YEARBOOK ON HUMAN RIGHTS FOR 1950

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Errata

Page 324 In footnote 2, for "p. 397" read "p. 398".

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INTRODUCTION

The present volume is the fifth *Yearbook on Human Rights.* Building upon the work of previous years and incorporating certain new features called for by decisions of the Economic and Social Council, the Secretariat and the contributors have sought to record in as ample and as readable a fashion as possible the significant constitutional, legislative and judicial developments in the field of human rights during 1950.

In addition to the subjects covered in the *Yearbook* for 1949, the present edition includes decisions taken by national and international courts and the texts and summaries of ordinary laws (as well as basic laws) which apply in Trust and Non-Self-Governing Territories. Like its predecessor, the *Yearbook* for 1950 consists of four parts:

I. States (National Laws and Decisions of National Courts);

II. Laws and Other Texts on Human Rights in Trust and Non-Self-Governing Territories;

III. International Treaties and Agreements and Texts adopted by Specialized Agencies and other Inter-governmental Organizations;

IV. A. The United Nations and Human Rights;

B. Judgments and Advisory Opinions of the International Court of Justice.

Part I includes the human rights provisions in twelve constitutions, the texts or summaries of 272 statutory provisions, regulations, etc., and summaries of, or references to ninety-eight decisions of national courts. In all, Part I, which comprises two-thirds of the *Yearbook*, contains 382 items, of which 334 are texts or summaries and forty-eight are listed merely by title and date of promulgation and publication. This listing does not include nearly one hundred laws which were adopted by State legislatures in the United States and which have been summarized or cited in the United States contribution.

Readers familiar with previous *Yearbooks* will note that in Part I of the *Yearbook* for 1950 greater use has been made of condensed summaries of legal texts. This practice is in conformity with opinions expressed in the Commission on Human Rights when the *Yearbook* was under consideration. Summaries have been employed notably for social, economic and cultural rights on which the texts themselves, without additional amplification, may be difficult to understand. Here, every effort has been made to avoid duplication of other United Nations publications and those of the specialized agencies, particularly the International Labour Office. In this field, and still more in that of civil and political rights, however, a reasonable number of texts and extracts of texts have been reproduced since the editors believe that students of human rights, political scientists, and legislators will wish to be acquainted with the actual structure of important laws relating to such rights.

In the new sections of Part I dealing with decisions of national courts, it is gratifying to note the broad regional distribution of the States and territories represented—Western and Central Europe (Austria, France, Ireland), the United States, the Commonwealth of Nations (Australia, India, New Zealand, Union of South Africa), Latin America (Costa Rica, Guatemala, Mexico, Uruguay), the Far East (Japan, the Philippines).

All the texts in Part I refer to the year 1950, with the exception of a few texts which for purely technical reasons could not be included in the *Yearbook on Human Rights for 1949.* This is especially true of some summaries of judicial decisions which had been transmitted by correspondents in one of the previous years, but, under the terms of reference prevailing before 1950, could not be included in any of the preceding *Yearbooks.*

Part II, containing laws and other texts on human rights in Trust and Non-Self-Governing Territories, has benefited from the wider terms of reference laid down by the Economic and Social Council. It contains twelve texts referring to human rights in Trust Territories and eighteen texts relating to Non-Self-Governing Territories. Part II also contains the human rights provisions of the Trusteeship Agreement for Somaliland.

In the preparation of both this part and Part I, valuable research was contributed by a number of the *Yearbook's* devoted correspondents. In consequence, comprehensive notes appear concerning the legal framework of human rights in such territories as Western Samoa, Nauru, the Cook Islands and Tokelau Islands, New Guinea and Papua. The situation in such territories can be most clearly explained by the use of descriptive notes, since the understanding of texts and summaries alone is complicated by the applicability of metropolitan legislation and customary law.

Part III, International Treaties and Agreements, includes three sections devoted to specialized agencies, regional and other multilateral treaties and agreements, and bilateral treaties and agreements. In the preparation of this part, the International Labour Office and UNESCO again gave valuable co-operation. Among the regional treaties included, the Rome Convention for the Protection of Human Rights and Fundamental Freedoms deserves special notice. Among the bilateral treaties, the Indo-Pakistan Agreement of 1950 should be mentioned. The introductory note to this agreement was jointly agreed to by the correspondents of India and Pakistan.

Part IV is devoted to the activities of various United Nations bodies in the field of human rights. In general, the scheme of organization closely resembles that followed in the *Yearbook* for 1949. The reader will notice certain new developments indicated by chapter or section headings. For instance, in the opening chapter devoted to the Universal Declaration of Human Rights a new section describes the General Assembly action in setting aside each 10 December—the anniversary of the adoption and proclamation of the Universal Declaration—as Human Rights Day. The establishment of the *Ad Hoc* Committee on Slavery and the *Ad Hoc* Commission on Prisoners of War is noted in separate chapters. A detailed account is included of the work of the Commission on Human Rights, the Economic and Social Council and the General Assembly in the preparation of the draft Covenant on Human Rights. Moreover, all significant decisions taken by the United Nations bodies in the year 1950 concerning Freedom of Information, the Status of Women, the Prevention of Discrimination and Protection of Minorities, Forced Labour, and the promotion of human rights in Trust and Non-Self-Governing Territories, are fully described. A final section deals with judgments and advisory opinions of the International Court of Justice which refer to human rights.

Altogether, seventy-one sovereign States are represented in the *Yearbook* for 1950. Of these, fifty-three are Member States and eighteen are non-members of the United Nations.

Like the previous *Yearbook*, the *Yearbook on Human Rights for 1950* includes an Index of Constitutional Provisions and an Index of Laws, Decrees, Regulations, etc. The Index of Laws, etc., covers the texts, summaries and references to texts in the five *Yearbooks* published. In addition, it includes a Table of Cases, the first index of this type, since judicial decisions were not reported in previous *Yearbooks*.

The preparation of the *Yearbook on Human Rights* is a co-operative effort in which many persons in many countries have taken part. In some cases the contributors have been official correspondents named by governments. In others, officials of governments and government agencies have supplied texts, summaries, and information. The names of official correspondents have been mentioned in the footnotes. To all who through their valued contributions have made this *Yearbook* possible, the Secretary-General of the United Nations extends his sincere thanks.

PART I

STATES (NATIONAL LAWS AND DECISIONS OF NATIONAL COURTS)

NATIONAL LAWS AND OTHER TEXTS CONCERNING THE OBSERVANCE OF HUMAN RIGHTS DAY

NOTE

At its 317th plenary meeting, held on 4 December 1950, the General Assembly of the United Nations adopted a resolution[1] by which it invited "all States and interested organizations to adopt 10 December of each year as Human Rights Day, to observe this day to celebrate the proclamation of the Universal Declaration of Human Rights by the General Assembly on 10 December 1948, and to exert increasing efforts in this field of human progress".

Previously, the Director-General of the United Nations Educational, Scientific and Cultural Organization had made suggestions for the celebration of Human Rights Day and a Human Rights week.[2]

Reports on the celebration of Human Rights Day in 1950 in forty-six countries have been received by the Secretary-General of the United Nations.[3] These celebrations were prepared even before the General Assembly's action. Moreover, as early as 1949, Bolivia, Ecuador and the United States of America declared by presidential proclamation the tenth of December as Human Rights Day, and the President of the Philippines took the same action in 1950. Under the impulse of the General Assembly's resolution, it is expected that the number of official actions will increase.

In addition to the four above-mentioned texts, instructions of the Ministers of Education of Cuba and France concerning the commemoration of Human Rights Day are printed here, as examples of action taken in a great many countries.

[1] Resolution 423 (V). See also Part IV, "The United Nations and Human Rights", pp. 449 et seq. of this *Yearbook*.

[2] Circular letter/413, annex (UNESCO).

[3] See "Human Rights Day—Second Anniversary Celebration", United Nations document E/CN/4/531, 23 March 1951.

BOLIVIA

SUPREME DECREE No. 1826 PROCLAIMING THE TENTH OF DECEMBER AS HUMAN RIGHTS DAY[1]

dated 10 December 1949

Whereas the United Nations, during the first part of the third session of its General Assembly, held in Paris, adopted, at the plenary meeting of 10 December 1948, the text of the Universal Declaration of Human Rights;

Our country, as a Member of the international organization, voted in favour of the said Declaration;

Bolivia is a democratic republic whose Constitution, in the second section thereof, embodies the rights and guarantees which protect the human person;

NOW THEREFORE it is hereby ordered by and with the advice of the Council of Ministers as follows:

Art. 1. The tenth day of December is hereby declared to be Human Rights Day.

Art. 2. The universities, public and private educational establishments and cultural institutions of the country shall on that day each year organize public ceremonies to pay tribute to the fundamental principles of freedom and the dignity of the human person, so that this inestimable advance of the law may be inculcated in the hearts and minds of the people and of future generations.

The Minister of Foreign Affairs and the Minister of Education shall be responsible for giving effect to and administering this decree.

[1] Spanish text received through the courtesy of Mr. Roberto Bilbao-la-Vieja, Ambassador, Permanent Representative of Bolivia to the United Nations. English translation from the Spanish text by the United Nations Secretariat.

A speech commemorating the first anniversary of the proclamation of the Universal Declaration of Human Rights was delivered on 12 December 1949 by Dr. Alberto Saavedra Nogales, Minister of Foreign Relations of Bolivia. On the same day, a lecture on the Universal Declaration of Human Rights was given by Dr. Luis Fernando Guachalla, former Minister of Foreign Relations of Bolivia.

ECUADOR

DECREE OF THE PRESIDENT OF THE REPUBLIC OF ECUADOR DECLARING THE TENTH OF DECEMBER AS HUMAN RIGHTS DAY AND PROVIDING FOR THE DISTRIBUTION OF AND PUBLICITY FOR THE UNIVERSAL DECLARATION OF HUMAN RIGHTS[1]

of 4 April 1949

Whereas the General Assembly of the United Nations, after thorough study and long debate, approved the Universal Declaration of Human Rights at its plenary session, in Paris, on 10 December 1948;

Whereas the United Nations Educational, Scientific and Cultural Organization proposed that all countries should pay a tribute to the Declaration on 10 December of each year;

Whereas Ecuador was the first member of the United Nations Educational, Scientific and Cultural Organization to accept the idea of paying tribute to the Declaration; and

Whereas the Government of Ecuador, in accepting that proposal, offered to organize various cultural events in its country with a view to making known, publicizing and promoting interest in the Universal Declaration of Human Rights;

NOW THEREFORE it is decreed:

Art. 1. The tenth of December of each year shall be known as the Day of the Universal Declaration of Human Rights.

Art. 2. The Ministry of Education shall publish the Universal Declaration of Human Rights for distribution throughout the country, and in particular in the universities, colleges and schools of the Republic. The text shall be published on a priority basis by the national printing office.

Art. 3. The Ministry of Education shall issue special regulations to the effect that in all educational institutions under its administration civics teachers shall give lectures on or explanations of the Universal Declaration of Human Rights during the first week of each month.

Art. 4. Competitions shall be held on the following topics: "The Constitution of the Republic of Ecuador and the Universal Declaration of Human Rights", the rules for the competition to be drawn up by the deans of the law faculties of the universities of the Republic and the prizes awarded by those institutions; "The Universal Declaration of Human Rights and the United Nations Charter", the rules to be drawn up and the prizes awarded by the Legal and Social Sciences Section of the Ecuador House of Culture; and "History of the Universal Declaration of Human Rights and its influence on international life", the rules to be drawn up by the National UNESCO Commission and the prize awarded by the Ministry of Education. The opening of the three competitions shall be publicized during the current month of April; the papers entered for the competition shall be marked before 30 November so that the prizes may be awarded on 10 December of the same year as one of the events in celebration of the adoption of the Universal Declaration of Human Rights.

Art. 5. The Government shall undertake to publish the papers which were awarded prizes following the decisions of the judges of the competition.

Art. 6. As part of the celebrations in honour of the Declaration, special lectures shall be given at all educational institutions by teachers designated for that purpose.

Art. 7. Immediately upon promulgation, this decree shall be transmitted by the Ministry of Foreign Affairs to the United Nations Educational, Scientific and Cultural Organization and to all heads of diplomatic missions in Ecuador.

Art. 8. The Ministers of Education, State and Foreign Affairs shall be responsible for putting this decree into effect.

[1] Spanish text received through the courtesy of the Ministry of Foreign Affairs. English translation from the Spanish text by the United Nations Secretariat.

PHILIPPINES

PROCLAMATION No. 255 OF THE PRESIDENT OF THE PHILIPPINES DESIGNATING 10 DECEMBER 1950 AS HUMAN RIGHTS DAY[1]

dated 27 November 1950

Whereas the second anniversary of the adoption of the Universal Declaration of Human Rights by the General Assembly of the United Nations at the Palais de Chaillot, Paris, falls on 10 December 1950;

[1] English text received through the courtesy of the Secretary of Foreign Affairs of the Philippines.

The Department of Education of the Republic of the Philippines gave instructions for the observance of Human Rights Day in the schools and ordered that the week preceding 10 December 1950 be devoted to discussions and dissemination of the ideals contained in the Universal Declaration of Human Rights.

Whereas the peoples of the United Nations have reaffirmed in the Charter their faith in fundamental human rights, in the dignity and worth of the human person, and in the equal rights of men and women;

Whereas "recognition of the inherent dignity and of equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world";

Whereas Member States have pledged themselves to achieve international co-operation in promoting universal respect for and observance of human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion; and

Whereas grave developments in international relations make it imperative that Human Rights Day be fittingly observed;

NOW THEREFORE I, Elpidio Quirino, President of the Philippines, do hereby proclaim 10 December 1950 as Human Rights Day and call upon all our citizens, all national, provincial and municipal officials, all teachers in public and private schools, and all other elements in this country, public or private, local or foreign, to publicize the text of the Universal Declaration of Human Rights and to cause it to be disseminated, displayed and expounded.

UNITED STATES OF AMERICA

PROCLAMATION OF HUMAN RIGHTS DAY BY THE PRESIDENT OF THE UNITED STATES[1]

issued on 6 December 1949

Whereas under the Charter of the United Nations Member Governments have pledged themselves to promote universal respect for and observance of human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion, and

Whereas on 10 December 1948 the General Assembly of the United Nations approved the Universal Declaration of Human Rights as a common standard of achievement for all people and all nations, and

Whereas the Declaration enumerates several political, economic, social and cultural rights and calls upon every individual and every organ of society to "strive by teaching and education to promote respect for human rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance", and

Whereas the attainment of basic rights for men and women everywhere is essential for the peace we are securing:

NOW THEREFORE I, Harry S. Truman, President of the United States of America, do hereby designate December 10th, 1949, and December 10th of each successive year as United Nations Human Rights Day; and I invite the people of the United States to observe such a day in appropriate manner.

[1] Text received through the courtesy of the United States Government.

CUBA

ADDRESS ON HUMAN RIGHTS BY THE MINISTER OF EDUCATION[1]

Circular letter sent to teachers on 10 November 1950

On 10 December there will be celebrated in all the countries Members of the United Nations the Universal Declaration of Human Rights, which was approved and proclaimed by the General Assembly of the United Nations in Paris in 1948. The General Assembly recommended to the Governments of Member States that they should publicize the text of the Declaration and "cause it to be disseminated, displayed, read and expounded principally in schools and other educational institutions, without distinction based on the political status of countries or territories".

Freedom, justice and peace, which the present world so fervently desires, are based on the full recognition of human dignity and the equal and inalienable rights of all members of the human family. Accordingly, we must strengthen in our children "the faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and

[1] The Spanish texts of this document, as well as of other documents issued for the same purpose, are to be found in: *Ministerio de Educación, Superintendencia General de Escuelas, Boletín No. 16. Conmemoración del Segundo Aniversario de la Declaración Universal de los Derechos del Hombre por la O.N.U.*, Havana 1950. English translation from the Spanish text by the United Nations Secretariat.

women" in order that we may achieve a better world.

The Ministry of Education, in associating itself with this highly commendable purpose, urges Cuban teachers to co-operate and to celebrate in a worthy manner Human Rights Day and Human Rights Week, not only as the second anniversary of the Declaration, but also in commemoration of Antonio Maceo and the other heroes who died for our country, and to work out a syllabus for their class work in keeping with the mental capacity of children and adolescents so as to instil in their minds the principles proclaimed in the Universal Declaration of Human Rights, principles for which Maceo so resolutely fought and gave his life.

This Ministry hopes that school inspectors and teachers will co-operate most enthusiastically in making these functions on the occasion of such a memorable date a splendid success.

FRANCE

CELEBRATION OF THE ANNIVERSARY OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS[1]

Circular letter of the Minister of National Education to the *Recteurs d'Académie*

(29 November 1950)

This year the anniversary of the Universal Declaration of Human Rights, adopted in Paris in 1948 by the General Assembly of the United Nations, is to be celebrated on Monday, 11 December. In harmony with the principles underlying our French educational movements and all international institutions, and in accordance with the traditions of the French University, which has always striven to reconcile love of country with the spirit of universality, I have decided that on that day tribute shall be paid in all French public educational institutions to the sentiments of human solidarity which must inspire the peace-loving peoples.

I therefore request all teachers, at every stage of university education, to talk to their students during teaching hours on 11 December 1950 on the obligations which devolve on every man and woman in the task of achieving understanding among the peoples, and to remind them that while their first duty is love of country and readiness to defend it, "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world".

I am confident that they will learn from the Universal Declaration of Human Rights that ideal of justice, peace and fraternity which is France's ideal no less than that of the United Nations and the United Nations Educational, Scientific and Cultural Organization. In so doing, they will each be fulfilling the desire of the many French teachers who, in defence of that ideal, have not hesitated to sacrifice their lives.

[1] French text received through the courtesy of the Ministry of Foreign Affairs, Paris. English translation from the French text by the United Nations Secretariat.

AFGHANISTAN

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS[1]

In 1950, an Act concerning freedom of the press was promulgated. The main provisions of this Act are reproduced in the present *Yearbook*.

Among the laws enacted in previous years, the following which deal with human rights may be noted:

1. *Nationality Act of 1939.* According to this Act a person who is born of Afghan parents, or of unknown parents if born on Afghan territory, or of a foreign father or a foreign mother if the other parent was born and resided permanently in Afghanistan, or of foreign parents if, since the age of majority (18 years) he or she has resided permanently in Afghanistan, is an Afghan and of Afghan nationality.

A woman married to an Afghan, and the spouse and children of a man who has acquired Afghan nationality, become Afghan nationals. A woman who has married an alien in conformity with *shariat* (religious) law loses Afghan nationality, including the right to own real estate (which she is allowed to sell to an Afghan national).

An Afghan national may not renounce Afghan nationality except upon attaining the age of majority and by authorization of the Council of Ministers. He must sell his real estate within a year after his renunciation of Afghan nationality. The children, major or minor, of such a person shall not lose Afghan nationality except by authorization of the Council of Ministers.

2. *Regulations of 16 January 1946 governing the employment of persons in industrial establishments.*[2] These regulations are designed to implement the principles of free choice of employment and of protection of employed persons. They contain provisions on payment of wages, hours of work, a weekly day of rest, working conditions, prevention of and compensation for accidents, and labour hygiene.

3. *Act of 1935 concerning houses of detention and prisons.* This Act is ntended to shorten the period of detention preceding trial, to prevent unjust arrest and detention, to safeguard the health of the prisoners and to secure to prisoners other than political the right to a visit on each Friday from relatives or friends.

The courts in Afghanistan render decisions on the basis of Moslem civil and criminal law. Any person may plead in court any provision of *shariat* civil or criminal law and no one may interfere with this right or the procedure whereby it is administered. Any person whose claim is rejected may appeal to the higher court and thence to the Court of Appeals at Kabul, the supreme court of Afghanistan. This court is also competent to decide, in the last instance, cases of violation of duties by public officials who may appeal against decisions delivered by "Councils of authorities" acting in provinces and districts.

The following social welfare institutions are in operation in Afghanistan:

1. The poor house (*marastoon*), founded in 1946 by the Ministry of National Economy. It shelters and nourishes beggars and indigent persons while retraining them for work.

2. The organization for the protection of children (*rozentoon*) founded in 1910 and re-established in 1933 after a temporary suspension of its activities. It provides lodging and nourishment for orphans who also attend a kindergarten (*woroktoon*) previously administered separately and now integrated with the abovementioned institution.

3. The Women's Welfare Society, founded in 1945 by individual women, business men and corporations with the support of the Government. This society provides work for a certain number of indigent women and aims to eradicate illiteracy among women.

4. The Afghan Red Crescent Society, founded in 1946 by the Government of Afghanistan and operating under the auspices of the Ministry of the Interior. It is financed by annual contributions from business men, corporations and philanthropists, and cares for victims of natural disasters.

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[1] The texts and information on which this note is based were received through the courtesy of Mr. Fazal Ahmad Zormaty, chief of section in the Department of the Press of the Ministry of Foreign Affairs, Kabul.

[2] See *Yearbook on Human Rights for 1947*, p. 3, and, for the complete text of the regulations, *Legislative Series* (published by the International Labour Office), Afghanistan 1, March–April 1948.

ACT CONCERNING THE PRESS[1]
of 31 December 1950

[Part I is concerned with definitions.]

PART II

PROVISIONS CONCERNING FREEDOM OF THE PRESS

Art. 1. In accordance with the first part of article 23 of the constitutional law of Afghanistan,[2] publications and newspapers of Afghanistan which are not contrary to religion are under no restrictions, save as provided by the special law relating to them (that is, provided in this Act concerning the press).

Art. 2. Books and pamphlets and news and articles appearing in newspapers and magazines are not subject to any form of censorship before printing or publication. Injury caused by way of the press to any person or to the community shall nevertheless render the offender liable to the penalties prescribed by this Act.

NOTE 1. For the purposes of the preceding provision, the Press Department shall exercise supervision over all printed publications in the country.

NOTE 2. In exceptional circumstances, such as periods of emergency or a state of war, printed publications may be subject to prior censorship by the military authorities.

PART III

OBLIGATIONS OF THE RESPONSIBLE EDITOR OF A NEWSPAPER OR MAGAZINE OR OF THE PUBLISHER OF A BOOK OR PAMPHLET

Art. 3. Every newspaper or magazine must have a responsible editor and every establishment publishing books or pamphlets must have a publisher. The responsible editor or publisher must possess the following qualifications:

(*a*) He must be an Afghan;
(*b*) He must be twenty-five full years of age;
(*c*) He must never have been convicted of a criminal offence;
(*d*) He must employ capital in the publication which belongs to himself or to Afghan associates, and no foreign capital;
(*e*) He must have an adequate knowledge of publishing matters.

[1] Persian text received through the courtesy of Mr. F. A. Zormati, chief of section, Press and Publications Department, Kabul. Translation by the United Nations Secretariat.

[2] See *Yearbook on Human Rights for 1946*, p. 1.

PART IV

AUTHORIZATION REQUIREMENTS AND OBLIGATIONS REGARDING PUBLICATIONS

Art. 4. Authorization to publish a newspaper, magazine or periodical pamphlet or any similar publication shall be given by the Press Department. Any person or company wishing to publish a newspaper, magazine or other news publication must be in possession of authorization and, to that end, shall submit an application signed by the responsible editor or by the person requesting authorization; the application shall include the following particulars:

(*a*) In the case of an individual, his first name, his father's first name, his family name and his address; in the case of a company, the first names of the shareholders and the first name, family name, titles and qualifications of the responsible editor or editors and of their legally appointed representatives;

(*b*) In the case of a newspaper, magazine or periodical pamphlet, the title, intervals at which published, approximate number of copies of each issue, subject and language of the publication;

(*c*) The name and address of the printing works;

(*d*) The address of the administrative offices.

Art. 5. Any changes in the particulars contained in the application submitted in accordance with article 4 must be notified to the competent section of the Press Department not less than ten days before the change takes place. A responsible editor or publisher committing a breach of this regulation shall be liable to a fine of not more than ten days' income.

Art. 6. The responsible editor and holder of the authorization must deposit 5,000 afghanis as security, in the case of a daily newspaper, and 3,000 afghanis in the case of a non-daily publication.

Art. 7. Security of 5,000 afghanis is required for the establishment of a printing works.

Art. 8. If publication is undertaken without authorization, the publication shall be banned and the responsible editor shall be liable to a fine equivalent to six months' income without prejudice to the penalties prescribed by other provisions concerning publication in violation of the Act concerning the press.

Art. 9. If the holder of authorization to publish a newspaper, magazine or periodical pamphlet does not issue the publication within six months following the date stated, the Press Department may withdraw the authorization and give public notice thereof.

Art. 10. If a newspaper or magazine is not published regularly during the six months following the date of commencement of publication, the Press Department may withdraw the authorization and retain half the amount of the security by way of penalty.

Art. 11. Newspapers, magazines and periodical pamphlets must bear the name of the responsible editor and of the holder of the authorization; books and other printed matter must indicate the publisher and the printing works, as well as the date of printing. Any person violating this provision is liable to a fine not exceeding fifteen days' income.

Art. 12. The management of every newspaper or magazine is required to forward two printed copies of every issue free of charge and promptly, to the competent section of the Press Department. If the publication is not so forwarded because of fear of censorship or prohibition, the responsible editor shall be liable to a fine not exceeding two months' income, without prejudice to the penalties prescribed in other provisions concerning publications made in violation of the law; if the failure to forward a copy of the publication is merely due to an oversight, a fine not exceeding twelve days' income may be imposed.

PART V

PUBLICATIONS CONTRARY TO PUBLIC POLICY AND MORALITY

Art. 13. Publications contrary to religion are prohibited. If this provision is violated, the publication shall be confiscated and the responsible editor and the author shall be liable to the penalties prescribed by law.

Art. 14. Publications likely to cause a breach of the peace, contrary to the constitutional system or containing propaganda against national unity, are prohibited. In the case of a newspaper, magazine or periodical pamphlet, the publication shall be confiscated; in addition, the responsible editor and the author shall be liable to a fine not exceeding four months' income and disqualification from public office for a period of not less than six months or more than five years. During that period, they may not be granted authorization to publish; if the article in fact resulted in a breach of the peace, they shall be liable to the penalties laid down by law; if the offending publication is in the form of a book, pamphlet, or speech, the editor, author, translator or speaker shall be liable to the aforesaid penalty.

Art. 15. Publications intended to deceive the reader by the propagation of misleading stories or superstitions are prohibited. If this provision is violated, the publisher, author and translator shall be liable to a fine not exceeding fifteen days' income.

Art. 16. If matter contrary to the law has been printed without a written instruction issued by the publisher or the responsible editor or their legally appointed representative, the penalty to which the responsible editor and the publisher would be liable shall be imposed on the printer and on the owner of the printing works.

Art. 17. If a newspaper or magazine publishes criticism of a government official or of an employee of a non-governmental establishment or of a governmental or non-governmental administration relating to the performance of his or its functions, the reply made by that person or administration shall be published in the same type and in the same position in one of the three issues published after the date of receipt of the reply in the case of a newspaper, and in the next issue in the case of a magazine. If this provision is violated, a newspaper may be suspended for three months and a magazine for six months.

PART VI

PROVISIONS REGARDING ATTACKS AGAINST INDIVIDUALS OR CORPORATE BODIES

Art. 18. Insults against the person of the Sovereign are prohibited. If this provision is violated, all copies shall be confiscated; the author and the responsible editor or publisher shall be required to issue a retraction and, in addition, shall be liable to imprisonment for a period not exceeding ten years.

Art. 19. Insults against the sovereigns, presidents and ambassadors or ministers plenipotentiary of friendly powers shall be punishable by imprisonment for not more than six months.

NOTE. This penalty shall be imposed even in the absence of reciprocal arrangements.

Art. 20. The publication of defamatory statements is prohibited. Offences shall be punishable by imprisonment for not less than one week or more than six months.

Art. 21. Criticism of writings, actions and other activities from a scientific and cultural point of view is permitted within the bounds of moderation and good taste; criticism must not extend beyond the subject under review. In the event of violation, the management of the newspaper or magazine may modify particular passages. If the management of the newspaper or the magazine permits the insertion of articles without rectifying passages which are not germane to criticism of the subject, the responsible editor and the author shall be liable to a fine not exceeding fifteen days' income. The same responsibility shall exist in respect of the reply to any such criticism.

Art. 22. If the signature of an offending article does not clearly indicate the author, and if the responsible

editor fails to disclose the author, the penalties to which the author is liable shall be imposed on the responsible editor in addition to any penalties to which he may be liable as responsible editor.

Art. 23. The publication of military secrets is prohibited; if this provision is violated, the offender shall be liable to the penalties prescribed by the legislation concerning the Army.

Art. 24. The publication of the proceedings of secret sessions of the National Assembly and of the Council of Ministers or of other State secrets is prohibited. Any violation shall render the responsible editor and the author liable to a fine not exceeding six months' income or to imprisonment for not less than one month or more than two years.

Art. 25. Any person circulating or publishing printed matter covered by the provisions of articles 16, 23 and 24 shall be liable to a fine of not less than 500 or more than 2,000 afghanis or to imprisonment for not less than one week or more than one year.

PART VII

PROVISIONS CONCERNING PRINTING WORKS

Art. 26. To keep a printing works, private printers must obtain the prior authorization of the Press Department. Application shall be made in writing and shall state the applicant's first name, family name and address, the head office and style of the printing works, the type of machines employed, the names of partners and the amount of capital. The Press Department has authority to close any printing works established without authorization; the offender shall be liable to a fine not exceeding four months' income of the printing works.

Art. 27. Private printers wishing to make any changes in their establishment, or to transfer it to another place, are required to notify the Press Department thereof twenty days in advance. Offenders shall be liable to a fine not exceeding two months' income.

Art. 28. Before printing a newspaper, gazette or magazine presented for publication for the first time, the printing works shall first examine the authorization for the publication, and, if the name of the printing works appears therein, it may proceed with the regular printing of the publication on the responsibility of the responsible editor.

Any person violating the present article shall be liable to a fine not exceeding three months' income.

NOTE. Authorization to print a newspaper, magazine or periodical is issued in the name of the printing works specifically selected by the responsible editor or publisher, and no other printing works may print the said publication without having received such authorization.

Art. 32. The number and type of printing machines of all kinds, regardless of size, with the exception of typewriters, and the name of the operator, must be notified to the Press Department by the management or the person concerned. Customs offices must likewise inform the Press Department of the importation of such machines, and indicate the type.

PART VIII

IMPORTATION AND SALE OF PUBLICATIONS PRINTED ABROAD

Art. 33. Foreign books and printed matter may be freely imported and sold in the country, provided that they contain no propaganda directed against religion, national unity, or the Government, and that they are not contrary to the interests of Afghanistan. If this provision is violated, they shall be confiscated and the importer shall be liable to the penalties prescribed by law.

PART IX

PROVISIONS CONCERNING BROADCASTING

Art. 34. The importation of broadcasting transmitting apparatus, of whatever power, is subject to the provisions concerning printing works.

Art. 35. The importation of radio receivers is subject to the provisions of special legislation.

PART X

PROVISIONS CONCERNING THE CINEMA

Art. 36. The exhibition of films likely to exercise a harmful or destructive influence on the social life of the community is forbidden. In the capital, the censorship of such films shall be the responsibility of the Press Department, and in the provinces, of its representatives.

PART XI

Art. 37. The importation of gramophone records is subject to the provisions regarding the importation of books.

PART XII

PROVISIONS CONCERNING POSTERS

Art. 38. The printing of posters is unrestricted. The Press Department may seize posters contrary to religion, morality and the laws of the land. Posters published in contravention of the provisions of this

article shall be confiscated, and the person responsible for printing them shall be liable to a fine equivalent to his daily income for not less than five days or more than one month.

NOTE. If the text of the poster contains attacks against religion, the order established by the constitutional government or the unity of the country, articles 13 and 14 shall apply.

PART XIII

[Part XIII contains provisions concerning infringement of copyright, and Part XIV provisions concerning press fines. Article 46 provides that, in the capital, the Press Department shall be competent to fix the amount of, and to impose, press fines, and that in the provinces competence shall be vested in the Consultative Council with the participation of the press representative.]

ALBANIA

CONSTITUTION OF THE PEOPLE'S REPUBLIC OF ALBANIA[1] of 4 July 1950

PART I

FUNDAMENTAL PROVISIONS

Title I

THE PEOPLE'S REPUBLIC OF ALBANIA

Art. 1. Albania is a People's Republic.

Art. 2. The People's Republic of Albania is a State of workers and peasants.

Art. 3. The People's Councils, which came into existence during the struggle for national liberation from fascism and reaction and which attained strength as a result of the historic victory achieved in that struggle and during the laying of the framework of a socialist order, constitute the political foundation of the People's Republic of Albania.

Art. 4. In the People's Republic of Albania all power belongs to the working people of town and country as represented by the People's Councils.

Art. 5. All representative organs of State power shall be chosen by the people by secret ballot in free elections on the basis of universal, equal and direct suffrage.

The representatives of the people in all organs of State power shall be responsible to their electors.

Electors shall have the right to recall their representatives at any time. A special law shall specify the manner in which this right shall be exercised.

Art. 6. All organs of State power shall exercise their functions in accordance with the Constitution, the laws and the general regulations issuing from the superior organs of State power.

Title II

SOCIAL AND ECONOMIC STRUCTURE

Art. 7. In the People's Republic of Albania, the means of production shall be either the collective property of the people in the possession of the State, the property of people's co-operative organizations, or the property of private persons, whether individuals or legal entities.

All mineral wealth and other natural deposits, waters, natural springs, forests and pasture lands, air, rail and water transport, postal, telegraph and telephone services, radio broadcasting stations and banks shall be the collective property of the people.

Foreign trade shall be subject to State supervision. The State shall likewise regulate and supervise all local internal trade.

Art. 8. In order to protect the vital interests of the people, to raise the standard of living and to utilize all resources and economic forces, the State shall direct the economic life and development of the nation in conformity with a general economic plan. Through the medium of the State-administered and co-operative sectors of the economy, the State shall exercise general supervision over the privately owned sector.

In carrying out the general economic plan, the State shall rely on the manual and office workers' trade unions, the peasants' co-operatives and the other organizations of the working masses.

Art. 9. The administration of State property shall be regulated by law. State property shall be specially protected by the State.

Art. 10. The State shall take a particular interest in the people's co-operative organizations and shall assist them and foster their development.

Art. 11. Private property and private enterprise in the economic field shall be guaranteed. The right to inherit private property shall be guaranteed. No person may exercise private property rights to the detriment of the community.

Private property may, as provided by law, be made subject to restrictions or expropriation when the common interest so requires.

The law shall specify the cases in which and the extent to which a property owner shall receive compensation.

Certain branches of the economy and certain enterprises may be nationalized under the same conditions when the common interest so requires.

Monopolies, trusts, cartels and all organizations established to fix prices and monopolize the market to the detriment of the national economy shall be prohibited.

[1] Albanian text in *Bashkimi (Organ central frontit demokratik)* No. 1747, of 28 July 1950. English translation from the Albanian text by the United Nations Secretariat.

Art. 12. The land shall belong to those who cultivate it. The law shall specify the cases in which and the extent to which an individual or a legal entity may own land which he or it does not cultivate.

Large estates may not be privately owned for any reason whatsoever.

The maximum amount of land which may be privately owned shall be determined by law.

The State shall protect the socialist development of agriculture by organizing State agricultural enterprises and setting up machine and tractor stations and by fostering agricultural co-operatives and other forms of association voluntarily established by rural workers.

The State shall, through its economic policy and by means of agricultural credits and the tax system, specially protect and assist the holders of small and medium-sized farms.

Art. 13. Work is the foundation of the social order of the People's Republic of Albania.

Work shall be a duty and a matter of honour for every able-bodied citizen in accordance with the principle: "He who does not work, neither shall he eat."

The principle applied in the People's Republic of Albania is that of socialism: "From each according to his ability, to each according to his work."

Title III

RIGHTS AND DUTIES OF CITIZENS

Art. 14. All citizens shall be equal before the law. They shall be bound to obey the Constitution and all laws.

No privilege shall be granted on the basis of birth, position, wealth or degree of education.

Art. 15. All citizens shall be equal without distinction as to nationality, race or religion. Any act conferring privileges upon or limiting the rights of certain citizens on the grounds of a difference in nationality, race or religion shall be contrary to the Constitution and subject to the penalties provided by law. Any incitement to hatred or dissension among nationalities, races or religions shall be contrary to the Constitution and punishable by law.

Art. 16. Every citizen, without distinction as to sex, nationality, race, creed, degree of education or residence, who has attained the age of eighteen years, shall be entitled to vote and may be elected to any organ of the State.

The same rights shall be enjoyed by citizens serving in the Army.

Elections shall be held by secret ballot on the basis of universal, equal and direct suffrage.

Those persons shall be prohibited from voting whom the law deprives of the right to vote.

Art. 17. Women shall be equal to men in all spheres of private, political and social life.

Women shall be entitled to receive the same remuneration as men for equal work. They shall enjoy the same rights as men in respect of social insurance.

The State shall in particular protect the interests of mother and child by ensuring to the mother prematernity and maternity leave with pay and by providing maternity homes, nurseries and kindergartens.

Art. 18. Freedom of conscience and of creed shall be guaranteed to all citizens.

The church shall be separate from the State.

Religious communities shall be free to manage their religious affairs and to perform religious ceremonies.

The use of the church or religion for political purposes shall be prohibited.

Political organizations with a religious basis shall likewise be prohibited.

The State may grant material assistance to religious communities.

Art. 19. Marriage and the family shall be under the protection of the State. The State shall specify by law the legal status of marriage and the family.

A legal marriage may be contracted only before the competent authorities of the State. After the celebration of a legal marriage, citizens may likewise contract a religious marriage according to the rites of their faith.

The tribunals of the State shall have sole jurisdiction in all matters relating to marriage.

Parents shall have the same duties and obligations towards illegitimate as towards legitimate children. Illegitimate children shall have the same rights as legitimate children.

Art. 20. Freedom of speech, freedom of the press, freedom of association, freedom of organization, freedom of assembly and freedom of public demonstration shall be guaranteed to all citizens.

Art. 21. In order to develop the organizational initiative and political activity of the masses of the people, the State shall ensure to citizens the right to unite in public organizations—the democratic front, trade unions, co-operative associations, youth organizations, women's organizations, sport and national defence organizations, cultural, technical and scientific societies; and the most active and politically most conscious citizens in the ranks of the working class and other sections of the working masses shall unite in the Albanian Labour Party, which is the organized vanguard of the working class and of all the working masses in their struggle to build the foundations of a socialist order and is the directing nucleus of all organizations of the working people, both public and State.

Art. 22. The inviolability of the person shall be guaranteed to all citizens. No person may be detained for more than three days except by decision of a court or by the authorization of a public prosecutor.

No person may be punished for an offence except by a sentence of a competent court pronounced as prescribed by the law establishing the jurisdiction of the court and defining the offence.

Penalties may be fixed and imposed only as prescribed by law.

No person may be sentenced without having been interrogated and requested to defend himself as provided by law, except where his absence has been legally established.

The administrative authorities of the State may, within the limits prescribed by law, impose penalties not more severe than imprisonment for minor contraventions of the ordinary law.

No citizen may be exiled from the State or interned within the State, save as provided by law.

The People's Republic of Albania shall protect Albanian citizens residing abroad.

Art. 23. The home shall be inviolable.

No person may enter and search a house against the will of the master thereof unless he is in possession of a search warrant issued according to law.

No search may be conducted save in the presence of two witnesses. The master of the house shall also be entitled to be present at the search.

Art. 24. The privacy of correspondence and communications shall be inviolable save in the event of a criminal investigation, mobilization or a state of war.

Art. 25. The State shall guarantee to citizens the right to work and to be paid in proportion to the quantity and quality of their work.

