promotional institutions. Institutions already exist in a number of countries. Their structures and functions varied according to the circumstances of the particular society. Their composition should represent all bodies and interested groups within the society. The role of such promotion institutions could include: assistance to Governments and institutions involved in human rights education; the provision of source material for research; assistance in the development of international instruments by giving advice to Governments on their reporting obligation under various conventions and supervising the implementation of these obligations at the national level.

140. In a national context the committees could examine proposed as well as existing laws and advise Governments on human rights legislation. They could be empowered to investigate infringements of human rights and act in a conciliatory capacity. They would perform a function in relation to national Governments and to the United Nations, and should consult with non-governmental organizations and other groups concerned. It was recommended that Member States of the United Nations should be encouraged to establish such promotion institutions.

141. As regards subitem 3 (Non-governmental organizations), many participants endorsed the contribution made by these organizations in the field of human rights. Their role in the promotion and protection of human rights was recognized both at the national and international levels and they act on behalf of individuals or groups of people or entire peoples who are deprived of basic rights and fundamental freedoms. The independence of non-governmental organizations is an essential factor to their effectiveness. It was suggested that effective and regular channels of communication should be established in order to strengthen their role in advising Governments. It was proposed that a resource centre on non-governmental organizations' activities should be established, and it was urged that their activities should be encouraged in countries where it is so far relatively little developed.

142. Communication between non-governmental organizations and the United Nations system should be promoted and all relevant information should be brought to the attention of non-governmental organizations, and the United Nations should make available and disseminate reports of NGO activities supporting the work of the United Nations, particularly in respect to the protection of human rights. Education within the United Nations system should be provided to inform delegates of the kind of work done by non-governmental organizations.

143. The final recommendations of the seminar should be made readily available to non-governmental organizations.

144. Concerning subitem 4 (Institutions for the dissemination of information on human rights), it was suggested that the United Nations should make available all international instruments relating to human rights in all relevant languages, and should co-operate in the dissemination of this material. The United Nations should also undertake to help make these instruments in readily understandable language. It should assist institutions who undertake to do this.

145. Governments should disseminate information about the basic human rights provided in the national legal system, and also about the mechanisms available for the implementation of national and international obligations. Governments should disseminate widely basic human rights texts including the Universal Declaration of Human Rights, the International Covenants on Human Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Convention on the Suppression and Punishment of the Crime of Apartheid and the Standard Minimum Rules for the Treatment of Prisoners. The United Nations should assist Governments in the dissemination of information on human rights.



### Chapter III

#### RELATIONS BETWEEN NATIONAL AND LOCAL INSTITUTIONS AND UNITED NATIONS OR REGIONAL HUMAN RIGHTS ORGANS

##### 1. General discussion

146. This item was discussed at the 10th and 11th meetings on 25 September 1978. It was introduced by Mr. Jean-Bernard Marie (France).

147. He recalled that in 1946, in its resolution 9 (II) of 21 May 1946 - a resolution which established the nature of the Commission on Human Rights - the Economic and Social Council invited Member States of the United Nations to study the possibility of creating, in their respective countries, organizations or local committees which would co-operate in the development of the work of the United Nations Commission on Human Rights.

148. This idea was based, he said, on the conviction that United Nations efforts to promote and protect human rights would be less than successful without the establishment of effective communications between national and international levels.

149. Certain observations could be made, Mr. Marie said, in the light of developments in the field of human rights since the adoption of the Universal Declaration of Human Rights. The elaboration of international standards in the field of human rights, the adoption of declarations, conventions and the various international instruments in this field - it was in these areas that the United Nations had concentrated its main efforts. All Member States had participated in the elaboration and adoption of these instruments and it was precisely this kind of co-operation which had enabled a variety of methods of implementation to take shape.

150. Considerable progress in regard to international standards had been made, he continued, with the adoption and the entry into force of the International Covenants on Human Rights. However, was it not logical to ask, at this point, whether a temporary "pause" might not now be called in the march towards international standard-setting. Could not the conclusion now be drawn that it was time to concentrate on the effective implementation at the national level of those human rights, the existence of which was already universally recognized?

151. In so far, therefore, as priority, in the promotion and protection of human rights, should fall now at the national and local levels, it was at these levels that the urgent necessity arose of establishing institutions for the implementation of human rights recognized and guaranteed by the international community.