The State shall ensure to citizens the right to rest and leisure by fixing hours of work, granting annual holidays with full pay and establishing sanatoria, rest homes, clubs and so forth.

The State shall likewise, through social insurance, ensure to citizens support in their old age in case of sickness or loss of capacity to work.

Art. 26. All citizens shall have equal access to government office under the conditions prescribed by law.

Every citizen in government service or elected to public office shall perform his duties conscientiously.

Art. 27. The State shall ensure to disabled ex-servicemen adequate means of existence and shall bear the cost of their vocational rehabilitation. The State shall give special protection to children of servicemen killed in combat and to other war victims.

Art. 28. The State shall safeguard the health of the people by establishing and supervising a public health service, hospitals and sanatoria.

Art. 29. The State shall provide for the physical education of the people, and of young persons in particular, in order to improve the health and increase the working capacity of the people and to make them better fitted to defend the State.

Art. 30. Freedom of scientific and artistic endeavour shall be guaranteed. The State shall protect science and the arts in order to foster culture and promote the welfare of the people.

The rights of authors shall be protected by law.

Art. 31. With a view to raising the general cultural level of the people, the State shall enable all classes of the population to attend schools and other cultural institutions.

The State shall provide in particular for the education of children.

Young children shall be under the protection of the law.

Schools shall belong to the State. No private school may be established otherwise than by virtue of a law, and the functioning thereof shall be supervised by the State.

Elementary education shall be compulsory and free of charge.

Schools shall be separate from the Church.

Art. 32. A citizen shall be entitled to address petitions and complaints to organs of State power.

A citizen shall be entitled to protest against any irregular or illegal decision of a State administrative body and against any abuse perpetrated by a government official.

Art. 33. Every citizen shall be entitled to institute proceedings in a competent court against a government official who has committed an injustice in the discharge of his functions.

Art. 34. Under conditions prescribed by law a citizen shall be entitled to claim compensation from the State or its officials for damages suffered as a result of the illegal or irregular functioning of a public service.

Art. 35. It shall be the duty of every citizen to safeguard and strengthen public property (property of the State and of co-operative associations) as the sacred and inviolable foundation of the people's democracy, and as the source of the might of the country and of the well-being and culture of every worker.

Any person committing an offence against public property is an enemy of the people.

Art. 36. The defence of his country is the most sacred duty of every citizen, and his highest honour. To betray the people is the most serious of crimes. Military service shall be compulsory for every citizen.

Art. 37. Every citizen shall pay taxes in proportion to his ability to do so.

Taxes and tax exemptions shall be determined by law.

Art. 38. Citizens may not use the rights conferred upon them by this Constitution in order to alter the constitutional government of the People's Republic of Albania for anti-democratic purposes.

Any act to this end shall be considered unlawful and shall be punishable as prescribed by law.

Art. 39. In the People's Republic of Albania national minorities shall enjoy all rights; their cultural development shall be safeguarded; and they shall be free to use their own language.

Art. 40. The People's Republic of Albania shall grant the right of asylum in its territory to foreign citizens persecuted for their actions on behalf of democracy, the struggle for national liberation, the rights of the workers or freedom to engage in scientific and cultural pursuits.

PART II

ORGANIZATION OF THE GOVERNMENT

Title IV

THE COURTS AND THE PUBLIC PROSECUTOR'S OFFICE

A. *The Courts*

...

Art. 80. The courts shall be independent in the exercise of their functions. All courts shall be separate from the administrative branch of the Government. No decision of a court may be altered save by a higher court having jurisdiction.

Within the limits prescribed by law, the lower courts shall be subject to supervision by the higher courts.

The Ministry of Justice shall direct and supervise the work of the judicial administration, and shall supervise the organization and the proper functioning of the courts.

Art. 81. Judges shall render justice in accordance with the law and in the name of the people.

Art. 82. Court proceedings shall ordinarily be open to the public.

The accused shall be guaranteed the right to defend himself.

Art. 83. Save as specially provided for by law, "assessors" shall participate in the trial of cases by the courts.

Art. 84. All court proceedings shall be conducted in Albanian. Any citizen who does not know Albanian may use his own language and the services of an interpreter.

Art. 85. The courts shall be elected by the people, and judges who have been elected may be removed from office.

The Supreme Court shall be elected by the People's Assembly for a term of four years.

Election procedures for other courts shall be determined by law.

...

ARGENTINA

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS

1. Act No. 14006, of 30 September 1950, declares the activities of radio-amateurs to be of national interest. A summary of this Act is reproduced in this *Yearbook*.

2. Act No. 13995, of 5 October 1950, provides for the lease and transfer of State lands to agricultural workers. Extracts from this Act are reproduced in this *Yearbook*.

3. Act No. 13944, of 9 October 1950, provides penalties for failure to assist dependent members of the family. This Act was adopted by Congress on 15 September 1950, promulgated on 9 October 1950, and came into force on 3 November 1950, the date of its publication in *Boletín Oficial* No. 16769. It provides penalties for failure of parents to furnish assistance to children under eighteen years of age, or if incapacitated, beyond that age. The same penalties shall be incurred by children with regard to parents who are incapacitated, guardians, adoptive parents and adopted children and by husband or wife with regard to each other.

4. By decree No. 24453, of 17 November 1950, published in *Boletín Oficial* No. 17768, of 28 November 1950, it was made a condition for the admission of immigrants that the applicant should be able to read and write in any one language. Permits for immigration may be granted for special reasons to those who do not fulfil this condition. Persons under ten and over seventy years of age are exempted from this condition, as well as those whose close relatives, spouse, parents or children being already established in the country, have applied for their immigration.

5. Regulation No. 6401 of the Ministry of Education, promulgated on 25 March 1950 and published in *Boletín Oficial* No. 16606 of 29 March 1950, implements governmental decree No. 29337, of 22 November 1949, by which the payment of fees at the universities of the Republic was suspended for students. The regulation of the Ministry of Education referred to specifies that students who take regular courses in the national universities are exempted from the payment of matriculation, tuition or examination fees.

ACT No. 14006, OF 30 SEPTEMBER 1950, DECLARING THE ACTIVITIES OF RADIO-AMATEURS TO BE OF NATIONAL INTEREST

SUMMARY

By Act of Congress of 30 September 1950, promulgated by the President on 23 October 1950 and published in *Boletín Oficial* No. 16767 of 31 October 1950, the activities of radio-amateurs were declared to be of national interest.

The Act defines a radio-amateur as "anyone, duly authorized by the competent authority, who is interested in radio technique for purely personal and not for gainful purposes, and who by means of his broadcasting station, performs a public service of self-instruction, intercommunication and technical research". The Act grants exemptions from customs duty for the importation of technical equipment, instruments and appliances for the use of radio-amateurs as far as they are imported by the central office or the regional offices of the Argentine Federation of Radio-amateurs.

The control of radio-amateurs is entrusted to the Ministry of Communications of Argentina, which acts through the intermediary of the Argentine Federation of Radio-amateurs.

ACT No. 13995, CONCERNING LEASE AND TRANSFER OF STATE LANDS TO AGRICULTURAL WORKERS[1]

of 5 October 1950

PART I

RURAL LANDS

Chapter I

Art. 1. The Executive Power, through the National Ministry of Agriculture and Stock-breeding, shall promote the socially productive use of State lands by the gradual and systematic lease or transfer thereof to *bona fide* agricultural workers.

The fundamental principle in interpreting and applying the present Act shall be that land is not a source of income, but an instrument of work. The main purpose of the present Act is to protect the Argentine farmer and ensure the full use of State lands.

Art. 2. Rural lands shall be understood to mean those lands which are situated outside urban areas and are used mainly for agriculture and stock-breeding.

Art. 3. The State lands shall be prospected, studied, surveyed, sub-divided and registered; they shall then be sold, leased, given for occupancy or reserved, and the use to which they are put shall be determined and controlled. Encouragement shall be given to the establishment of producer and consumer co-operatives and credit and insurance schemes suitable for agricultural and stock-breeding undertakings.

Art. 4. The rural lands shall be sub-divided in such a way that each farm shall constitute an economic working unit which shall not be subject to attachment or distress and shall not be further divided except upon action taken by the State.

An economic working unit shall be understood to mean any farm which, by virtue of its area, quality of soil, location, improvements and other conditions of exploitation, would if rationally worked by the farmer and his family contributing most of the necessary labour, be capable of meeting their needs and of favourable further development.

Art. 5. The following may not hold rural State lands in any capacity:

(*a*) Limited liability companies;

(*b*) Other associations constituted for purposes of gain;

(*c*) Persons holding, through sale or lease, other State lands constituting an economic working unit;

(*d*) Persons who, because they have transgressed the present Act or previous State Land Acts or regulations, are considered undesirable settlers by the Executive Power.

Point (*b*) does not include family undertakings; point (*c*) does not include religious, welfare or educational institutions not primarily constituted for purposes of gain.

Chapter II

LAND GRANTED BY WAY OF SALE

Art. 7. Grantees shall undertake, as from the date on which they take possession:

(*a*) To work the farm personally, and for their own benefit, and to reside there;

(*b*) To introduce all the improvements, crops and live-stock necessary for the rational working of the farm;

(*c*) To fulfil the specific obligations laid down in each case;

(*d*) Not to transfer the property without express prior authorization.

Art. 14. The owner may appoint a person (spouse or heir) to whom the farm shall be assigned in case of his death for the purpose of continuing the working thereof, provided that such person satisfies the statutory conditions for ownership.

Art. 15. . . . Official credit and insurance agencies are authorized to set up a scheme enabling the assignee to meet the financial obligations arising out of the partition. In that case, immunity from attachment as provided for in article 4 shall no longer apply, and any new assignment of property which may result must be made in conformity with the provisions of the present Act, and the ex-joint heirs of the original owner shall enjoy preference in the assignment. . . .

Chapter III

LAND GRANTED ON LEASE

Art. 20. If after a period of five years it is established that the prescribed obligations and other requirements have been satisfied, the tenant shall have the option to acquire the land by purchase . . .

If the option is duly granted and is exercised within six months of the expiration of the five-year period, counting from the date of the conclusion of the contract, the sums paid as rent during that period, until title to the land is granted, shall be deducted from the sale price.

[1] This Act was adopted by the Congress of the Argentine Republic on 29 September 1950, and promulgated by the President of the Republic on 5 October 1950. It was published in *Boletín Oficial* No. 16756, of 13 October 1950.

PART II

Sole Chapter

URBAN LANDS

Art. 26. A *solar* shall be understood to mean a unit of land lying within the urban limits of populated centres and intended for family residence or industrial, commercial or cultural activities.

Art. 29. Units of land (*solares*) shall be granted by way of sale subject to the following limitations:

(*a*) To natural persons, one unit in each town;

(*b*) To co-operatives, undertakings, companies or entities formed for purposes of gain or public utility, as many units in each town as, in the judgment of the Executive Power, may be necessary for their purposes.

In such cases, the applicants must undertake to carry out the work and make the improvements required by the nature of their activities . . .

Art. 32. After ascertaining that the obligations as prescribed in article 29, second paragraph, have been satisfied, the Executive Power shall confer the corresponding title of ownership, after which the unit of land (*solar*) shall be governed by the ordinary law.

PART III

Sole Chapter

GENERAL PROVISIONS

Art. 36. State lands shall not be acquired by prescription.

Art. 40. Privately owned lands needed to give effect to the purposes of the present Act shall be declared to be necessary in the public interest and liable to expropriation.

Art. 43. Upon the proposal of the National Ministry of Agriculture and Stock-breeding, the Executive Power may create land reservations in the public interest or establish a special system of grants for zones considered essential for the defence and security of the State.

It may also grant occupation permits to settlers of limited means when deemed advisable for reasons of social utility.

Art. 48. The Executive Power shall prescribe the procedure to be followed for the granting of State lands, forfeitures, termination or expiration of rights and imposition of fines as provided in this Act, as well as the formalities and conditions for titles of ownership which shall be conferred by the administration without requiring the intervention of a notary public.

The procedure shall be such as to ensure the greatest possible economy of administrative action, eliminate bureaucratic formalities and guarantee to those concerned the opportunity to be heard, to defend their interest and to offer evidence.

Art. 49. In order to satisfy itself of the independence and nature of agricultural and stock-breeding undertakings, the Executive Power is authorized when necessary to inspect the accounting books and commercial papers of the grantees and assignees and to ask third parties for any information that may be essential.

AUSTRALIA

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS[1]

No major legislative enactments were passed with respect to human rights in Australia during 1950, but provisions affecting human rights which are contained in Commonwealth and State Acts enacted during that period are noted hereunder.

In the field of court decisions, the decision of the Commonwealth Court of Conciliation and Arbitration given on 12 October 1950, as a result of the Basic Wage Inquiry, deals with the industrial and economic right of employees to a satisfactory standard of living. A note on the case, with extracts from the judgments delivered by the three judges constituting the Court in 1950, is given below.

With regard to the territories under the authority of the Commonwealth, the legislation of the Territory of Papua and of the Trust Territory of New Guinea contains some relevant material—notably the provisions of the Native Labour Ordinance of 1950. This and other ordinances affecting human rights in these territories are noted in this *Yearbook*.[2]

The position with regard to human rights in the Trust Territory of Nauru is set out briefly in a statement on human rights in that Territory.[3]

In the above-mentioned territories, industrial and economic rights have been guaranteed by the ratification on their behalf by the Commonwealth of various International Labour Organisation conventions. Lists of these conventions are appended to the texts for the respective territories.[4]

[1] Note prepared by Mr. H. F. E. Whitlam, Crown Solicitor, Canberra.

[2] See pp. 357 and 371.

[3] See p. 363.

[4] See pp. 357, 365 and 371.

LEGISLATION

PROVISIONS OF COMMONWEALTH AND STATE ACTS AFFECTING HUMAN RIGHTS

SOCIAL SERVICE RIGHTS

Social Services Consolidation Act 1950 (No. 1) (Commonwealth). Child endowment was extended to cases of families with only one child. (Hitherto, child endowment had been payable only in respect of families with more than one child.)

Social Services Consolidation Act 1950 (No. 2) (Commonwealth). Rates of pension were increased for various categories of pensioners.

States Grants (Milk for School Children) Act 1950 (Commonwealth). This Act made provision for the grant of financial assistance to the States in connexion with the provision by the States of free milk for school children.

Australian Soldiers' Repatriation Act 1950 (Commonwealth). Pensions to returned soldiers and their dependants were increased.

Non-Contributory State Pensions Act 1950 (Victoria). Non-contributory State pensions were increased.

Superannuation Act 1950 (Commonwealth). Rates of pensions were increased.

INDUSTRIAL AND ECONOMIC RIGHTS

Coal Mine Workers' Pensions (Amendment) Act 1950 (Victoria). Pensions for coal miners were increased.

Coal Industry (Long Service Leave) Act 1950 (Victoria). Provision was made with respect to the granting of long service leave to employees in the coal mining industry.

Industrial Code Act 1950 (South Australia). Provision was made for the quarterly computation of a living wage and as to the power of the Governor to declare a living wage quarterly.

Coal Mine Workers' (Pensions) Act Amendment Act 1950 (Western Australia). The amount of coal mine workers' pensions was increased.

Miners' Pensions Act 1950 (Tasmania). The scope of the pensions scheme was extended, and provision made for additional payments to pensioners in certain cases.

JUDICIAL DECISION

COMMONWEALTH COURT OF CONCILIATION AND ARBITRATION: BASIC WAGE INQUIRY (1950), DECISION OF 12 OCTOBER 1950[1]

1. The decision in this case, which was given on 12 October 1950, increased the basic wage and thus had the effect of substantially increasing wage rates for men and women in Australia.

2. In addition to the economic importance of the decision, the case is of outstanding interest in the field of human rights for the following reasons:

(*a*) It was the first major inquiry by the Court under recent legislation which defined the "basic wage" and, therefore, involved a re-examination of the various wage concepts which have been current in Australia.

(*b*) It was the first inquiry under recent legislation empowering the Court to determine or alter a basic wage for adult females.

(*c*) The claims made on behalf of the unions required the Court to consider the desirability and practicability of adjusting wages "in accordance with increases in . . . productive capacity".

(*d*) It involved consideration of a claim for an equal basic wage for men and women workers.

(*e*) The judgments handed down deal inferentially with the position of the Court in relation to wages policy and to other authorities charged with responsibilities for economic matters.

3. The Court of Conciliation and Arbitration is only one of the authorities exercising conciliation and arbitration powers under the (Commonwealth) Conciliation and Arbitration Act 1904–1951.[2] In wage fixing, it has jurisdiction only to determine what the basic wage element shall be, and it can exercise this jurisdiction only in the courts of preventing or settling an industrial dispute, or of varying an award already made. Moreover, its decision affects only the parties to the dispute (registered organizations of employers and workers). However, where there are a number of disputes and of applications for variation, as in the recent case, the Court is able to embark on a combined hearing of the matter common to all of them. In the words of the Chief Justice: "The purpose of the combined hearing was to enable the Court, its attention having been directed exclusively to considerations common to all the claims, to express its views of what the common foundational element [of the wages to be paid under the various awards] should be." The Court's decision, in such a combined hearing, is given legal effect by consequential variation of the various awards concerned.

4. The claims before the Court on this occasion can best be expressed in terms of the statement submitted on behalf of the Australian Council of Trade Unions, wherein the Court was moved to "proceed to a hearing and determination of the claims following, and in the course of such hearing, conduct an investigation to determine the actual living costs of a family of five—a man, wife and three dependent children—based on a standard of living related to socially necessary requirements and the productive capacity of the nation, and a method by which such standard can be adjusted in accordance with increases in such productive capacity:

"(*a*) That the basic wage for all adults be an amount of £10 per week for the capital cities taken together . . .

"(*b*) . . .

"(*c*) That such wage shall be adjusted at yearly intervals by additions proportionate to the increase in the productive capacity of Australian industry.

"(*d*) That the basic wage ascertained in accordance with the preceding claims . . . be adjusted at quarterly intervals by the application thereto of a specially designed system of index numbers which will fully provide for increases in the actual cost of living."

In support of these claims the unions submitted, *inter alia*,

". . .

(*b*) That workers, irrespective of sex, should be paid at the same rate, and the elimination of differing rates is necessary to prevent unfair discrimination by employers as between male and female workers."

In the event, claims (*c*) and (*d*) were not pursued and were not taken into account by the Court.

5. The decision of the Court was a majority one consisting of Justices Foster and Dunphy, who were of opinion that the adult male basic wage should be increased by approximately £1 per week and that the female basic wage should be fixed at 75% of the new male rate. Chief Justice Kelly, on the other hand, reached the conclusion that no basic wage increase was warranted either for males or for females.

6. The following extracts from the three judgments deal with the various aspects of the case set out above. Page references are to the report published by authority of the Commonwealth.

Chief Justice Kelly

(p. 61) "The basic wage to which the power so conferred upon the Court relates, is now defined in

[1] Summary prepared by Mr. H. F. E. Whitlam, Crown Solicitor, Canberra. Text: Law Book Co.'s *Industrial Arbitration Service Current Review*, p. 97, and *Report of the Basic Wage Inquiry 1949–1950*, printed by authority of the Commonwealth. About the Court of Conciliation and Arbitration see also *Yearbook on Human Rights for 1948*, pp. 9 and 11 *et seq.*

[2] See *Yearbook on Human Rights for 1947*, pp. 6–8; *idem for 1948*, pp. 11–14; *idem for 1949*, p. 12.

section 25 itself as being that wage or that part of a wage which is just and reasonable for an adult male (or an adult female, as the case may be) without regard to any circumstance pertaining to the work upon which, or the industry in which, he (or she) is employed . . .

(p. 62) "Summarizing my approach to what I have called the function of the Court, I would say that the Court must bear in mind that its purpose and duty is to determine an amount to be paid as a wage or a part of a wage; an amount which will be just and reasonable for an adult male or an adult female, as the case may be, with reference to what it finds to be the expenditure which will be necessary to purchase what it regards as an appropriate standard of living for him or her. The Court will take account of the capacity of the economy to achieve and to sustain the standard of living it has in mind . . . The Court must, to the best of its ability, give attention to what is accepted as being a fair allowance of remuneration to management; and again, to what is allowed to be a fair return for the investment of savings and for the labour of those who toil for themselves. In my opinion, it cannot fail to take account of such contribution to the division of the fruits of the country's productive effort as is made in the way of social service benefits; not forgetting, of course, the circumstances in which, and the extent to which, sections of the community other than that of the wage earner also participate in such benefits. On the other hand, the Court should not, in my view, be influenced by the incidence or burden upon different sections of the community of taxation, direct or indirect. For this is a matter for which the legislature of the country must alone be responsible. . . .

(p. 63) "I take the view that the requirement that the 'wage' or 'part of a wage' referred to in section 25 of the Act must be 'just and reasonable' cannot be fulfilled unless the Court has regard for both the 'needs' principle and the 'economic capacity' principle. Indeed, practical effect—that is to say, the translation of it into a definition in terms either of purchasing power or of money—cannot be given to the first-mentioned principle except with reference to the second. For it is, in the view of the Court, axiomatic that the 'needs' to be contemplated in the assessment of a basic wage must be measured as liberally as the economy of the nation may permit. . . .

(p. 78) "In the present circumstances the Court can, I think, do much harm to the economy, and therefore to the community as a whole, the greater part of which is comprised of the wage earners, by adding to the cost of production by way of establishing even higher wage levels, both nominal and real, than those which already exist. . . . The rapid deterioration in the value of money must, perhaps even with some serious sacrifices on the part of all, be arrested. Failure to arrest it will surely endanger this unbalanced economy to the material detriment of our established industries and to the general unhappiness, perhaps the early poverty, of large numbers of our people. I am not prepared to take any risks about this matter. There are other steps necessary to be taken by other authorities charged, as well as this court, with such action as will adjust, so as eventually to remove, the effects of our unbalanced economy. Their existence, even their inaction, in some regard, to date does not absolve this court from doing what it understands to be its particular duty. I believe that today its duty is to give a lead to the other instruments of adjustment by taking a firm stand to stabilize, as well as lies in its power, the level of wages; for it is undoubtedly principally owing to the rapidly increasing level of wages, both nominal and real, that costs and prices are now tending to become out of control. . . .

(p. 86) "The problem raised by the unions' claim [female basic wage] is whether the case for an equal basic wage for men and women can be validly put—that is to say put upon the foundation of 'justice' and 'reasonableness' simultaneously with a case for assessing the 'basic wage' with reference to a 'standard of living related to the socially necessary requirements on the highest level consistent with the productive capacity of the nation' of a family of five . . .

(p. 88) "The conclusion is indeed inescapable that accepting, as we must, the definition of the 'basic wage', in respect of which the Court has jurisdiction, so long as assessment of the 'basic wage' for adult males pays any regard to the needs, or 'socially necessary requirements' of a family group, . . . the basic wage for women cannot as a matter of social justice, . . . be assessed at very much more than half of that basic wage [the adult male's] which is fixed as an amount adequate for the fulfilment of the needs of a family group. . . .

(p. 89) "In the light of the considerations which I have attempted to describe and to weigh in this statement I find myself unable to agree with my brother judges that a case has been established for an alteration of the basic wage either of adult males or of adult females."

Justice Foster

(p. 102) "Two alternative bases are suggested for the fixation or alteration of the basic wage—(1) needs; and (2) capacity . . . It is my view that this Court has long since abandoned 'needs' as the basis. When in 1937 it added prosperity loadings, it must have been satisfied that without the loadings the 'needs' of workers were provided for by the 'needs' portion of the wage, and because of prosperity it was possible to add something and so to raise living standards. Nothing short of calamity should induce the Court to lower those higher standards thus created and sustained . . .

(p. 105) "The community demands progress, and as much progress as is reasonably possible, and the Court should beware lest it come to be regarded as an unreasonable brake upon that progress, lest the people

who come to it asking to share in the notable advance of technical science and human achievement be driven to seek less orderly and desirable avenues. . . .

(p. 110) "I do firmly conclude that the economy will not be unduly hampered if the Court goes further and not merely awards the existing standards, but requires it to adjust itself to a slightly higher one. . . .

(p. 119) "Very early in these proceedings the Court intimated that it rejected the claim for equality (as between male and female basic wage) if based on the present male basic wage. It seems to me that such a claim cannot be sustained because:

"(*a*) The male basic wage was a social wage for a man, his wife and family;

"(*b*) No claim was made for a unit wage upon which equality of wages could be based . . .

"(*c*) 'Equal pay' based on the male basic wage would put intolerable strain upon the economy;

"(*d*) It was socially preferable to provide a higher wage for the male because of his social obligations to fiancee, wife and family;

"(*e*) While single females were said to be anxious to receive the higher wage, their interest changed on their marriage, which occurred in Australia at the average age of about twenty-five. As married women, they became concerned that their husbands should bring home the largest possible pay envelope;

"(*f*) The productivity, efficiency and the needs and the responsibilities, etc., of females were substantially less than that of males in this community; and

"(*g*) Lastly, the re-distribution of the wage fund so that young unmarried females would receive very substantially increased spending power would disturb the economy in a manner certainly to the disadvantage of the married basic wage worker and his wife and family, and probably of the whole community. . . .

(p. 122) "I am of opinion that the economy can safely sustain a higher standard for its workers, and feel confident that the economy will not over all and upon the whole suffer by an award raising the male basic wage by £1 per week and fixing the female basic wage at 75 per cent of that basic wage."

Justice Dunphy

(p. 124) "This case does not only affect the wage of the lowest-paid worker—if the increase is awarded as claimed—it is added equally to the wage of the unskilled, semi-skilled and the highly skilled. Men, women and juniors would all share in the benefit, and the reaction could not be confined to awards of the Commonwealth Court. State tribunals could hardly remain unaffected by a federal decision which made an upward alteration of the foundation of the structure upon which Australia's federal wage system has been built. . . .

(p. 126) "In a period of thirteen years industrial tribunals have found so many devices to improve the economic status of the lowest-paid worker without officially taking him out of the basic wage class that it is no longer true to talk about workers generally, or even a very restricted number of workers, as now living on the equivalent of the Harvester standard of 1907 (basic wage). There have been other advances which have had enormous beneficial effect on the economic status of the Australian worker, and the development of the marginal structure is one of the most important. . . . The plain truth of the matter is that even without taking into account overtime working or over-award payments, no Australian worker is obliged to live on the basic wage. . . . .

(p. 128) "In terms of pure logic there are many strong points of argument against the paying of a family wage to an unmarried person, or to a married person without children, if the family wage includes an allowance for children. In fact, the only substantial argument in favour of the present system appears to be grounded on the ethical concept that an adult worker should be entitled to a wage which would support a family if he had one. . . .

(p. 137) "The Court is authorized by the Statute to determine a basic wage which is just and reasonable. In view of the Court's undoubted duty to have regard for the public interest it must have a wider vision than the mere looking at what may be considered just and reasonable from the viewpoint of the worker only. The granting of a wage increase of such an amount that serious inflationary effects followed could not possibly be considered as acting in the public interest or for that matter granting a just and reasonable wage. . . .

(p. 140) "Loading additions to the 'needs' have resulted in recognition that the basic wage is intended to purchase something more than 'needs', and as the price of many commodities, upon which the wage-earner may be presumed to spend his money, is uncontrolled, and the loadings are not all adjusted upwards, I consider something more than 10*s.* should be added to the 'needs' and the 'prosperity' loading. In times of such rare general prosperity, with no control over many price levels, and when the Australian pound is not re-valued, I think it appropriate that the sum to be added to the needs and prosperity base should be £1 (one pound). . . .

(p. 141) "The Court is for the first time empowered to determine a basic wage for females, and whilst we are, in effect, left to our own resources to find material from which to base a decision, there is some precedent established in the field by industrial tribunals throughout the Commonwealth. . . . The gravamen of judicial decision has resulted in the fixation of a female basic wage in the vicinity of 54 per cent of the male basic wage. There have been vital changes in industry in recent times in regard to the employment of women, and perhaps it is time for a revaluation of their base standard. In my view, there should be an upgrading, and I would prescribe the female basic wage on a general limit of 75 per cent of the male basic wage."

AUSTRIA

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS[1]

A. LEGISLATION

I. Amendments to the Federal Constitution

1. The only amendments that were made during 1950 in the Austrian Constitution as enacted in 1929 restored to full validity the provisions concerning the abolition of capital punishment (article 85 of the Constitution)[2] and those relating to the system of trial by jury (article 91, paragraph 2, of the Constitution).

2. Article 85 of the Constitution had abolished capital punishment in ordinary proceedings. Nevertheless, owing to the disturbing frequency of most serious crimes, capital punishment had been re-introduced with temporary effect (and most recently with effect to 30 June 1950) in pursuance of the constitutional enactments of 24 July 1946, 21 May 1947 and 12 May 1948.[3] Now, however, pursuant to Federal Act of 21 June 1950 (*Bundesgesetzblatt* No. 130/1950) the position as contemplated in article 85 of the Constitution has been restored. The penalty of capital punishment to which offenders were liable under the above-mentioned constitutional enactment has now been superseded by rigorous imprisonment for life.

3. Article 91, paragraph 2, of the Constitution provides that for offences liable to severe penalties and expressly defined by statute, as well as for all political offences, the question of the liability of the accused has to be decided by a panel of jurors. Under the constitutional enactments referred to under paragraph 2 above, and also under a further constitutional enactment of 24 May 1950 (*Bundesgesetzblatt* No. 114/1950) it had been ordered that for a specified period, which expired on 31 December 1950, even in these cases the enlarged *Schöffengerichte* (so-called *Schwurgerichte*), being courts consisting of members of professional and lay judges, were competent to exercise jurisdiction. The Trial by Jury Act of 22 November 1950 (*Bundesgesetzblatt* No. 240/1950) restored the system of trial by jury as contemplated in article 91, paragraph 2, of the Constitution. Under this Act, all political offences must be tried by courts with jury (*Geschwornengericht*), for other offences a jury need be empanelled only if the offender is liable on conviction to a penalty of not less than ten years' imprisonment or if, owing to exceptionally aggravating circumstances, the prosecutor applies in his statement for a sentence exceeding ten years' imprisonment. A *Geschwornengericht* consists of three judges and twelve jurors. Upon the conclusion of the proceedings, the judges give a summing-up to the jury of the legal position and furnish any particulars required. Thereupon, the jury deliberates on the liability of the accused. If all three judges so desire and if the majority of the jury does not object, the judges may attend the deliberations of the jury on the liability of the accused. However, no other person may be present when the jury reaches its decision. For the purposes of giving an affirmative reply to questions, an absolute majority of votes is required. By the unanimous ruling of the three judges, a verdict returned by a jury which in the opinion of the judges is erroneous may be set aside and the case may be referred to another *Geschwornengericht* for re-trial. If the verdict of the jury of this second court concurs with that of the first, this verdict shall form the basis of the judgment. If the jury returns a verdict of "guilty", the penalty to be imposed forms the subject of consultations between the judges and the jury.

II. Fundamental Freedoms

(a) *Freedom of Movement*

4. Under Federal Act of 18 June 1946 (*Bundesgesetzblatt* No. 125/1946), Austrians wishing to proceed abroad had to obtain visas; under the Fourth Passport Amendment Act of 15 February 1950 (*Bundesgesetzblatt* No. 73/1950) this requirement was repealed.

5. The Agreement of 4 October 1950 (*Bundesgesetzblatt* No. 220/1950) between the Austrian Federal Government and the Italian Government concerning the removal of property by South Tyrolese residents opting for re-transfer provides that residents of South Tyrol who, having exercised their options, had emigrated to Austria are free to transfer their entire Austrian assets to Italy when returning to Italy, notwithstanding the provisions in the Austrian exchange control regulations to the contrary.

(b) *Freedom of Opinion*

6. The Federal Act of 31 March 1950 (*Bundesgesetzblatt* No. 97/1950) concerning the suppression of

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[1] Survey prepared by Dr. Ignaz Seidl-Hohenveldern, senior officier in the Federal Chancellery. English translation from the German text by the United Nations Secretariat.

[2] See *Yearbook on Human Rights for 1947*, p. 10.

[3] *Bundesgesetzblatt* Nos. 141/1946, 104/1947 and 100/1948, respectively.

obscene publications and the protection of young persons against moral danger makes it a punishable offence to disseminate obscene writings, pictorial representations and films. Young persons under the age of sixteen years may not have access to writings, etc., which are likely to have a morally dangerous effect upon them. A ban not exceeding three years may be placed on the sale in public places of writings which are likely to be a source of danger to or to produce a brutalizing effect on young persons. The same applies to the sale of such publications by newsvendors. However, any such literature may not be restricted in its distribution by reason only of its political, social or religious contents.

Extracts from this Act are reproduced in the present *Yearbook*.

7. Regulations concerning the dispatch of newspapers and periodicals by mail are contained in the order of the Federal Ministry for Communications dated 10 January 1950 (*Bundesgesetzblatt* No. 44/1950). As far as these regulations include provisions for excluding domestic and foreign newspapers from eligibility for reduced postal rates, such provisions are based on purely technical reasons—*e.g.*, excessive weight.

(c) *Freedom of Association*

8. The Association Amendment Act of 12 July 1950 (*Bundesgesetzblatt* No. 166/1950) provides that liquidators shall be appointed for associations dissolved by order of the authorities (for example the Ex-Servicemen's Association of former members of units of the Austro-Hungarian Army, dissolved by order of the occupying Powers). The assets of such association shall, so far as is possible and permissible, be applied to purposes in keeping with the articles of association of such bodies or to related purposes, failing which they shall be applied to general welfare purposes.

III. Cultural Rights

9. Under the Act of 12 July 1950 (*Bundesgesetzblatt* No. 174/1950) relating to students at institutes of higher learning, provision is made for the representation, on the basis of democratic principles, of regular students of Austrian nationality at Austrian institutes of higher learning, for the purpose of safeguarding their interests.

IV. Legislation relating to Social Questions

10. By Federal Act of 1 March 1950 (*Bundesgesetzblatt* No. 87/1950), employees' committees were formed, covering particular occupational groups of trade and industrial associations of the *Länder*, for the purpose of safeguarding and promoting the technical and occupational interests of the employees working in the undertakings of the industrial group concerned.

11. The Children's Allowance Act of 16 December 1949 (*Bundesgesetzblatt* No. 31/1950), as revised and supplemented by the Federal Acts of 21 June 1950 (*Bundesgesetzblatt* No. 135/1950), and of 25 October 1950 (*Bundesgesetzblatt* No. 215/1950) grants an allowance to any person not working for his own account, to persons in receipt of pensions and to persons in receipt of annuities, in respect of every child under the age of twenty-one years who is being brought up by them; the allowance is payable out of a fund to which all employers contribute.

12. The Social Insurance (Transitional Arrangements) Amendment Act No. 4, of 31 March 1950 (*Bundesgesetzblatt* No. 93/1950), provides that claims for social insurance benefits are admissible even in the case of applicants residing abroad, provided that the applicant, being an Austrian national, is resident abroad with the consent of the insurers or if for the purposes of preserving reciprocity the right to these benefits is created by order or by international agreement.

13. The Unemployment Insurance Amendment Act of 31 March 1950 (*Bundesgesetzblatt* No. 94/1950) provides that the emergency assistance (*Notstandshilfe*) to be granted after the claim for unemployment benefit has been exhausted may be extended, subject to certain conditions, to aliens and stateless persons. This Act is published in the present *Yearbook*.

V. Legislation relating to Economic Questions

14. Certain measures relating to economic control and planning which, as originally enacted, would have ceased to be valid in 1950 were continued in force subject to certain amendments.

These measures include, *inter alia*, the allocation of housing (Dwellings Requisitioning Amendment Act of 22 November 1950, *Bundesgesetzblatt* No. 230/1950, and 15 December 1950, *Bundesgesetzblatt* No. 10/1951).

B. JUDICIAL DECISIONS

I. Jurisdiction of the Constitutional Court (*Verfassungsgerichtshof*)

15. Under Article 144 of the Constitution a Constitutional Court deals with complaints relating to decisions or orders of the administrative authorities in so far as the complainant alleges that he has suffered prejudice in a right guaranteed to him by the Constitution.

Decisions of Austrian administrative authorities which merely reproduce orders made by the occupying authorities in Austria are not, however, subject to the supervision of this Court—even if they are inconsistent with the Austrian Constitution—just as the orders of the occupying authorities themselves are not subject to its jurisdiction (Court's rulings of 4 October 1949, see its *Law Reports* No. 1861, of 16 December 1949, *ibid.* No. 1899 and of 2 July 1949, *ibid.* No. 1835). A summary of the decision of 16 December 1949 is published in this *Yearbook*.

16. It emerges from a ruling of the Court that the United Nations resolution concerning the Universal Declaration of Human Rights does not yet form part of Austrian law, particularly as the Republic of Austria has not yet been admitted as a Member of the United Nations (Court's ruling of 5 October 1950, *Law Reports* R.106/50/9). A summary of the decision of 16 December 1949 is published in this *Yearbook*.

II. Freedom of Religion

17. The Chief Commissioner of Police of Vienna, for reasons of public security, had banned a series of religious lectures organized by a group which styled itself "Austrian Friends of the Knowledge of God". This group had not registered as an association or as a religious sect. The Court ruled that the members of this group, even though they had not registered, were in principle entitled freely and in public to exercise their right of public worship. Nevertheless, lectures not accompanied by any ritual or worship did not constitute an exercise of the right of freedom of religion. Accordingly, the lectures were to be regarded as meetings. Under the provisions of the Austrian Constitution concerning freedom of assembly, a meeting could be dissolved or banned only if it was likely to endanger public security or the public weal. In fact, the followers of this movement advocated a "Germanic" religion and urged opposition to the Mosaic, Christian and Moslem religions which they described as Jewish. The Court ruled that this encouragement of racial ideology was a danger to public security. In an attempt to prove that it was not their intention to propagate National-Socialist ideas, the followers of this doctrine pointed out that the foundress of the movement, Mrs. Mathilde Ludendorff, had quarrelled with Hitler. As against this argument, the Court took the view that these doctrines, judged objectively, were calculated to produce precisely this effect. Accordingly, the Court held that the police authorities had been correct in regarding the dissemination of these doctrines as likely to endanger the public security and hence had quite properly banned the group's activities (decision of 27 September 1950, *Law Reports* B/72/50/17).

III. Electoral Legislation

18. The provisions of paragraph 20, sub-paragraph 3, of the workers' representation ordinance of 30 August 1938 (*Bundesgesetzblatt* No. 200/1948), under which a political party was not entitled to take part in the electoral campaign for the elections of workers' representatives to the *Arbeiterkammer* (Workers' Council) unless the party had also taken part in the electoral campaign for elections to the National Council, was held to be unconstitutional by the Constitutional Court in a decision rendered on 15 July 1950. The *Arbeiterkammer*, it held, was the occupational body representing the totality of electors. Accordingly, even groups of electors not organized in political parties ought to be entitled to designate members to represent them on this body (*Law Reports*, 20 June 1950, V 5/50/5).

Accordingly, the clause which the Court had held to be unconstitutional was repealed by an order published on 15 July 1950 (*Bundesgesetzblatt* No. 176/1950).

LEGISLATION

FEDERAL ACT CONCERNING THE SUPPRESSION OF OBSCENE PUBLICATIONS AND THE PROTECTION OF YOUNG PERSONS AGAINST MORAL DANGER[1]

dated 31 March 1950

Section I

PROVISIONS RELATING TO JUDICIAL PROCEEDINGS AND PENALTIES

Art. 1. (1) Any person who commits any of the following acts for gainful purposes shall be deemed to have committed a crime; that is to say, if he

(*a*) Prepares, publishes or possesses for the purposes of dissemination obscene writings, images, films or other obscene articles;

(*b*) Imports, transports or exports any such article;

(*c*) Offers or delivers such articles to other persons, or exhibits, displays or posts up publicly or otherwise distributes them or exhibits such films to other persons;

(*d*) Publicly or in the presence of others or in printed matter or in writings circulated to the public openly offers his services for the purposes of any of the acts described under (*a*), (*b*) and (*c*) above;

(*e*) Informs the public in the manner described under (*d*) above in what manner, from whom or through whose agency obscene articles can be acquired or lent or where such objects may be inspected.

(2) The offender shall be liable to imprisonment for a term of six months to one year. In addition to the penalty of imprisonment he may be liable to a fine not exceeding 500,000 schillings.

[1] German text in *Bundesgesetzblatt* 97/1950. English translation from the German text by the United Nations Secretariat.

Art. 2. (1) Any person who knowingly commits any of the following acts shall be deemed to have committed an offence; that is to say, if he

(*a*) Offers or delivers for valuable consideration to a person under the age of sixteen years any writing, pictorial representation or other image that is likely to endanger the moral or physical development of young persons by arousing lascivious emotions or corrupting their sexual instincts or offers or delivers for valuable considerations to any person as aforesaid any film or gramophone record likely to produce a similar effect;

(*b*) Exhibits, displays, posts or otherwise disseminates any such writing, image or other representation in such a manner that the offending contents thereof become accessible to an extended circle of persons under the age of sixteen years;

(*c*) Exhibits a film of the nature described above or a record of the same nature to a person under the age of sixteen years, or makes a theatrical representation or other public performance or exhibition of the type described above accessible to a person under the age of sixteen years.

(2) So far as this offence is not punishable with greater severity under other provisions, it shall be punishable by close detention for one to six months. In addition to the penalty of imprisonment, the offender may be fined a sum not exceeding 250,000 schillings.

Art. 5. If an act punishable under article 1 is committed in the exercise of an occupation or other activity, the court, in sentencing the offender, may in addition bar him from the exercise of the occupation or order the undertaking in question to discontinue operations for a specified period (which shall in no case exceed five years), if the employer or his agent had knowledge of the punishable act or was negligent in selecting the employee who committed the offence.

SECTION II

RESTRAINTS UPON DISTRIBUTION

Art. 10. (1) The regional administrative authority may, so far as the territory of its jurisdiction is concerned, *ex officio* on the application of any authority or of any person who can show that he has a proper interest, ban the distribution to persons under the age of sixteen years or prohibit the sale through newsvendors or retailers and forbid the display or exhibition in places where they are accessible to persons under the age of sixteen years, of any printed matter (which term does not include films) which is calculated to prejudice the moral, mental or physical development of young persons by inducing them to commit acts of violence or punishable offences of any kind, or by arousing lascivious emotions or corrupting their sexual instincts.

(2) If in pursuance of paragraph 1 above, a restraint is ordered on the distribution of an edition of a newspaper or of an issue of any other printed matter which appears in serial form (fascicules) and if it is reasonable to assume that the contents of subsequent issues or editions of the printed matter are also likely to be such as to justify similar restraint upon distribution, then, in such circumstances, an order may be made to restrain the distribution of all issues (fascicules) of the printed matter which appear within a period to be appointed in the said order, such period not to exceed one year or, if the said publication had been previously subject to a similar restraint on distribution, three years.

(3) It shall not be permissible to make an order restraining the distribution of a publication for reasons related to the political, social or religious contents of the said publication.

Art. 11. (1) The regional administrative authority under article 10, paragraph 1, above, shall give a ruling within three days and shall report thereon and on any order restraining the distribution or publication *ex officio* to the *Landeshauptmann* (Governor of the Province) without delay.

(2) The *Landeshauptmann* shall have power *ex officio* or in pursuance of an application under article 10, paragraph 1, above, whether made by authorities or persons, to order the restraints upon distribution to be applicable to the entire *Land.*

(3) Similarly the Federal Ministry of Internal Affairs acting in concert with the Federal Ministry of Education may order restraints upon the distribution of publications applicable to the entire federal territory.

Art. 12. (1) The editor or publisher of the publication in question may apply to set aside the order restraining distribution made by a regional administrative authority, though such application shall not result in suspending the effect of the said order.

(2) The ruling given by the *Landeshauptmann* in pursuance of paragraph 1 and article 11, paragraph 2, above, is final. The foregoing shall be without prejudice to the terms of article 109 of the Federal Constitution [1] as enacted in 1929.

SECTION III

UNLAWFUL NOTICES TO THE PUBLIC

Art. 15. (1) It shall be unlawful to do any of the following things for the purposes of advertisement; that is to say,

[1] This article refers to the administration of the province of Vienna.

(*a*) In notices referring to writings, pictorial or other representations, films, records, theatrical performances or other exhibitions or entertainments, to refer to anything therein contained that might be offensive within the meaning of article 2 above.

(*b*) In notices referring to publications to state that the distribution of the publication is subject to restraint under the terms of Section II or that proceedings are pending with a view to the imposition of such restraint or that any such proceedings have at any time been pending.

(2) Any person contravening the foregoing provisions shall, unless the offender is liable to a greater penalty under other provisions, be liable on conviction by the court to a fine not exceeding 5,000 schillings or imprisonment not exceeding a term of three months. If the offence is attended by aggravating circumstances both penalties may be imposed concurrently.

(3) Any printed matter which contains any reference which would be unlawful under paragraph 1 above may be provisionally seized in conformity with article 37 of the Press Act.

FEDERAL UNEMPLOYMENT INSURANCE AMENDMENT ACT[1] of 31 March 1950

1. Article 23, paragraph 3, shall read as follows:

"(3) The requirement of Austrian nationality shall be waived in the case of persons who have since 1 January 1930 been resident without interruption in the territory now comprised in the Republic of Austria; the same shall apply in the case of persons born after the said date in the territory now comprised in the Republic of Austria who have been resident in this territory since then."

2. Add the following paragraph 3 to article 24:

"(3) Unemployed persons who are not Austrian nationals and not eligible for emergency assistance (*Notstandshilfe*) under an order made pursuant to paragraph 2 may, after consultation with the statutory representatives of the interests of the employers and of the employees, be admitted by the Federal Ministry of Social Affairs as eligible for emergency assistance provided that the person was employed in Austria, in employment involving compulsory unemployment insurance, for not less than 156 weeks during the five years immediately preceding the application for emergency assistance; for the purpose of determining the five-year period, any periods during which the person in question was in receipt of unemployment assistance (emergency assistance) shall be disregarded. The ruling admitting eligibility may be made for a specified period and for a specified group of unemployed persons."

[1] German text in *Bundesgesetzblatt* No. 94/1950. English translation from the German text by the United Nations Secretariat.

JUDICIAL DECISIONS

RIGHT TO PROPERTY—EXPROPRIATION—POWERS OF MILITARY GOVERNMENT—MILITARY OCCUPATION OF AUSTRIA—CONSTITUTIONAL COURT OF AUSTRIA—LEGAL COMPETENCE—LAW OF AUSTRIA

KAISER *v.* MINISTRY FOR COMMERCE AND RECONSTRUCTION

Constitutional Court of Austria

16 December 1949[1]

The facts. The Governor of Salzburg, invoking a general authorization of the United States Military Government in Austria, confiscated the car of the appellant pursuant to an order of 1946. This action was confirmed by the Ministry for Commerce and Reconstruction, which declared the confiscation to be valid on the ground that an order of the Military Government had the same effect as an Austrian law. On appeal against this decision to the Constitutional Court, the appellant contended that the order was invalid as being repugnant to the guarantee of the right to property contained in the Austrian Constitution.

Held: that the order of the Governor was inconsistent with the guarantee of the right to property contained in the Austrian Constitution. Although the order of

[1] Collection No. 1899. German text of the decision received through the courtesy of the Federal Government of Austria. English summary by the United Nations Secretariat.

the Military Government was legally valid and, as the lawful act of an occupation authority, not subject to review by the Constitutional Court, the act of the Governor fell outside the general authorization of the Military Government, which allowed the confiscation of property only for the purpose of safeguarding public health and promoting the national economy. The person to whom the car was transferred received it in a personal and private capacity, although he was at the same time the secretary of a *Land* organization of an association of victims of political persecution. The decision of the Ministry confirming the transfer of the car to him was therefore equivalent to an expropriation and should be rescinded accordingly.

EQUALITY BEFORE THE LAW—FREEDOM OF CHOICE OF OCCUPATION—LEGAL VALIDITY OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

Constitutional Court of Austria[1]

5 October 1950

The present case is based on an appeal against an administrative decision made pursuant to Ordinance No. 233/*Federal Gazette* of 1948, which placed certain restrictions on the admission to the Bar of applicants who had gained their legal qualifications abroad. The appellant claimed that this decision constituted a violation of the principles of equality before the law and of freedom of professional activities embodied in the Austrian Federal Constitution and in the Universal Declaration of Human Rights.

The Constitutional Court declared that the Ordinance No. 233/*Federal Gazette* of 1948 and the decision pursuant thereto did not violate the principles embodied in the Austrial Federal Constitution. As to the alleged violation of the principles of the Universal Declaration of Human Rights, the Court said:

"In addition to his other arguments, the appellant claims that Ordinance No. 233/*Federal Gazette* of 1948 was contrary to law in view of the Universal Declaration of Human Rights. This argument fails, as the resolution of the United Nations adopting the Universal Declaration of Human Rights has not yet been incorporated in the national law of Austria, all the more so as the Austrian Republic has not yet become a member of the United Nations. The decision appealed against is in conformity with Ordinance No. 233/*Federal Gazette* of 1948. As there exists no doubt as to the legality of this ordinance, the appeal appears unfounded and has to be dismissed."

[1] Collection No. 2030. *Law Reports* B.106/50; see *Österreichische Juristen Zeitung* 1951, p. 94. The following extract in English is taken from "*Österreichische Rechtsprechung*", by Dr. Ignaz Seidl-Hohenveldern, in *Journal du droit international*, Paris, 78e année (1951), p. 622. Permission to reproduce this text was granted by Dr. Ignaz Seidl-Hohenveldern and the chief editor of the *Journal du droit international*, whose courtesy is gratefully acknowledged.

BELGIUM

NOTE ON SOCIAL SECURITY LEGISLATION[1]

1. An order of the Regent of 16 March 1950 (published in the *Moniteur belge* Nos. 79 and 80, of 20 and 21 March 1950) grants a housing allowance or a residence allowance to certain categories of State employees. Among those eligible for this allowance are personnel employed in State administrative departments, teaching and scientific personnel and those classed as such in establishments coming under the Ministry of Education, officers and other ranks on the established strength of the Army, Navy, Air Force and gendarmerie, as also certain other categories.

2. An order concerning the granting of family holiday bonuses in 1950, promulgated by the Regent on 15 May 1950 and published in the *Moniteur belge* No. 137, of 17 May 1950, provides that the workers referred to in article 1 of the law of 7 June 1949 concerning annual holidays for employees[2] will, in certain circumstances, receive a supplementary holiday bonus, known as the "family holiday bonus", for 1950. The amount of the family holiday bonus is established in accordance with the number of days in 1949 for which the family allowance was paid for each child.

3. A royal order of 3 October 1950 (published in the *Moniteur belge* No. 279, of 6 October 1950) grants to workers not in receipt of a salary a birth allowance equivalent to that granted to salaried workers in accordance with earlier provisions, establishes the conditions and rate of the allowance, and authorizes the Minister of Labour and Social Welfare to decide, upon the proposal or advice of the Family Allowances Commission, that the birth allowance shall also be granted in deserving cases or categories of cases which are not eligible to receive family allowances.

4. A circular from the Prime Minister, the Minister of Public Health and the Family and the Minister of Labour and Social Welfare, addressed to the public assistance committees and the Unemployment Relief Fund (circular No. 48/50 of 13 November 1950, published in the *Moniteur belge* No. 334, of 30 November 1950) states that public assistance committees are bound to assist political refugees and displaced persons, in accordance with the legislation in force on 30 June 1950, when the International Refugee Organization ceased its activities in Belgium. Since, however, these responsibilities will entail a heavy burden on the finances of some public assistance committees, the Government has admitted in principle that the outdoor relief granted to these persons, as also any hospital expenses, will be chargeable to the State, notwithstanding the general provisions of the Public Assistance Act of 27 November 1891. The circular contains details concerning the recognition and verification of the qualification of political refugee and displaced person, the reimbursement of expenses and other procedural questions, and states that the decision of principle taken by the Government has yet to receive the sanction of the legislative authority.

[1] This note is based on documents received through the courtesy of Mr. Edmond Lesoir, Secretary-General of the *Institut international des Sciences administratives*, Brussels.

[2] See *Yearbook on Human Rights for 1949*, p. 22.

ACT OF 18 MARCH 1950 SUPPLEMENTING THE ACT OF 20 SEPTEMBER 1948 CONCERNING THE ORGANIZATION OF THE NATIONAL ECONOMY[1]

Note. The purpose of the Act of 18 March 1950 is to provide manual and office workers' delegates to works councils, and candidates for election as delegates, with as effective a protection as possible against arbitrary dismissal.

In the Act of 20 September 1948 on the organization of the national economy, the legislature had already sought to prevent delegates elected as members of works councils from being dismissed because of their election.

[1] French text in *Moniteur belge* No. 90, of 31 March 1950, received through the courtesy of Mr. Edmond Lesoir, Secretary-General of the *Institut international des Sciences administratives*, Brussels. Note prepared by the Ministry of Labour and Social Welfare, Brussels. English translation from the French text by the United Nations Secretariat. The Act entered into force on the day of its publication in the *Moniteur belge*.

Article 21 of the Act of 20 September 1948 provides, in paragraph 5: "The delegate may be dismissed only for serious reasons warranting immediate termination of employment."

It has seemed desirable to grant the same protection to candidates for election as delegates. Under the Act of 18 March, such persons are protected against arbitrary dismissal during the period of their actual candidature and for a period of two years after the date of the elections. Moreover, the Act further defines the protection granted to elected delegates.

Art. 1. Article 21 of the Act of 20 September 1948 on the organization of the national economy shall be replaced by the following provisions:

Art. 21. 1. The delegates of the staff shall be elected for a term of four years. At their first election, however, this term shall be reduced to two years. They shall be re-eligible.

It shall be the duty of alternate members to replace deceased members or members who have resigned or no longer fulfil the conditions of eligibility.

Alternate members shall complete their predecessors' terms of office. New elections may take place as soon as all the alternate members on the list have become principal members.

Without prejudice to the above provisions relating to the duration of the term of office of a principal or alternate delegate, such term of office shall cease when the employment of the delegate in the firm concerned comes to an end, or when the delegate ceases to belong to the organization which proposed him or to the group of manual or office workers by whom he was elected.

Until the following elections, a delegate may be dismissed only for serious reasons justifying immediate termination of employment or for economic and technical reasons previously recognized by the competent joint commission.

The revocation of a delegate's powers for a serious offence may be requested before the Labour Court by the organization which put forward his candidature.

2. As from a fortnight before the time when the works council, or, where no works council as yet exists, the head of the firm, first informs the workers, by the display of a notice, of the date for which the elections have been fixed and until the period of two consecutive years following on the posting of the election results has expired, a worker who has been entered in a list of candidates may be dismissed only for serious reasons warranting immediate termination of employment, or—but only after the election results have been posted—for economic or technical reasons previously recognized by the competent joint commission.

3. Any dismissal which takes place before the entry into force of this Act and which violates the provisions of sub-section 2 shall be null and void.

4. Any notice of dismissal given before the entry into force of this Act, and during the period referred to in sub-section 2, to a worker entered on a list of candidates shall be null and void.

5. The head of a firm shall be obliged to reinstate in the employment of the firm the workers referred to in sub-sections 1–4 in accordance with the clauses and conditions of their contracts, provided that such workers address applications to him to that effect by registered letter within the thirty days following the dismissal. In the case, however, of workers dismissed before this Act came into force, application must be made within the thirty days following the date of such entry into force.

6. In case of failure on the part of the head of the firm to execute the obligations incurred by him under sub-section 5 towards a delegate or worker entered in a list of candidates and dismissed by him contrary to the provisions of sub-sections 1–4, the head of the firm shall be obliged to pay such workers compensation equal to the amount of two years' wages, including any benefits acquired under the contract, and without prejudice to such greater compensation as might fall due under the contract or customary procedure and to any other damages for material and moral injury.

The same amounts of compensation shall be due if the serious reasons advanced for immediate dismissal are judged to be unfounded.

7. If the head of a firm reinstates a delegate or a worker who has been entered in a list of candidates, he shall still be under obligation to pay him an amount of compensation equal to the wages to which he would have been entitled.

8. For the purposes of this article, dismissal, whether of a delegate or a worker who has been entered on a list of candidates, shall be understood to mean any breach of contract on the part of the employer, whether with or without termination allowance, and whether without notice or with notice given after the commencement of the fortnight preceding the time when the date of the elections was first announced to the workers by the display of a notice.

ACT CONCERNING THE PAYMENT OF WAGES TO WORKERS FOR TEN HOLIDAYS A YEAR[1]

dated 30 December 1950

Note. In theory, workers were already entitled to ten holidays a year with pay. In practice, however, they had only eight or nine, according to the number of holidays falling on a Sunday.

The purpose of the Act of 30 December 1950 is to ensure that workers shall in all cases receive payment for at least ten holidays. Holidays falling on a Sunday are to be replaced by a national, regional or local holiday.

Art. 1. The title of the legislative order of 25 February 1947 on the payment of wages to workers for eight holidays a year shall be replaced by the following title: "Legislative order on the payment of wages to workers for a certain number of holidays a year."

Art. 2. Article 1, first paragraph, of the same legislative order shall be supplemented as follows:

"*Art. 1.* This legislative order shall apply to all persons bound by a labour or apprenticeship contract, except employees already enjoying a guaranteed remuneration, in so far as such persons are engaged, etc. . . ."

Art. 3. Article 2 of the same legislative order shall be replaced by the following provision:

"*Art. 2.* The persons referred to in article 1 may claim at least ten paid rest days corresponding to holidays.

"The number and dates of such days shall be determined by the King by provisions which shall be either general or particular for the various branches of activity or categories of workers concerned.

"Should one of the holidays thus determined fall on a Sunday, it shall be replaced, in accordance with a procedure to be determined by the King, by a national, regional or local holiday.

"The National Joint Commission shall determine annually which holidays are to be replaced in each branch of activity.

"The National Joint Commission shall delegate this task to the Regional Joint Commission or to the works councils where they are established, and shall determine the period within which the decisions of these bodies must be submitted to it for approval.

"The decision of the National Joint Commission shall be rendered binding by a royal order."

Art. 4. Article 5 of the same legislative order shall be supplemented by the following provision:

"In branches of activity where a subsistence insurance fund is established, the King may release the employers from all or part of their obligations in respect of payment of wages for holidays on which no work is done.

"In that event, the subsistence insurance fund may, after agreement with the competent joint commission, be called upon to assume such obligations, unless the King designates other bodies to assume some or all of these obligations.

"Furthermore, the King may determine the amount of wages to which the workers engaged in the branches of activities concerned are entitled for the holidays in question."

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[1] French text in *Moniteur belge* No. 365, of 31 December 1950, received through the courtesy of Mr. Edmond Lesoir, Secretary-General of the *Institut international des Sciences administratives*, Brussels. Note prepared by the Ministry of Labour and Social Welfare, Brussels. English translation from the French text by the United Nations Secretariat.

BOLIVIA

Supreme Decree No. 1826 of 10 December 1949 proclaiming the tenth of December as Human Rights Day.[1]

[1] The text of this decree appears on p. 3 of this *Yearbook*

BRAZIL

ACT No. 1079, TO DEFINE CRIMES CONSTITUTING AN ABUSE OF AUTHORITY AND TO REGULATE THE APPROPRIATE PROCEDURE FOR TRIAL[1]

dated 10 April 1950

PART I.—THE PRESIDENT OF THE REPUBLIC AND MINISTERS OF STATE

Art. 1. The crimes specified in this Act are crimes constituting an abuse of authority.

Art. 2. The crimes defined in this Act, even when merely attempted, are punishable by loss of office and disqualification from holding any public office for a period not exceeding five years, such punishment to be imposed by the Federal Senate in cases involving the President of the Republic or Ministers of State, judges of the Federal Supreme Court or the Attorney-General of the Republic.

Art. 3. Imposition of the penalty referred to in the previous article does not preclude trial and sentence of the accused for ordinary offences in the usual course of justice under the laws on penal procedure.

Art. 4.[2] Acts of the President of the Republic in contravention of the Federal Constitution are crimes constituting an abuse of authority, particularly when they are prejudicial to:

I. The existence of the Union;

II. The free exercise of the legislative power, the judiciary power and the constitutional powers of the States;

III. The exercise of political, individual or social rights;

IV. Home security;

V. The integrity of the administration;

VI. Budgetary law;

VII. The custody and the legal use of public funds;

VIII. The execution of judicial decisions.

TITLE I

Chapter III

CRIMES AGAINST THE EXERCISE OF POLITICAL, INDIVIDUAL OR SOCIAL RIGHTS

Art. 7. The following are crimes constituting an abuse of authority committed against the free exercise of political rights, whether individual or collective:

1. Prevention of the free exercise of the vote, whether by violence, threats or corruption;
2. Obstruction of polling officers in the execution of their duties;
3. Violation of the secrecy of the ballot or nullification of results by removal, diversion or destruction of electoral material;
4. Use of the federal power to prevent free implementation of the electoral law;
5. Employment of immediately subordinate authorities for purposes of abuse of power, or toleration of the commission of such acts by those authorities without punishment;
6. Subversion or attempted subversion of the political and social order by violent means;
7. Incitement of military personnel to civil disobedience or breach of discipline;
8. Provocation of ill-feeling between or against the armed forces, or on the part of the latter against the civil authorities;
9. Open violation of any individual right or guarantee under article 141 or of the social rights guaranteed by article 157 of the Constitution;[3]
10. The taking or authorizing during a state of siege of repressive measures in excess of the limits laid down by the Constitution.

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PART II.—TRIAL AND SENTENCE

SOLE TITLE.—PRESIDENT OF THE REPUBLIC AND MINISTERS OF STATE

Chapter I

BRINGING OF CHARGES

Art. 14. Any citizen has the right to bring before the Chamber of Deputies charges against the President of the Republic or a Minister of State for a crime committed in abuse of authority.

[1] Portuguese text in *Diario Oficial* No. 83 of 12 April 1950. English translation from the Portuguese text by the United Nations Secretariat.

[2] This article is identical with Article 89 of the Constitution of 18 September 1946.

[3] Both articles are reproduced in *Yearbook on Human Rights for 1946*, pp. 45–47.

Art. 15. The charges are not receivable if the accused has already, for any reason, finally relinquished office.

Art. 16. The charge, signed by the person bringing it, and with the signature duly witnessed, should be accompanied by documentary evidence or by a statement that it cannot be produced and an indication of the place where it is to be found. In cases of crimes to which there are witnesses, the charge should contain a list of at least five witnesses.

Art. 17. In trials involving crimes constituting an abuse of authority, an official of the Secretariat of the Chamber of Deputies or the Senate shall act as clerk of the court, according to the house of the National Congress in which the trial is held.

Art. 18. The witnesses listed in the written charge shall appear in person to give evidence, and the Presidency of the Chamber of Deputies or of the Senate, which shall be responsible for summoning them, shall take the necessary legal measures to enforce attendance.

[Chapters II and III set forth the procedure to be followed in dealing with this category of crimes. The charges as provided for in articles 15–18 is examined by an *ad hoc* commission appointed by the Chamber and composed of representatives of all political parties. If a formal accusation ensues, the Chamber submits the case to the Senate, which constitutes itself as a tribunal and delivers judgment. Certain functions in the procedure are reserved to the President of the Supreme Federal Tribunal.]

CAMBODIA

CONSTITUTION OF THE KINGDOM OF CAMBODIA[1]

of 6 May 1947

Introductory Note. By an Act of 2 February 1950,[2] the exchange of letters of 27 November 1947 and 14 January 1948 between the President of the Republic, President of the French Union, and the King of Cambodia, and the treaty between France and Cambodia of 8 November 1949, with the subsequent agreements, were ratified.

In the above-mentioned exchange of letters it was specified that the Kingdom of Cambodia was a member of the French Union as a free and associated State.

The provisions on human rights in the Constitution of Cambodia are to be found below.

In accordance with a convention between France and Cambodia, signed in 1950, agencies dealing with the Press, information and radio, labour and social legislation, hygiene and public health were transferred to the authorities of the Kingdom of Cambodia. Prior to that convention, local technical agencies dealing with education, public health, social affairs and labour inspection had been transferred to the authorities of Cambodia.

CHAPTER I

NATURE AND FORM OF STATE

...

Art. 2. The official language shall be Cambodian. The official language for all acts concerning the French Union shall be French, and the use of that language shall be permitted in all other cases.

CHAPTER II

FREEDOMS, RIGHTS AND DUTIES OF THE CAMBODIANS

Art. 3. Freedom shall be the option of doing whatever does not harm the rights of another; conditions for the exercise of freedom shall be defined by law. No one may be compelled to do that which the law does not require.

Art. 4. No one may be prosecuted, arrested or detained save as determined by law and according to the forms thereby prescribed.

No one may be kept in detention unless the legality of his arrest has been confirmed by a magistrate, who shall state the grounds for his decision within the time-limit prescribed by the law.

The use of unnecessary rigour or compulsion in the course of an arrest, any recourse to moral pressure or physical brutality in the case of a person in detention and any treatment which may augment the penalty applicable by law to a convicted person shall be forbidden by law, and persons committing, helping to commit or instigating such acts shall be held personally responsible for them.

Art. 5. Every accused person shall be deemed to be innocent until found guilty.

Penalties, whether entailing deprivation or restriction of liberty, must conduce to the rehabilitation of the offender.

Art. 6. A Cambodian may not be expelled from Cambodian territory, denied the right to reside wheresoever he chooses or compelled to settle in a given place, save as provided by law.

Art. 7. Property shall be protected by the law. No one may be deprived of his property save in the public interest or in cases provided for by law and subject to the previous payment of an equitable indemnity.

Art. 8. There shall be absolute freedom of conscience. There shall likewise be absolute freedom of worship, subject solely to limitations necessary for the maintenance of public order.

The religion of the State shall be Buddhism.

Art. 9. Every Cambodian shall be free to speak, to write, to print and to publish. He may express,

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[1] French text in *Notes documentaires et études. La documentation française*, Paris, No. 633, 2 June 1947. English translation from the French text by the United Nations Secretariat. Introductory note based on: *The Transfer of Powers to the Associated States of Viet Nam, Laos and Cambodia*, issued in May 1950 by the Press and Information Service of the French Embassy, New York. See also "Actes définissant les rapports entre les Etats associés du Viet-Nam, du Cambodge et du Laos avec la France" in *Notes et Etudes documentaires* No. 1295, of 14 March 1951.

[2] French text of this Act in *Journal officiel de la République française* of 2 February 1950. English translation by the Press and Information Service of the French Embassy, New York (quoted in footnote 1).

disseminate and defend any opinion through the press or by any other means provided that he does not thereby abuse this right or endanger the peace.

No one may be compelled to express an opinion.

Art. 10. Every Cambodian shall have the right of free association unless such association should impair or should conduce to the impairment of the freedoms guaranteed by the present Constitution.

Every Cambodian shall also enjoy freedom of assembly.

Art. 11. The dwelling is inviolable. No entry may be made except in the cases and according to the forms laid down by law.

Art. 12. Privacy of correspondence shall be inviolable save for temporary exceptions expressly provided for by law and necessitated by the overriding interest of the nation.

Art. 13. All Cambodians shall also have access to all public employment on the sole basis of merit or competence.

Art. 14. Every Cambodian shall have the right to address written petitions to the public authorities to bring about the examination of problems of individual or collective interest.

Art. 15. Exercise of the rights guaranteed by the present Constitution may not be suspended. None the less, the rights set forth in articles 4, 9 (first paragraph), 10 (second paragraph) and 12 may, when the nation is declared to be in danger, be suspended within the limits and in the forms established by law.

Such suspension shall be limited to a period not exceeding six months; it may be renewed in the same forms.

Any person abusing such suspension for the purpose of arbitrarily prejudicing the material or moral rights of another shall be held personally answerable for his act.

Anyone believing that his person or property has suffered arbitrary injury within the period of suspension shall have the right to claim moral or material reparation before the courts.

Art. 16. Every Cambodian owes allegiance to the King. It is his duty to observe the law, defend his country and give aid to the Government by paying his taxes and in every way prescribed by law.

CHAPTER III

CONCERNING THE LAW AND THE PUBLIC POWERS

Art. 17. The law is an expression of the national will. It is applicable to all whether it protects, punishes or compels.

The law guarantees to all Cambodians the exercise of the rights and freedoms set forth in the preceding chapter, and may in no wise impair those rights and freedoms.

Art. 18. The right to seek redress shall be ensured to all by law, and lack of means shall not constitute an impediment.

Art. 19. Save as expressly provided by law, no law shall have retroactive effect.

None the less, no one may be judged and punished for an infraction provided for by a law promulgated and made obligatory after the infraction took place.

...

CHAPTER V

CONCERNING THE NATIONAL ASSEMBLY

Art. 48. Every Cambodian citizen who has attained the age of twenty years, provided that he has not suffered deprivation of his civil rights and that he fulfils the requirements of the electoral law, shall be an elector.

Members of the armed services may not be electors or be qualified to be elected. Likewise, monks may not be electors or candidates by reason of the Buddhist dogmas.

Art. 49. Electors of not less than twenty-five years shall be qualified for election to the National Assembly. The electoral law shall determine conditions of ineligibility.

The mandate of deputy is not compatible with the active exercise of any public function.

Art. 50. National Assembly deputies shall be elected for a period of four years by universal and direct suffrage...

CANADA

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS

On 20 March 1950 a motion was made in the Senate "that a special committee be appointed to consider and report on the subject of human rights and fundamental freedoms, what they are and how they may be protected and preserved, and what action, if any, can or should be taken to assure such rights to all persons in Canada . . ." The Committee was called upon to give consideration to eighteen draft articles which were included in the text of the motion.[1]

The draft articles are similar to articles 2–13 and 16–21 of the Universal Declaration of Human Rights, subject to certain adjustments and variations.

Draft article 18 provides in the final paragraphs as follows:

"Any person whose rights or freedoms as herein set forth have been violated may apply for relief on notice of motion to the Supreme or Superior Court of the province in which the violation occurred.

"The above articles shall not be deemed to abridge or exclude any rights or freedoms to which any person is otherwise entitled."

The motion was agreed to. The Special Committee on Human Rights and Fundamental Freedoms established under this motion held eight public sessions, in the course of which it heard thirty-six witnesses. In its report, presented to the Senate on 27 June 1950, the Committee mentioned that it "was urged to recommend the incorporation into Canadian law of the United Nations Universal Declaration of Human Rights and Fundamental Freedoms. Your committee finds, however, that the Universal Declaration, as its name implies, was drafted for general application and was not designed with special reference to Canadian conditions with our divided jurisdiction and individual history. This finding also applies to the draft articles appearing in the Senate resolution, most of which are copied from the Universal Declaration. Witnesses before your committee addressed themselves to the general principles of Human Rights and Freedoms and scarcely at all to the items in detail."

The report then reviews certain basic problems connected with the adoption of this text, and stresses the necessary respect for provincial rights and provincial jurisdiction, which should not be invaded forcibly by the Dominion Parliament. It calls for concurrence as an essential requisite to constitutional progress, and considers it wise to await the time when prospective Dominion Provincial Conferences will have worked out a method for the control within Canada of the Canadian Constitution and agreement has been reached as to incorporation in the Constitution of a national bill of rights. The Committee therefore recommended that as an interim measure "the Canadian Parliament adopt a declaration of human rights to be strictly limited to its own legislative jurisdiction. Such a declaration would not invade the Provincial legislative authority, but it would nevertheless cover a very wide field. While such a declaration would not bind the Canadian Parliament or future Canadian Parliaments, it would serve to guide the Canadian Parliament and the federal civil service. It would have application within all the important matters reserved to the Canadian Parliament in Section 91 and in other sections of the British North America Act. It would apply without limitation within the North-west Territories.

"A Canadian declaration of human rights could follow in its general lines the preamble and certain of the articles of the United Nations Universal Declaration of Human Rights, subject to the reservations expressed by the Canadian delegates at the United Nations. It would declare the right of everyone in Canada to life, liberty and personal security; the right of equal treatment before the law; to fair trial; to freedom from arbitrary interference with one's privacy, family, home and correspondence; to freedom of movement; to a nationality; to obtain asylum from persecution; to found a family; to own and enjoy property; to freedom of thought, conscience and religion; to freedom of opinion and expression; to peaceful assembly and association; to take part in the Government of the country directly or through representatives chosen at periodic elections by universal and equal suffrage. The declaration would also state that everyone in Canada has duties to our community and is subject to such limitations as are determined by law, for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare and good government of Canada. Finally, the declaration would specify that none of its provisions may be interpreted as tending to permit any group or person to engage in activity aimed at the destruction of the rights and freedoms of the people of Canada.

[1] See for the debates concerning this motion: The Senate of Canada, *Official Report of Debates* Nos. 12 and 62–65, of 20 March and 27–30 June 1950. See also *Minutes of the Proceedings of the Senate of Canada* No. 62, of 27 June 1950, pp. 426–435.

"Such a declaration of human rights adopted by the Canadian Parliament would solemnly affirm the faith of all Canadians in the basic principles of freedom, and it would evidence a national concern for human rights and security. Judges would recognize the principles of such a declaration as part of Canada's public policy, and subsequent Parliaments would hesitate to enact legislation violating its revered principles. To adults it would convey a feeling of security, and children would memorize its terms with pride."

On 28-30 June 1950, the report of the Special Committee was discussed by the Senate. On 30 June 1950, the motion for concurrence in the report was agreed and the report was concurred.

UNEMPLOYMENT INSURANCE ACT, 1940
as amended 1943, 1946, 1947, 1948, 1949, and 1950[1]

Note. The Act was amended by adding thereto, immediately after section 87, section 87 A to F, inclusively known as part II A.

By P.C. 1564, of 12 July 1935, the Committee of the Privy Council gave consideration to the conventions and recommendations adopted by the International Labour Conference at its Eighteenth session (June 1934), with a view to determining how the several draft conventions and recommendations would lie within the competence of Parliament or of the provincial legislatures, so that they might at some time implement them, in discharge of our country's obligation under article 405 of the treaty of peace with Germany and the corresponding articles of the other treaties of peace. Draft convention No. 44, which was one of the four conventions considered, was entitled "Convention (No. 44) ensuring Benefit or Allowances to the Involuntarily Unemployed, and Recommendation (No. 44) concerning Unemployment Insurance and Various Forms of Relief for the Unemployed". The minimum conditions to be complied with by every scheme of unemployment insurance were laid down. In fuller satisfaction of this obligation entered into by our country, the Unemployment Insurance Act, 1940, as amended, is further amended by section 20 of 14 George VI, chap. I, by the addition thereto of part 2 (*a*), Supplementary Benefit. The effect of this amendment is to add, after section 87, sections 87 (A) to 87 (F) inclusive.

PART II A

SUPPLEMENTARY BENEFIT

87A. Every person, who proves in the prescribed manner that he comes within one of the four classes mentioned in section eighty-seven B of this Act, and in whose case all the conditions for the receipt of benefit laid down by this Act, except the statutory conditions, are fulfilled, shall, subject to the provisions of this Act, be entitled to receive payments (in this part referred to as "supplementary benefit") at weekly or other prescribed intervals, at such rates and for such duration as authorized by this part, so long as those conditions continue to be fulfilled and so long as he is not disqualified under this Act from the receipt of benefit or supplementary benefit.

87B. (1) The classes of persons entitled to receive supplementary benefit are as follows:

Class 1.—A person whose benefit year has terminated since the thirty-first day of March immediately preceding the day on which he makes a claim for supplementary benefit.

Class 2.—A person who made a claim for benefit, but in relation to whom a benefit year was not established with respect to that claim for the reason that he did not fulfil the statutory conditions, if contributions were paid in respect of him, while employed in insurable employment, for not less than ninety days subsequent to the thirty-first day of March immediately preceding the day on which he makes a claim for supplementary benefit.

Class 3.—A person who, for not less than ninety days within any period of twelve consecutive months falling within the eighteen months immediately preceding the date on which he makes a claim for supplementary benefit, was employed

(i) In lumbering and logging in any area of Canada which had not been prescribed as an area where contributions are payable in respect of such employment prior to the first day of January, nineteen hundred and fifty, or

(ii) In any employment described in sub-paragraph (i) and in any insurable employment in any place.

Class 4.—A person who, for not less than ninety days subsequent to the thirty-first day of March immediately preceding the day on which he makes a claim for supplementary benefit, was employed in

[1] English text in *Statutes of Canada, 1950, 14 George VI*, Vol. I, pp. 3-16. Text and note received through the courtesy of the Deputy Minister of Justice, Ottawa.

(i) Any employment that was made insurable employment at any time during the twelve months immediately preceding the day on which he makes a claim for supplementary benefit, or

(ii) In any employment described in sub-paragraph (i) and in other insurable employment.

(2) No claim for a supplementary benefit in respect of any supplementary benefit period may be made before the first day of December immediately preceding that period.

(3) For the purposes of sub-section one, where a person in Class 1 or Class 2 makes a claim for supplementary benefit on or after the first day of April, nineteen hundred and fifty, in respect of the supplementary benefit period on the fifteenth day of April in that year, the thirty-first day of March immediately preceding the day on which he makes that claim shall be deemed to be the thirty-first day of March, nineteen hundred and forty-nine.

87C. (1) Subject to the provisions of this section, the rates of supplementary benefit shall be 80 per cent of the benefit rates authorized by section thirty-one of this Act.

(2) For the purposes of this section, the average daily contribution shall be:

(*a*) For a person in Class 1, the average daily contribution used in calculating his rate of benefit for the benefit year immediately preceding the supplementary benefit period;

(*b*) For a person in Class 2, the average of the ninety most recent daily contributions paid by him subsequent to the thirty-first day of March immediately preceding the day on which he makes a claim for supplementary benefit;

(*c*) For a person in Class 3, the average of the ninety most recent daily contributions that, within any period of twelve consecutive months falling within the eighteen months immediately preceding the date on which he makes a claim for supplementary benefit, were paid by him and would have been paid by him if contributions had been payable in respect of lumbering and logging in any area of Canada which had not been prescribed as an area where contributions are payable in respect of such employment prior to the first day of January, nineteen hundred and fifty; and

(*d*) For a person in Class 4, the average of the ninety most recent daily contributions that, subsequent to the thirty-first day of March immediately preceding the day on which he makes a claim for supplementary benefit, were paid by him and would have been paid by him if contributions had been payable in respect of the employment that was made insurable employment during the twelve months preceding the day on which he makes a claim for supplementary benefit.

(3) Where the average daily contribution computed in accordance with this section is the amount in column (1) below, the rates of supplementary benefit shall be the respective amounts set out in columns (2) to (5) inclusive below:

Average daily contribution	*Rate of supplementary benefit*			
	Person without a dependant		*Person with a dependant*	
Daily	*Daily*	*Weekly*	*Daily*	*Weekly*
(1)	(2)	(3)	(4)	(5)
(Cents)	*(Dollars)*		*(Dollars)*	
2	0.55	3.30	0.65	3.90
3	0.80	4.80	1.00	6.00
4	1.10	6.60	1.35	8.10
5	1.35	8.10	1.70	10.20
6	1.65	9.90	2.10	12.60
7	1.90	11.40	2.45	14.70
8	2.15	12.90	2.80	16.80

87D. (1) Notwithstanding section thirty of this Act, supplementary benefit may be paid only in respect of the period from the coming into force of this part to the fifteenth day of April in the year nineteen hundred and fifty and in any other year from the first day of January to the thirty-first day of March next following (herein referred to as "supplementary benefit period") for the number of days calculated as follows:

(*a*) For a person in Class 1, the same number of days to which he was entitled to benefit by virtue of his most recent benefit year established under section thirty-six of this Act;

(*b*) For a person in Class 2, one-fifth of the number of days for which contributions have been paid in respect of him subsequent to the thirty-first day of March immediately preceding the day on which he makes a claim for supplementary benefit;

(*c*) For a person in Class 3, one-fifth of the number of days for which he was employed in lumbering and logging and in any insurable employment, during the period of twelve months specified for that class in section eighty-seven B; but no supplementary benefit shall be paid in respect of any person in Class 3 in respect of any period after the thirty-first day of March, nineteen hundred and fifty-one;

(*d*) For a person in Class 4, one-fifth of the number of days for which he was employed in the employment that was made insurable and in other insurable employment, subsequent to the thirty-first day of March immediately preceding the day on which he makes a claim for supplementary benefit.