152. In this regard, Mr. Marie said, it was not possible to consider the relations between national and local institutions without considering the types of institutions involved. Similarly, it would be difficult to establish such relations without considering the functions of such institutions. It would also be necessary, therefore, to focus on the idea of a key body concerned with human rights, in the national or local context.

153. Such a body would not overlap with the legislative or the judiciary. Nor need it be a "super-administration" controlling and supervising all human rights questions in that country. Rather, it would be a link body in regard to human rights. It would open new channels of communications, at different levels:

- communications nationally between various organizations and those organizations concerned with the protection and promotion of human rights;
- communication between individuals and various human rights institutions in order to advise the former of their rights and of recourse procedures open to them;
- communication with regional human rights organs and with the United Nations.

154. Such a body would play an important and basic role in regard to education on the subject of human rights, in regard to information on human rights and as a vital, initiating and key body in all other human rights matters. It would, as such, play an indispensable part in the now-needed drive for implementation. The envisaged body would also give impulse to the implementation of such programmes as those elaborated in the Final Document of the United Nations Educational, Scientific and Cultural Organization Congress on the Teaching of Human Rights, held at Vienna (12-16 September 1978). Mr. Marie also drew particular attention to the possibility of creating within the framework of the United Nations Educational, Scientific and Cultural Organization a special voluntary fund for the development of awareness of human rights through teaching and exchange of information, as recommended in the Vienna Final Document. Such a fund would also assist developing countries wherever they were engaged in the struggle against illiteracy.

155. Such a body would have the power to make recommendations on matters concerning human rights. Its purview would include legislative, judicial and administrative procedures and it would be empowered to formulate proposals on questions affecting human rights. It would in no way seek to replace either legislator or judge, rather it would make the task of both easier by improving existing procedures, rationalizing proposals and exercising a consultative capacity.

156. In addition, this body would take up such issues as the forms of discrimination encountered in everyday life - in, for example, employment or housing. It could be assigned specific duties and powers that would permit its implementation of the proper procedures to identify acts of discrimination, whether based on race, sex or any other grounds - according to the law of the country.

157. Taking into account the variety of duties it might be called upon to perform, the independence of such a body should be guaranteed by law.

158. Mr. Marie then described other functions, in connexion with international organizations, that might be entrusted to such a body. These would include assisting in the preparation of periodic reports on the implementation of human rights protection; assisting the national Government in meeting its responsibilities under the human rights covenants; the dissemination of information on human rights matters; acting as a catalyst in the national system for all matters relating to human rights; advising on studies and other projects emanating from time to time from the United Nations; improving co-ordination between various other bodies

acting in the field of human rights; the offering of a decisive impulse, nationally, to United Nations activities and programmes in the field of human rights - in regard, for example, to the struggle against racial discrimination, apartheid, under-development, and the protection of the rights of women, children and youth; organizing seminars, scholarships and the services of experts; and, in general, acting as a central, key and link organization and clearing-house for all national and local human rights matters.

159. In areas where no regional human rights bodies yet existed, he said, one of the tasks of such a national organization would be to facilitate their creation, acting, in that regard, in a consultative capacity.

160. The time had now come, Mr. Marie concluded, on this occasion of the thirtieth anniversary of the adoption of the Universal Declaration of Human Rights, to move from principle to action. Such a move towards implementation would be rendered easier, he said, by the establishment of institutions adapted to greater progress in the field of human rights. Nor should such institutions be guided by other than the spirit of the indivisibility and universality of human rights. The establishment of such institutions, in other words, would result in a network beneficial to human rights, rather than to a mere fragmentation affecting only their detriment.

## 2. Summary of discussion

161. Mr. Marie who led the discussion of the debate summed up as follows. Most representatives stressed the significance of the thirtieth anniversary of the Universal Declaration of Human Rights, in which context the seminar was being held. The coming into force of the International Covenants on Human Rights had translated the concepts of the Declaration into a binding legal obligation for Member States acceding to these instruments. Several participants stressed that all States which have not yet ratified these Covenants should do so. The time had now come to concentrate on the implementation of these standards.

162. Many representatives further stressed the need to concentrate the task of implementation at the national and local levels. In this regard, new institutions were needed at those levels. Where such institutions already existed, they could now be improved and adapted to meet the international community's present need for implementation.