(2) Any supplementary benefit paid under this part to any person shall not be taken into account for the purposes of section thirty of this Act.

(3) Any day of unemployment:

(*a*) Before the commencement of the supplementary benefit period but after the thirtieth day of November immediately preceding that period, or

(*b*) Within the thirty days immediately preceding the coming into force of this part,

may be substituted for any of the eight days mentioned in paragraph (*b*) of sub-section one of section thirty-five.

87E. Except as provided in this part, all the provisions of any other part of this Act applicable in respect of insurance benefit shall be applicable *mutatis mutandis* in respect of supplementary insurance benefit.

87F. (1) The Minister of Finance shall credit to the Fund from time to time, out of moneys provided by Parliament, an amount equal to the supplementary benefit paid to persons of Class 3 and Class 4.

(2) The Minister of Finance shall also credit to the Fund in like manner, after the thirty-first day of March, nineteen hundred and fifty-two, an amount equal to the amount by which the aggregate of the supplementary benefit paid under this part for persons in Class 1 and Class 2 before the thirty-first day of March, nineteen hundred and fifty-two, exceeds the portion of the aggregate of

(*a*) That part of the combined unemployment insurance contributions of the employers and of the employed persons representing twelve cents for each week, received from the sale of unemployment insurance stamps or paid otherwise under this Act, and

(*b*) One-fifth of the amount specified in paragraph (*a*) that was credited to the Fund under sub-section two of section seventy-seven of this Act after the amendment of sub-section two of section seventeen of this Act in the year nineteen hundred and fifty, but before the first day of April, nineteen hundred and fifty-two.

NATIONAL DEFENCE ACT[1]

(Assented to 30 June 1950)

Note. Under the new National Defence Act, 14 George VI, chap. 43, s. 190, a Court Martial Appeal Board is set up to review the legality of a finding of guilty. Under s. 196, a person whose appeal has been dismissed in whole or in part by the Court Martial Appeal Board may, where there has been dissent in the Board, appeal to the Supreme Court of Canada with leave of the Attorney-General of Canada.

COURT MARTIAL APPEAL BOARD

190. (1) There shall be a Court Martial Appeal Board which shall hear and determine all appeals referred to it under this part.

(2) The Court Martial Appeal Board shall consist of the following members:

(*a*) A Chairman, who shall be a judge of the Exchequer Court or of a superior court of criminal jurisdiction as that expression is defined in the Criminal Code; and

(*b*) Two or more other persons, each of whom shall be a judge or retired judge of the Exchequer Court or of a superior court of criminal jurisdiction as that expression is defined in the Criminal Code, or a barrister or advocate of not less than five years' standing, all of whom shall be appointed by the Governor in Council.

(3) The Chairman of the Court Martial Appeal Board shall preside at sittings of the Board, unless he appoints another member to be the presiding member in his place.

(4) The Minister may require the Court Martial Appeal Board to sit and hear appeals at any place or places, and the Chairman of the Board shall arrange for sittings and hearings accordingly.

(5) Three members of the Court Martial Appeal Board shall be a quorum, and the decision on any appeal shall be determined by the vote of the majority of the members present, and in the event of an equality of votes, the Chairman or other presiding member shall have a second or casting vote.

(6) Where an appeal has been wholly or partially dismissed by the Court Martial Appeal Board, and there has been dissent in the Board, the appellant shall forthwith be informed of that dissent.

(7) The Court Martial Appeal Board may hear evidence, including new evidence, as it may deem expedient, and the Board may sit in camera or in public, and for the performance of its duties shall have all of the powers vested in commissioners under Part I of the Inquiries Act.

(8) The members of the Court Martial Appeal Board shall be paid such fees and allowances as may be prescribed by the Governor in Council.

[1]English text in *Statutes of Canada, 1950, 14 George VI*, Vol. I, pp. 469–566. Text and note received through the courtesy of the Deputy Minister of Justice, Ottawa.

APPEAL TO SUPREME COURT OF CANADA

196. (1) A person whose appeal has been wholly or partially dismissed by the Court Martial Board may, where there has been dissent in the Board, appeal to the Supreme Court of Canada with leave of the Attorney-General of Canada.

(2) An application for leave to appeal under sub-section one shall be delivered to the Attorney-General of Canada within thirty days of notice to the appellant of the decision of the Court Martial Appeal Board.

(3) The Supreme Court of Canada shall, in respect of the hearing and determination of an appeal under this section, have the same powers, duties and functions as the Court Martial Appeal Board has under this Act, and sections one hundred and ninety-one to one hundred and ninety-four shall apply with such adaptations and modifications as the circumstances may require.

CANADIAN CITIZENSHIP ACT OF 1946
as amended in 1950[1]
(Assented to 30 June 1950)

Note. Consideration has been given in the amendment made in 1950 to permit the Minister of Citizenship and Immigration to grant resumption after loss of Canadian citizenship.

6. (*as amended 30 June 1950*) (1) A person who is a Canadian citizen under paragraph (*b*) of section four or under paragraph (*b*) of sub-section one of section five ceases to be a Canadian citizen upon the expiration of one year after he attains the age of twenty-one years unless, after attaining that age and before the expiration of the said year,

(*a*) He asserts his Canadian citizenship by a declaration of retention thereof, registered in accordance with the regulations; and

(*b*) Being a national or citizen of a country other than Canada, he files in accordance with the regulations a declaration renouncing the nationality or citizenship of that country.

(2) A person who has ceased to be a Canadian citizen by virtue of sub-section one may, with the permission of the Minister in any case, file a declaration of resumption of Canadian citizenship and, where he comes within paragraph (*b*) of sub-section one, a declaration of renunciation, and he thereupon again becomes a Canadian citizen.

[1]English text in *Statutes of Canada, 1950, 14 George VI*, Vol. I, pp. 353–365. Text and note received through the courtesy of the Deputy Minister of Justice, Ottawa.

DOMINION ELECTIONS ACT 1938
as amended 1944, 1948 and 1950[1]
(Assented to 30 June 1950)

QUALIFICATIONS AND DISQUALIFICATIONS OF ELECTORS

14 (*as amended 1948 and 1950*).

(2) The following persons are disqualified from voting at an election and incapable of being registered as electors and shall not vote nor be so registered; that is to say:

[(*a*)–(*d*) *Unchanged.*]

[(*e*) *Repealed.*]

[*Former text of (e):*
Every Esquimau person, whether born in Canada or elsewhere.]

(*f*) (*as amended 1950*) Every Indian, as defined in the *Indian Act*, ordinarily resident on a reserve, unless,

(i) He served in the naval, army or air forces of Canada in World War I or World War II, or

(ii) He executed a waiver, in a form prescribed by the Minister of Citizenship and Immigration, of exemptions under the Indian Act from taxation on and in respect of personal property, and subsequent to the execution of such waiver a writ has issued ordering an election in any electoral district.

[1]English text in *Statutes of Canada, 1950, 14 George VI*, Vol. I, pp. 401–402. Text received through the courtesy of the Deputy Minister of Justice, Ottawa. The complete text of section 14 of the Dominion Elections Act 1938, as amended up to 1948, is reproduced in *Yearbook on Human Rights for 1948*, p. 290. See also the summary of the amendments of 1948, *ibid.*, p. 24.

[*Former text of (f):*
Every Indian person ordinarily resident on an Indian reservation who did not serve in the naval, military or air forces of Canada in the war of 1914–1918 or in the war that began on the tenth day of September 1939 (for the purpose of this provision "Indian" means any person wholly or partly of Indian blood who is entitled to receive any annuity or other benefit under any treaty with the Crown).]

(4) (*as amended 1950*) Notwithstanding anything in this Act, a woman who is the wife of an Indian, as defined in the Indian Act, who served in the naval, army or air forces of Canada in World War I or World War II, is entitled to have her name included in the list of electors prepared for the polling division in which she ordinarily resides, and is entitled to vote in such polling division, if such a woman is otherwise qualified as an elector.

[*Former text of sub-section* (4):
Notwithstanding anything in this Act, a woman who is the wife of an Indian person, as defined in paragraph (*f*) of sub-section two of this section, which Indian person has served in the naval, military or air forces of Canada in the war of 1914–1918, or in the war that began on the tenth day of September, nineteen hundred and thirty-nine, is entitled to have her name included in the list of electors prepared for the polling division in which she ordinarily resides and is entitled to vote in such polling division, if such woman is otherwise qualified as an elector.]

Provincial Statutes[1]

Newfoundland

Further to its recent entry into the Confederation, this province has enacted several acts of interest herein, and Newfoundland, in doing so, was standardizing its legislation so that, it is presumed, it might follow in line with that of the other Canadian provinces generally.

The Workmen's Compensation Act 1950

An Act respecting compensation given to workmen for injuries suffered in the course of their employment.

The Trade Union Act, 1950

An Act respecting labour legislations similar to those already in force in the other provinces.

The Labour Relations Act, 1950

An Act respecting the right of employees to organize and provide for mediation and conciliation in industrial disputes.

Prince Edward Island

The Adoption Act, chap. 2, 1950

An Act respecting general procedure to be followed in connexion with the adoption of children and providing also for social and welfare norms with regard to adopted children.

The Children's Protection Act, chap. 6, 1950

An Act respecting the protection of neglected, dependent and delinquent children.

[1]Texts and summaries received through the courtesy of the Deputy Minister of Justice, Ottawa.

Nova Scotia

The Child Welfare Act, chap. 2, 1950

An Act to amend and consolidate chap. 166 of the Revised Statutes 1923.

The Children's Protection Act (Enacted under the name of Child Welfare Act)

An Act respecting the appointment of a director of child welfare and providing for certain powers and jurisdiction to all children's aid societies incorporated with the object of protecting children.

New Brunswick

The Municipal Employees Pension Act

An Act providing that a municipality may by by-law either adopt a pension plan for its permanent employees or enter into a contract with an insurer for the payment by this insurer of the pensions or allowances provided for in the plan or also providing for the establishment of a superannuation fund and for contributions by the permanent employees to this fund.

Quebec

The Courts of Justice Act (Revised Statutes, 1941, chap. 15 as amended 1950, chap. 10, 1950)

An Act respecting the establishment of the Social Welfare Court.

This court will be authorized to take cognizance of cases of juvenile delinquents within the meaning of the Juvenile Delinquents Act 1929 of the Statutes of Canada, 19–20 George V, chap. 46. Its jurisdiction is also related to the Youth Protection Schools, Quebec

Old Age Pensions, Hospitalization of Indigents, Confinement and Discharge of Insane Persons, Adoption of Children, etc.

The Public Order Act

An Act respecting public order and prohibiting certain employees of municipalities from joining any syndicate other than one formed exclusively of employees of the same category and in the service of the same municipal corporation.

Ontario

The Labour Relations Act, 1950

An Act respecting the right of any person to join a trade union of his own choice and dealing also with industrial disputes.

The Silicosis Act, 1929 (as amended 1930 and 1950)
Health certificate

Section 2 of this Act provides that no employee without a health certificate can be employed in an industrial process involving a silica exposure.

"2. Subject to section 5 and the regulations, no person shall be employed in an industrial process involving a silica exposure as defined by the regulations unless he is the holder of a health certificate issued under the regulations."

Saskatchewan

The Mental Hygiene Act, 1950

An Act respecting mentally defective, mentally ill and other handicapped persons.

The One Day's Rest in Seven Act, 1950, chap. 93

An Act providing for one day of rest in seven for certain employees.

Period of Rest

"5. Except as hereinafter mentioned, every employee shall be entitled to at least twenty-four consecutive hours of rest in every seven days, which hours of rest shall, whenever possible, be on a Sunday; and no employer shall require or suffer or permit an employee to work for him without such period of rest."

Alberta

The Alberta Labour Act, 1947 (as amended 1950)

An Act respecting union dominated by employer.

New sub-section (10) added immediately after sub-section 9:

"(10) Notwithstanding anything in this part, any trade union or organization of employees, the administration, management or policy of which is, in the opinion of the Board,

"(a) Influenced by an employer so its fitness to represent employees for the purpose of collective bargaining is impaired; or

"(b) Dominated by an employer".

British Columbia

The Indian Inquiry Act, 1950

An Act authorizing an inquiry into the status and rights of Indians in the Province.

This inquiry is to be conducted by a Provincial Advisory Committee on Indian Affairs. Section 4 (5) and section 5 read as follows:

"4 (5) It shall be the duty of the Provincial Advisory Committee on Indian Affairs:

"(*a*) To collect and correlate information relating to Indians resident in the Province;

"(*b*) To collaborate with all other departments of the Government of the Province and of Canada in the compilation of information relating to Indians;

"(*c*) To study, investigate, and inquire into such questions relating to the civil rights of Indians and other matters affecting Indians as may be designated from time to time by the Lieutenant-Governor in Council;

"(*d*) To submit from time to time to the Lieutenant-Governor in Council reports of the investigations, studies, and inquiries made by the Committee, together with such recommendations as to the Committee seem proper;

"(*e*) To report their findings and recommendations to the Legislature.

"5. The Provincial Advisory Committee on Indian Affairs shall have the same power to require the attendance of witnesses and to require any person to bring and produce before the Committee all documents, writings, books, deeds, and papers in his possession, custody, or power, touching or in any wise relating to or concerning the subject-matter of any inquiry before the Committee as is conferred by the 'Public Inquiries Act' upon Commissioners appointed under that Act."

Yukon

An Ordinance to establish annual holidays, 1950.

CEYLON

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS[1]

Legislation

The Parliament of Ceylon, in 1950, passed the following acts which are relevant to human rights:

Citizenship Amendment Act No. 40 of 1950. Extracts of this Act will be found in this *Yearbook*.

Indian and Pakistani Residents (Citizenship) (Amendment) Act, No. 37 of 1950, assented to on 7 December 1950[2] The Act amends the principal Act (No. 3 of 1949) by widening the definition of "continuity of residence" and of "Indian and Pakistani resident". The amendments have retroactive effect and are deemed to have come into force on the same date as the principal Act; previous orders of refusal of any application for registration as citizens may be revoked and previous or new applications decided on the basis of the modified provisions.

Industrial Disputes Act No. 43 of 1950. Extracts from this Act are published in the present *Yearbook*.

Judicial Decisions

During the year 1950, no judicial decisions were rendered which may be regarded as constituting important developments in the field of human rights.

[1] This note is based on texts and information received through the courtesy of the Permanent Secretary of the Ministry of External Affairs, Colombo.

[2] The text of this Act is available at the Government Publications Bureau, Colombo.

CITIZENSHIP AMENDMENT ACT[1]
No. 40 of 1950
(Assented to 14 December 1950)

PART II

CITIZENSHIP BY DESCENT

...

8. (1) Any person who ceases under section 18 or section 19 to be a citizen of Ceylon by descent may at any time thereafter make application to the Minister for a declaration that such person has resumed the status of a citizen of Ceylon by descent; and the Minister may make the declaration for which the application is made—

(*a*) If that person renounces citizenship of any other country of which he is a citizen, in accordance with the law in force in that behalf in that other country; and

(*b*) If that person is, and intends to continue to be, ordinarily resident in Ceylon.

(2) Where a declaration is made in relation to any person under sub-section (1), that person shall, with effect from such date as may be specified in the declaration, again have the status of a citizen of Ceylon by descent.

(3) Any person who makes or has made an application under sub-section (1) may, in his application or by subsequent letter, make a request for the grant to any minor child of that person of the status of a citizen of Ceylon by descent; and if in any such case a declaration under sub-section (1) is made in relation to that person, each minor child specified in the declaration shall have the status of a citizen of Ceylon by descent.

(4) The Minister may refuse to make a declaration under sub-section (1) in relation to any person on grounds of public policy; and such refusal shall be final and shall not be contested in any court, but without prejudice to the power of the Minister subsequently to make such a declaration in relation to that person.

(5) The Minister may in his discretion exempt any person from the requirements of paragraph (*a*) of sub-section (1) of this section, and make a declaration under that sub-section notwithstanding that such person does not comply with the said requirements.

...

[1] English text in: Parliament of Ceylon, 4th session 1950, *Citizenship Amendment Act No. 40 of 1950*, Ceylon Government Press, Colombo, 1950. Text received through the courtesy of the Permanent Secretary of the Ministry of External Affairs, Colombo. The provisions of the principal Act which are not affected by this Act are omitted. The principal Act is reproduced in *Yearbook on Human Rights for 1948*, pp. 31–34.

PART III

CITIZENSHIP BY REGISTRATION

11. (1) This section shall apply to any applicant for registration as a citizen of Ceylon who has the following qualifications:

(a) That the applicant is of full age and of sound mind;

(b) That the applicant—

(iii) is a person, whose father was a citizen of Ceylon by descent, and who would have been a citizen of Ceylon under sub-section (2) of section 5[1] if his birth had been registered in accordance with the provisions of that sub-section, or

(iv) is a person whose father, having been a citizen of Ceylon by descent whether at or before the time of the birth of that person, ceased under section 19 to be a citizen of Ceylon; . . .

[Sub-section (2) provides that a person with the qualifications prescribed therein may be registered on his making an application to the Minister, unless the Minister decides to disallow such application on grounds of public policy.]

PART IV

LOSS OF CITIZENSHIP

. . .

19. (1) Where a person born before the appointed date is a citizen of Ceylon by descent and is also on that date a citizen of any other country, that person shall:

(*a*) On the thirty-first day of December, 1952, or

(*b*) On the day on which he attains the age of twenty-two years, whichever day is in his case the later, cease to be a citizen of Ceylon, unless before that day he renounces citizenship of that other country in accordance with the law therein in force in that behalf and notifies such renunciation to a prescribed officer.

(2) Where a person is a citizen of Ceylon by descent and that person, by operation of law, is at the time of his birth or becomes thereafter, also a citizen of any other country, that person shall—

(*a*) On the thirty-first day of December, 1952, or

(*b*) On the day immediately succeeding the date of the expiration of a period of twelve months from the date on which he so becomes a citizen of that other country, or

(*c*) On the day on which he attains the age of twenty-two years, whichever day is in his case the latest, cease to be a citizen of Ceylon, unless before that day he renounces citizenship of that other country in accordance with the law therein in force in that behalf and notifies such renunciation to a prescribed officer.

(3) A person who, under sub-section (2) of section 5,[1] is a citizen of Ceylon by descent but whose father is or was a citizen of Ceylon by registration, shall, on the day on which he attains the age of twenty-two years, cease to be a citizen of Ceylon, unless before that day he transmits to the Minister in the prescribed manner and form a declaration of retention of citizenship of Ceylon.

(4) In the case of any person to whom the provisions of any of the preceding sub-sections apply, the Minister may in his discretion direct that those provisions shall apply in that case subject to the modification that the reference therein to the age of twenty-two years shall be construed as a reference to such higher age as may be specified in the direction.

(5) A person who is a citizen of Ceylon by descent shall cease to be a citizen of Ceylon if he voluntarily becomes a citizen of any other country.

(6) Where a person who, having been exempted from the requirements of paragraph (*a*) of sub-section (1) of section 8, resumes the status of a citizen of Ceylon by descent by virtue of a declaration under that sub-section, that person shall, on the day immediately succeeding the date of the expiration of a period of three months (or such longer period as the Minister may for good cause allow) from the date of the declaration, cease to be a citizen of Ceylon, unless he earlier complies with the requirements of the aforesaid paragraph (*a*).

20. (1) A person who is a citizen of Ceylon by registration shall cease to be a citizen of Ceylon if he voluntarily becomes a citzen of any other country.

(2) Where a person who is registered as a citizen of Ceylon thereafter becomes, by operation of law, also a citizen of any other country, that person shall:

(*a*) On the day immediately succeeding the date of the expiration of a period of three months (or such longer period as the Minister may for good cause allow) from the date on which he so becomes a citizen of that other country, or

(*b*) On the day on which he attains the age of twenty-two years, whichever day is in his case the later, cease to be a citizen of Ceylon, unless before that day he renounces citizenship of that other country in accordance with the law therein in force in that behalf and notifies such renunciation to a prescribed officer.

(3) Where any person,

(*a*) who, having been exempted from the provisions of sub-section (2) of section 14,[2] is registered under this Act as a citizen of Ceylon; or

[1] See *Yearbook on Human Rights for 1948*, p. 32.

[2] See *Yearbook on Human Rights for 1948*, p. 33.

(*b*) who is registered under the Indian and Pakistani Residents (Citizenship) Act, No. 3 of 1949,[1] as a citizen of Ceylon,

continues after such registration to be a citizen of any other country, that person shall—

(i) on the day immediately succeeding the date of the expiration of a period of three months (or such longer period as the Minister may for good cause allow) from the date of his registration as a citizen of Ceylon, or

(ii) on the day on which he attains the age of twenty-two years, whichever day is in his case the later, cease to be a citizen of Ceylon, unless before that day he renounces citizenship of that other country in accordance with the law therein in force in that behalf and notifies such renunciation to a prescribed officer.

[1] See "Note on the Development of Human Rights", p. 44 of this *Yearbook*.

20A. In any case where any person purports to renounce citizenship of any country for the purpose of acquiring, retaining or resuming, under any provision of this Act, the status of a citizen of Ceylon, and it is found at any time that the renunciation was not in accordance with or not effective under the law in force in that behalf in such other country, that person shall be deemed never to have acquired, retained or resumed, under that provision, the status of a citizen of Ceylon; and if the Minister makes a declaration to that effect in any such case, the declaration shall be final and shall not be contested in any court.

...

PART V

MISCELLANEOUS

[The definition of "appropriate embassy or consulate" contained in Section 26 (1)[2] of the principal Act has been deleted by the present amending Act.]

[2] See *Yearbook on Human Rights for 1948*, p. 34.

INDUSTRIAL DISPUTES ACT[1]

No. 43 of 1950

(Assented to 16 December 1950)

PART II

FUNCTIONS OF THE COMMISSIONER[2] AND CIRCUMSTANCES IN WHICH INDUSTRIAL DISPUTES WILL BE REFERRED FOR SETTLEMENT BY CONCILIATION OR BY ARBITRATION OR BY AN INDUSTRIAL COURT

2. Where upon notice given to him or otherwise, the Commissioner is satisfied that any industrial dispute exists or is apprehended, it shall be the function of the Commissioner to make such inquiries into the matters in dispute, and to take such other steps, as he may think necessary with a view to promoting a settlement of the dispute, whether by means referred to in this Act or otherwise.

3. Where any industrial dispute exists or is apprehended in any industry, and

(*a*) Arrangements for the settlement of disputes in that industry have not been made in pursuance of any agreement between organizations representative respectively of employers and workmen engaged in that industry; or

(*b*) The dispute is not referred for settlement by means of any such arrangements which have been so made; or

(*c*) There has been a failure to obtain a settlement of the dispute by means of any such arrangements which have been so made,

then the Commissioner,

(i) If he is of opinion after inquiry made in that behalf that the dispute is likely to be settled by conciliation, may endeavour to settle such dispute by conciliation, or refer the dispute to an authorized officer for such settlement; or

(ii) If he is not of such opinion or if there has been a failure to effect a settlement by conciliation, and if both the parties to the dispute or the representatives of each party to the dispute consent, may by an order in writing, refer the dispute for settlement by arbitration to a person nominated jointly by the parties, or in the absence of such nomination to the district judge of the district in which the dispute exists or is apprehended.

4. Where any industrial dispute cannot be referred for arbitration under paragraph (ii) of section 3 by reason of the absence of the consent required by that

[1] English text in: Parliament of Ceylon, 4th Session 1950, *Industrial Disputes Act No. 43 of 1950*, Ceylon Government Press, Colombo. Text received through the courtesy of the Permanent Secretary of the Ministry of External Affairs, Colombo.

[2] According to Section 47 "Commissioner" means the person for the time being holding the office of Commissioner of Labour and includes:

(*a*) Any person for the time being holding the office of Deputy or Assistant Commissioner of Labour; and

(*b*) In respect of any power, duty or function of the Commissioner under this Act, any person authorized in writing by the Commissioner to exercise such power, perform such duty or discharge such function.

section, the Minister may, by an order in writing, if the dispute is in an essential industry, or if he is satisfied that the dispute is likely to prejudice the maintenance or distribution of supplies or services necessary for the life of the community, or if he thinks that it is necessary or expedient so to do, refer the dispute for settlement by an industrial court.

PART III

COLLECTIVE AGREEMENTS, SETTLEMENTS, AWARDS AND EFFECTS THEREOF

[Part III deals in sub-division (*a*) with collective agreements, their definition, transmission to the Commissioner, publication and date of coming into force, effect and termination. The effect of certain collective agreements on employers not referred to in these agreements as parties to which these agreements relate is set forth in section 10.]

10. (1) Where

(*a*) The parties to a collective agreement are, firstly, a trade union or two or more trade unions consisting of employers in any industry in any district, and secondly a trade union or two or more trade unions consisting of workmen in that industry in that district; and

(*b*) The total number of such employers, who are members of the union or unions for the time being bound by the agreement, is not less than the prescribed percentage of the total number of employers engaged in that industry in that district; and

(*c*) The total number of such workmen, who are members of the union or unions for the time being bound by the agreement, is not less than the prescribed percentage of the total number of workmen engaged in that industry in that district; and

(*d*) Such other conditions, if any, as may be prescribed are complied with in the case of the parties to the collective agreement,

then, every employer in that industry in that district who is not bound by that agreement as provided in section 8 shall observe either the terms and conditions set out in the agreement (hereinafter referred to as the "recognized terms and conditions") or terms and conditions which are not less favourable to workmen than the recognized terms and conditions.

Provided that the duty to observe such terms and conditions shall not so arise until the date of the publication of that agreement in the *Gazette* or such later date, if any, as may be specified therein as the date on which it shall come into force.

In the computation, for the purposes of this subsection, of the number of employers or workmen who are members of a trade union, no account shall be taken of the membership of any trade union, unless that union had been registered under the Trade Unions Ordinance[1] at least one year before the date of the signature of the agreement and unless the annual subscription payable by a member of such union is not less than one rupee.

(2) For the purposes of sub-section (1), terms and conditions of employment of workmen in any industry in any district shall not be deemed to be less favourable than the recognized terms and conditions, if they are in accordance with the terms and conditions of employment applicable under—

(*a*) Any subsequent settlement by conciliation effected by the Commissioner or by an authorized officer under this Act in any industrial dispute concerning workmen in the same or a similar industry in the district; or

(*b*) Any subsequent award upon arbitration made by a district judge under this Act in any industrial dispute concerning workmen in the same or a similar industry in that district; or

(*c*) The Wages Boards Ordinance, No. 27 of 1941, or any subsequent decision made under that Ordinance, in respect of similar matters.

(3) If any question arises as to the nature, scope or effect of the recognized terms and conditions in any industry in any district or as to whether an employer is observing the recognized terms and conditions or is observing terms and conditions which are not less favourable than the recognized terms and conditions, that question shall be decided by the Commissioner, subject to an appeal within the prescribed time and in the prescribed manner to the industrial court, and the decision of that court on that question shall be final, so, however, that in making any such decision the Commissioner and the court shall have regard to any collective agreement, any settlement by conciliation, any award made under this Act, or any decision of a Wages Board under the Wages Boards Ordinance, No. 27 of 1941, relating to the same industry or a similar industry in the same district or a similar district.

[Part III deals in sub-division (*b*) with the settlement of disputes by conciliation, the duties and powers of the Commissioner of Labour or an authorized officer for purposes of conciliation, procedural matters, the date on which a settlement comes into force, its duration, effect and termination. Sub-division (*c*) of Part III deals with the settlement of disputes by arbitration, the duties and powers of the arbitrator, the publication of an award and the date on which it comes into force, its duration, effect and termination.]

PART IV

INDUSTRIAL COURT

22. (1) For the purposes of this Act, the Governor-General may from time to time appoint a panel of not less than five persons, from which industrial courts shall be constituted as hereinafter provided.

No person other than a person who has been or is a Judge of the Supreme Court shall be appointed by

[1] Provisions concerning the registration of trade unions (Trade Union Ordinance No. 14 of 1935, 1938 Revision) as amended in 1948 are published in *Yearbook on Human Rights for 1948*, pp. 34–35.

the Governor-General under the preceding provisions of this section to be a member of such panel.

(2) Every person appointed under sub-section (1) shall, unless he earlier vacates his office, hold office for such period not exceeding three years as the Governor-General may determine at the time of the appointment. Any person vacating office by effluxion of time shall be eligible for reappointment.

(3) The Governor-General shall nominate one of the members of the panel appointed under sub-section (1) to be the chairman of the panel.

(4) For the purposes of constituting an industrial court to exercise any power, perform any duty, or discharge any function, under this Act, the chairman of the panel shall, according as he may in his discretion determine, select from the panel either one person or three persons to constitute the industrial court.

(5) Where an industrial court consists of three persons, the chairman of the panel, or, if he is not a member of the court, such member as may be nominated by the chairman, shall be the president of the court.

(6) Regulations may be made prescribing the form and manner in which industrial disputes, applications and questions may be referred under this Act to industrial courts, and in which appeals under this Act may be referred to such courts.

23. Every order of the Minister under section 4 referring a dispute for settlement by an industrial court shall be accompanied by a statement prepared by the Commissioner setting out each of the matters which to his knowledge is in dispute between the parties.

Nothing in the preceding provisions of this section shall be deemed to be in derogation of the power of the industrial court to which the dispute is referred to admit, consider and decide any other matter which is shown to the satisfaction of the court to have been a matter in dispute between the parties prior to the date of the aforesaid order.

24. (1) It shall be the duty of an industrial court to which any dispute, application or question or other matter is referred or made under this Act, as soon as may be, to make all such inquiries and hear all such evidence, as it may consider necessary, and thereafter to take such decision or make such award as may appear to the court just and equitable.

(2) Subject to such regulations as may be made under section 39 (1) (*f*) of this Act in respect of procedure, an industrial court conducting an inquiry under this part may lay down the procedure to be observed by such court in the conduct of the inquiry.

(3) Reference shall be made in every award of an industrial court to the parties and trade unions to which, and the employers and workmen to whom, such award relates.

(4) Where an industrial court consists of more than one person, the opinion on any matter of the majority of the members of the court shall prevail, and shall be deemed to be the decision of the court on that matter.

26. Every award of an industrial court made in an industrial dispute and for the time being in force shall, for the purposes of this Act, be binding on the parties, trade unions, employers and workmen referred to in that award in accordance with the provisions of section 24 (3); and the terms of the award shall be implied terms in the contract of employment between the employers and workmen bound by the award.

27. Any party, trade union, employer or workman, bound by the award of an industrial court, who desires that such award be set aside or replaced by a new award, or that the terms and conditions be modified, or that any new terms or conditions be inserted in the award, may make application in that behalf to the Minister; and the Minister shall thereupon refer the application for consideration by an industrial court:

Provided, however, that—

(*a*) Where any application in respect of any award is made at any time within the period of twelve months from the date on which the award came into force... the application shall not be entertained by the Minister unless it is supported by a certificate under the hand of the Commissioner to the effect that a change in the economic and labour conditions warrants the reconsideration of the findings in that award before the expiry of that period;

(*b*) Where a trade union is, or is included in, a party bound by an award, no application in respect of that award made independently of that trade union by any employer or workman who is a member of that trade union, shall be entertained by the Minister.

28. (1) An industrial court to which an application under section 27 in relation to any award is referred may in its decision—

(*a*) Confirm the award;

(*b*) Set aside the award;

(*c*) Set aside the award and make a new award in place thereof; or

(*d*) Vary or modify the award in such manner as may appear necessary.

(2) Reference shall be made, in every new award under sub-section (1) and in every decision under that sub-section varying or modifying any award, to the parties and trade unions to which, and the employers and workmen to whom, such new award or such decision relates.

29. Every decision given under section 28 shall be transmitted to the Commissioner, who shall forthwith cause the decision to be published in the *Gazette*.

31. (1) Whenever an industrial court consists of more than one person and there is a vacancy in such court, the court may act notwithstanding such vacancy.

(2) No act, proceeding or determination of an industrial court shall be called in question or invalidated by reason of any vacancy in the court.

PART V

ESSENTIAL INDUSTRIES[1]

32. (1) No employer shall commence, or continue, or participate in, or do any act in furtherance of, a lockout in connexion with any industrial dispute in any essential industry, unless written notice of intention to commence the lockout had, at least twenty-one days before the date of the commencement of the lockout, been given in the prescribed manner and form by the employer or on his behalf to the workmen who will be affected by the lockout.

(2) No workman shall commence, or continue, or participate in, or do any act in furtherance of, any strike in connexion with any industrial dispute in any essential industry, unless written notice of intention to commence the strike had, at least twenty-one days before the date of the commencement of the strike, been given in the prescribed manner and form by such workman or on his behalf to his employer.

[1] According to Section 47, "essential industry" means any industry which is declared, by order made by the Minister and published in the *Gazette*, to be essential to the life of the community.

PART VI

GENERAL

[Part VI contains general provisions concerning decisions which may be contained in an award, and provisions on evidence and on regulations which may be made by the Minister (and which have to be approved by the Senate and the House of Representatives), and deals with offences and punishments under this Act. Section 35 provides that an award of an arbitrator or an industrial court shall not be less favourable than existing law.]

35. Where any industrial dispute referred to any arbitrator or industrial court involves questions as to wages, or as to hours of work, or otherwise as to the terms or conditions of or affecting employment, which are regulated by any written law other than this Act, the court or arbitrator shall not make any award the terms of which are less favourable than the provisions of such law.

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CHILE

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS[1]

No laws were adopted during 1950 affecting to a notable extent the existing legislation on human rights, nor were any court decisions rendered which constitute important developments in the field of human rights.

[1] Information received through the courtesy of Mr. Daniel Schweitzer, attorney-at-law, Santiago.

COLOMBIA

NOTE ON THE CONSTITUTIONAL SITUATION AND THE DEVELOPMENT OF HUMAN RIGHTS

On 9 November 1949, the President of the Republic declared by two decrees that the public order had been disturbed and proclaimed a state of national emergency.[1] By another decree, issued on 7 July 1950,[2] the President declared that the causes of the disturbance had not disappeared and that the suspension of the meetings of the National Congress would continue for the time being.

Decree No. 260, of 25 January 1950, modified by Decree No. 2660, of 5 August 1950, regulates the workers' participation in benefits of enterprises.[3] Decree No. 2474, of 19 July 1948,[4] laid down in principle the obligation of employers to secure the participation of workers in the benefits of their enterprises if these benefits exceeded a certain percentage of the capital invested. The decree of 1950 determines which enterprises are under obligation to comply with the provisions of the decree of 1948, the ways and means by which such obligations are to be met, and the administrative control of this matter.

Decree No. 2562, of 31 July 1950,[5] implements a law of 1946 which provided in principle for obligatory occupational accident and sickness insurance; the decree of 1950 contains special provisions for the application of this law.

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[1] See the "Note on the Constitutional Situation and the Development of Human Rights" in *Yearbook on Human Rights for 1949*, p. 38.

[2] Published in *Diario Oficial* 27363, of 17 July 1950.

[3] See *Diario Oficial* 27229, of 2 February 1950, and 27402, of 5 August 1950.

[4] Reproduced in *Yearbook on Human Rights for 1948*, pp. 44–46.

[5] Published in *Diario Oficial* 27429, of 25 October 1950.

COSTA RICA

LEGISLATION

ALIENS AND NATURALIZATION ACT[1]

of 29 April 1950

Art. 1. The following are natural-born Costa Ricans:

1. The child of a Costa Rican father or mother born in the territory of the Republic;

2. The child of a natural-born Costa Rican father or mother who is born abroad and is registered as Costa Rican in the register of births, marriages and deaths at the request of the Costa Rican parent, during his minority, or at his own request at any time before reaching the age of twenty-five years;

3. The child of foreign parents who is born in Costa Rica and is registered as Costa Rican at the request of either of his parents during his minority, or at his own request at any time before reaching the age of twenty-five years; and

4. The child of unknown parents who is found in Costa Rica.

Art. 2. The following are Costa Rican by naturalization:

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5. An alien woman who, on marriage with a Costa Rican, loses her nationality or declares her intention to become a Costa Rican;

. . .

Art. 4. Loss of Costa Rican nationality does not extend to the spouse or the children, who will continue to enjoy it so long as they do not lose it under article 16 of the Political Constitution;[2] acquisition of Costa Rican nationality does not extend to the spouse who retains his or her own nationality, unless he or she applies for naturalization under this Act. Acquisition of Costa Rican nationality by the father or mother extends to the children who are minors and were domiciled in Costa Rica at the time when the parent or parents acquired Costa Rican nationality, and accordingly the relevant document drawn up before the Registrar of Births, Marriages and Deaths must state the first names and surnames of the children, the place and date of their birth and their domicile. Upon attaining majority and at any time before they reach the age of twenty-five years they are entitled to appear before the Registrar of Births, Marriages and Deaths and renounce Costa Rican nationality. If they do not so renounce it within that period they remain naturalized Costa Ricans.

Art. 6. If under the laws of the country of which the husband is a national the Costa Rican wife cannot acquire his nationality, she shall retain her Costa Rican nationality unaltered; if on the contrary she loses her nationality under the laws of his country, she may, if the marriage is dissolved and she returns to Costa Rica, resume her nationality as a natural-born or naturalized Costa Rican, whichever was her status before the marriage. In any case, if the option is in her choice, a Costa Rican woman should clearly state in the marriage document what her future nationality is to be, so that the Registrar may note it in the relevant entry in the marriage register. In order to reacquire Costa Rican nationality, it shall be sufficient for her to renounce the nationality of the husband, for which purpose an appearance shall be entered before the Registrar either by her in person or by a representative holding special powers of attorney granted in Costa Rica.

Art. 7. The child under the age of twenty years of a natural-born Costa Rican father or mother who has lost his nationality owing to some act of his Costa Rican parent may, upon attaining majority and before reaching the age of twenty-five years claim his status as a natural-born Costa Rican by making a declaration before the Registrar either in person or through a specially authorized representative, the declaration to be supported by suitable evidence. If he is resident in the republic and holds any public office at the time of attaining majority, he shall be considered a natural-born Costa Rican without further formality. The same shall apply to the child under age who, being born of a natural-born Costa Rican mother, has lost his nationality although having been recognized by his alien father.

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[1] Spanish text in *La Gaceta* No. 102, of 10 May 1950. English translation from the Spanish text by the United Nations Secretariat. The complete text of this Act appears in the *Legislative and Administrative Series* (*Child, Youth and Family Welfare*, 1950, Cos. 3) published by the United Nations.

[2] According to article 16 of the Constitution of Costa Rica of 7 November 1949, Costa Rican nationality is lost as a result of acquisition of another nationality or of voluntary absence from the country for six consecutive years. See also *Yearbook on Human Rights for 1949*, p. 40.

INJUNCTION PROCEEDINGS ACT[1]
of 2 June 1950

Art. 1. Applications for injunctions (*recurso de amparo*)[2] under article 48 of the Political Constitution[3] shall be dealt with in accordance with the provisions of this Act. Proceedings of *habeas corpus* and proceedings alleging unconstitutionality shall be governed by the legislation specially applicable to them.