163. In the discussion significance was also attached to the thirtieth anniversary of the Universal Declaration of Human Rights, the representatives proposing that the seminar might consider issuing a reaffirmation at Geneva of the Universal Declaration of Human Rights.

164. Some participants also proposed that the seminar should formally endorse the conclusions reached at the International Congress on the Teaching of Human Rights, Vienna, 1978. The seminar should, however, in taking note of its recommendations, avoid a duplication of its contents. Attention should also be given to the co-ordination of similar activities within all United Nations bodies.

165. It was also proposed that the establishment of a human rights field officer in various regions of the world would serve as a useful means of providing advice and disseminating information between the United Nations and national and local bodies.

166. It was suggested that co-operation between the United Nations and national human rights institutions would be made easier if members of those institutions could act as national representatives to the various international bodies in the human rights field.

167. The point was made that non-governmental organizations in consultative status with the Economic and Social Council or with the specialized agencies should be assisted to perform their functions more effectively. In this connexion a special centre should be created to co-ordinate their activities and United Nations materials on human rights should freely be made available to them for distribution.

168. The focus of the discussion, however, was on the need to establish, or improve existing, national and local institutions in the field of human rights.

169. Most speakers stressed the need to move beyond standard-setting to the implementation of human rights at national and local levels. According to them new machinery was needed for this.

170. Such machinery might take the form of establishing in each country a central or key institution concerned with human rights matters. The task of this organization would be to co-ordinate; to disseminate information; to act as a link between the United Nations under the responsibility of the public authorities; act as a link between national bodies and the demands of the international community; to advise, encourage and consult on all human rights matters; to assist Governments in meeting their international responsibilities; to improve public awareness of human rights; to advise and assist individual citizens; and to act as a key element in an international network of bodies reporting to and from the United Nations. The need for a statutory independence for such institutions was also stressed. Speakers also spoke of assisting the developing countries in the implementation of teaching programmes on human rights, in the context of the struggle against illiteracy. The view was expressed that States should use their existing machinery for the promotion and protection of human rights and whenever necessary promote the establishment of new bodies.

171. One speaker stated the need, in regard to the dissemination of information on human rights, of regular research and widely-published reviews. In the course of the discussion States were again called upon to ratify the International Covenants on Human Rights, where they had not yet done so, as a means of implementing human rights and furthering international progress and development in that regard. A call was also made for the possible establishment of regional bodies concerned with human rights, in addition to the discussion on the establishment of national and local institutions.

172. Finally, the international community had already achieved much in regard to setting standards, the majority of speakers stated. In order, therefore, three decades after the adoption of the Universal Declaration on Human Rights, to concentrate now on implementation, a broad consensus was necessary as to the guidelines for new and much-needed national and local human rights institutions.

## Chapter IV

### DESIRABLE AREAS OF ACTION AT THE UNITED NATIONS OR NATIONAL AND LOCAL LEVEL IN THE LIGHT OF THE DISCUSSION OF THE PREVIOUS ITEMS

173. This item of the agenda was discussed at the 10th and 11th meetings on 25 and 26 September 1978. The item was introduced by Mr. Mümtaz Soysal (Turkey). In introducing the item Mr. Soysal said that desirable areas of action at the national and local levels were many and included improving the United Nations machinery itself; the better co-operation of the United Nations with Governments in the field of human rights and the need for a proper interrelationship between international, national, regional and local bodies active in the human rights field. The stress, he said, was an action. The time had come to implement the international standards laid down in the 30 years since the adoption of the Universal Declaration of Human Rights.

174. During a discussion that followed a number of representatives considered, as desirable areas of action, the wider dissemination of information on national efforts in the field of human rights. Ways and means needed also to be considered for the wider dissemination of human rights information within countries. To this end national institutions in this field needed to be improved.

175. In this regard, the giving of all possible support to non-governmental organizations was considered, by some speakers, as a highly important area of action. Such non-governmental organizations as already existed were the bed-rock on which an international network of necessary national and local institutions might be based. Assistance should especially be given to non-governmental organizations active in those countries where the people were struggling for national liberation.

176. The potential educative function of national and local institutions was considered an important and desirable area of action. It was necessary to improve awareness and understanding of human rights in each country. Such educational needs should be borne in mind when the nature of necessary national institutions was being considered.