Art. 2. Subject to the provisions of the preceding article, proceedings for an injunction may be instituted in order to maintain or restore the enjoyment of individual rights embodied in the Political Constitution.[4] Accordingly, such applications shall be allowed against any measure, act or decision and generally against any act or omission which has violated, is violating or threatens to violate any of the said rights.

Art. 3. Applications for injunctions are not allowable:

(*a*) Against legislative provisions;

(*b*) Against decisions and actions of the Supreme Court of Justice and other courts and judicial officers in matters within their competence;

(*c*) Against the execution of judicial decisions for which the administrative authorities are by statute responsible;

(*d*) Against decisions of other officials or bodies, so long as all possible remedies granted by statute against such decisions have not been exhausted, unless no ruling has been given on such remedies within fifteen days of their being applied for; and

(*e*) If the party aggrieved expressly consented or must be presumed to have consented to the act or omission which violates the individual right in question. There shall be a presumption of consent if more than eight days have elapsed since the violation or threat of violation of the right ceased and the party aggrieved has not applied for an injunction.

Art. 4. An application for an injunction may be made against any authority, official or employee, whether acting on his own initiative or on superior orders. If he is acting on superior orders, the application shall be deemed to be made against the superiors also.

Art. 5. Applications may be made by any natural or legal person who has been subjected to a violation, threat or omission owing to which he has suffered or is in imminent danger of suffering prejudice. A person holding a general or special power of attorney may apply in the name of his principal. A minor may make such an application in person if over the age of eighteen years; if he is under the age of eighteen years, the application may be made by his legal representative or the representative of the National Child Welfare Institute (Patronato Nacional de la Infancia).

If the party aggrieved is unable, *de jure* or *de facto*, to make the application, and has no legal representative, the application may be made, after a declaration of inability, by the spouse, ascendants, descendants or collateral relatives to the third degree, and in the absence of relatives the application may be made in his name by any citizen.

Art. 6. If the act or omission which violates or threatens to violate the right emanates from the President of the Republic, Ministers of the Government, governors of provinces, Army Commanders in cities or the Director-General of Police, the application shall be heard by the Plenary Court. The President of the court shall be responsible for the conduct of the proceedings, and twelve judges shall be required to form a quorum for the final decision. None of the twelve judges may be excused from attendance, or challenged, but if a just impediment exists they shall not participate in the proceedings.

In all other cases, application shall be heard by the judge of the criminal court in the district where the act or omission occurred, and if there be more than one such court, any one of them shall be competent to entertain the proceedings and give a decision. The judge may not be excused from or challenged in the proceedings; the judge shall not hear the case only if lawfully impeded from so doing, in which case the hearing of the application shall be transferred without further formalities to his official deputy under the Organic Judicature Act.

Art. 7. Applications for injunctions may be made and proceedings entertained at any time and on any day. Hearings on the application shall proceed *ex officio* and have priority over any other matter of a different nature, with the exception of *habeas corpus* proceedings. Unstamped paper may be used for the written documents and for procedural purposes, and applications may even be made by telegraph or radiotelegraphy. The time-limits are mandatory and not subject to

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[1] Spanish text in *La Gaceta* No. 135 of 18 June 1950. Text received through the courtesy of Dr. Fernando Fournier, Professor of International Law, San José. English translation from the Spanish text by the United Nations Secretariat. The Act was approved by the Legislative Assembly on 26 May 1950 and promulgated by the President of the Republic on 2 June 1950.

[2] The English translation from the Spanish title of this Act, "Ley de Amparo", does not cover the whole field in which the *recurso de amparo* is applicable and which is described in this Act. Since no corresponding legal term exists, the English translation of the title can be fully understood only after a reading of the text.

[3] See *Yearbook on Human Rights for 1949*, pp. 41–42.

[4] *Ibid.*, pp. 40–42.

extension, except in the cases referred to in the second paragraph of article 12; the parties who have indicated an office or residential address for notification shall receive notice only of the decision or of the ruling rejecting the application.

Art. 8. Applications for injunctions shall describe as clearly as possible the act or omission complained of, the right alleged to be threatened or violated, and the official or employee responsible for the threat or injury, and any incriminating evidence. It shall not be subject to any other formality and shall require no authentication. If the application is obscure or fails to fulfil the requirements indicated, the applicant shall be directed to remedy this defect, and if he fails to do so within three days, the application shall be dismissed outright.

Art. 9. When an application has been received it shall be dismissed outright if it appears from the contents thereof that the threat or injury complained of is not properly a subject for an application for injunction, or if it is covered by the terms of any of the paragraphs of article 3. An appeal lies before the court concerned against the ruling of the judge dismissing the application outright.

Art. 10. If there are no grounds for dismissing the application outright, a report shall be requested from the official or employee indicated as the author of the injury, threat or omission, the said report being transmitted by the most rapid means possible, including telegraph. If the report is not submitted within the required time, the application shall be receivable without further formalities, unless the court or the judge considers that some preliminary inquiry is necessary, though without prejudice to the liabilities incurred by the official who failed to render the report if, owing to the admission of the application, private interests or interests of the State have suffered prejudice.

Art. 11. The period allowed for making the report, to be indicated by the judge or court concerned whenever possible, shall be determined in accordance with the following rules:

(*a*) If the official or employee concerned is resident at the place where the court hearing the application is sitting, or in any other place within a radius of six kilometres thereof, the time allowed shall be twenty-four hours;

(*b*) If the place of residence of the official or employee responsible for reporting is served by a daily transport service or can communicate by telegraph or radiotelegraph with the place where the court dealing with the application is sitting, the time-limit shall be reckoned at the rate of twenty-four hours for every 50 kilometres of the distance between the two places; and

(*c*) If the residence of the person responsible for rendering the report is at a place difficult of access, the court concerned shall use its own discretion in fixing the time limit, which shall be stated in the document requesting the report.

In the capital cities of provinces and places within easy reach of the place where the court dealing with the application is sitting, officials or employees against whom an application has been made shall be under a duty to transmit the relevant documents, if any.

Art. 12. If it appears from the report that the charge is well founded, the application for an injunction shall be declared receivable. If the official or employee denies the charge, the Plenary Court shall appoint a judicial officer to conduct an inquiry, who shall hear verbal depositions by the applicant, by the injured party if not identical with the applicant, and by the official or employee, all of which he shall set forth in a memorandum and report back within forty-eight hours; this report shall serve as a basis for whatever ruling may be given concerning the application. If the application is being heard by a judge, he shall conduct the inquiry in person or through a justice of the peace or judicial agent and shall, within the prescribed time-limit, cause a written statement concerning the inquiry to be inserted in the record. When the report has been made or the statement inserted as aforesaid, a decision in respect of the application shall follow within twenty-four hours.

In particularly difficult cases, in order to ensure more thorough investigation any action may be ordered before a decision is rendered, provided that such action will not cause any irreparable prejudice to the applicant or delay the settlement of the case by more than forty-eight hours.

Art. 13. In any case involving a violation which, if carried out, might cause grave or irreparable damage, the court or judge may order the immediate suspension of the order, measure or act complained of, pending the hearing of the application and a ruling thereon. The court or judge may also remove this suspension at any time. The authority, official or employee against whom the application has been made shall be informed immediately—and even by telegraph—of the suspending order.

Art. 14. No appeal shall lie against rulings of the Plenary Court or the criminal court, except appeals charging the judges with open violation of the Constitution. An appeal against decisions of judges of criminal courts shall lie to the competent criminal court, if notice of the intention to appeal is given in the notification or within twenty-four hours thereafter. Upon receiving written notice of the appeal, the judge shall transmit it to the criminal court without further formality, together with the record. The judge shall use the most rapid possible means of transmission, and post offices shall be bound to act promptly and deliver the documents to the criminal court immediately. The said court shall give its decision within twenty-four hours of the receipt of the said documents, unless it

orders a more thorough investigation in accordance with the final paragraph of article 12. No appeal shall lie from the other rulings given. The final decisions of the judges and the criminal courts in proceedings for injunctions shall be published in the *Judicial Gazette* (*Boletín Judicial*).

Art. 15. If the act complained of is of a positive nature, the decision granting the injunction shall have the object of enabling the injured party to recover full enjoyment of the right violated, with the restoration of the situation as it existed before the violation. If the act is of a negative character, the effect of the injunction shall be to require the official or employee responsible to proceed in such a way as to respect the guaranteed right in question and to fulfil all the requirements of the said guaranteed right.

If at the time when an application for an injunction is declared receivable, the effects of the act complained of have ceased, or the act has been carried out in such a manner that it is not possible to restore to the applicant the enjoyment of his constitutional right, the effect of the judicial decision shall be to warn the official or employee to refrain from the acts or omissions by reason of which the application was held receivable and to caution him that if he does not refrain therefrom he will be committing an offence punishable under article 18 of this Act, without prejudice to any other liability he may have incurred.

Art. 16. When the decision granting the injunction has become final, the Plenary Court, the criminal court concerned, or the judge, as the case may be, shall without delay order the authority, official or employee responsible for the injury to comply with the judicial decision, and if this order is not complied with by the person concerned within twenty-four hours, the judge or court shall direct his immediate superior to enforce the decision. If the decision is not complied with within a further period of twenty-four hours, proceedings shall be taken against the guilty party or parties in conformity with the following article.

Art. 17. The official or employee responsible for failing to comply with a decision granting an injunction shall be liable to imprisonment for six months to three years, without prejudice to any other criminal or civil liabilities which he may have incurred through the acts or omissions in respect of which injunction proceedings were instituted.

If the official or employee enjoys immunity, the Supreme Court of Justice shall accordingly notify the Legislative Assembly, meeeting in ordinary or extraordinary session, so that the said Assembly may institute proceedings under paragraph 9 of article 121 of the Constitution.[1] In other cases, the judge of the criminal court shall institute the necessary proceedings.

Art. 18. If an application for an injunction has been granted in respect of certain acts or omissions, then, if the acts or omissions to which it related are repeated to the prejudice of the same person in such a manner as to constitute sufficient grounds for another application and if the same person is responsible for them, he shall be liable to imprisonment for one to four years.

Art. 19. If the application for an injunction was made maliciously and the acts imputed to the official or employee were never committed, or were grossly misrepresented, the judge or court may, in dismissing the application, impose upon the applicant a fine of 100 to 360 colones, or sentence him to detention in the event of non-payment at the rate of one day's detention for every two colones, without prejudice to any other liability which he may have incurred.

Art. 20. Compliance with a decision rendered in injunction proceedings shall not prevent proceedings being taken against the official or employee concerned if the acts or omissions for which he is responsible constitute an offence or punishable error; for this purpose, and also in the case of any criminal liability which he may have incurred under the provisions of articles 15 and 17 if the application is granted, the judge or the court shall witness the necessary documents and transmit the evidence to the competent court.

Art. 21. The rejection of an application for an injunction shall be without prejudice to the civil or criminal liability incurred by the official or employee responsible for the injury, the injured party being free to take such action as he considers desirable.

Art. 22. Save as otherwise expressly provided in this Act, the provisions of the Procedural Code and of the Organic Judicature Act shall apply in so far as they are applicable.

Art. 23. This Act shall enter into force on the date of its publication.

[1] This article deals with the powers of the Legislative Assembly.

ADMINISTRATIVE TRIBUNALS ACT[1]
of 13 November 1950

Art. 1. The object of an action before an administrative tribunal is to safeguard the administrative rights of any person against infringement by any kind of definitive order made by the Executive Power or any of its officers, by a municipality, or by an autonomous or semi-autonomous institution, acting as a statutory body under statutory powers.

Art. 2. In accordance with the provisions of the previous article, the following matters shall not afford ground for an action before administrative tribunals:

(*a*) Orders of general application made by the Public Administration acting under its discretionary power and not under any statute, regulation or other administrative provision binding upon it; provided that an appeal shall lie against a decision taken under a general order made under the discretionary power even if such order does not infringe any private right conferred by a statute, regulation or other administrative provision.

(*b*) Purely civil or criminal matters governed by the ordinary law. For the purposes of this article a civil matter is one in which a civil right has been infringed, or one arising out of an act done by a body referred to in article 1 in its capacity as a legal person or as a body possessing rights and duties.

Art. 3. A claim may be lodged before an administrative tribunal by any person, including the State, a municipality or an autonomous or semi-autonomous public institution, whose administrative rights have been infringed in the manner referred to in article 1.

Art. 4. The tribunal shall not entertain the claim until administrative procedure has been exhausted.

Administrative procedure shall be deemed to be exhausted when every means of appeal available in the particular matter has been used, or when the claim has been rejected by a final decision duly notified to the complainant, by publication in *La Gaceta* where appropriate or by telegram or official communication addressed to him, or if the claim remains undecided more than two months after it is filed.

Art. 5. An action before an administrative tribunal shall be barred on the expiry of one year from the date of publication in *La Gaceta* of the decision declaring administrative procedure exhausted, or from the receipt by the person concerned of the telegram or official communication referred to in the previous article, or from the date of expiry of the two months' period referred to in this article, as the case may be. If the aggrieved party is the State, a municipality, or an autonomous or semi-autonomous institution, the period of limitation of action shall be five years from the date on which it received notice of the order giving ground for the action.

Art. 6. Express or implied consent to an administrative decision, shown by any later act, shall bar the right of a private complainant to the contentious administrative action.

[Article 7 deals with formal requirements with which the claim shall comply.]

Art. 8. Should the claim not comply with the requirements of the previous article, the judge may in his discretion direct the complainant to remedy the formal defects of the claim, which he shall specify. If the judge comments on the form of the claim and the respondent, in moving for dismissal of the action, objects that the claim is defective in law, the judge shall, if he upholds the defendant's objection, forthwith direct the complainant to amend his claim, and after such amendment has been made the case shall proceed.

No appeal shall lie against a direction by the judge to amend a claim.

Art. 9. When the claim is presented the court shall consider—

(1) Whether the decision complained of is definitive. A definitive decision is one from which no administrative appeal lies, or a purely procedural decision by which the substance of the matter is decided, directly or indirectly, in such a way that the matter is concluded or cannot be continued;

(2) Whether the decision relates to acts done under statutory powers, or is one covered by the proviso contained in article 2 (*a*).

The Executive Power, its officers, municipalities and autonomous and semi-autonomous State institutions shall be taken to act under statutory powers when their acts are bound to conform to the provisions of a statute, regulation or administrative procedure;

(3) Whether the decision infringes an administrative right previously established in favour of the complainant;

(4) Whether the claim has been made within the time limit prescribed for the institution of proceedings.

If the foregoing requirements are not fulfilled, the claim shall be summarily rejected.

Summary rejection shall be subject to ordinary appeal and to cassation.

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[1] Spanish text in *La Gaceta* No. 263 of 21 November 1950, received through the courtesy of Dr. Fernando Fournier, Professor of International Law, San José. English translation from the Spanish text by the United Nations Secretariat. The Act was to come into force upon publication of the amendments to the Judicature Act, amendments which entered into force on 21 February 1951.

Art. 10. If the claim is in proper form or any defects have been amended according to direction, the judge shall call upon the defendant to enter a defence within a period of not less than fifteen and not more than thirty days. The same period shall be allowed for the entry of a reply, if any, by the plaintiff. The rejoinder must comply with articles 222 and 226 of the Code of Civil Procedure.

Art. 11. The trial and conclusion of actions before administrative tribunals shall be governed by the provisions of the Code of Civil Procedure, subject to those of this Act, according to the value of the subject-matter in dispute. The judge may reduce the other time-limits by not more than one-half, and "cassation" proceedings, may consist only of preliminary proceedings and the summoning of the parties for judgment.

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JUDICIAL DECISION

FREEDOM OF SPEECH—COMMUNICATION OF IDEAS BY BROADCASTING—LIMITATIONS—MAINTENANCE OF FRIENDLY INTERNATIONAL RELATIONS—ARTICLE 29 OF THE CONSTITUTION—INJUNCTION PROCEEDINGS ACT

ROBERTO RAMON GUELL MORA, *v.* UNDER-SECRETARY FOR FOREIGN AFFAIRS AND DIRECTOR OF NATIONAL BROADCASTING

Supreme Court of Justice[1]

21 July 1950

The facts. By means of a circular telegram to owners of broadcasting stations, the Director of National Broadcasting, acting on instructions received from the Ministry of Foreign Affairs in answer to a request from the Ambassador of the Republic of Honduras, prevented the applicant and a group of Costa Rican students from giving a broadcast in commemoration of the massacre of Honduran citizens at San Pedro Sula. The Under-Secretary for Foreign Affairs stated that, relying on national broadcasting regulations, and wishing to avoid an international dispute, he had requested the Director of National Broadcasting, in the name of the Government, to prevent the above-mentioned broadcast. The applicant contended that the order prohibiting the broadcast was inconsistent with article 29 of the Constitution.[2]

Held: that the application should be granted, and a communication addressed to the Under-Secretary of Foreign Affairs, and the Director of National Broadcasting, requesting them to rescind the suspending order in conformity with article 29 of the Political Constitution and articles 6, 12, 14 and 15 of Act No. 1161 of 2 June 1950.[3] Although the instructions issued by the Ministry of Foreign Affairs to the Director of National Broadcasting for the cancellation of the broadcast were issued with the purpose of avoiding possible international difficulties with a neighbouring country, since, according to Press reports, it was intended that the broadcast should deal with questions relating to the domestic policy of the Republic of Honduras, the said order was inconsistent with article 29 of the Political Constitution of the Republic, which guarantees the right of all persons to communicate their ideas orally or in writing and to publish them without previous censorship, subject to liability for abuse of the right. Freedom of speech cannot be restricted, even if there are grounds for fearing that the freedom may be abused in certain circumstances. The only limitation which this constitutional provision places on persons exercising that right is that they are answerable, as provided by law, for any abuses which they may commit under its protection. Accordingly, there is no legal basis for allowing the said order to stand.

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[1] Report No. 401 of the Supreme Court of Justice, received through the courtesy of Dr. Fernando Fournier, Professor of International Law, San José, and summarized by the United Nations Secretariat.

[2] *Art. 29.* "Every person may communicate his thoughts by word of mouth or publish them in writing, without previous censorship, but shall nevertheless be liable for any abuses he may commit in the exercise of this right, in the cases and in the manner established by law."

[3] See p. 53 of this *Yearbook*.

CUBA

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS[1]

1. On 3 August 1950, Presidential Decree No. 2273 (published in *Gaceta Oficial* No. 199, of 26 August 1950) on the right of correction in radio broadcasting was issued. The text of this decree is published in the present *Yearbook*.

2. By Act No. 3982, signed on 10 November 1950 and published in the *Gaceta Oficial* No. 282, of 2 December 1950, the President established in the Ministry of Justice a Department of Legal Advisers for the Rural Population. Considering that a great part of the rural population lacks legal knowledge, and has not the financial means of obtaining the necessary legal advice, this department is to advise the rural population and to enable them to comply in their work with the regulations prescribed by law. The Department shall, moreover, provide free legal aid to the rural population in judicial proceedings in which they may be involved.

PRESIDENTIAL DECREE No. 2273 OF 3 AUGUST 1950 ON THE RIGHT OF CORRECTION IN RADIO BROADCASTING[1]

(1) Any individual or corporate body referred to directly or indirectly in any radio broadcast in offensive terms, whether explicit or veiled, touching his reputation, or to whom acts have been attributed falsely or in a distorted form, shall have the right to request the Ministry of Communications, through the Directorate of Radio, that the correction of such remarks shall be published by the broadcasting undertaking used for the transmission of the said version, the appropriate announcement being read either by the station's announcer or by the person concerned himself.

(2) The text of the clarification or correction of the party presumed to be injured shall be submitted to the Directorate of Radio of the Ministry of Communications, which, after investigating and verifying the facts, shall determine whether or not the complaint is justified and, if the finding is in the affirmative, shall direct that the correction shall be transmitted by the broadcasting station concerned in the first item or programme broadcast after the correction has been ordered and covering the same area as that particular programme, whether news, education or other. In the event of several persons' having been mentioned, they shall have a right to correction in succeeding official broadcasts covering the same area as the programme in which they were offended.

This broadcast shall be free of charge, and shall be given the same amount of time as the broadcast article or news which gave grounds for the correction.

If the correction or explanation, which must be submitted in writing to the Directorate of Radio, contains insulting words or phrases, or matter detracting from the reputation or dignity of any person, it shall be refused.

(3) If the persons alluded to in the transmissions to which the first paragraph of this Decree refers are the President of the Republic, the President of the Senate or of the Chamber of Representatives, the President of the Supreme Court, the Ministers of the Government, the Attorney-General of the Supreme Court or the heads of the armed services, they may be represented by subordinates whom they shall appoint for the purpose of the reply provided for in this decree.

(4) No request for clarification or correction shall be entertained after the lapse of five days from the date on which the matter to be explained was broadcast.

(5) As all contracts under which broadcasting time is allotted to third parties by persons holding licences for broadcasting stations are subject to the limitations and conditions already laid down in the permits or licences, any person renting or making use of the broadcasting time of any broadcasting undertaking, in whatever capacity, shall be bound to agree to the use by the undertaking of whatever portion of the broadcasting time allotted may be necessary for the correction or clarification provided for by this decree.

(6) Failure on the part of a broadcasting undertaking to comply with the provisions of this decree shall, without prejudice to the other legal responsibilities incurred, be regarded as a breach of the regulations governing the operation of radio stations and shall be punishable in accordance with the regulations in force with regard to this aspect of broadcasting operation and service.

(7) The Ministry of Communications, through the Directorate of Radio, shall impose the punishments in question upon radio licence-holders who by excuses, subterfuges or any other means hinder the execution of these provisions.

The Minister of Communications shall be entrusted with the execution of the provisions of the present decree.

[1] Spanish text in *Gaceta Oficial* No. 180, of 4 August 1950. English translation from the Spanish text by the United Nations Secretariat.

CZECHOSLOVAKIA

ACT No. 165 CONCERNING THE DEFENCE OF PEACE[1]

of 20 December 1950

Art. 1. 1. Any person who attempts to disturb the peaceful co-existence of the peoples by any form of instigation to war or war propaganda, or who otherwise supports war propaganda, shall be guilty of a crime against peace.

2. Any person committing such an offence shall be punished by deprivation of liberty for one to ten years.

Where the acts referred to in paragraph 1 are committed by any person

(*a*) As a member of an association

(*b*) On a considerable scale, or

(*c*) Where there are other aggravating circumstances, the punishment shall be deprivation of liberty for ten to twenty-five years.

Art. 2. This Act shall come into force on the day of promulgation and shall be carried into effect by all the members of the Government.

[1] Czech text in *Sbírka zákonů* (Collection of Laws) No. 68, of 24 December 1950. English translation from the Czech text by the United Nations Secretariat.

PENAL CODE OF 12 JULY 1950[1]

Act No. 86 of 1950

GENERAL PROVISIONS

CHAPTER I

OBJECTS OF THE PENAL CODE

Art. 1. The Penal Code protects the People's Democratic Republic, its social structure, the interests of the working people and the interests of the individual; it also teaches observance of the rules of socialist communal life. In order to achieve these ends, it warns of punishment, sentences and their execution, and protective measures.

[1] Czech text in *Sbírka zákonů* (Collection of Laws) No. 39, of 12 July 1950. English translation from the Czech text by the United Nations Secretariat. The Czech text was also published by the Ministry of Justice in a volume entitled *Trestní zákon a trestní rad* (Penal Code and Code of Criminal Procedure), Prague, 1950. The Act was promulgated on 18 July 1950 and came into force on 1 August 1950. The Czechoslovak Penal Code consists of general provisions and special provisions. The general provisions consist of the following chapters: I. Objects of the Penal Code; II. The Foundations of Criminal Responsibility; III. Enforcement of Penal Law; IV. Penalties (the third part of this chapter is devoted to special provisions on the punishment of adolescents); V. Extinction of Punishability and of Penalty; VI. Protective Measures; VII. Common Provisions. The special provisions relate to: I. Offences against the Republic; II. Economic Offences; III. Offences against Public Order; IV. Offences giving Rise to Collective Danger; V. Offences against the Family and against Young Persons; VI. Offences against Life and Health; VII. Offences against Human Freedom and Dignity; VIII. Offences against Property; IX. Offences against the Law on Military Service; X. Military Offences; XI. Final Provisions.

CHAPTER III

APPLICABILITY OF CRIMINAL LAWS

Article 12

1. The punishableness of an act shall be judged according to the law in force at the time of the commission of the act; it shall be judged according to the subsequent law only where it is more favourable to the offender.

2. Protective measures shall always be decided on according to the law in force at the time of the decision.

CHAPTER IV

PENALTIES

PART 1.—GENERAL PROVISIONS CONCERNING PENALTIES

Article 17.—Purposes of the Penalties

1. The purposes of the penalties are:

(*a*) To render the enemies of the workers harmless,

(*b*) To prevent offenders from committing further offences and to teach them to observe the rules of socialist communal life,

(*c*) To exercise an educational influence on other members of society.

2. The execution of the sentence shall not constitute an offence against human dignity.

Article 18.—Categories of Penalties

1. The principal penalties are as follows:
   (*a*) The death penalty,
   (*b*) Deprivation of freedom,
   (*c*) Measures of rehabilitation
2. The accessory penalties are as follows:
   (*a*) Loss of nationality,
   (*b*) Loss of civil rights,
   (*c*) Exclusion from the Army,
   (*d*) Military degradation,
   (*e*) Confiscation of property,
   (*f*) Fines,
   (*g*) Prohibition to exercise a specified occupation,
   (*h*) Deportation,
   (*i*) Prohibition of sojourn,
   (*j*) Publication of the judgment,
   (*k*) Confiscation of the objects connected with the offence.

3. An accessory penalty shall not be imposed except in conjunction with the principal penalty.

. . .

PART 2.—IMPOSITION AND EXECUTION OF VARIOUS PENALTIES

[Article 29 deals with the death penalty; Articles 30 to 36 deal with deprivation of freedom under the following headings: commutation of the sentence (30); length of the sentence (31); execution of the sentence (32); conditional release (33, 34, 35); committal to a forced-labour camp (36).]

Article 36.—Committal to a Forced-labour Camp

1. If a person by his offence has shown hostility to the people's democratic system of government and has failed by his work and conduct while serving his sentence to give such proof of his rehabilitation as would justify the assumption that his future behaviour will be satisfactory and befitting a good worker, he may be committed to a forced-labour camp for a term of not less than three months nor more than two years, after completing his term of imprisonment.

2. A person who has not attained the age of eighteen years shall not be committed to a forced-labour camp.

Article 37.—Measures of Rehabilitation

1. If the court considers that the rehabilitation of a convicted person calls for the execution of the sentence, but that in order to achieve this rehabilitation a less severe penalty would suffice, a term of rehabilitation for a period of not less than one month nor more than six months shall be imposed instead of a term of imprisonment not exceeding three months, in the case of an offender whose behaviour has otherwise been satisfactory and befitting a good worker.

2. Measures of rehabilitation shall not be applied

(*a*) When postponement of enforcement of the penalty is inadmissible in view of the offence in question;

(*b*) When the application of such a measure is contrary to an important public interest;

(*c*) In the case of an offender who is constantly unfit for work;

(*d*) In the case of an offender subject to military jurisdiction.

Article 38

The offender shall be free during such time as measures of rehabilitation are applied to him. Such measures shall consist of the obligation imposed upon the offender to carry out specified work for a determined period, for a reduced wage, and he shall forfeit some of the advantages pertaining to wage-earning (article 39).

Article 39

1. The court shall not change the work of a wage-earning offender, especially if his occupation consists in the main of physical labour. Nevertheless, in serious cases, the court may change the offender's work for the duration of the penalty, in particular by giving him work entailing less responsibility or by changing his place of work; in such cases, the court shall rule at the same time on the principles governing the type, manner and place of the offender's employment.

2. One quarter of the wages due to the offender for his work shall be confiscated by the State; nevertheless, the court may reduce the proportion of the wages confiscated to one-tenth.

3. To the extent that the duration of the paid employment has any effect on the constitution or scope of the wage-earner's rights, the period of the execution of the measures of rehabilitation shall not be taken into account. The rights of the offender under the national insurance scheme shall not be prejudiced.

Article 40

1. Any time during which the offender has for any reason whatsoever failed to perform the work imposed upon him shall not be taken into account for the purposes of the duration of the execution of the measures of rehabilitation.

2. If during the prescribed period the offender fails to perform the work assigned to him or fails to perform it satisfactorily, the court shall transform the measure of rehabilitation into one of deprivation of freedom. For every two days of the measure of rehabilitation remaining to be completed, one day of deprivation of freedom shall be imposed.

Article 41

Upon completion of the measure of rehabilitation, the offender shall not be deemed to have been sentenced; nevertheless, the period of the measure of rehabilitation shall not be taken into account in the duration of paid employment (article 39, paragraph 3) until one year from the completion of the sentence.

Article 42.—Loss of Nationality

1. The court shall not sentence any person to loss of nationality except in cases expressly provided by law.

2. The penalty of loss of nationality involves loss of civic rights, exclusion from the Army, and confiscation of all property.

. . .

Article 47.—Confiscation of Property

1. The court shall order the confiscation of property in the cases expressly prescribed by law; nevertheless, the court may also order confiscation of property when sentencing the offender for a deliberate offence to the death penalty, imprisonment for life or imprisonment for a term exceeding three years or when sentencing an offender who by his offence has shown hostility to the people's democratic system of government.

2. The confiscation of property shall apply to all the property of the offender or such part thereof as may be determined by the court.

3. The ownership of the confiscated property shall devolve upon the State.

Article 53.—Prohibition of Sojourn

The court shall forbid the offender to reside in a certain part of the territory of the Czechoslovak Republic, for a fixed period or permanently, if the safety of persons or property or other public interests should render this necessary.

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SPECIAL PROVISIONS

CHAPTER I

OFFENCES AGAINST THE REPUBLIC

PART 1.—OFFENCES AGAINST THE BASES OF THE REPUBLIC

[*Articles 78 to 80.—High treason and conspiracy against the Republic.*]

Article 81.—Incitement against the Republic

1. If any person is guilty of incitement in public or incites no less than two persons against the Republic, its independence, its constitutional unity or its territorial integrity, its people's democratic regime or its social order guaranteed by the Constitution, or

If any person intentionally makes possible or facilitates the propagation of any declaration likely to incite as set forth above, he shall be liable to deprivation of freedom for not less than three months nor more than three years; there shall be no stay of execution.

2. The person guilty of the above offence shall be liable to deprivation of freedom for not less than one year nor more than five years if he commits the acts set forth in paragraph 1 at a time of great danger for his country; there shall be no stay of execution or commutation of the sentence.

Article 82

If any person by negligence makes possible or facilitates the propagation of any declaration likely to be a cause of incitement against the Republic, its independence, its constitutional unity, its territorial integrity, the people's democratic system of government or its social order guaranteed by the Constitution, he shall be liable to deprivation of freedom for a term not exceeding one year.

Article 83.—Support of and Propaganda for Fascism and Similar Movements

1. If any person propagates fascism, nazism or any similar movements tending or leading to the suppression of the rights and freedoms of the working people or inciting to national, religious or racial hatred, he shall be liable to deprivation of freedom for not less than one year nor more than five years; there shall be no stay of execution.

2. If the person guilty of the offence as defined above commits the acts set forth in paragraph 1 by means of the press, films, broadcasting or other equally effective measures, he shall be liable to deprivation of freedom for not less than five nor more than ten years; there shall be no stay of execution.

3. If the person guilty of the offence as defined above commits the acts set forth in paragraph 1 at a time of great danger for his country, he shall be liable to deprivation of freedom for not less than five nor more than twenty-five years; the sentence shall not be commuted.

[Articles 84 and 85 refer to the sabotage of national property or the property of a people's co-operative association. They also provide penalties for persons who fail to perform duties arising out of their profession, their employment or their services, or who have failed in such duties in order to create obstacles to the fulfilment of the economic plan or to the operation of an authority or public body.]

PART 2.—OFFENCES AGAINST THE SECURITY OF THE REPUBLIC

[Articles 86 to 94 deal with espionage and jeopardizing State secrets and important interests of the Republic.]

Article 95.—Illegal Departure from the Republic

1. If any person leaves the territory of the Czechoslovak Republic without authorization, he shall be liable to deprivation of freedom for not less than one nor more than five years.

2. The same penalty shall apply to any Czechoslovak citizen who refuses to comply with an official summons requiring him to return to the Czechoslovak Republic within a prescribed time-limit.

3. In addition to the penalties provided in paragraphs 1 and 2, the court may impose loss of nationality. There shall be no stay of execution.

Article 96.—Endangering the Interests of the Republic abroad

Any Czechoslovak citizen who intentionally endangers the interests of the Republic by spreading false news in a foreign country concerning conditions in the Republic shall be liable to deprivation of freedom for not less than one nor more than five years; there shall be not stay of execution and, if the act is committed at a time of great danger to the country, the sentence shall not be commuted.

Article 97

Any Czechoslovak citizen who by negligence endangers the interests of the Republic by spreading false news in a foreign country concerning conditions within the Republic shall be liable to deprivation of freedom for not less than three months nor more than three years.

Article 98.—Incitement to Aggressive War

If any person publicly incites others to a war of aggression, he shall be liable to deprivation of freedom for not less than one year nor more than five years; there shall be no stay of execution and, if the act is committed at a time of great danger for the country, the sentence shall not be commuted.

[Part 3 of Chapter I deals with offences against the defence of the country, and Part 4 with offences against persons in constitutional authority, including any act constituting a breach of the respect due to the President of the Republic or a public insult against the legislative body, the Government, any member of the Government or of the Council of Commissars or the principal members of the legislative body by reason of the exercise of their duties or, generally speaking, their political activities.]

PART 5.—OFFENCES ESPECIALLY PREJUDICIAL TO PUBLIC ORDER

[Articles 112 to 115 deal with jeopardizing economic and official secrets.]

Article 116.—Attacks against Groups of Inhabitants

1. If any person uses violence against or threatens with violence a group of inhabitants of the republic owing to their nationality, race or religion, or because they have no religious denomination or are partisans of the people's democratic system of government, he shall be liable to deprivation of freedom for not less than one nor more than five years.

2. If any person takes part in an association of not less than three persons met together for the purposes set forth in paragraph 1, he shall be liable to the same penalty.

3. The person guilty of the offence shall be liable to deprivation of freedom for not less than five nor more than ten years,

(*a*) If he commits the act referred to in paragraph 1 or 2 when he is armed, or

(*b*) If there are any other especially aggravating circumstances.

4. There shall be no stay of execution.

Article 117

Whosoever uses violence against another person or threatens him with violence or damages his property on account of his nationality, race or religion, or because the injured person has no religious denomination or is a partisan of the people's democratic system of government, shall be liable to deprivation of freedom for not less than three months nor more than two years.

Article 118

1. If any person is guilty of incitement in public or incites at least two persons to violence or to other hostile acts against a group of inhabitants of the Republic on account of their nationality, their race or their religion or because they have no religious denomination or are partisans of the people's democratic system of government, he shall be liable to deprivation of freedom for not less than three months nor more than three years.

2. If any person, in the manner set forth in paragraph 1 and for one of the reasons mentioned therein, propagates hatred against a group of inhabitants of the Republic, he shall be liable to deprivation of freedom for not less than three months nor more than two years.

3. If any person, in the manner set forth in paragraph 1 and for the reasons mentioned therein, incites to violence or other hostile acts or to hatred against an individual, he shall be liable to deprivation of freedom for not more than one year.

Article 119

If any person publicly insults a group of inhabitants of the Republic on account of their nationality, race or religion or because they have no religious denomination or are partisans of the popular democratic system of government, he shall be liable to deprivation of freedom for not more than one year.

[Articles 120–122 deal with the illegal bearing of arms, the unauthorized establishment of armed or militarily organized groups, participation in or support of such groups and the illegal manufacture and possession of radio transmitters.]

Article 123.—Abuse of Ecclesiastical Functions

1. If any person having ecclesiastical or similar religious functions is guilty of abuse in the exercise thereof with a view to exercising influence over political life in a manner unfavourable to the people's democratic system of government of the Republic he shall be liable to deprivation of freedom for not less than three months nor more than three years.

2. The person guilty of the above offence shall be liable to deprivation of freedom for not less than one nor more than five years,

(*a*) If he has committed the act referred to in paragraph 1 by refusing to perform a religious rite which is incumbent upon him by reason of his ministry or similar ecclesiastical function or

(*b*) If there are other especially aggravating circumstances.

3. There shall be no stay of execution.

[Articles 124–125 deal with insults against the Republic or an allied State, the head or other representative of an allied State or a representative of an allied State to the Government of the Republic.]

Article 126.—Insults against a Nation or Race

Whosoever insults a nation or its language or a race in a manner likely to raise the indignation of the public, shall be liable to deprivation of freedom for not more than one year.

Article 127.—Spreading alarming News

1. Whosoever spreads alarming news, thus giving rise, even if only by negligence, to the danger of causing grave anxiety to at least part of the population of any place, shall be liable to deprivation of freedom for not more than six months.

2. The person guilty of the above offence shall be liable to deprivation of freedom for not more than one year if he commits the offence mentioned in paragraph 1, although he knew that the news was false.

Article 128

1. If any person, by spreading alarming news, even if only by negligence,

(*a*) Endangers the safety of the Republic, the military capacity of its inhabitants, the Czechoslovak currency, the safety of persons or property or other public interests,

(*b*) Is likely to bring about a rise in the price of vital products, or panic buying or selling or the accumulation of certain products or hasty and mass withdrawals of money deposits,

he shall be liable to deprivation of freedom for not more than one year.

2. The person guilty of the above offence shall be liable to deprivation of freedom for not less than three months nor more than three years,

(*a*) If he commits the offence mentioned in paragraph 1 although he knew that the news was false,

(*b*) If he commits the offence at a time of danger for the country.

3. The person guilty of the above offence shall be liable to deprivation of freedom for not less than one year nor more than five years if he committed the offence mentioned in paragraph 1 by means of the press, films, broadcasting or other similarly effective means at a time of great danger for the country; the sentence shall not be commuted.

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CHAPTER II

ECONOMIC OFFENCES

[Part 1 of this chapter deals with offences against the economic system, such as intrigues against nationalization, establishment of private monopolies, or abuse of people's co-operatives or of the right of ownership; part 2 deals with offences against the central economic plan; part 3 with offences against the monetary system and part 4 with fiscal fraud and infringment of the provisions respecting foreign trade.]

[Chapter III deals with offences against public order; part 1 (articles 154–174) deals with offences against the popular administration of justice.]

Article 173.—Hindering the Control over the Churches and Religious Societies

1. Whosoever performs the functions of a minister of a church or religious society without the consent of the State shall be liable to deprivation of freedom for not more than three years.

2. The same penalty shall apply to anyone who performs the functions of a minister of a church or religious society in a position for which he has been refused the consent of the State.

3. Whosoever appoints another without the consent of the State to perform the functions of a minister of the church or religious society shall be liable to deprivation of freedom for one to five years.

Article 174

1. Whosoever intentionally evades or hinders the control by the State over a church or religious society shall be liable to deprivation of freedom for not less than one year nor more than five years.

2. The same penalty shall apply to any person who intentionally contravenes the law guaranteeing the economic security of churches and religious societies by the State.

CHAPTER VII

OFFENCES AGAINST HUMAN FREEDOM AND DIGNITY

[Part 1, "Offences against freedom" (articles 229 to 237), deals with acts prejudicial to personal freedom; sequestration; kidnapping abroad; banditry; blackmail; acts prejudicial to freedom of worship; oppression; acts prejudicial to freedom of domicile; breach of secrecy of correspondence and communications.]