177. In this regard, such institutions, it was stated, would need material support from the United Nations. Special attention, in this context, should be given to the needs of developing countries, which might have greater difficulties in establishing the necessary institutions.

178. Several members of the seminar considered, as a desirable area of action, the broad field of international peace and security. The promotion and protection of human rights were vital in order to lower international tensions and to further the cause of détente.

179. The same speakers felt that disarmament was also, therefore, a desirable area of action, and stated that disarmament should be linked with the promotion and protection of human rights. General disarmament would release much needed resources for the necessary promotion and protection of human rights.

180. One speaker stressed the need to protect national and local institutions concerned with human rights from governmental persecution or repression. In some countries certain organizations active in the field of human rights were greatly in need, due to their repression, of assistance from the international community.

181. It was the opinion of one representative that a special seminar should be held on a regional basis in order to study ways and means of ensuring greater interest in human rights questions in those countries by the general public. He considered as an urgent area for action the increasing of citizens' awareness of their human rights and of human rights problems in general.

182. The majority of representatives focussed on what the possible functions of national and local institutions might be. If the focus now was to be on areas of action it was necessary to study in depth how these functions might be elaborated. This, in fact, was the very mandate of the seminar. The guidelines to be proposed by the seminar should, therefore, go beyond generalities and should reflect exactly how national and local institutions might function. It would not be necessary to define their structure since conditions varied from country to country and different economic and social conditions prevailed in different parts of the world. Areas of action to be concentrated on had already been circulated, such as international, national, regional and local co-operation; the dissemination of information, etc. The guidelines to be elaborated by the seminar would articulate these functions in greater detail.

183. The representatives also stressed the need of national and local institutions for assistance and support from the international community. The United Nations could help by providing advice to those institutions, by co-ordinating their efforts, by freely providing them with information and by acting towards them in a consultative capacity.

## Chapter V

### GUIDELINES FOR THE STRUCTURE AND FUNCTIONING OF NATIONAL INSTITUTIONS

184. The seminar considered this item at its 16th meeting on 28 September 1978. It had before it a report of the Working Group (NLI/WG/1) containing the guidelines for the structure and functioning of national institutions which the seminar was asked to suggest pursuant to resolution 23 (XXXIV) of the Commission on Human Rights.

185. Following a discussion, the seminar approved by consensus the suggested guidelines as follows:

#### The Seminar:

- Recalling that in paragraph 1 of its resolution 23 (XXXIV) the Commission on Human Rights invited Member States, within the framework of their national legislation and policy and according to their available means, to set up national institutions for the promotion and protection of human rights,
- Keeping in mind, in conformity with paragraph 2 of the said resolution, the legal, judicial, executive and other systems of the country and the goal of the realization and effective achievement of all human rights and fundamental freedoms, on which the seminar made relevant conclusions and recommendations,
- In conformity with paragraph 3 of the resolution in which the Commission decided that the seminar on national and local institutions in the field of human rights, to be held under the advisory services programme in September 1978, should, as a part of its task, suggest certain possible guidelines for the structure and functioning of national institutions, based on the provisions of the resolution and the annex thereto;
- Suggests the following guidelines for the functioning and structure of new national institutions that Governments may decide to set up, as well as for existing national institutions, comprising all governmental and public bodies concerned with the promotion and protection of human rights:

#### I. Functions

- (a) National institutions as a source of relevant information for the Government of a Member State and for the people of that country regarding matters connected with human rights

(1) National institutions should sponsor national, regional and local conferences as a part of fact gathering and as a method of disseminating information to specific audiences.