Article 234.—Acts prejudicial to Freedom of Worship

If any person, by using violence, threats of violence or threats of any other serious harm,

(*a*) Forces another to be present during the performance of a religious rite,

(*b*) Prevents another from being present at a rite as aforesaid, or

(*c*) Prevents another from enjoying freedom of worship in any other way, he shall be liable to deprivation of freedom for not less than one year nor more than five years.

[Part 2, "Offences against Human Dignity" (articles 238 to 244), deals with rape, sexual abuses, sexual relations with a person of the same sex; incest; traffic in women and indecent offences.]

[Part 6, of Chapter IX (articles 269 to 308), entitled "Military offences" deals with offences against the usages of war.]

Article 299.—Acts of Violence against the Population

1. If any person in the course of military operations, loots, arbitrarily destroys property or commits other acts of violence against the population, or under the pretext of the necessity of war deprives the population of its property, he shall be liable to deprivation of freedom for not less than six months nor more than five years.

2. A person guilty of the above offence shall be liable to deprivation of freedom for not less than three nor more than ten years, if, being a member of an armed group, he commits the offence mentioned in paragraph 1.

3. The person guilty of the above offence shall be liable to the death penalty,

(*a*) If the offence mentioned in paragraph 1 is the cause of intense distress to many persons, or

(*b*) If there are any other especially aggravating circumstances.

Article 300.—Theft from Wounded and Dead Persons

Whosoever appropriates on the battlefield articles from wounded or dead persons shall be liable to deprivation of freedom for not less than six months nor more than five years.

Article 301.—Use of Prohibited Means of Combat

1. Whosoever, in warfare, intentionally uses prohibited means of combat shall be liable to deprivation of freedom for not less than six months nor more than five years.

2. The person guilty of the above offence shall be liable to deprivation of freedom for not less than five nor more than ten years if the consequences of the offence mentioned in paragraph 1 are specially serious.

Article 302.—Offences against Bearers of Flags of Truce

If any person insults the bearer of a flag of truce or a member of his mission in the presence of the former, or illegally detains such a person, he shall be liable to deprivation of freedom for not more than two years.

Article 303.—Ill-treatment of Prisoners of War

1. Whosoever ill-treats a prisoner of war shall be liable to deprivation of freedom for not more than one year.

2. The person guilty of the above offence shall be liable to deprivation of freedom for not less than three nor more than six years if he commits the offence mentioned in paragraph 1

(*a*) On repeated occasions and with special brutality;

(*b*) Against a wounded or sick prisoner of war.

CODE OF CRIMINAL PROCEDURE

of 12 July 1950[1]

CHAPTER I.—GENERAL PROVISIONS

SECTION 1.—BASIC PROVISIONS

Article 1.—Purpose of the Act

1. The purpose of the present Act is to establish in criminal matters a procedure which permits adequate determination of crimes and offences and the punishment of the offenders in conformity with the law. It is the right and duty of each citizen to assist in the attainment of this purpose.

[1] Czech text in *Sbirka zákonů* (Collection of Laws) No. 40, of 12 July 1950. Translation by the United Nations Secretariat. The Czech text was also published by the Ministry of Justice in *Trestní zákon a trestní rad* (Penal Code and Code of Criminal Procedure), Prague, 1950. The Act was promulgated on 18 July 1950 and came into force on 1 August 1950.

2. Proceedings must be so conducted as to put the citizens on guard against the enemies of the working people and against all those who hamper the constructive efforts of the people while at the same time encouraging such persons to discharge their civic duties.

Article 2.—Duties of the Public Prosecutor and the Court

1. In criminal proceedings, it is the duty of the public prosecutor and the court to ensure that the laws of the People's Democratic Republic are respected and applied in the interests of the working people. The prosecutor in a military court and the court itself shall furthermore, in order to contribute to the defence of the State, exert themselves to maintain the armed forces in a state of preparedness and to ensure order and discipline in the said forces and strengthen the authority of the command.

2. In criminal proceedings, it is the duty of the public prosecutor to conduct the preliminary proceedings and to ensure the just punishment of the offenders and the enforcement of the penalties imposed.

3. In criminal proceedings, it is the duty of the court to take cognizance in all equity of the crimes and offences committed; this task is incumbent equally upon the people's judges and professional judges.

. . .

SECTION 7.—THE ACCUSED AND THE DEFENCE

Article 41.—Rights of the Accused

1. The accused must be given an opportunity to be heard with regard to the charges against him and the evidence brought in support of those charges, to put forward in his behalf all circumstances and all evidence which may be useful for his defence, to make proposals and to choose his counsel.

2. The public prosecutor and, during the proceedings, the president of the court shall in every case inform the accused of the rights which he is entitled to exercise.

Article 42.—The Legal Representative of the Accused

The legal representative of an accused person who is not *sui juris* is entitled to represent him and in particular to choose counsel for him, and to make proposals, submit petitions and lodge appeals in his behalf; the said legal representative is also entitled to take part in any act in which the accused has the right to participate. The legal representative may exercise those rights even against the will of the accused.

Article 43.—Counsel for the Defence

1. The right to act as counsel for the defence is reserved for professional lawyers; in cases examined by the State prosecutor (*státní prokurátor*) or a military prosecutor and in cases tried by a State court (*státní soud*) or a military court, the counsel for defence must be entered on a special register which shall be drawn up by the Ministry of Justice in agreement with the Ministry of National Defence.

2. If the matter is urgent and if a lawyer is not immediately available, a judge or any assistant member of the court who has the qualifications for a judge may be appointed counsel for the defence (article 45).

3. If the matter is urgent and if a lawyer is not immediately available, or if the nature of the case so requires, an officer on the active list who is a lawyer by profession may, with the permission of his superior officer, be appointed counsel for the defence.

4. It shall not be lawful for any person who has been summoned as a witness, or required to act as an expert or an interpreter to act as counsel for the defence at the principal hearing, during an appeal, or at any public hearing whatsoever.

Article 44.—Choice of Counsel for the Defence

1. If the accused himself does not exercise his right to choose a counsel for the defence, such counsel may be chosen at the cost of the accused by a descendant in the direct line, his father, his adopted child, his spouse or a third party who proves that he has a legitimate interest in the case. If the accused is not *sui juris*, the persons as aforesaid may, even against his will, appoint a counsel for him.

2. If the person who has chosen counsel for the defence fails to notify the public prosecutor or, during the proceedings, the court, the counsel for the defence himself must furnish proof that he has been called upon to defend the accused.

3. The accused may withdraw the right to defend him from the counsel whom he himself has chosen; likewise he may choose another counsel in the place of the counsel appointed by the court or chosen by one of the persons entitled to do so.

Appointment of Counsel ex officio

Article 45

1. If the accused has no counsel for the defence in a case in which the rules require such counsel, the prosecutor or, during the proceedings, the president of the court, shall require him to make his counsel known within a fixed time-limit. If neither the accused nor any of the persons entitled to do so has chosen a counsel for the defence within the fixed time-limit, the prosecutor or, during the proceedings, the president of the chamber shall appoint one *ex officio*.

2. If the accused proves that he lacks the means to defray the costs of his defence, the president of the chamber shall on his request appoint a counsel to act for

him both at the principal hearing and during the appeal.

3. As a general rule, when there are several accused persons, one counsel is appointed to defend them, provided that this does not conflict with their interests.

Article 46

1. A counsel for the defence appointed by the court is bound to defend the accused; however, if he so requests with good cause, the prosecutor or, during the proceedings, the president of the chamber, may free him from his obligation.

2. On a request made by the accused, giving the reasons therefor, the prosecutor or, during the proceedings, the president of the chamber, may appoint another counsel to replace the one originally designated.

Article 47.—Powers of Counsel for the Defence

1. Unless the counsel's functions are expressly limited, they are presumed to extend to the entire proceedings.

2. The counsel for the defence may make proposals, submit petitions and lodge appeals on behalf of the accused; he is also entitled to take part in any act in which the accused has the right to participate. If the accused is not *sui juris*, the counsel for the defence may, if necessary, act against the will of the accused, but not against the will of his legal representative.

3. The counsel for the defence may confer and communicate with an accused person who is under arrest; during the preliminary proceedings, however, he must observe the conditions laid down by the public prosecutor in order not to hinder the progress of criminal investigation.

CHAPTER VIII.—ENFORCEMENT OF THE SENTENCE

SECTION 1.—ENFORCEMENT OF THE PENALTY AND PROTECTIVE MEASURES

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Article 279.—Committal to a Forced-labour Camp

1. On the request of the district prosecutor, the Commission on Conditional Release attached to the district court in the jurisdiction of which the convicted person serves a penalty of deprivation of freedom shall decide whether, after having served his penalty, the convicted person should be committed to a forced-labour camp.

2. If the district prosecutor so requests within three days from the date of being apprised of the decision of the Commission on Conditional Release, the Commission shall submit its decision for approval to the Minister of Justice and the decision of the said Minister shall be final.

3. The decisions mentioned in paragraphs 1 and 2 above must be made before the convicted person has served his full term of deprivation of freedom.

Application of Measures of Rehabilitation

Article 280

1. The public prosecutor shall notify the employer of the convicted person of any decision by the court involving a measure of rehabilitation to be applied without any change in the occupation of the convicted person; he shall communicate to the employer any information relevant to the application of the penalty.

2. If the court decides to change the occupation of the convicted person, the district national committee shall determine his new occupation in accordance with the principles laid down by the court. The district national committee shall communicate to the employer any information relevant to the application of the measure of rehabilitation.

3. The employer of the convicted person shall without delay communicate to the public prosecutor any facts which might lead to a change in the measure of rehabilitation or in that fraction of the penalty of deprivation of freedom which remains to be served; he shall also compute and transmit directly to the prosecutor that part of the wages of the convicted person which is due to the State.

Article 281

If the convicted person suffers from a disease which prevents him from performing the work assigned to him, the prosecutor may, for the period required for his cure, postpone or suspend the application of the measure of rehabilitation or invite the district national committee to assign other work to the convicted person.

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DENMARK

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS[1]

I. LEGISLATION

A. Civil and Political Rights

Freedom of Information, Right to Strike

On 26 January 1950, the Folketing (Lower House of Parliament) adopted a resolution with the following wording:

"The Folketing requests the Government to call upon the competent workers' and employers' associations, in its own name and in that of the Folketing, to seek agreement in the course of their negotiations for a collective bargain on such arrangements as will rule out the possibility of labour disputes which prevent the publication of the daily Press and thereby undermine the basis of a free formation of opinion."

The background of this resolution was a strike which was called in the printing trade in Copenhagen at the beginning of 1947, affecting all printing houses, including those newspapers the owners of which belonged to the employers' association. Two newspapers only, the organs of the Social-Democratic and Communist parties, were not affected by the strike, which lasted for several months, coinciding partly with the campaign preceding a general election for the Folketing.

Right to Nationality

Act No. 252, of 27 May 1950, regarding Danish nationality (published in *Lovtidenden A*, 1950, No. 31), which came into force on 1 January 1951 and superseded the Nationality Law of 1925, introduces certain new principles in Danish legislation on the acquisition and loss of nationality.

The law was prepared in common by representatives of the competent government departments of Denmark, Norway and Sweden, who submitted a joint report to their respective Governments in August 1949. To this report were attached draft bills, one for each country, on the basis of which bills were introduced in the Parliaments of the three countries during the parliamentary session of 1949–1950. When the bills had reached the committee stage, representatives of the three Parliaments met in Copenhagen to discuss basic principles of the bills with a view to preserving the uniformity which had been attained at the preparatory stage. Agreement was reached on all questions of principle, and the new nationality laws of the three countries are therefore uniform, except for minor technical points; one of these minor technical differences is due to the fact that naturalization is an administrative act in Norway and Sweden, but a legislative act in Denmark.[2]

The principal feature of the laws is the complete equality which they establish between men and women. Under the law of 1925, a foreign woman who married a Danish national thereby automatically acquired Danish nationality, but under the 1950 law this will not be so. The new law contains no specific provision regarding foreign women marrying Danish men. The national status of such women is therefore not affected by the marriage; if they wish to obtain Danish nationality, they must apply for naturalization in the same way as foreign men or foreign unmarried women.

On the other hand, a Danish woman who marries a foreigner does not thereby lose her Danish nationality; only if she obtains a foreign nationality upon application or with her own express consent does she lose her Danish nationality under a general rule to that effect which applies equally to men and women, married or unmarried. Under the law of 1925, a Danish woman who obtained a foreign nationality, even by the mere fact of marrying a foreigner, lost her nationality unless she was a Danish national by birth and maintained residence in Denmark.

The law is furthermore designed to avoid statelessness to the greatest possible extent. The bill which was submitted to Parliament contained a clause under which a person who had acquired Danish nationality through naturalization, and was subsequently sentenced to at least one year's imprisonment for certain specified crimes, could be deprived of his nationality by royal decree, but this clause was deleted by Parliament. Under the new law, as under previous laws, Danish nationality cannot, therefore, be revoked by a unilateral act of the Government.

A special clause of the law (article 10) authorizes the King to conclude agreements with Finland, Iceland, Norway and Sweden concerning certain points relating to the application of the law. Such an agreement was

[1] Note prepared by Professor Max Sørensen, University of Aarhus.

[2] See extracts from the Swedish Citizenship Act on p. 265 of the present *Yearbook*; see also Norway, p. 216.

concluded on 21 December 1950 between Denmark, Norway and Sweden.[1] According to its provisions, birth or residence in Norway and Sweden shall have the same effect as birth or residence in Denmark with respect to certain clauses of the law regarding acquisition of Danish nationality. It is furthermore provided that Norwegian and Swedish nationals under certain conditions shall have a right to obtain Danish nationality by making a unilateral declaration to that effect before a competent Danish authority, without having to pass through the process of naturalization. The conditions are that

(1) The Norwegian and Swedish nationality of the persons in question was not acquired by naturalization;

(2) He is between twenty-one and sixty years of age;

(3) He has been a permanent resident of Denmark for ten years; and

(4) He has not in that period been sentenced to imprisonment for a criminal act.

[1] See the text of this agreement on p. 434 of the present *Yearbook*.

B. Economic and Social Rights

By Act No. 147 of 31 March 1950 (published in *Lovtidenden A*, 1950, No. 16), the right to children's allowances was introduced. The general principle of the law is that every person who is responsible for the maintenance of a child not more than sixteen years of age, and whose taxable income is under 20,000 kroner a year, is entitled to an allowance by the State. The amount of the allowance varies from 112 to 44 kroner a year, depending upon the taxable income and the place of residence of the person entitled to the allowance, the amount being higher in urban than in rural districts.

II. COURT DECISIONS

Decisions rendered by Danish courts during 1950 do not constitute important new developments in the field of human rights.

DOMINICAN REPUBLIC

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS[1]

1. The Constitution of the Dominican Republic, promulgated on 10 January 1947, was not amended during the year 1950. The constitutional rules concerning personal rights, including nationality and citizenship, remained unchanged.[2]

2. In the field of political rights, all Dominican nationals of either sex who have attained eighteen years of age, and all married nationals, without any minimum age limit, have the right to vote and are eligible for election to any elective office.[3]

Discrimination on grounds of sex, race or religion does not exist in the Dominican Republic.

In the field of freedom of association and assembly for peaceful purposes, the law protects all groups, including political parties, trade unions, employers' associations, cultural associations and any other social groups whose social views are universally accepted.

3. Social security and welfare in the Dominican Republic are based on a series of legislative and administrative provisions, among which the Labour Code may be specifically cited.

4. The following laws referring to human rights and fundamental freedoms were promulgated during the year 1950:

(*a*) Amnesty Act No. 2278, of 4 February 1950, as supplemented by Act No. 2418, of 20 June 1950. This Act is reproduced in the present *Yearbook*.

(*b*) Act No. 2279, of 22 February 1950, relating to exiles or political refugees. This Act is reproduced in the present *Yearbook*.

(*c*) Act No. 2402, of 6 June 1950, concerning the duty to maintain minors under the age of eighteen years. This Act is published in the present *Yearbook*.

(*d*) Act No. 2570, of 29 November 1950, establishing a code for minors. This Act is published in *Gaceta Oficial* No. 7220, of 15 December 1950.

(*e*) Organic regulation No. 6331, of 30 January 1950, concerning the Secretariat of State for Education and Fine Arts. This regulation is published in *Gaceta Oficial* No. 7075, of 4 February 1950.

This regulation deals in Chapter I with the services included in the Secretariat of State, and lists the attributions of each of the services—technical service, service of fine arts, cultural expansion and intellectual co-operation, administrative service and medical school service. Among the attributions of the section of intellectual co-operation are listed contribution to the development of relations between intellectuals of the Dominican Republic and foreign intellectuals; execution of the work of the Dominican Commission of intellectual co-operation; organization of a roster of intellectuals of the nation with indication of the background, publications, etc., of each; co-operation for the establishment and maintenance of good relations between cultural institutions of the Dominican Republic and organizations of intellectual co-operation and cultural institutions abroad; publicity for the principles, plan and activities of UNESCO, and co-operation with the Institute of Psycho-pedagogical Research in the preparation of working material destined for the teaching in the schools of the country of the origin, the structure and the aims of the United Nations and its specialized agencies.

[1] This note is based on texts and information received through the courtesy of Dr. Enrique de Marchena, Minister Plenipotentiary and Permanent Alternate Delegate of the Dominican Republic to the United Nations.

[2] See the provisions in *Yearbook on Human Rights for 1946*, p. 90-91, and in *Yearbook on Human Rights for 1947*, p. 88.

[3] See the electoral provisions in *Yearbook on Human Rights for 1948*, pp. 306-307.

AMNESTY ACT No. 2278, OF 4 FEBRUARY 1950, AS SUPPLEMENTED BY ACT No. 2418, OF 20 JUNE 1950[1]

Art. 1. If, at the date of publication of this Act, a person has been guilty of an offence against the security of the State through participating, from a foreign country, in plots or conspiracies designed to disturb

[1] Spanish text in *Gaceta Oficial* No. 7085, of 25 February 1950, and No. 7139, of 28 June 1950, respectively. English translation from the Spanish text by the United Nations Secretariat. The validity of the Act of 20 June 1950 was extended for a period of sixty days by Act No. 2523, of 27 September 1950 (*Gaceta Oficial* No. 7187, of 4 October 1950); the provisions of the Act ceased to have effect on 22 November 1950 for those who had not availed themselves of its benefits and had not fulfilled the requirements of the law (see Act of 22 November 1950 in *Gaceta Oficial* No. 7215, of 2 December 1950).

the domestic peace of the Republic, or to overthrow its lawfully constituted authorities, or taking part in the preparation or execution of armed attacks with a similar purpose, he shall acquire the right to amnesty in respect of the crimes or offences which he has committed as aforesaid if he returns to national territory and gives a solemn undertaking before the Attorney-General of the Republic that he will not commit such offences again.

Art. 2. The benefit of this amnesty shall likewise extend to any person who, having been convicted of such offences and not having previously been pardoned by the Executive, is at the time of publication of this Act serving his sentence, as soon as he gives the solemn undertaking referred to in article 1 hereof before the Attorney-General of the Republic.

Art. 3. If any person covered by the foregoing provisions returns to national territory with the declared intent of availing himself of the benefits of this Act, he shall remain at liberty throughout the period necessary for arranging the formalities in connexion with his giving the said undertaking; nevertheless, if the competent authorities consider it necessary in the interest of public security, he may be kept under police supervision during this time.

Art. 4. If a person to whom the benefits of the provisions of articles 1 and 2 extend has not availed himself of the benefits conferred thereby, he shall be debarred from doing so after the expiry of a time-limit of three months from the date of publication of this Act, after which date the amnesty granted thereby shall cease to have effect so far as he is concerned.

ACT No. 2279, RELATING TO EXILES OR POLITICAL REFUGEES[1]

of 22 February 1950

Art. 1. Aliens admitted to the country in accordance with the immigration laws and permitted to take up residence as exiles or political refugees shall be required, in addition to being bound by all the provisions of the laws and regulations of the Republic, to comply with the following regulations in order to continue residing in the country:

(*a*) To take no hostile action against the lawful institutions, or those which the Republic recognizes, of the State of which he is a national, or of other States, and to take no part in any activity of this nature.

(*b*) To make no public abusive or defamatory statement, accusation or imputation against those institutions or against the person of their office-holders or members.

Art. 2. Exiles or political refugees who are already in the country at the time when the present Act comes into effect shall be governed by its provisions.

Art. 3. Any exile or political refugee who in the judgment of the Secretary of State for the Interior and Police, which shall be embodied in a written report, violates the provisions of this Act, shall be deprived of his entry permit and expelled from the country. Should the penalty for the violation entail the deprivation of personal freedom under other laws, expulsion shall take place after the proceedings prescribed by law and the serving of the sentence imposed.

Art. 4. This Act shall not affect the general immigration policy established by the Constitution and laws of the Republic.

[1] Spanish text in *Gaceta Oficial* No. 7085, of 25 February 1950. English translation of the Spanish text by the United Nations Secretariat.

ACT No. 2402 CONCERNING THE DUTY TO MAINTAIN MINORS UNDER THE AGE OF EIGHTEEN YEARS[1]

of 6 June 1950

Art. 1. The duty of parents to care for their children who are under the age of eighteen years is a matter of public concern and social interest. Accordingly, it shall be the duty of the father, and, failing him, of the mother, to feed, clothe, support, educate and provide shelter for their children who are under the age of eighteen years, whether they are children of the marriage or not, in keeping with the needs of the children and in proportion to the resources of the parents.

Art. 2. If a father or mother is negligent in the performance of these duties, or refuses to perform them and persistently refuses to perform them after being summoned to do so, he or she shall be liable to a term of two years' correctional imprisonment. The penalty shall likewise be applicable if more than eleven days elapsed between the date of the summons and the date of their appearance.

[1] Spanish text in *Gaceta Oficial* No. 7132, of 13 June 1950. English translation from the Spanish text by the United Nations Secretariat.

Art. 3. The summons referred to in article 2 shall be issued by the chief of any police office or station situated in the community in which the delinquent parents reside or happen to be, on the application of the interested party or pursuant to information laid by any person before the chief of police or justice of the peace.

By the summons referred to in this article, notice shall be served upon the delinquent parents to appear within three days before the magistrate competent for the said community in order that they may voluntarily agree to perform their duties.

Art. 4. If after eight days have elapsed since their appearance before the said magistrate the delinquent parents still fail to fulfil their obligations, the public prosecutor, likewise on the application of the interested party, shall cause them to be summoned before the Correctional Tribunal, which shall sentence them to the penalties referred to in article 2 of this Act, if applicable.

A judgment given by the said tribunal in these circumstances shall be deemed to have been given after a hearing of both sides, whether an appearance was entered by the delinquent parents or not, and hence is not subject to appeal.

If the case relates to legitimate children, or to natural children who have been acknowledged by their father, the judgment shall always be enforceable provisionally, any appeal therefrom notwithstanding.

If the case relates to natural children who have not been acknowledged by their father, the court may order the sentence which is imposed to be executed provisionally.

In appropriate cases, the tribunal shall in its decision fix the amount of the obligations.

Art. 5. If the time-limits prescribed in the preceding articles are not observed, such non-observance may never be pleaded as a reason for setting aside the proceedings if eleven days have elapsed between the date of the summons and the date of the trial. If the said time-limit of eleven days has not elapsed, the tribunal may pass judgment on the substance of the charges, unless the defendant applies to set aside the proceedings.

Art. 6. The provisions of paragraphs 2, 3 and 4 of article 4 of this Act shall also be applicable in appellate proceedings.

Art. 7. If a person be sentenced under this Act, he may at any time obtain the suspension of the sentence by undertaking to perform his duties as a parent as described in article 1.

Art. 8. For the purpose of obtaining the suspension of the sentence, the convicted parent shall make a formal petition to the public prosecutor of the local tribunal or to the public prosecutor of the court of appeals which imposed the sentence, and shall in the said petition bind himself to discharge his duties as soon as he is released from prison, and the public prosecutor of the local tribunal or of the court of appeals, as the case may be, shall take formal note of that document, which will be signed by the person concerned, if he can sign, and attached to the records of the proceedings.

Art. 9. If, after obtaining his release as aforesaid, the delinquent parent fails to perform his duties, he shall immediately be re-committed to prison on the first application of the interested party, or even automatically if his default comes to the notice of the representative of the public prosecutor concerned.

Art. 10. Investigation of paternity is permitted for the purposes of this Act, without prejudice to other legislative provisions, all manner of evidence being admissible.

Art. 11. The existence of a generally known relationship, and any incontestable, conclusive or reasonable fact related to the paternity under investigation, may serve as evidence. The Correctional Tribunal shall reach a definitive decision in accordance with the facts.

[Articles 12 and 13 deal with the administration of the Act and the repeal of previous laws.]

ECUADOR

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS[1]

The following acts and decrees, which have some relation with the development of human rights in Ecuador, were promulgated during 1950:

By Decree of 8 August 1950 (*Registro Oficial* No. 669, of 20 November 1950), the President of Ecuador issued an order for the enforcement of the Public Assistance Act,[2] codified by the Legislative Commission on 6 July 1949. The order deals in great detail with the organization of the services provided for by the Act (Chapter I), with the performance of such services (Chapter II) and with the financial basis for such services (Chapter III).

By Act of 15 August 1950 (*Registro Oficial* No. 600, of 26 August 1950), the Congress of Ecuador requested the Minister of Social Welfare to make a study of laws in force relating to public health, having in view the presentation of a project aiming at the improvement of health services in Ecuador.

By Act of 13 October 1950 (*Registro Oficial* No. 649, of 25 October 1950), the Congress declared that the services rendered by the blood banks, which had been initiated gratuitously by the Ecuadorian Red Cross in spite of economic limitations, were in the public interest; systematized and obligatory financial aid was inaugurated permitting blood banks to be set up in all public health services throughout the country.

By Act of 6 November 1950 (*Registro Oficial* No. 672, of 23 November 1950), the Congress created a special tax to provide sufficient funds for the continuation of the work of the Ecuadorian Anti-tuberculosis League in the fight against this disease.

By Act of 7 November 1950 (*Registro Oficial* No. 685, of 11 December 1950), the Congress approved some modifications on inheritance and gift taxes, to avoid cases in which the taxes exceed the amount inherited. These modifications were made in order to bring the Act into conformity with the Constitution of Ecuador, which guarantees the right to inheritance, and with a decision rendered by the Supreme Court of Justice of Ecuador.

By a regulation of 7 February 1950, the President of Ecuador issued rules for the rural teacher-training institutions. A summary of this regulation will be found in this *Yearbook*.

On 14 June 1950, a regulation was issued for the application of provisions concerning naturalization, extradition and deportation. A summary of this regulation is published in the present *Yearbook*.

[1] This note is based on information received through the courtesy of Dr. Antonio Quevedo, permanent representative of Ecuador to the United Nations. See also the decree of 4 April 1949 on p. 4 of this *Yearbook*.

[2] See *Yearbook on Human Rights for 1949*, p. 62.

REGULATION No. 206
CONCERNING RURAL TEACHER-TRAINING INSTITUTIONS[1]
of 7 February 1950

SUMMARY

The purpose of these schools (Chapter I) is the training of future rural teachers with the aim of improving the intellectual and moral standard, the economic situation and the social standing of the rural population and the sanitary conditions in rural districts. Further chapters deal with the personnel of the schools, the Council governing each of them, the duties and obligations of the superintendents of the schools and of other public servants having duties relating to the administration of the schools. The rights and duties of the students are set forth in Chapter XIV as follows:

[1] Spanish text of the regulation in *Registro Oficial* No. 624, of 23 September 1950. Summary prepared by the United Nations Secretariat.

DUTIES AND RIGHTS OF STUDENTS

Art. 23. The duties and rights of students are as follows:

1. To receive free of charge the education imparted by the training college in accordance with its purposes and, in the case of boarders, healthful and nourishing food;

2. To be punctual in attending theoretical and practical classes;

3. To participate in the various activities of the college and its dependencies, and particularly in farming and public health activities;

4. To work on individual and collective lots on the college farm. The produce of individual lots shall

belong to students cultivating them; that of collective lots shall serve to meet the educational needs of the classes concerned, and the remaining produce from the farm shall be used for the benefit of the training college and its associated schools;

5. To be a member of at least one of the educational societies of the college;

6. To participate actively in the seminar work organized at the college;

7. To co-operate diligently in the cultural and social extension work conducted by the college for the benefit of the local population;

8. To maintain bodily cleanliness, neatness in dress and good behaviour at all times inside and outside the college, and to perform all the school work assigned to them by the teachers;

9. To carry out diligently all duties necessary for the maintenance of the various services of lecture halls, laboratories, kitchen, dining-hall, dormitory, offices and for the care and protection of domestic animals;

10. To provide themselves with the equipment required for their personal use;

11. To take the examinations prescribed by these rules.

Among the final provisions of the regulation, chapter XXI is to be mentioned, which provides for extension classes to be organized by rural teacher-training institutions for vocational agricultural purposes and for combating illiteracy among adults.

REGULATION FOR THE APPLICATION OF PROVISIONS CONCERNING NATURALIZATION, EXTRADITION AND DEPORTATION[1] of 14 June 1950

SUMMARY

This regulation is designed to implement the Status of Aliens Act of 20 February 1947[2] and the provisions of the Naturalization and Extradition Act of 7 November 1940, in so far as these latter provisions are still in force. It deals in its four chapters with the naturalization of aliens, the naturalization of Ecuadorians in foreign countries, extradition and deportation. The provisions concerning the naturalization of aliens contain, in addition to procedural matters, the following articles concerning the naturalization of married women and minors:

"*Art. 5.* The alien woman, wife of an alien who has applied for naturalization, can apply for her naturalization jointly with her husband. In this case, the decrees of naturalization will be granted individually.

"*Art. 6.* The alien woman, wife of an Ecuadorian citizen, can acquire her husband's nationality, either by declaration made at the time of her marriage to the effect that she adopts the Ecuadorian nationality and renounces her previous nationality, or at any time after her marriage by means of an application addressed to the Minister of Foreign Affairs, who will take the necessary decision.

"*Art. 7.* The minor children of an alien who applies for naturalization may be included in the application and obtain naturalization provided that they are under parental authority; they retain, however, the right to opt for the nationality of their origin when they reach eighteen years of age."

In the chapter on the naturalization of Ecuadorians in foreign countries, the following article may be cited:

"*Art. 14.* An Ecuadorian who is naturalized in another country loses Ecuadorian nationality. The wife and the minor children of an Ecuadorian who is naturalized in another country also lose Ecuadorian nationality provided that they acquire the foreign nationality; however, they retain the right to be reinstated in their nationality of origin at the termination of their marriage or when they reach the age of majority, respectively."

In the chapter on extradition, it is provided than an Ecuadorian may not be extradited. Naturalized Ecuadorians who have committed an offence after their naturalization are excepted from this rule. The State of Ecuador is not obliged to extradite a person who has committed a political offence or an offence connected with a political offence. The national authorities have the responsibility of deciding whether the offence committed was of a political nature. The crime of homicide committed against the head of a foreign State or against any other authority of a foreign State is not considered to be a political offence or to be connected with a political offence. Other cases in which extradition is not obligatory are listed in article 22 (*b*) to (*f*) of the regulation.

Chapter 4 outlines the procedure in cases of deportation and provides for penalties in cases of false denunciations. If deportation is not possible—for instance in the case of a stateless person—or for other reasons, the Ministry of the Interior shall order the confinement of the alien either in an agricultural or in a penal colony in accordance with the gravity of the act committed by the alien and the danger which the deportable person may constitute to the State.

[1] Spanish text of the regulation in *Registro Oficial* No. 548, of 24 June 1950. English summary prepared by the United Nations Secretariat.

[2] See *Yearbook on Human Rights for 1947*, p. 92–94.

EGYPT

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS[1]

Freedom of the Press

Act No. 120 of 1950 adding a new article to the penal code. This Act appears in this *Yearbook*.

Right to Nationality

Act No. 160 of 1950 on Egyptian Nationality. Excerpts from this Act are included in this *Yearbook*.

Economic and Social Rights

Act No. 89 of 1950 concerning industrial accidents. Excerpts from this Act are reproduced in this *Yearbook*.

Act No. 97 of 1950 concerning collective labour agreements. This Act, dated 24 July 1950, is published in the *Journal officiel du Gouvernement égyptien* No. 76, of 31 July 1950. An English translation of this Act will be found in: International Labour Office, *Legislative Series 1950* (Egypt 2).

Act No. 116 of 1950 on the social security scheme. Excerpts from this Act are included in this *Yearbook*.

Act No. 117 of 1950 concerning compensation for occupational diseases. Excerpts from this Act are reproduced in this *Yearbook*.

Act No. 118 of 1950 imposing social and health services on certain agricultural land-owners. Excerpts from this Act are included in this *Yearbook*.

Right to Education

Act No. 90 of 1950, establishing free education in kindergartens and secondary and technical schools. A summary of this Act is included in this *Yearbook*.

[1] This note is based on texts and information received through the courtesy of Dr. Ahmed Moussa, *Premier Substitut au Conseil d'Etat*, Cairo.

ACT No. 120 OF 1950 ADDING A NEW ARTICLE TO THE PENAL CODE[1]

Art. 1. A new article, article 201 *bis*, is hereby added to the Penal Code, as follows:

Article 201 bis. Any person who publishes, in a newspaper or other printed matter, without the written authorization of the Minister of the Interior, news or drawings, photographs or emblems relating to the private affairs of the royal family or of any of its members shall be liable to imprisonment for a period not exceeding six months and to a fine not exceeding £E.100, or to one of these penalties only.

Art. 2. The Ministers of Justice and of the Interior shall be responsible for the application of the present Act, which shall come into force on publication in the *Official Gazette*.

[1] Arabic text in *Official Gazette* No. 80, of 10 August 1950. Arabic and French texts received through the courtesy of Dr. Ahmed Moussa, *Premier Substitut au Conseil d'Etat*, Cairo. English translation from the French text by the United Nations Secretariat.

ACT No. 160 OF 1950 ON EGYPTIAN NATIONALITY[1]

Art. 1.

[Paragraphs 1 to 7 of this article state what persons are considered Egyptian.]

Wives and children under age are fully entitled to Egyptian nationality under the terms of the abovementioned paragraphs of this article.

Art. 2. The following persons shall be considered Egyptian:

(1) Any child born of an Egyptian father;

(2) Any child born in Egypt of an Egyptian mother and

[1] Arabic text in *Official Gazette* No. 91, of 18 September 1950. French text in *Journal officiel du Gouvernement égyptien* No. 21, of 5 March 1951. English translation by the United Nations Secretariat. The Act was promulgated on 13 September 1950 and came into force on the day of its publication in the *Official Gazette*.

a father who is stateless or whose nationality is not known;

(3) Any child born in Egypt of an Egyptian mother and the identity of whose father is not legally established;

(4) Any child born in Egypt of unknown parentage.

Any child found on Egyptian territory is presumed to have been born in Egypt, barring proof to the contrary.

Art. 3. Any child born abroad of an Egyptian mother and a father who is stateless or whose nationality is not known, and who, within one year from the time he attains his majority, has opted for Egyptian nationality by notification to the Minister of the Interior, shall be considered Egyptian.

[Articles 4 to 7 inclusive lay down the conditions under which an alien born in Egypt may be considered Egyptian by decision of the Council of Ministers or under which Egyptian nationality may be granted to a foreigner by decree or by special legislation.]

Art. 8. The wife of an alien who acquires Egyptian nationality shall become Egyptian unless, within the year following her husband's naturalization, she should declare in favour of retaining her original nationality.

Nevertheless, those of her children who are minors shall be considered Egyptian unless they ordinarily reside abroad and unless, under the laws of the country in which they reside, they retain their father's original nationality.

Children whose nationality has been established in accordance with the foregoing provisions may, within the year after they have reached their majority, declare in favour of retaining their original nationality.

Art. 9. An alien woman who marries an Egyptian does not acquire Egyptian nationality unless she declares her desire to do so in the marriage document or by subsequent application, and provided she has lived together with her husband for at least two years from the date on which the marriage was performed.

Nevertheless, the Minister of the Interior may, by a decision taken before the expiration of the period provided for in the first paragraph and accompanied by a statement of his reasons, deny to the alien wife the right to acquire Egyptian nationality. An alien wife, however, who acquires Egyptian nationality does not lose it when the marriage is dissolved unless she should re-marry an alien or ordinarily reside abroad or unless she should reacquire her foreign nationality.

Art. 10. Any alien naturalized under the terms of articles 4, 5, 6, 8 and 9 shall not enjoy the rights of Egyptian nationals or exercise political rights until five years after the date of his naturalization.

Furthermore, he shall not be vested with elective functions or powers until ten years after that date.

Any person, however, who has enlisted in the regular Egyptian army and has fought in its ranks may be exempted by decree from the aforesaid time limitations.

Art. 11. No Egyptian may acquire a foreign nationality without prior authorization granted by decree.

Any Egyptian who acquires a foreign nationality without prior authorization shall remain an Egyptian in every respect and in all cases, unless the Egyptian Government declares him to be deprived of that nationality under article 15.

Art. 12. The wife of an Egyptian authorized to acquire a foreign nationality shall lose her Egyptian nationality if she necessarily assumes her husband's nationality in pursuance of the law governing her new nationality, unless, in the year following her husband's naturalization, she declares her desire to retain her Egyptian nationality.

Children who have not yet attained their majority shall lose their Egyptian nationality if, as a result of their father's change of nationality and in pursuance of the law governing his new nationality, they necessarily assume the nationality of the father.

Children whose nationality has been established in virtue of the foregoing provisions may, in the year after they have attained their majority, declare in favour of retaining their original nationality.

Art. 13. An Egyptian woman who marries an alien shall retain her Egyptian nationality unless, when the marriage is performed or during her married life, she should declare her desire to acquire her husband's nationality in compliance with the law of his country.

In case of dissolution of the marriage, the Egyptian wife may regain her original nationality at her own request and with the approval of the Minister of the Interior.

If, however, the marriage of an Egyptian woman and an alien is not recognized by Egyptian law and is valid according to the laws of the country of the husband, the woman shall be considered as having retained her original nationality and as never having acquired her husband's nationality.

[Article 14 lays down the conditions under which any person may be deprived of his Egyptian nationality within five years from the date he has acquired it, by a decree stating the reasons for this action, if he has acquired Egyptian nationality under the provisions of articles 4 to 6 and 9 of the present Act.]

Art. 15. Any Egyptian may be deprived of his Egyptian nationality by a decree stating the reasons for this action:

(1) If he has acquired a foreign nationality contrary to the provisions of article 11;

(2) If he has consented to undergo military service for a foreign Power without prior authorization granted by a decision of the Council of Ministers;

(3) If he has engaged in activities for the benefit of a foreign country or government which is in a state of war with Egypt or which has severed diplomatic relations with this country;

(4) If he has accepted employment in a government or in an international institution abroad and if he retains that post despite the Egyptian Government's order to resign from it;

(5) If he has his ordinary place of residence abroad and has become affiliated either with a foreign organization spreading subversive propaganda against the social or economic order of the State or the basic institutions of society or seeking to achieve that objective by any other means, or with a centre, branch, school or other institution, bureau or group which is part of or connected with such an organization in any form whatsoever.

Art. 22. The provisions of any international agreements or treaties relating to nationality concluded between the Kingdom of Egypt and foreign Powers shall in all cases be carried out, even if they are contrary to the terms of the present Act.

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ACT No. 89 OF 1950, CONCERNING INDUSTRIAL ACCIDENTS[1]

CHAPTER II

GENERAL PROVISIONS

Art. 3. Any employee who suffers an injury arising out of and in the course of his employment shall be entitled to compensation from the employer in accordance with the rules laid down in Chapters III and IV.

No compensation shall be payable by the employer, however, if—

(*a*) The injury has not incapacitated the employee for more than three days from engaging in his trade or occupation;

(*b*) The injury was self-inflicted;

(*c*) The injury was caused through the serious and wilful misconduct of the employee. Serious and wilful misconduct shall be deemed to include:

1. Any act committed under the influence of alcohol or narcotic drugs;
2. Disobedience to the general rules issued by the employer and posted up in the workplace or to the express orders issued by the employee's chief, the execution of which is under the supervision of such chief, or failure to use any device which the employee knew to be provided for his safety, except in the case of an accident causing death or permanent incapacity exceeding the degree of 25 per cent mentioned in the schedule to this Act or established by the court medical officer mentioned in section 24.

The grounds for refusing compensation under (*b*) and (*c*) above may not be invoked unless they were mentioned in the notice referred to in section 12 or in the investigation made by the police in virtue of section 13.

Art. 4. An employee shall not be entitled to lodge a claim against the employer under any other provisions than those of this Act on the ground of an accident incurred by him in the course of his employment unless the accident was caused by a serious offence on the part of the employer.

Any agreement the purpose of which is to grant to an employee who has incurred an accident, or to his dependants, compensation at a rate lower than the rates prescribed in this Act shall be null and void, whether entered into before or after the injury.

Art. 6. Any employer who temporarily hires out or lends the services of an employee to a third party shall continue to be liable with respect to the employee in accordance with the provisions of this Act.

Art. 7. If an injury which gives rise to compensation in accordance with the present Act simultaneously involves the liability of a person other than the employer, the employee shall be entitled to claim compensation either from the employer or from the other person.

The rights of the employee with respect to the person liable shall be transferred to the employer who has paid the compensation due; likewise any compensation which may be payable by the employer shall be subject to deduction of the sums actually obtained by way of damages from the person liable.

Art. 8. Any sum payable to the injured employee or his dependants in virtue of this Act shall be guaranteed by a preference of the same rank and enforceable under the same conditions as the preference prescribed in section 1141 of the Civil Code in respect of sums due to employees.

Such sums shall be inalienable and exempt from attachment except as regards one-fourth of their amount in respect of debts for alimony.

Art. 12. The employer shall be bound to send notice in writing to the police authority of every accident incurred by one of his employees which

[1] French text in *Journal officiel du Gouvernement égyptien* (French edition) No. 32, of 12 April 1951, received through the courtesy of Dr. Ahmed Moussa, *Premier Substitut au Conseil d'Etat*, Cairo. The Act is dated 5 July 1950. An English translation of the complete text of the Act is published in: International Labour Office, *Legislative Series 1950* (Egypt 1).

entails incapacity for work lasting more than three days, within four days of his being informed thereof.

The said notice shall contain, in addition to the name and address of the injured person, a concise statement of the accident, the nature of the injury and the name and address of the medical practitioner in attendance, and the name of the company (if any) with which the employer is insured.

Art. 13. The police authority shall make an investigation into every notice received in virtue of this Act and shall make a detailed report of the circumstances of the accident. The statements made by the witnesses, the employer or his representative and the injured worker shall, when appropriate, be included in the report.

The police shall notify these cases at once to the Labour Department, furnishing it with a copy of the report. The said department may, if it considers it desirable, require the police to make a further investigation.

Art. 17. Disputes respecting compensation for industrial accidents shall be dealt with summarily by the courts. The employee or his survivors shall be exempt from legal expenses.

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CHAPTER III

MEDICAL TREATMENT

Art. 19. The employer shall be bound in every case to provide first aid for an injured employee, even if the employee is not obliged by the injury to leave his work.

In every establishment where more than twenty workers are employed there shall be kept, in good order and in a place made known to the employees, one first-aid box or more containing the dressings, medicaments and disinfectants prescribed by the Labour Department in agreement with the Ministry of Public Health according to the rules laid down in an order issued by the Minister of Social Affairs. The said order shall fix the number of workers to whom one box shall be assigned, the place where the box shall be made available and the person in charge thereof.

Art. 20. Every employee who meets with an accident shall be entitled to treatment free of charge in a Government hospital if there is such a hospital within a radius of 50 kilometres of the place where the accident occurs, there is a vacant bed therein and the management of the hospital considers that the case requires hospital treatment. The said management shall be the judge of the length of the stay in hospital which is necessary.

Art. 21. In cases where neither a Government hospital nor any other hospital where the employee can receive treatment free of charge exists within the above-mentioned radius, the employer shall be bound to pay all the medical, pharmaceutical and hospital expenses, but shall be entitled to choose the medical practitioner and the hospital.

Art. 22. The expenses of transport to the hospital shall be defrayed in every case by the employer.

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CHAPTER IV

COMPENSATION

Art. 27. If the injury renders the employee incapable of carrying on his trade or occupation, the employer shall be bound to pay him a cash allowance until he is cured or his permanent incapacity for work is established in accordance with section 23 or until his death.

The said allowance shall be equal to the employee's full remuneration during the first ninety days; it shall then be reduced to half the said remuneration, subject to a minimum of P.T.10 or the full remuneration if the normal remuneration is less than P.T.10.

The allowance shall be based on the employee's last remuneration. For workers paid at task rates the allowance shall be based on the average remuneration during the ninety days which preceded the accident, with due regard to the provisions of the preceding paragraph.

The allowance shall be paid weekly.

If death occurs or permanent incapacity for work is established within twelve months of the accident, the sums paid under this section shall not be deducted from the amount of the compensation prescribed in sections 28 and 30.

On the other hand, sums paid under this section after 12 months shall be deducted.

Art. 28. If the accident causes the death of the employee, the employer shall be liable to pay compensation equal to 1,000 days' wages calculated on the basis of the employee's last remuneration. For piece workers the compensation shall be based on their average remuneration during the last ninety days.

All supplementary allowances in cash or in kind received by the employee shall be included in the remuneration.

For the purpose of calculating the said remuneration, a month shall be deemed to consist of thirty days in the case of employees paid by the month. In the case of a worker paid at task rates, the total amount of the remuneration received during the days on which he comes to work shall be divided by the number of days.

If it is found impossible to ascertain the rate of remuneration owing to the shortness of the employee's

period of service or the conditions of his employment, the average remuneration (calculated as above) of an employee of the same class in the service of the employer (or, in default of such person, an employee in the service of another employer, preferably in the same district) shall be substituted for the said rate.

The total compensation payable in the case of death shall be not less than £E15 or more than £E600. For unpaid apprentices the full compensation shall be £E100.

In addition to the above compensation, the employer shall pay funeral expenses not exceeding £E5.

Art. 30. If the injury results in total and permanent incapacity for work, a sum equal to the remuneration for 1,200 days shall be paid to the injured person; the remuneration shall be calculated on the same basis as in the case of death.

The compensation thus due shall not be less than £E180 or more than £E700.

For unpaid apprentices the amount of the compensation shall be £E125.

. . .

[A schedule showing the amount of compensation payable to the dependants of a deceased employee and the distribution thereof among them is annexed to the Act.]

ACT No. 116 OF 1950 ON THE SOCIAL SECURITY SCHEME[1]

PART I

GENERAL PROVISIONS

Art. 1. This law shall be applicable to Egyptians and to foreigners if, in the case of pensions, they have had a continuous residence in Egypt for not less than ten years immediately preceding the date of application for pension, and the legislation of their countries provides for reciprocal treatment, and, in the case of public assistance, without regard to the said residence condition.

Art. 2. For the purpose of applying the provisions of this law:

(*a*) "Children" means dependent children whose age does not exceed thirteen years, and those whose age does not exceed seventeen years if attending schools or institutions determined by the Minister of Social Affairs, or if they are totally disabled, or dependent daughters.

(*b*) "Family" means a group composed of husband, wife and children or some members of this group, living together and sharing the same board.

(*c*) "Orphans" means children both of whose parents are dead, or whose fathers are dead and mothers re-married, or whose fathers or both of whose parents are unknown.

(*d*) "Pensioner" means a person who has been granted a pension on account of total disability or old age (whether a man or woman), a widow with children, and the elder orphan if the orphans are sharing the same board. In the case of orphans living separately from each other, each of them shall be considered a "pensioner."

(*e*) "Aggregate pension" means the pension to which the pensioner is entitled, plus the allowances due to the other members and the family bonus.

Art. 3. Subject to the provisions of this law, the following persons shall be eligible for a pension if they satisfy the conditions laid down in Part II of this law:

(*a*) Widows with children,
(*b*) Orphans,
(*c*) Persons totally incapacitated for any work,
(*d*) Persons who have attained old age.

Art. 16. Pensions and public assistance payments shall not be assigned or passed to any other person, nor shall they be liable to seizure.

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PART II

QUALIFYING CONDITIONS FOR PENSIONS

Art. 18. Widowhood pension shall be payable to every woman whose age is under sixty-five years and whose husband has died leaving her one or more children living with her and who has not re-married. If a husband dies leaving more than one widow with children, each of such widows shall be entitled to a widowhood pension.

If a widowhood pensioner dies or re-marries, her children shall be entitled to orphans' pension.

Art. 19. Every person whose age is over seventeen and less than sixty-five full years, whether a man or a woman without a husband, shall be entitled to total disability pension, provided it is established that he or she is totally incapacitated for any work as the result of illness, accident or any congenital defect.

Art. 20. Every man or woman without a husband who can prove by an official document that he or she has attained the age of sixty-five years shall be entitled to old-age pension.

. . .

[1] Arabic text in *Official Gazette* No. 82, of 17 August 1950. English translation in *Social Welfare in Egypt* (published by the Egyptian Ministry of Social Affairs and received through the courtesy of the Egyptian Delegation to the United Nations), 1950, pp. 146-152.

PART IV
PUBLIC ASSISTANCE

Art. 36. There shall be established in the Social Security Department a Public Assistance Fund.

Art. 37. The Social Security Department may grant from the Fund assistance, in cash or in kind, to needy individuals or families who are not eligible for pensions under the provisions of this law, in the following cases:

(1) Divorced wives with children.
(2) Widows less than sixty-five years of age without children.
(3) The family whose breadwinner suffers partial disablement.
(4) The family deemed to be eligible for a pension on account of the total disability of its breadwinner during the waiting period of six months referred to in the second paragraph of article 11.
(5) Sickness of the breadwinner of the family or one of its members.
(6) The family whose breadwinner is imprisoned or detained.
(7) The family whose breadwinner is unemployed.
(8) Cases in need of funeral or child-birth expenses.

Other cases may be added by an order from the Minister of Social Affairs. Payment of assistance shall be effected in accordance with conditions and in the manner to be laid down by him within the limits of moneys appropriated for this purpose.

Art. 39. The Minister of Social Affairs may, by an order, grant relief assistance in cases of disaster and general catastrophies such as floods, fires, torrents, etc., to pensioners and others without distinction.

PART V
REHABILITATION AND VOCATIONAL TRAINING OF THE DISABLED

Art. 42. The Ministry of Social Affairs, in agreement with the Ministries and associations concerned, shall take measures for setting up institutions and schools necessary for the rehabilitation and vocational training of the disabled.

. . .

ACT No. 117 OF 1950 CONCERNING COMPENSATION FOR OCCUPATIONAL DISEASES[1]

. . .

Art. 1. This Act shall apply to all wage-earners, salaried employees and apprentices engaged in any of the industries or occupations enumerated in the schedule to this Act.

Art. 2. Any employee suffering from any of the diseases enumerated in the schedule to this Act shall be entitled to compensation from the employer, the amount of which shall be fixed in accordance with the rules laid down in Chapters III and IV of Act No. 89 of 1950,[2] concerning industrial accidents. In the case of the death of the employee, the compensation shall be payable to his survivors.

The compensation shall be payable where the disease results in temporary or permanent incapacity for work, whether total or partial, or the death of the employee.

Nevertheless, the employer shall not be bound to pay compensation if it is proved that the employee has disregarded or contravened the rules referred to in section 10 or disobeyed the express orders issued by his chief, the execution of which is under the supervision of such chief within the limits of his authority, or has failed to make use of any device which he knew to be provided for his safety, except where the disease has resulted in the death of the worker or in permanent incapacity the degree of which is not less than 25 per cent of total incapacity.

Art. 4. Any employee suffering from an occupational disease to which this Act applies may not avail himself of the provisions of any other law unless the disease is the result of a serious offence on the part of the employer.

Any agreement according to which the employee or his dependants give up their right to compensation or accept a sum in compensation which is lower than the rates prescribed in this Act shall be null and void, whether entered into before or after the disease is contracted.

Art. 5. Any sum payable to the sick employee or his dependants in virtue of this Act shall be guaranteed by a preference of the same rank and enforceable under the same conditions as the preference prescribed in section 1141 of the Civil Code in respect of sums due to employees.

Such sums shall be inalienable and exempt from attachment except as regards one-fourth of the amount in respect of debts for alimony.

Art. 6. The employer shall be held responsible for compensation within one solar year from the date on which the worker's service is terminated, where

[1] Arabic text in *Official Gazette* No. 82, of 17 August 1950, received through the courtesy of Dr. Ahmed Moussa, *Premier Substitut au Conseil d'Etat*, Cairo. The Act is dated 9 August 1950. An English translation of the complete text of the Act is published in International Labour Office, *Legislative Series* 1950 (Egypt 4).

[2] See p. 76 of this *Yearbook*.

symptoms of the disease contracted by the worker appear within this period, if the employee has remained unemployed or has been employed in any industry in which he was not exposed to that disease.

Art. 7. If the employee has been employed by two or more employers during the year which preceded the appearance of the symptoms, each of the employers shall be bound to pay compensation to the sick employee or his survivors in proportion to the period which the employee has spent in his service, unless any one of them proves beyond doubt that the worker has not contracted the disease while in his service. The employee entitled may claim the compensation from any of the said employers according to his choice, and the employer who pays it may claim from each of the others repayment of the share due.

Art. 9. Every employer shall be obliged to insure his employees against occupational diseases for which he is liable to pay compensation under this Act, in accordance with the conditions and in the manner prescribed by Act No. 86 of 1942 respecting compulsory insurance against industrial accidents.[1]

The employee shall be entitled to enforce his claims from both the employer and the insurance carrier; if the insurance carrier pays the compensation, the rights of the employer shall be transferred to the insurance carrier.

If the employer is declared bankrupt, the amount due from the insurance carrier shall not be included in the assets.

Art. 10. The employer shall comply with the rules for the protection of workers against diseases which shall be established in an Order of the Minister of Social Affairs.

These rules shall be posted up in a conspicuous position in the workplace.

Art. 12. The employer shall entrust one or more medical practitioners with the medical examination of his workers at intervals to be fixed by the Labour Department and published in an order of the Minister of Social Affairs.

The medical practitioner shall at once notify the Labour Department, the nearest office of the public health authorities and the employer of all cases of death or sickness among the employees caused by the diseases enumerated in the schedule to this Act.

If the medical practitioner fails to make the notification provided for in the preceding paragraph, the Labour Department shall bring the case before the Central Association of the Medical Profession with a view to disciplinary action. The Labour Department may, in addition, ask the employer to replace the medical practitioner in question by another.

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[A schedule of occupational dis ases is annexed to the Act.]

[1] See this Act in International Labour Office, *Legislative Series*, 1942 (Egypt 2), p. 2.

ACT No. 118 OF 1950 IMPOSING SOCIAL AND HEALTH SERVICES ON CERTAIN AGRICULTURAL LAND—OWNERS[1]

Art. 1. In applying the provisions of this law, the word "ezba" shall mean a collection of buildings erected to serve as house accommodation for workers who usually work on the agricultural land attached to that "ezba".

The term "ezba proprietor" shall mean any person, whether real or legal, individual or collective, who owns agricultural land to which the provision of the preceding paragraph applies.

Art. 2. No "ezba" shall be constructed before a permit to this effect is issued by the provincial council within the circumscription of which is situated the agricultural land to which the buildings of the "ezba" are attached. A copy of the plans of the buildings duly approved by the competent authorities shall be annexed to the permit, together with the relevant specifications.

Art. 3. The specifications referred to in the preceding article shall particularly include the following:

(1) Supply of pure drinking water for the use of the inhabitants of the "ezba", whether by means of a lifting machine or any other means approved by the competent health authority;

(2) Erection of one or more basins described in the preceding paragraph to be filled with water for the drinking of cattle;

(3) To assign a certain place to the south of the "ezba" buildings where the inhabitants may store their organic manure, and another place for storing fuel stalks;

[1] Arabic text in *Official Gazette* No. 82, of 17 August 1950. English text based on the translation in *Social Welfare in Egypt* (published by the Egyptian Ministry of Social Affairs and received through the courtesy of the Egyptian Delegation to the United Nations), 1950, pp. 171–173.

(4) To make available in a designated place of the "ezba" for the use of its inhabitants a first-aid box which shall always contain the disinfectants and bandages specified in an *arrêté* issued by the Minister of Public Health and kept in the charge of a trained person;

(5) To construct a meeting-hall or a place for prayers in conformity with the conditions laid down by the Ministry of Social Affairs. "Ezbas" established before the promulgation of this law shall be exempted from the application of this paragraph if the agricultural land attached to it is less than fifty feddans[1] or if the tax imposed on it is less than £E.50.

Art. 13. The proprietor of an ezba shall maintain its dwellings and all its institutions in good repair according to the specifications made by the competent authorities.

The inhabitants of an ezba are responsible for the cleanliness of their dwellings and for the good care of repairs made by the proprietor.

Art. 14. The proprietor of an ezba shall set aside for each dwelling a piece of land not less than a kirat[2] free of charge for raising vegetables and other foodstuffs. These pieces of land may be united together in one lot adjacent to the ezba.

Art. 15. The expenses of construction and those incurred in connexion with the application of the present law and the ministerial orders issued in pursuance thereof shall be a charge on the proprietor. The inhabitants of the ezba shall bear no portion of these expenses.

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[1] A feddan is equal to an acre.

[2] A kirat is approximately 175 square metres.

ACT No. 90 OF 1950 ESTABLISHING FREE EDUCATION IN KINDERGARTENS AND SECONDARY AND TECHNICAL SCHOOLS[1]

SUMMARY

Article 1 states that education shall be free in kindergartens, secondary schools, and intermediate commercial and agricultural schools.[2]

Articles 2 and 3 repeal or amend certain provisions contrary to free education in the above-mentioned institutions. Thus some articles of Act No. 10, of 4 February 1949, regulating secondary schools and examinations for certificates of intermediate and secondary studies[3] have been rescinded. The articles of the Act of 4 February 1949 that have been rescinded (articles 5 to 7, 15, 20 to 23, 39, 41 and 47) dealt with conditions of admission to secondary education.

[1] French text of the Act in *Journal officiel du Gouvernement égyptien* No. 69, of 10 July 1950, received through the courtesy of Dr. Ahmed Moussa, *Premier Substitut au Conseil d'Etat*, Cairo, and summarized by the United Nations Secretariat. The Act was promulgated on 5 July 1950. Articles 4 and 5 of the Act provide that "this Act shall take effect from 16 January 1950" and that it "shall enter into force as from the date of its publication in the *Journal officiel*".

[2] So far as primary schools are concerned, article 5 of Act No. 1 of 16 January 1949 states that "teaching is free of charge for all the pupils of primary schools, and no supplementary fees may be charged" (see *Yearbook on Human Rights for 1949*, p. 64). Mention should also be made of the decree of 15 April 1950 establishing freedom from matriculation and examination fees at the Fuad I and the Farouk I Universities for the children of former and present teachers. (Information through the courtesy of Dr. Moussa.)

[3] See *Yearbook on Human Rights for 1949*, p. 65.

ETHIOPIA

NOTE ON EDUCATION IN ETHIOPIA[1]

When Ethiopian administration was restored in 1942, after five years of occupation, the Government had to inaugurate anew an educational system. All pre-war Ethiopian schools were destroyed, educated Ethiopians were victims of the occupation, and there were thousands of homeless children for whom the Government had to care with very limited means. At the sacrifice of other services, the Government undertook a far-reaching plan for the education of the nation. Since 1942, over 20 per cent of the national budget has been allotted annually to education. Schools were opened in all parts of the Empire, and teachers were internationally recruited. As a means of settling the homeless children, a large number of boarding-schools were established. Elementary education was made compulsory, but from the beginning, owing to the disruption of normal life and the lack of educational facilities in Ethiopia, many children had not the opportunity to attend school when they reached the normal school-age.

Among the Ethiopian institutions of higher learning there exist colleges for agriculture, medicine, commerce, teacher-training and technology. Recently, a liberal arts college, staffed with outstanding foreign educators, has been opened and a university graduate school is under construction in Addis Ababa. In addition, about two hundred students pursue their studies in institutions of higher learning abroad at government expense.

Up to 1947, schools at all levels were maintained and financed by the national Government, but on 30 November 1947 several proclamations and orders were issued modifying the system of education. One of these texts, which deals with the powers and duties of the Ministers[1] provides that the Minister of Education and Fine Arts is responsible for the preparation of draft laws necessary for the development and proper administration of his Ministry, of regulations implementing these laws, and of the supervision of their implementation. The functions of the Minister are determined in detail as follows:

(*a*) Develop education and the arts;

(*b*) Define the nature of and the curriculum for schools of general education and technical schools;

(*c*) Control private educational institutions;

(*d*) Establish such fine arts as seem to be useful and whose value has been scientifically proved;

(*e*) Establish an academy for the promotion of research in languages and fine arts;

(*f*) Follow up the progress of science and arts on the international scale, and make it known through publications;

(*g*) Establish libraries on science, arts and history for the public at large;

(*h*) Establish public museums;

(*i*) Issue certificates for the students of schools at higher educational levels.

Ethiopian educational policy is planned by a National Board of Education and Fine Arts, which is composed of the heads of the several governmental departments and educators of high standing. The board functions under the direct supervision of the Emperor. The Minister of Education, himself a member of the board, is responsible for the implementation of the plan.

Each of the twelve provinces of Ethiopia has its own board of education which is composed of the governor of the province, the director of education in the province, and of educators. This board is responsible for the planning of elementary education in the province within the limits of general educational policy as laid down by the National Board of Education. It is also responsible for the appropriate use of the funds raised in pursuance of the Educational Tax Proclamation of 30 November 1947,[2] which provides for taxes to be levied in every province for the support of elementary education. The provincial boards also advise the Minister of Education on elementary education and on education in general in their respective provinces.

[1] English text of the order to define the powers and duties of the Minister, from which the following extract is taken, in: *New Times and Ethiopian News*, London, 28 October 1950.

[2] Published *ibid.*

FINLAND

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS[1]

1. Act No. 34, concerning the administration of social welfare, was adopted on 20 January 1950 and amended by Act No. 612, of 29 December 1950. A summary of this Act appears in the present *Yearbook*.

2. On 17 February 1950, three laws having a bearing on the physical integrity of the human person were promulgated.

Act No. 82 (published in *Finlands Författningssamling* of 20 February 1950) lays down the conditions under which abortion may be performed, on medical grounds, subject to the woman's consent and not later than before the end of the fourth month of pregnancy. Detailed written certificates submitted separately by two physicians are normally required. Difficult living conditions may be taken into consideration as a factor in judging the consequences of childbirth for the physical or mental health of the woman. Abortion may by performed on any woman who was under sixteen years of age when she became pregnant.

Acts Nos. 83 and 84, dealing with sterilization and castration respectively, are published in the same issue of the *Official Gazette*. Summaries of these Acts appear in the present *Yearbook*.

Act No. 637, provisionally amending the Inebriates Act, was promulgated on 29 December 1950. A summary of this Act appears in the present *Yearbook*.

[1] This note is based on texts and information received through the courtesy of the Finnish Branch of the International Law Association.

ACT No. 34, CONCERNING THE ADMINISTRATION OF SOCIAL WELFARE[1] OF 20 JANUARY 1950, AS AMENDED BY ACT No. 612, OF 29 DECEMBER 1950

SUMMARY

This Act, which came into force on 1 January 1951, creates in each municipality a board which is in charge of social work. These boards work under the supervision of the Ministry of Social Affairs. They are divided into a general welfare division and a special relief division.

The general welfare division deals with matters concerning population, protection of children, youth welfare, work for the advancement of vocational training, and relief for disabled persons; the division of special relief cares for the poor, alcoholics and vagabonds.

The Act provides that women as well as men shall be appointed to the boards, each of which is composed of a Chairman, Vice-chairman and at least four other members.

The Act also lists the duties and powers of the boards. Among other tasks, they decide whether and how social relief shall be granted, or, if the case is outside the scope of their work, transmit the matter to the competent authority; they assist indigent people if the persons who have to support them according to law do not meet their obligation, and they give direction and advice for the sustenance of indigent persons. In the case of children born out of wedlock, the board may transfer this obligation to the child welfare guardian.

[1] Swedish text in *Finlands Författningssamling* Nos. 34-39, of 27 January 1950, received through the courtesy of the Finnish branch of the International Law Association. Summary prepared by the United Nations Secretariat.

ACT No. 83, CONCERNING STERILIZATION[1] of 17 February 1950

SUMMARY

This Act regulates the conditions under which (*a*) a mentally ill or feeble-minded person may be sterilized against his will (if the defect is hereditary or expected to prevent the person from taking care of his children); (*b*) legally capable persons may request sterilization (1) for fear of hereditary mental illness or physical defects, or (2) because as a result of misuse of alcohol or drugs, they feel unfit to take care of children, or (3) in case of a woman, because pregnancy would be dangerous to her health.

Before the order or permission to sterilize a person is issued by the Board of Health, the person to be sterilized shall be heard, provided he is capable of understanding the implications of the operation or has not himself requested the operation. If he is a minor, or married, or in a public institution, his guardian, his wife or the head of the institution shall be given an opportunity to be heard.

[1] Swedish text in *Finlands Författningssamling* Nos. 82–85, of 20 February 1950, received through the courtesy of the Finnish Branch of the International Law Association. Summary prepared by the United Nations Secretariat.

ACT No. 84, CONCERNING CASTRATION[1] of 17 February 1950

SUMMARY

This Act regulates the conditions under which a person who has been convicted for a sexual offence or for an attempt at such offence and who is likely to commit again such offence can be castrated against his will. Furthermore, a person of full legal capacity may be castrated at his own request if he fears that he might commit sexual offences. Persons under 21 years of age may not be castrated.

The order or permission to castrate a person is issued by the Board of Health. A person who is ordered to be castrated shall be kept under observation for not more than two months in a mental institution before the decision is taken.

Appeal from a decision by which permission to castrate a person is granted or rejected shall lie with the Supreme Court.

[1] Swedish text in *Finlands Författningssamling* No. 82–85, of 20 February 1950, received through the courtesy of the Finnish Branch of the International Law Association. Summary prepared by the United Nations Secretariat.

THE INEBRIATES (TEMPORARY PROVISIONS) AMENDMENT ACT[1] Act No. 637 of 29 December 1950

SUMMARY

The principal Act, No. 60/1936, adopted on 17 February 1936, regulates the treatment of persons who because of excessive drinking disturb public order and morality or neglect to support themselves or those for whom they are responsible. Article 3 provides that, as a first step, a warning shall be given and an attempt made to rehabilitate the inebriate by education and guidance. If these measures appear insufficient to restore the inebriate to a temperate and orderly way of life, or are otherwise obviously inadequate therefor, he shall be committed to temperance supervision or to a public institution for inebriates. In this case an order shall be made specifying the circumstances in which an inebriate who cannot be restored to a temperate and orderly way of life by temperance supervision may be committed to a public institution for inebriates (articles 4 and 7).

The amendment of 1950 stemmed from the shortage of suitable institutions and asylums for inebriates. In the future, the governor of a province, in whom the power is vested to commit an inebriate to a public institution, shall, before taking his decision, report to the Minister for Social Affairs. The allotment of space for future inmates shall be subject to the central supervision of the Minister and the governor shall not commit any person to an institution except after authorization by the Minister. This provision shall be valid until the end of 1952 when the temporary shortage of these institutions is expected to be overcome.

[1] Swedish text of the Act in *Finlands Författningssamling* Nos. 631–637, published on 10 January 1951. Text and information received through the courtesy of the Finnish Branch of the International Law Association. English summary by the United Nations Secretariat.

FRANCE

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS[1]

In the year 1950, France made an important contribution to the protection of human rights—that prime requisite for the life of the individual as well as of society—in all the fields in which these rights serve as a criterion for action and thought.

The effort to ensure respect of the human person has been continued this year by means of legislation, judicial decisions and administrative action.

I. LEGISLATION

1. Assimilation into the French Community

Save in the darkest periods of its history, contemporary France has never closed its borders to men of goodwill who wished to be assimilated into the community. Its extremely simple naturalization laws enable aliens to be received in French territory and to acquire rapidly the full rights of citizenship. In order to remove the last psychological obstacle and ground for discrimination, the law-makers had made it possible, under the control and on the responsibility of the *Conseil d'Etat*, to eliminate anything in the sound of a name which might recall an alien origin. Since 3 April 1950 this possibility, which in spite of the flexible interpretation of the *Haute Assemblée* (*i.e.*, the *Conseil d'Etat* sitting in plenary) was still subject to arbitrary action, has become a right.

Under the terms of Act No. 50-399 of 3 April 1950 (*Journal officiel* of 6 April 1950), any alien who has applied for naturalization and who has a particularly foreign-sounding surname which may hinder his assimilation into the national community may ask that his name be "gallicized". This gallicization may consist either in the translation of the surname into French or in the simple change required to remove its foreign appearance or sound. Aliens who satisfy the conditions set forth in the Nationality Code for becoming French citizens by a declaration of nationality, or by virtue of birth and residence in France, enjoy the same rights.

Along with the gallicization of the surname, the law also permits gallicization of the first name.

Application for the change of name is connected with the application for naturalization.

The rights of third parties are respected in that any gallicization decree may be revoked if the *Conseil d'Etat* considers the objections of such third parties to be valid.

A related measure is the Act of 24 June 1950 (*Journal officiel* of 27 June 1950), repealing the Act of 22 June 1886, which denied access to French territory to members of the former French reigning families. Passed at a time when the republican regime had not yet firmly taken root, the Act of 1886 had since become an anachronism. Its repeal has no political implications whatever; its sole motive is respect for human rights, which would be violated if any category of French nationals were made to endure perpetual and hereditary banishment.

Other steps towards a liberal organization of the French community were taken in the framework of the French Union: the Act of 2 February 1950 (*Journal officiel* of 2 February 1950) approving the instruments defining the relations of the associated States of Cambodia, Laos and Viet Nam[2], with France, and the Decree of 10 January 1950 (*Journal officiel* of 11 January 1950) providing for the representation of Viet Nam at the Assembly of the French Union.[3]

2. Protection of Human Life

As regards protection of human life, which is a constant concern of Governments dedicated to the concept of humanism, the year was marked by the adoption of the Act of 29 July 1950 (*Journal officiel* of 30 July 1950) on the protection of childbirth,[4] which takes up and amplifies a concept already laid down in 1941, by providing, firstly, that public hospitals shall receive pregnant women and nursing mothers during the month preceding and the month following childbirth, the hospitalization costs to be borne by the free medical assistance service or social security funds if the woman herself is unable to defray them; and secondly, that births taking place under these conditions shall be kept secret on the express request of the mother, who shall not be asked to submit any identification papers and regarding whom no inquiry shall be made. These provisions, the purpose of which

[1] This note was prepared by, and received through the courtesy of, Mr. Marcel Martin, *Maître des Requêtes au Conseil d'Etat*, Paris. English translation from the French text by the United Nations Secretariat.

[2] See pp. 35, 181 and 343.

[3] This law provides that there shall be nineteen representatives from Viet Nam to this Assembly, to be designated in accordance with Viet Nam's domestic legislation.

[4] See p. 89 of the present *Yearbook*.

power. (See Court of Cassation, Criminal Chamber, 4 May 1950.)[1]

C. *Freedom of Labour*

In the same spirit, freedom of labour has been protected both against pressure on the part of workers and trade unions and against efforts of employers to represent strikes as breaches of contracts of employment.

Under the first count, there is the decision of the Aix Court of Appeal of 2 June 1950,[2] according to which an employer who, under pressure from the workers, dismisses a plant manager on the pretext that his attitude towards the workers has made it impossible to keep him in his post, whereas in fact he was compelled by instructions from the head office to adopt that attitude, is guilty of abuse of a right and is liable to payment of damages.

Under the second count, there is the now classic doctrine to the effect that a strike does not necessarily represent a breach of the contract of employment unless it is improperly conducted, because it exceeds its proper scope as a trade action, or is accompanied by illegal acts or is imbued by a spirit of ill will (Dieppe Civil Court, 31 May 1950).[3]

And since we are speaking of the right to strike, mention must be made of one of the most important decisions of the *Conseil d'Etat* in its interpretation of the right to strike, which the Constitution accords to public officials while safeguarding the essential interests of the public service. In this decision, the *Conseil d'Etat* takes its stand on the wisdom of the drafters of the Constitution, who certainly did not intend to condemn to death by anarchy the very State of which they were laying the foundations. In the view of the Haute Assemblée, by stating in the preamble of the Constitution that "the right to strike shall be exercised within the limits of the laws which regulate it", the Constituent Assembly had intended that the legislators should effect the necessary conciliation between the defence of professional interests, in which the strike is one of the means employed, and the protection of the public interests to which it might be injurious.

Having stated this, the *Conseil d'Etat* explained that in the public services the constitutional recognition of the right to strike could not, in the absence of regulations enunciated by the Constitution, be interpreted as excluding any limitations to be set on that right, as on any other right, in order to prevent its abuse or a use contrary to the needs of public order. Consequently, in the present state of the legislation, it was up to the Government itself, as being responsible for the proper operation of the public services, to fix, under judicial control with respect to these services, the nature and extent of such limitations.

In the case in question, it was decided that a strike which—whatever its motive—would interfere with the exercise of the prefectural function as regards its essential powers would constitute a grave prejudice to the maintenance of public order and therefore the Government had acted legally in forbidding and punishing by disciplinary measures any participation by the heads of departments of a prefecture in the strike planned for July 1948. (See *Conseil d'Etat, Ass.* 7 July 1950.)[4]

D. *Freedom of Thought and Religion*

We now come to the highest expression of freedom—freedom of thought and religion—and it must be said that this year again the *Conseil d'Etat* has not failed in its traditional task of defending the equality of all faiths before the law. In an Assembly decision of 7 July 1950,[5] it annulled an administrative decision rejecting, by reason only of their religious character, an application for assistance from private technical schools.

III. INTERNATIONAL AGREEMENTS

Several laws have been passed authorizing the President of the Republic to ratify a number of agreements relating to human rights.

These laws include:

1. The Act of 4 January 1950 relating to the Convention for the Safety of Life at Sea.
2. The Acts of 10 and 11 August 1950, relating respectively to two labour conventions, Convention No. 62 concerning Safety Provisions in the Building Industry and Convention No. 3 concerning the Employment of Women before and after Childbirth.
3. Several Acts authorizing the ratification of a number of agreements on social security, in particular the agreements between France and Luxembourg, France and the Saar and France and Yugoslavia.

IV. ADMINISTRATIVE ACTION

Since administrative action takes place within the framework of the law, it is bound to be affected by the evolution of the law. It should be noted that the state of mind in which the law was conceived, far more than the letter, influences the conception which the executive organs have of their duties towards the citizens.

[1] *Sem. Jur.* Ed. G, n. 5629. (Free right of appeal case.)

[2] *Sem. Jur.* Ed. C I n. 5833. (Dismissal of plant manager case.)

[3] *Sem. Jur.* Ed. C I n. 5757. (Right to strike case.)

[4] *Sem. Jur.* Ed. G, n. 5681. (Charles Dehaene *v.* Prefect. of Indre-et-Loire.)

[5] *Sem. Jur.* Ed. G, summary p. 165. (Technical School and Parents' Association *v.* Minister of National Education.)

The dangers to individual freedom are aggravated by the fact that between the great fundamental principles and the latest measures of application—particularly in police matters—there rises a whole hierarchy of texts and men and that there is no certainty that those who take the final action truly profess a humanitarian philosophy.

That is why parliament, appointed by law as the guardian of all our freedoms, is called upon from time to time to consider certain problems in detail and to recall the Government—which then acts as its spokesman before the various services—to a proper respect of the traditional liberties. Thus, when the economic control service, having recruited personnel who had served as economic inspectors during the war, began to use police investigation methods, a debate took place in the Assembly which ended in a motion instructing the executive to put an end to such occurrences.

Side by side with such administrative action by the legislators, the *Conseil d'Etat*, in which the important bills and draft regulations are debated, exercises all its influence to exclude proposals which, if put into effect would infringe the freedom and independence of the individual in any manner whatsoever.

Lastly, in the field of doctrine and philosophy, mention must be made of the clearly defined tendency of certain groups to review ideas and modes of thought which, although rooted in an old tradition, are none the less contrary to universal justice. This effort towards improvement, which so far has only taken the form of a more strict examination of conscience with regard to existing institutions, has been directed chiefly towards penal procedures, which are still cumbersome and include a preliminary examination by the police that is often psychologically prejudicial to the accused, and towards the State's freedom from financial responsibility in cases of obvious legal errors due to mistakes made by judges or the police. While further efforts are still to be made and reforms remain to be introduced in the general spirit of the nation rather than in the institutions themselves, it may nevertheless be said that the general line of evolution is now defined—however traditional and unconscious it may sometimes be—by the ideal laid down in the Universal Declaration of Human Rights.

DECREE OF 1 FEBRUARY 1950 AND ORDERS OF 4 FEBRUARY 1950 IMPLEMENTING THE JUVENILE PUBLICATIONS ACT OF 16 JULY 1949

SUMMARY

The Juvenile Publications Act of 16 July 1949, published in the *Yearbook* for 1949,[1] reconciles the principle of freedom of the press with the need for protecting children. With this object it organizes the supervision of publications for the young. As penalties in the case of publications likely to constitute a danger, the publisher might be prohibited from accepting advertisements or the publications might be banned outright.

The Act was followed by the decree of 1 February 1950 containing the administrative regulations for its application.[2] This decree deals with the organization of the committee to supervise and control publications for young people, established under Article 3 of the above-mentioned Act, specifies the committee's duties and lays down the obligations of managers and publishers of juvenile publications. Details regarding the declaration to be forwarded to the Minister of Justice by the manager or publisher concerning any such publication are set forth in one of the orders of 4 February 1950,[3] which also deal with the deposit of the publications.

[1] See *Yearbook on Human Rights for 1949*, pp. 68 and 70–72. The texts of the Act, the decree and the order summarized above appear in a publication of the Ministry of Justice (*Direction de l'Education surveillée*, supplement to No. 22 of *Rééducation*), Melun, 1950.

[2] See *Journal officiel* No. 28, of 2 February 1950.

[3] See *Journal officiel* No. 39, of 13/14 February 1950.

ACT No. 50-880, OF 29 JULY 1950, TO AMEND ARTICLE 1 OF THE ACT OF 2 SEPTEMBER 1941 FOR THE PROTECTION OF CHILDBIRTH, AND ANNULLING THE ACT OF 18 DECEMBER 1941[1]

Art. 1. . . .

It shall not be lawful for a public hospital able to provide care for a woman who is pregnant or has recently given birth to a child to refuse to accept her during the month preceding and the month following childbirth, as the case may be, provided that vacant beds are available.

The costs incurred by the hospital shall be reimbursed in accordance with the usual procedure and

[1] French text in *Journal officiel* No. 180, of 30 July 1950. The first two paragraphs of article 1 of the Act of 2 September 1941 were replaced by the article given above.

conditions, either by the free medical assistance service, or by the social security funds, or by the women concerned if they are not entitled to assistance from the above-mentioned services or organs or are only partly entitled thereto.

If, to preserve the secrecy of pregnancy or childbirth, the patient requests that her admission be kept secret, the request shall be acceded to, subject to the conditions set forth in the following paragraph, provided that there are no vacant beds in a maternity home in the *département* in which the application for admission was made. No identification papers shall be required and no inquiry shall be made. Secrecy shall not be maintained if the names of the legitimate father and mother of an infant born in a public hospital appear in the birth certificate drawn up within the time-limit provided for in article 55 *et seq.* of the Civil Code.