- (2) National institutions should collect, compile and disseminate information concerning human rights, the laws and judicial decisions relating to them and various procedures available for their promotion and protection.
- (3) National institutions should, within the framework of their constitutions and competences, receive complaints and information directly from any source, individual or group and there should be no restrictions on submissions of communications to the national institutions.
- (4) National institutions should receive and disseminate information concerning human rights using appropriate and impartial mass communications media and press facilities.
- (5) National institutions should publish and submit periodic reports of their activities, findings and recommendations in the field of human rights to national authorities, including the results of inquiries and investigations conducted, remedial or other actions secured, the cases and decisions relating to human rights during the relevant period.
- (6) National institutions should, within the framework of their constitution and competence, serve as centres of information in respect of the particular field of human rights.
- (7) National institutions should widely publicize basic human rights texts.
- (b) assistance in the education of public opinion towards an awareness of and respect for human rights
- (8) National institutions should inform the general public, particularly individuals and groups of individuals, or associations of any kind, of the nature of their human rights provided for in any instrument based on the principles contained in the Universal Declaration of Human Rights, or otherwise comprised in national legislation. The general public should be advised by the national institutions about means of enforcement of their rights according to national law.
- (9) National institutions should ensure that persons are made aware of their rights and those of others and should assist them in the matter of protection and enforcement of their rights.
- (10) National institutions should mobilize public opinion in their countries against gross and massive violations of human rights, and in particular against the practices of apartheid, racism and genocide.
- (11) National institutions should promote respect for the rule of law. To this end, they should promote measures to guarantee and protect the independence and the impartiality of the judiciary, and also to guarantee and safeguard the independence of lawyers in respect of their representation of any client or any case.
- (12) In the promotion of human rights and in the education of public opinion as to those rights national institutions should link their efforts to the struggle against illiteracy.
- (13) National institutions involved in promoting human rights should structure their activities in accordance with national, political, economic and social conditions and historic and cultural traditions of each nation, but in so doing the



national institutions should not derogate from the principles set out in the Universal Declaration of Human Rights.

(14) National institutions should co-operate with educational institutions, trade unions and other appropriate associations and the mass media when such co-operation results in the further promotion of human rights and fundamental freedoms.

(15) National institutions should play a prominent role in the implementation of educational programmes concerning human rights in the spirit of the principles formulated in the Final Document of the International Congress on the Teaching of Human Rights, held by UNESCO in Vienna, 12-16 September 1978. To this end they should make a special effort to provide a wide dissemination of this and other pertinent documents.

(16) National institutions should assist in the provision of free legal aid to the needy. They should devise effective means of rendering legal assistance to their nationals who are denied proper access to legal representation in foreign countries.

(17) It should be considered a paramount task of national institutions in the field of human rights to promote the implementation of the right to self-determination and national independence, and undertake publicity programmes to focus attention on this right as set out in the United Nations instruments on human rights.

(18) National institutions should be guided by the principle that the State has the basic, but not exclusive, responsibility and obligation for the protection of human rights, bearing in mind the rights of the individual as proclaimed in the Universal Declaration of Human Rights and the International Covenants on Human Rights.

(19) National institutions should actively promote and assist in advancing education on human rights at all levels, to ensure that the teaching of human rights is made part of the curricula of all formal educational institutions and informal out-of-school education. Regional, national and local programmes should be sponsored by national institutions to relate human rights to everyday life and to provide basic education on the law to citizens. Special courses should be promoted for professional groups, particularly law enforcement personnel and be made part of military and police training.

(20) Systematic programmes of education and research by national institutions should include measures to change attitudes detrimental to the protection of human rights. Elimination of discrimination and prejudice should be among the objects of such programmes.

(21) National institutions should, as far as possible, avail themselves of the assistance of individuals, groups of individuals or appropriate associations of any type, in particular in the protection of the rights of persons deprived of their human rights as enunciated in the Universal Declaration of Human Rights, the International Covenants on Human Rights and other relevant United Nations instruments.

(22) National institutions should operate in conjunction with a free and responsible press.

- (c) Considering, deliberating upon and making recommendations, within their specified terms of reference, regarding any particular state of affairs that may exist nationally that the Government may wish to refer to them

(23) National institutions for human rights should include independent fact-finding agencies established by law. They should be authorized, within the framework of their constitution and competence, to investigate complaints alleging that citizens are being deprived of their basic rights.

(24) National institutions should be authorized, within the framework of their constitution and competence, to apply concrete remedies to individual cases of human rights violations.

(25) Competent national institutions, while discharging their functions of fact finding, conciliation or redress, should be empowered, in the conduct of their inquiry, with due process of law, into any matter affecting human rights at the national level, to summon witnesses and have access to relevant evidence.

- (d) Advising on any questions regarding human rights referred to such institutions from time to time by their national Government

(26) National institutions, within the framework of their constitution and competence, should make periodic reviews of legislative and administrative systems in order to suggest appropriate improvements relevant to the promotion of human rights.

(27) National institutions should promote improved procedures for the protection of human rights in the context of established judicial procedures.

(28) National institutions should be readily accessible and should play a prominent role in a consultative capacity on all matters affecting human rights at the national level.

(29) National institutions should study and make relevant suggestions to the competent national authorities concerning human rights in the administration of justice, without prejudice to the independence of the judiciary.

- (e) Studying and keeping under review the status of legislation, judicial decisions and administrative arrangements for the promotion of human rights, and preparing and submitting, in this connexion, periodic reports at prescribed intervals to the appropriate authorities designated by the Government of the Member State concerned

(30) National institutions should study legal developments and review the laws and policies of the national Government with respect to discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

(31) National institutions should study:

- (i) legislative directives to the administration;
- (ii) subordinate and delegated legislation;
- (iii) findings of parliamentary and other commissions of inquiry, with a view to promoting the principles of equality and non-discrimination in the exercise of legislative, executive and administrative authority.

(32) National institutions should promote the incorporation of human rights provisions in national constitutions.

(33) National institutions should promote remedial measures against unlawful decisions of the executive.

(34) National institutions should promote the realization of economic, social and cultural development which are conducive to the effective enjoyment of human rights.

(35) National institutions should review and contribute to the process of drafting laws which protect human rights and fundamental freedoms.

(36) National institutions should promote legal safeguards against arbitrary derogation from constitutional provisions in a state of emergency.

(37) National institutions should promote protection for the rights of persons belonging to vulnerable groups such as indigenous peoples, national, ethnic or linguistic minorities, migrant workers and their families, etc.

(38) National institutions should encourage the early ratification by Governments of international instruments in the field of human rights.

(f) Performing any function which the Government of a Member State may wish to assign to them in connexion with its duties under those international conventions in the field of human rights to which it is a State party

(39) National institutions should assist the national Governments in the task of preparing reports required by the international community under the reporting systems envisaged by the various international instruments of human rights.

(40) National institutions should co-operate, through appropriate channels, with the United Nations, specialized agencies as well as intergovernmental organizations in order to facilitate the promotion of human rights and also channel information between the United Nations system and non-governmental organizations in the field of human rights.

(41) National institutions should facilitate research designed to bring national legislation into conformity with the standards embodied in the Universal Declaration of Human Rights, the International Covenants on Human Rights and other international instruments.

## II. Structure

- (42) National institutions should be so designed as to bring all parts of the population into the decision-making process in regard to human rights.
- (43) National institutions on human rights should be statutory authorities or bodies created within and subject to the constitutions and laws of respective Member States.
- (44) National institutions, within the constitution and laws of the Member States, should be established as autonomous, impartial, statutory bodies.
- (45) Membership of national institutions should reflect in its composition wide cross-sections of the public.
- (46) Appointment to such national institutions should be for a fixed term and persons so appointed will not be removed arbitrarily or without good cause.
- (47) National institutions should be adequately staffed in order to enable effective discharge of their statutory functions.
- (48) National institutions should function regularly and should make adequate provision for immediate access to it by any member of the public or public authority.
- (49) National institutions should, in appropriate cases, have local or regional advisory organs to assist them in discharging their functions. Whenever practicable, these bodies should issue publicly available reports to the national institutions.
- (50) Wherever practicable, national institutions should be established as local or regional organs comprising persons familiar with local problems.

## Chapter VI

### ADOPTION OF THE REPORT AND CLOSING OF THE SEMINAR

186. The present report was adopted at the final meeting of the seminar on 29 September 1978. On the same date, the seminar adopted the "Dedication and Pledge at Geneva", the text of which is annexed to this document.

187. At the same meeting, Mr. Theo C. van Boven, Director of the Division of Human Rights, gave the closing address.

Annex

DEDICATION AND PLEDGE AT GENEVA

The United Nations Seminar on National and Local Institutions for the Promotion and Protection of Human Rights, meeting in Geneva from 18 to 29 September 1978, pursuant to General Assembly resolution 32/123 of 16 December 1977, in connexion with the observance of the thirtieth anniversary of the Universal Declaration of Human Rights,

Recognizes the everlasting relevance of the basic truths expressed in the preamble of the Universal Declaration of Human Rights, which reads as follows: "This Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction":

Affirms full and unqualified support for and total dedication to the ideals and principles set forth in the Universal Declaration of Human Rights; and

Pledges to intensify and enhance its efforts to ensure fulfilment by all Member States of the obligations set forth in the Universal Declaration of Human Rights.