When secrecy is maintained, the expenses of the stay in the hospital shall be assumed by the child welfare service of the *département* and borne by the public bodies in accordance with the regulations for the allocation of welfare costs, the *département* in which the hospital is situated being regarded as the domicile for purposes of relief.

. . .

DEMOCRATIC REPUBLIC OF GERMANY

LEGISLATION

DEFENCE OF PEACE ACT[1]
of 15 December 1950

Art. 1. Any person who slanders other peoples or races, incites to hatred against them or advocates a boycott against them, for the purpose of disturbing friendly relations between peoples and involving the German people in a new war, shall be liable to imprisonment, and in serious cases to hard labour.

Art. 2. (1) Any person who promotes aggressive action, in particular an offensive war, or incites to war in any other manner, or who recruits, induces or incites Germans to take part in warlike acts resulting in the oppression of a people, shall be liable to imprisonment, and in serious cases to hard labour.

(2) The same penalties shall apply to any person who recruits Germans for the French Foreign Legion or similar foreign military formations or mercenary troops, or who induces Germans to enlist in them.

Art. 3. (1) Any person who makes propaganda in favour of a revival of aggressive German militarism and imperialism or of Germany's entry into an aggressive military bloc shall be liable to imprisonment, and in serious cases to hard labour.

(2) The same penalties shall apply to any person who agitates against international agreements which serve the maintenance and strengthening of peace and the peaceful and democratic development of Germany, or who advocates a breach of such agreements with a view to involving Germany in aggressive acts of war.

Art. 4. Any person who extols or advocates the use of atomic weapons or other means of mass destruction such as poison, and radioactive, chemical and bacteriological weapons, shall be liable to imprisonment, and in serious cases to hard labour.

Art. 5. Any person who, for the purpose of inciting to war, impugns or vilifies the movement for the maintenance and strengthening of peace or who agitates against those who fight for peace on the grounds of their activity or causes them to be persecuted, shall be liable to imprisonment, and in serious cases to hard labour.

Art. 6. (1) In especially serious cases of offences against articles 1 to 5 above, the penalty shall be not less than five years of hard labour, and may be hard labour for life.

(2) An especially serious case is one in which the offence is committed on the direct orders of States, or of organs or agencies thereof, which are engaged in incitement to war or which are pursuing a policy of aggression against peaceful peoples. In such cases, the death penalty may be imposed.

Art. 7. The planning of or attempt to commit offences against articles 1 to 6 above is punishable.

Art. 8. (1) In addition to any other penalties under the present Act, a fine up to any amount may be imposed.

(2) Furthermore, part or all of the offender's property may be confiscated. The entire property of offenders sentenced to death, hard labour for life, or hard labour for not less than five years, shall be confiscated.

Art. 9. (1) When an offender is sentenced to hard labour under the present Act, the sentence shall state that he shall be temporarily or permanently deprived of:

1. The right to hold public office and occupy a leading position in economic or cultural life;
2. The right to vote and be elected.

(2) In the case of a less severe sentence, the provisions of paragraph 1 above may be applied by the court at its discretion.

Art. 10. (1) Legal proceedings for contravention of the present Act shall be instituted only upon information of the Attorney-General of the Democratic Republic of Germany.

(2) The Supreme Court of the Democratic Republic of Germany shall have jurisdiction in such cases. The Attorney-General may bring the case before another court or may instruct the Attorney-General of one of the *Länder* of the Democratic Republic of Germany to do so.

(3) The Supreme Court of the Democratic Republic of Germany shall have jurisdiction even when the offence is committed by German citizens outside the

[1] German text in *Gesetzblatt der Deutschen Demokratischen Republik* No. 141, of 22 December 1950. English translation from the German text by the United Nations Secretariat.

territory of the Democratic Republic of Germany, and when the offender has no domicile or residence in the territory of the Democratic Republic of Germany.

Art. 11. Regulations to give effect to the present Act shall be prescribed by the Council of Ministers of the Democratic Republic of Germany.

Art. 12. The present Act shall enter into force on 16 December 1950.

ACT CONCERNING THE ELECTIONS OF 15 OCTOBER 1950 TO THE PEOPLE'S CHAMBER, THE *LAND* LEGISLATURES (*LANDTAGE*), COUNTY COUNCILS (*KREISTAGE*) AND COMMUNAL REPRESENTATIONS (*GEMEINDEVERTRETUNGEN*) IN THE DEMOCRATIC REPUBLIC OF GERMANY[1]

dated 9 August 1950

I. Election Day

Art. 1. Universal, equal, direct and secret elections to the People's Chamber (*Volkskammer*), to the *Land* diets (*Landtage*), to the county councils (*Kreistage*) and to the Communal Representative Bodies (*Gemeindevertretungen*) shall be held on 15 October 1950, according to the principles of proportional representation in a single poll.

II. Structure of the Representative Bodies

Art. 2. (1) Four hundred delegates will be elected to the People's Chamber. . . .

III. Right to vote; Eligibility

. . .

Art. 3. All male and female German nationals domiciled in the territory of the Democratic Republic of Germany who have passed their eighteenth birthday on the day of the election have the right to vote (article 52 of the Constitution).[2]

(2) Only persons registered in a list of electors or in possession of a polling certificate are entitled to vote (*cf.* article 19).[3]

(3) All male and female German nationals domiciled in the territory of the German Democratic Republic or in Greater Berlin who, on 15 October 1950, have passed their twenty-first birthday may stand for election.

Art. 4. (1) German nationals who have the right to vote and whose temporary residence on the day of the election is in a foreign country in which the Government of the Democratic Republic of Germany is represented by a diplomatic mission may cast their vote for representatives to the People's Chamber on the premises of the said diplomatic mission.

(2) The chief of the diplomatic mission or his deputy is responsible for preparing the poll.

(3) The polling is supervised by a committee. The committee consists of three persons, elected by and from among the members and employees of the diplomatic mission.

(4) No lists of electors are drawn up. The right to vote shall be established prior to the voting, and in case of the admittance of a voter to the poll, his name is to be entered in a list.

Art. 5. The following categories of persons do not have the right to vote, nor may they stand for election:

1. Persons indicted or convicted as war or Nazi criminals, or because of an offence against the political foundations of our anti-fascist, democratic system, in so far as they do not fall under the law of 11 November 1949 concerning the remission of sanctions and the granting of civic rights to former members and followers of the Nazi Party and to officers of the Fascist armed forces;
2. Persons under permanent or temporary guardianship, or under care because of a mental defect;
3. Persons not enjoying their full civic rights.

Art. 6. The following categories of persons are unable to exercise their right to vote:

1. Insane persons and imbeciles in mental hospitals and sanatoria;
2. Prisoners serving a sentence or in pre-trial confinement;
3. Persons under detention on the basis of a judicial or police order.

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IX. Nomination Lists

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Art. 26. (1) Nomination lists for the People's Chamber may be submitted only by those associations which, according to their statutes, aspire to the demo-

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[1] German text in *Gesetzblatt der Deutschen Demokratischen Republik* No. 88, of 11 August 1950. English text in *Soviet Zone Constitution and Electoral Law* (published by the Office of the United States High Commissioner for Germany), 1951.

[2] See *Yearbook on Human Rights for 1949*, p. 77.

[3] *Art. 19* (4): "Holders of polling certificates may vote at any place within the German Democratic Republic."

cratic development of State affairs and social life in the whole Republic and who maintain an organization throughout its territory (article 13, paragraph 2, and article 53 of the Constitution).[1]

(2) Nominations for the representative bodies in the *Länder*, the counties, and the communities may be made only by those associations who, according to their statutes and on the basis of the Constitution, strive for the democratic development of public life and whose officers are designated by their members (article 13, paragraph 1, of the Constitution).[2]

Art. 27. The associations which, according to article 26, are entitled to submit nomination lists are authorized to submit joint nomination lists.

XII. Validity of the Elections

. . .

Art. 45. The parties or associations that have submitted nomination lists may file a protest against the validity of the elections within the two weeks following publication of the results. This period begins with the day of the publication of the election results.

Art. 46. Protests against the validity of the election shall be submitted by the election officer at the first meeting of the representative body for decision. The decision shall be at once forwarded to the person having filed the protest.

Art. 47. (1) If the election of one or several delegates was legally inadmissible on grounds of lack of eligibility, only the election of the delegates concerned shall be declared invalid.

(2) If a candidate withdraws before the election, or if the election of a delegate is declared invalid, the association which has nominated him also nominates his successor.

(3) The same applies if the requirements for a delegate's eligibility cease to apply subsequently, if he dies or subsequently withdraws for other reasons. Failure to meet the requirements or a subsequent withdrawal shall be determined by a decision of the representative body.

Art. 48. Subject to his consent, a citizen may be admitted to a representative body by decision of the latter. He thereby acquires the same rights and duties as an elected delegate.

Art. 49. The capital city of Berlin sends to the People's Chamber sixty-six delegates with advisory vote.

. . .

[1] See *Yearbook on Human Rights for 1949*, pp. 74 and 77.
[2] *Ibid.*, p. 74.

LABOUR CODE

TO BUILD UP AND MAINTAIN THE LABOUR FORCE, TO INCREASE PRODUCTIVITY AND FURTHER TO IMPROVE THE MATERIAL AND CULTURAL CONDITIONS OF MANUAL AND OFFICE WORKERS[1]

dated 19 April 1950

I. The Right to Work

Art. 1. (1) Every citizen of the Democratic Republic of Germany has the right to work. Every citizen shall be given work which corresponds to his capacity and which is on such a level that he may reasonably be expected to perform it.

(2) It shall be the duty of the Ministry of Planning, in co-operation with the Ministry of Labour and Health and the other competent Ministries, to prepare each year a manpower plan within the scope of national economic planning.

(3) A supplementary plan shall be drawn up annually to deal with the question of training successive generations of skilled workers.

(4) It shall be the duty of the State agencies to create the necessary conditions to enable women to make wider use of their right to work in all branches of the national economy.

Art. 2. Without prejudice to their right to the old-age pension, gainfully occupied men and women shall have full opportunity, if they so wish, to continue to carry on their occupations according to their physical and mental abilities. The valuable experience gained in their trade over a period of years enables them to exert a stimulating and widely beneficial influence.

Art. 3. All workers shall receive equal pay for equal work, regardless of sex or age.

II. Right of Wage-earning and Salaried Employees to Participate in Decisions

Art. 4. (1) Under our new democratic system, where the key undertakings belong to the people, the

[1] German text in *Gesetzblatt der Deutschen Demokratischen Republik* No. 46, of 28 April 1950. English translation from the German text by the United Nations Secretariat.

right of the wage-earning and salaried employees, as the decisive force in the State, to a voice in the conduct of the economy shall be made effective through the democratic agencies of the State.

(2) The free German trade unions are the legal representatives of the wage-earning and salaried employees in undertakings and in the administrative bodies for the purpose of protecting the rights and interests of the said employees as regards production, protection of labour, observance of the working conditions prescribed by law, and wages.

Art. 5. All agencies of the Government of the Democratic Republic of Germany, the governments of the *Länder*, the administrative authorities and all bodies concerned with publicly owned undertakings are required to maintain the closest liaison with the competent agencies of the Federation of Free German Trade Unions and its affiliated unions.

Art. 6. In each undertaking, the works council represents the wage-earning and salaried employees. The members of the works council shall not be prejudiced in any way for exercising their right to participate in decisions or for their trade union activities. In pursuance of the resolutions of the Federation of Free German Trade Unions and its affiliated unions, the works councils shall take part in the work of national public control agencies by ensuring the observance of legislative provisions in the undertakings.

Art. 7. (1) In publicly owned undertakings, the reciprocal obligations of workers and management arising out of the National Industry Plan shall be laid down each year in the contract relating to the operation of the particular undertaking.

(2) The works councils shall participate in the proper distribution and use of administrative funds.

(3) The wage-earning and salaried employees in publicly owned undertakings shall exercise their right to participate in decisions on the occasions when the National Industry Plans are discussed at workers' meetings and production conferences; they shall make suitable proposals with a view to furthering the development of the national economy of the Democratic Republic of Germany.

Art. 8. The managements of publicly owned undertakings shall be fully responsible for the fulfilment of the production plan and the observance of the legislative provisions concerning labour, wages and the protection of labour.

Art. 9. Private industrial, agricultural, trade and commercial undertakings are required to conclude agreements respecting the operation of the undertakings with the works councils giving effect to the right to participate in decisions, and are under duty to furnish particulars to the works councils concerning questions of production and management.

VII. Leave

Art. 34. For the purpose of giving effect to the constitutional right to rest, every worker shall be granted paid leave once each calendar year, in accordance with the following rules:

(*a*) Wage-earning and salaried employees shall be granted basic leave of the same duration, which shall consist of twelve working days. Disabled persons and persons persecuted under the Nazi regime shall receive three working days of supplementary leave.

(*b*) Wage-earning employees who perform work under high temperatures, work injurious to health, or heavy work shall be granted eighteen to twenty-four working days of leave.

(*c*) Administrative and technical staff performing responsible work shall be granted eighteen to twenty-four working days of leave.

(*d*) Young persons between the ages of fourteen and sixteen shall be granted twenty-one working days of leave.

(*e*) Young persons between the ages of sixteen years and eighteen years shall be granted eighteen working days of leave.

. . .

VIII. Right to give Notice

Art. 38. To protect the workers, the right to give notice shall uniformly be exercised according to the following rules:

(*a*) All parties shall be equally entitled to give notice of termination of employment.

(*b*) Notice unaccompanied by a statement of reasons is inadmissible and without effect in law.

(*c*) Members of trade union directions, persons persecuted by the Nazi regime, disabled persons and expectant and nursing mothers are entitled to special security of tenure.

. . .

IX. Protection of Labour

(a) *Working Hours*

Art. 40. Working hours shall be eight hours a day and forty-eight hours a week; for young persons between the ages of sixteen and eighteen years, seven and one-half hours a day or forty-five hours a week; for young persons between the ages of fourteen and sixteen years, seven hours a day or forty-two hours a week. Where work injurious to health is involved, the Government of the Democratic Republic of Germany may decide, on the proposal of the competent Ministry of the Republic or of one of the *Länder*, to fix the working day in individual cases at less than eight hours. The economic plans are calculated on the basis of a forty-eight-hour week. The process of production

in each industry shall be so organized that it may be completed within the prescribed working hours. The forty-eight-hour working week may be exceeded only in exceptional cases, with the consent of the works council and the approval of the competent labour office. Overtime shall be remunerated by additional pay, usually 25 per cent. The said consent shall be given in conformity with the policies of the Ministry of Labour and Health.

. . .

(c) Special protection for young persons and women.

Art. 45. (1) Young persons under the age of sixteen years, as well as expectant and nursing mothers, shall not be permitted to do night work.

(2) Young persons under the age of sixteen years, as well as expectant and nursing mothers, shall be forbidden to do mining work underground.

Art. 46. To protect the health of pregnant women, maternity leave of five weeks before the birth and six weeks after the birth shall be granted.

Art. 47. The Ministry of Labour and Health shall issue regulations, not later than 31 July 1950, for the protection of women and young persons engaged in gainful occupations.

ACT CONCERNING THE PROTECTION OF MOTHERS AND CHILDREN AND THE RIGHTS OF WOMEN[1]

of 27 September 1950

Introductory Note. The Act, which entered into force on 1 October 1950, is sub-divided into five main parts: public assistance for mothers and children; marriage and the family; working women and their protection; participation of women in public life and in the social life of the community; and final provisions.

Part I provides that mothers of large families shall receive a grant at the birth of the third child and of each child thereafter and monthly allowances for the fourth child and each child thereafter until each child has reached fourteen years of age. Between the years 1951 and 1955, certain services and institutions are to be created for the improvement of medical care for children and pregnant women, and general and educational care for children of working mothers. Pregnant women are entitled to five weeks' leave of absence before childbirth and six weeks' leave after the birth of the child and to an allowance during that period equalling the previous average monthly income.

The Act provides in Part IV for special training courses for women to enable an adequate proportion of them to participate with men in the administration of the Democratic Republic of Germany. The departments of education and public information, superintendents of schools and teachers must aid mothers in performing their educational duties and in widening their knowledge of the public and social activities of women in the Democratic Republic of Germany and abroad.

Part II and extracts from Part III are reproduced below.

II. Marriage and the Family

Art. 12. The healthy family is one of the foundations of democratic society. It is one of the most important duties of the Government of the Democratic Republic of Germany to consolidate it.

Art. 13. Terms of equality in family law shall correspond to terms of equality already established in social life for men and women. All legislative provisions and regulations which restricted or diminished the rights of women in family law ceased to have effect upon the entry into force of the Constitution of the Democratic Republic of Germany.

Art. 14. The rights of a woman shall not be curtailed or diminished by marriage. The right of decision in all affairs of conjugal life hitherto exclusively vested in the husband shall in future be vested jointly in the husband and wife. In particular, decisions regarding the place of residence and domicile, questions affecting in principle domestic arrangements, the education of children, etc., are only to be taken jointly.

Art. 15. Marriage shall not bar a woman from holding any occupation or from continuing her occupational training and her social and political education, even if this should involve a temporary separation of husband and wife.

Art. 16. (1) Parental care, which includes the right and duty to care for children and their property as well as the right to represent children, is exercisable by husband and wife jointly.

[1] German text of the Act in *Gesetzblatt der Deutschen Demokratischen Republik* No. 111, of 1 October 1950. English translation from the German text and introductory note prepared by the United Nations Secretariat.

(2) Where one parent only exercises parental care, the Guardianship Court shall, if applied to or of its own motion if this is desirable in the child's interest, appoint a person to assist the said parent.

(3) A woman shall not by reason of her re-marriage cease to be entitled to care for her children by a previous marriage.

Art. 17. (1) Birth out of wedlock carries no stigma. The mother of a child born out of wedlock enjoys full parental rights, which shall not be diminished by the appointment of a guardian for the child. For the purpose of the settlement of claims against the father the lower administrative authorities shall act only as advisers to the mother.

(2) The maintenance allowance claimed by the mother in respect of a child born out of wedlock shall be determined in keeping with the financial circumstances of both parents.

Art. 18. The Ministry of Justice shall submit to the Government not later than the end of the year 1950 draft legislation relating to family rights which shall conform to the principles set forth in this section.

III. Women in Productive Employment and the Protection of Women Employees

Art. 19. (1) In conformity with the principle of equality, women shall be given greater opportunities of employment in industry, the transport system, communal services, trade, machine-rental stations and the people's farms, in all branches of the State administration, educational and health services and other institutions of the Democratic Republic of Germany. The employment of women in industry shall not be confined to the traditional women's trades, but shall extend to all branches of production, in particular to the electrical and optical industries, machine construction, precision engineering, the timber and furniture industry, the shoe industry, the building trade and the printing and related trades.

(2) The conditions of employment shall be adapted to the physical capacity of women.

Art. 20. The Government of the Democratic Republic of Germany and the Governments of the *Länder*, the directors of undertakings owned by the people, and of undertakings of a similar nature, machine rental stations and people's farms as well as the owners of private undertakings shall comply with the following conditions for the purpose of promoting the employment of women on productive work:

(*a*) Women shall be given work corresponding to their knowledge and abilities;

(*b*) The principle of equal pay for equal work as laid down in the Labour Code shall be observed;

(*c*) Measures for training women as skilled workers shall be taken in all trades. An effort shall be made to employ women in positions of responsibility to a greater extent than in the past.

Art. 21. The plans for future generations of workers shall give priority to the training of women in skilled trades.

. . .

JUDICIAL DECISION

RIGHT TO WORK—RIGHT TO CHOICE OF EMPLOYMENT—TERMINATION OF EMPLOYMENT IN CAPITALIST ECONOMY—TERMINATION OF EMPLOYMENT IN A PLANNED ECONOMY—CONSTITUTION OF THE DEMOCRATIC REPUBLIC OF GERMANY

FRIEDRICH *v. LAND* GOVERNMENT OF SAXONY[1]

District Labour Court, Dresden

3 February 1950

The facts. A member of the Justice Department, who was assigned to a district court, had received notice of termination of employment within the prescribed time-limit. No reason for his termination was given. He instituted proceedings against the Government of Saxony and, relying on the principle of good faith, asked the court for a declaration that the notice of termination was inoperative. The plaintiff obtained a decision in his favour in the court of first instance (lower labour court), against which the defendant appealed to the district labour court.

Held: that the decision rendered by the lower labour court should be set aside and the plaintiff's suit dismissed. The court said:

"The lower court relied on the principle evolved

[1] German text of the decision in *Deutsche Rechts-Zeitschrift* No. 17/18, of 15 September 1950, pp. 416–417. English summary by the United Nations Secretariat.

unanimously by the district labour courts of the Democratic Republic of Germany, that a notice of termination of a manual or office worker's employment must be based on sufficient grounds and is therefore to be deemed without effect in law if a statement of these grounds is withheld, because—and this is the thought behind the principle—the individual manual or office worker has a right to his job. The lower labour court was also quite right in holding that the district labour courts did not, in evolving this principle, differentiate between manual or office workers in private capitalist undertakings and those in publicly owned undertakings; they even applied the principle to the case of terminations of contracts of employment of civil servants. Accordingly, the lower labour court can rightly claim that its decision is fully in conformity with the precedents established by the district labour courts of the Democratic Republic of Germany. Nevertheless, in view of the social evolution which has taken place in the Democratic Republic of Germany since 1945, it ought to have asked itself whether it is still a defensible practice to apply this jurisprudence to the extent to which it was applied in the past, or whether it should not rather be revised in the light of a critical examination.

"It is undoubtedly true that at a time when the economic system perforce produced periodic economic crises and real unemployment of ever-worsening proportions, it was essential to give the working man adequate protection against the arbitrary termination of his employment by a private capitalist entrepreneur, for loss of a job could lead to temporary or permanent unemployment. Furthermore, in the capitalist economy, the economic interests of the employer and those of the manual and office workers were opposed to each other. It was not, therefore, greatly in the public interest to strengthen by law the employer's economically stronger position by admitting terminations of employment to a limited extent without a reason being given. It was rather in the interest of the community to maintain a contract of employment unless its termination could be justified by one of the parties on economic, legal or personal grounds. For these reasons, the jurisprudence of the district labour courts now under review was correct.

"Nowadays, however, in the Democratic Republic of Germany, the principle of economic planning, which is a material feature of publicly owned industry, has become the cornerstone of general economic policy. The recent past has clearly shown the wisdom and superiority of this principle, as compared with the capitalist economy which is guided not by needs, but by the profit motive and hence is bound to be anarchical.

"The question therefore arises, whether in a planned economy there remains any need for protection of tenure in individual jobs. In this connexion, the court trying the appeal refers to article 15 of the Constitution of the Democratic Republic of Germany, which lays down some very important principles governing the protection and management of labour.[1] Under the terms of article 144 of the Constitution,[2] these principles constitute concrete rights, and are therefore of more than theoretical value. They guarantee the right to work, but not to any specific job; and for very sound reasons, for under the same article 15 the form in which the right to work receives practical application is this: the management of the economy by the State is calculated by its very nature to ensure work to every able-bodied person; and in cases where no suitable work can be found for a citizen, the State provides for his support. In other words, security of tenure in any particular job has been superseded by the possibility, furnished through economic planning and the direction of industry, of finding other employment and the right to such other employment as guaranteed by the Constitution.

"Where the capitalist sector of the economy is concerned, there may nevertheless be some justification for the precedents of the district labour courts which are now contested by the defendants. In the case of publicly owned undertakings, there is no longer any justification for it; nor, *a fortiori*, is there in the case of national, district and other public authorities, where entirely different interests are involved.

"Neither publicly owned undertakings nor the public authorities pursue private capitalist interests. There can hardly be any question of 'contempt for the employee'—a term used in the judgments of the Saxony-Anhalt District Court cited by the plaintiff to describe cases where the reasons for the notice of termination are withheld from a manual or office worker—if only because all persons working in publicly owned undertakings or for public authorities are employees, whether they are managers and directors or workers and officials. Certainly there can no longer be any question, in the case of the public authorities or publicly owned undertakings, of arbitrary action on the part of the employer, motivated either by the desire for larger profits or by political reasons, such as was frequent in the past and still occurs today. This is particularly true of the public administration. The State agencies responsible for policy relating to personnel are appointed by the Government, which is elected by the representatives of the people; they are designated in close agreement with those who shape the political will of the people. Hence, this fact constitutes a guarantee that every single decision to terminate the employment of public servants is taken exclusively in the public interest, that is to say, in the interest of the people.

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[1] It reads: "Labour is protected by the State.

"The right to work is guaranteed. The State shall direct the national economy so as to ensure work and subsistence to every citizen. In cases where no suitable work can be found for a citizen, provision shall be made for his necessary support."

[2] See *Yearbook on Human Rights for 1949*, p. 78.

The position as regards the law and the interests involved can therefore not be considered in the same light as in the case of a private employer *vis-à-vis* his manual or office worker. On the contrary, for the purpose of terminating employment in these cases, the interests of society, as represented by the personnel agency of the Ministry concerned, are bound to take precedence over the personal interests of the individual employee. The evolution of our democratic State has progressed so far that it is reasonable to expect every official empowered to take decisions involving staff policy, precisely because he is in the last resort responsible for protecting the State and building a democracy, to take these decisions in the public interest, and hence it should be axiomatic that no reasons need be given in each separate case, so long as the notice of termination observes the time-limits prescribed in the collective agreement of employment.

"This, incidentally, corresponds not only to the letter of the relevant provision of the collective agreement, which requires reasons for notice of termination to be given only in cases of summary dismissal, but not when due notice is given, but also to its spirit; for to divulge the reasons for a notice of termination may often be prejudicial to the interests of the State, and cases may occur where it would conflict with other administrative regulations to state the reasons. In particular, employment may be terminated because of circumstances which are of a confidential or secret nature and hence not fit for publication outside a very small group.

"The lower labour court should have realized that where, contrary to the usual practice, notice of termination is given to a court employee without a statement of grounds, then, if this is done with the approval of the Ministry of Justice, there are bound to be weighty reasons for such a procedure. By simply inquiring from the Ministry the court could have learned that the plaintiff's employment was terminated by reason of circumstances which are of a confidential and secret nature.

"Lastly, for the reassurance of civil servants it may be stated that, if any public official empowered to take decisions involving staff policy should so much as dare to attempt to procure the dismissal of one of his subordinates arbitrarily, without good and sufficient reason, his arbitrary act would be immediately reversed by superior authorities, quite apart from the fact that such arbitrary action is impossible, inasmuch as article 17 of the Constitution[1] guarantees all manual and office workers a decisive voice in their own affairs.

"In the case under consideration here, it should further be noted that the body representing the employees—that is, the works council, concurred in the decision to terminate the plaintiff's employment. It approved the notice of termination and thereby vouched for the absence of arbitrary action as a motive for the notice. It must have had weighty reasons for not hearing the plaintiff before taking its decision. These reasons are not open to discussion. So far as the case requires adjudication by the court, the decisive question is: did the works council give its approval or not? How that approval was arrived at is an internal matter. It is not for the court to inquire into such internal procedure.

"The foregoing proves that the validity of the notice to terminate the plaintiff's employment may not be challenged on the ground that the defendant did not inform him of the reasons for the notice. This means that in law there is no basis for the complaint. The lower labour court should have dismissed it forthwith. The defendant's appeal was therefore admissible and the contested decision should be varied accordingly.

"In conformity with this finding, the plaintiff is required to bear the total costs of the proceedings in both courts."

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[1] See *Yearbook on Human Rights for 1949*, p. 74.

FEDERAL REPUBLIC OF GERMANY

Federal Legislation

ACT RESPECTING THE RECOGNITION OF UNOFFICIAL MARRIAGES OF PERSONS PERSECUTED ON RACIAL OR POLITICAL GROUNDS[1]

dated 23 June 1950

Art. 1. (1) If two persons who were betrothed to each other were unable to contract marriage before a registrar on racial grounds, but by the celebration of an ecclesiastical marriage service, by a declaration made before relatives, or otherwise, solemnly announced their decision to enter into a lasting union, then, if owing to the death of one of the parties it has become impossible to confirm the marriage by appearance before a registrar, the judicial authorities of the *Land* shall have the power to rule that the union has in law the consequences of a legal marriage. In any such ruling, the date which is to be deemed to be the date of the conclusion of marriage shall be fixed.

(2) If the marriage was confirmed by appearance before a registrar before the entry into force of the present Act, the judicial authorities of the *Land* may order that the effects of the conclusion of marriage shall be deemed to have commenced as from an earlier date, if this is necessary for the purposes of claiming compensation for damage. This shall apply, *mutatis mutandis*, if owing to the absence of one of the parties the marriage could not be confirmed by appearance before a registrar before the entry into force of this Act and if the marriage is confirmed before a registrar within the six months following the date on which the circumstances that had previously prevented confirmation cease to exist. Account shall not be taken of mere loss of property unless it is substantial in relation to the circumstances of the parties affected.

(3) An order made in pursuance of paragraph (1) or (2) shall not affect the reciprocal property rights of the spouses.

. . .

[1] German text in *Bundesgesetzblatt* No. 27, of 26 June 1950. English translation from the German text by the United Nations Secretariat.

CODE OF CRIMINAL PROCEDURE[1]

as amended up to and including 12 September 1950

PART I
GENERAL PROVISIONS

Section 9

ARREST AND DETENTION PENDING INQUIRY

Art. 112. The accused may be placed under detention pending inquiry only if he is strongly suspected of the offence and if:

1. He was in the act of escaping or in hiding, or if, in view of the circumstances of the case, in particular the private situation of the accused and the circumstances with regard to an escape, there are grounds for fear that the accused may evade criminal proceedings, or if

2. Definite facts exist to indicate that there is a danger that the accused may, by destroying material or other evidence of the offence or by influencing witnesses or accomplices, make it more difficult to ascertain the truth.

The facts which constitute grounds for suspicion that the accused may flee or may tamper with the evidence shall be placed on record. No further grounds are needed for suspicion of escape, if:

1. A crime is under inquiry, or

2. The accused has no established residence or domicile in the territory in which the present federal Act is applicable, and particularly if he is a vagrant or is unable to furnish proof of his identity.

Art. 115a. So long as the accused remains under detention pending inquiry, the court must investigate within a specified time-limit whether detention shall be continued (detention investigation procedure).

The first investigation shall take place after one month of detention pending inquiry.

If the court does not discharge the accused, it shall at once determine when the detention investigation

[1] German text in *Bundesgesetzblatt* No. 40, of 20 September 1950, received through the courtesy of the Foreign Office of the Federal Republic of Germany. English translation from the German text by the United Nations Secretariat.

procedure is to be repeated; as a rule, the time-limit shall be at least three weeks, and may not be more than three months. The same shall apply each time the detention investigation procedure is repeated.

At the request of the accused, a decision as to his detention shall be taken after an oral examination, and the accused shall be informed that he has this right. If the accused does not make the request, he shall be heard before a decision is taken; if he has counsel, the latter shall also be heard.

If during the period provided for in paragraph 2 the accused appeals against the detention order or requests an oral examination in accordance with article 114*d*,[1] or if in accordance with article 207, paragraph 2,[2] an order is given to continue detention, a new period shall begin when the decision to continue detention is announced. If such a decision is taken during a period specified by the court in accordance with paragraph 3, the court must specify a new period.

. . .

Section 10

HEARING OF THE ACCUSED

Art. 136a. The freedom of decision and action of the accused may not be impaired by maltreatment, fatigue, bodily harm, administration of drugs, torture, deceit or hypnosis. Compulsion may be used only to the extent permitted by criminal law. Threats to use measures not permitted under that law, and promises of advantages not legally provided for, shall be forbidden.

Measures which impair the memory or judgment of the accused shall not be permitted.

The prohibition contained in paragraphs 1 and 2 above applies irrespective of the consent of the accused. Statements obtained in contravention of this prohibition may not be used in evidence even when the accused consents thereto.

[1] Article 114*d* provides that on the application of an accused person who is detained, a hearing is to be held and thereafter a decision to be taken whether he should remain in detention or be released, with or without bail. The hearing shall be held within a week after the application.

[2] Article 207 provides, *inter alia*, that the court decides *proprio motu* whether detention shall be continued.

Legislation of the *Länder*

CONSTITUTION OF NORTH-RHINE-WESTPHALIA[1]

of 28 June 1950

PREAMBLE

The men and women of the *Land* of North-Rhine-Westphalia, answerable to God and mankind, united with all Germans, imbued with the resolve to overcome the distress of these times by a common effort, to serve the ends of peace at home and abroad, and to secure freedom, justice and well-being for all, have adopted this Constitution:

PART I

FOUNDATIONS OF THE *LAND*

Art. 2. The people expresses its will through elections, national petitions (*Volksbegehren*) and referenda.

Art. 3. 1. The legislative power is vested in the people and the people's representatives.

2. The executive power is vested in the Government of the *Land*, the communes and the associations of communes (*Gemeindeverbände*).

3. The judicial power is exercised by independent judges.

PART II

FUNDAMENTAL RIGHTS AND THE ORDERING OF SOCIAL LIFE

Section 1

FUNDAMENTAL RIGHTS

Art. 4. The fundamental and civic rights laid down in the Basic Law of the Federal Republic of Germany as enacted on 23 May 1949[2] are part of this Constitution and have direct validity as the law of the *Land*.

Section 2

THE FAMILY

Art. 5. 1. Marriage and the family are recognized as the basis of human society. They are under the special protection of the State. Mothers and large families are entitled to special care.

[1] German text received through the courtesy of the Foreign Office of the Federal Republic of Germany. English translation and note by the United Nations Secretariat. The Constitution was promulgated on 28 June 1950, published in the *Official Gazette* of the *Land* on 10 July 1950 and came into force on 11 July 1950. North-Rhine-Westphalia is in the United Kingdom Zone of Occupation. See the text of the Constitutions of the German *Länder* in the French, Soviet and United States Zones of Occupation in *Yearbook on Human Rights for 1946*, pp. 119-131; *Yearbook on Human Rights for 1947*, pp. 100-126; and *Yearbook on Human Rights for 1948*, pp. 74-85.

[2] See *Yearbook on Human Rights for 1949*, pp. 79-84.

2. Domestic work performed by a woman for her family is held to be on an equal footing with professional work.

Art. 6. 1. Young persons shall be provided with adequate opportunity of learning and exercising an occupation; in particular, encouragement shall be shown to gifted young persons.

2. Young persons shall be protected from exploitation, misuse of their labour and moral danger.

3. The right of churches, religious societies and private charitable associations to co-operate in the care of the family and the welfare of young persons is guaranteed and its exercise shall be encouraged.

Section 3

EDUCATION, ART AND SCIENCE, RELIGION AND RELIGIOUS SOCIETIES

Art. 7. 1. The noblest purpose of education is to awaken reverence for God, respect for the dignity of man and readiness to assume social responsibilities.

2. Young persons shall be educated in the spirit of humanity, democracy and freedom to show tolerance and respect for the convictions of others, love of their own people and country, membership of the international community and devotion to the cause of peace.

Art. 8. 1. Every child is entitled to education and training. The natural right of the parents to determine the education and training of their children is the foundation of the educational and school system.

It is the responsibility of the State to see to it that the educational system is in keeping with the cultural and social requirements of the country.

2. There is a general duty to attend school; it is the normal function of the elementary and occupational training schools to make compliance with this duty possible.

3. It is the duty of the *Land* and of the communes to establish and assist schools. The entire educational system shall be subject to *Land* supervision. The inspection of schools shall be carried out by professionally trained full-time officials.

4. So far as private schools are concerned, the provisions of article 7, paragraphs 4 and 5, of the Basic Law of the Federal Republic of Germany of 23 May 1949[1] shall likewise be applicable as an integral part of this Constitution. Private schools approved under the aforesaid provisions shall have the same rights as the corresponding public schools. They shall be entitled to the grants made out of public funds necessary for the performance of their functions and the fulfilment of their duties.

Art. 9. 1. Instruction in the elementary and occupational training schools shall be free.

[1] See *Yearbook on Human Rights for 1949*, p. 80.

2. The introduction and application of the principle of exemption from the payment of school fees in the case of post-elementary schools and of the principle of free supply of equipment for teachers and pupils in the case of all schools shall be regulated by statute. Special maintenance grants shall be made for the purpose of study in case of need. To the extent to which exemption from the payment of school fees is granted by the State in the case of public schools, private schools referred to in article 8, paragraph 4, shall likewise be entitled to waive the right to charge fees and may claim corresponding compensation from the State; and to the extent to which the State provides free equipment for teachers and pupils, such equipment shall be provided for private schools in the same way as for public schools.

Art. 10. 1. The educational system of the State is based on the basic school (*Grundschule*), which is part of the elementary school, and attendance at which is compulsory for all children. The organization of the educational system shall be determined by the manifold requirements of social life and of work. The type of school to which a child is to be admitted shall be determined by the child's ability and inclinations, and not by the financial circumstances and social position of the parents.

2. The parents or guardians of the children shall participate in the organization of the school system through bodies representing the parents.

Art. 11. Civics shall be taught in all schools, of which education in civic responsibilities shall be an obligatory function.

Art. 12. 1. The elementary schools comprise denominational schools (*Bekenntnisschulen*), interdenominational schools (*Gemeinschaftsschulen*) and schools teaching certain systems of philosophy (*Weltanschauungsschulen*).

2. In the denominational schools, children of the Catholic or Protestant faith will be educated and instructed in the spirit of their creed.

In the interdenominational schools, children of different denominations will be educated and instructed on the basis of Christian educational and cultural values.

In the schools teaching certain systems of philosophy, which expression includes undenominational (*bekenntnisfrei*) schools, children will be educated and instructed in the spirit of the particular system of philosophy.

3. The parents or guardians of the children are entitled to choose the type of school to be attended by the children. Schools shall be established, in the manner to be prescribed by statute, in conformity with the provisions of paragraph 2 hereof at the request of the children's parents or guardians wherever the possibility of an ordered school organization exists. Even schools which do not provide a great variety of courses and which are not divided into classes shall, as

a rule, be regarded as providing an ordered school organization.

4. Teachers must possess the personal and academic qualifications required by the nature of the school organization concerned.

Art. 13. No child may be refused admittance to a public school for reasons of religious denomination, if no appropriate school is available.

Art. 14. 1. Religious instruction shall be a regular part of the curriculum in all schools with the exception of schools teaching certain systems of philosophy (undenominational schools). Teachers imparting religious instruction must be authorized to do so by either the church or the religious society concerned. No teacher may be compelled to impart religious instruction.

2. Syllabuses and textbooks for religious instruction shall be determined by agreement with the church or religious society concerned.

3. Without prejudice to the State's right of supervision, the churches or religious societies shall be entitled, in a manner to be agreed upon with the education authorities, to inspect schools for the purpose of ensuring that religious instruction is being imparted in accordance with their teachings and requirements.

4. Exemption from religious instruction may be granted only if the parent or guardian or, when he has reached the age prescribed by law, the pupil himself, makes an application in writing for exemption from religious instruction.

Art. 15. 1. The professional training of teachers in all schools shall be of university standard.

2. Their training must correspond to the nature, special features and requirements of the various kinds and forms of schools.

As a rule, the training of elementary school teachers shall be on a denominational basis.

Art. 16. 1. Universities and institutions of equal standing as centres of research and teaching shall be entitled, without prejudice to the State's right of supervision, to administer themselves in the manner best suited to their particular nature, provided that they comply with general legislation and do not exceed the limits of their articles of association as officially approved.

2. Churches and religious societies shall be entitled to establish and maintain institutions of university standing for the training of the members of their clergy, or of their ministers of religion, as the case may be.

Art. 17. Adult education is to be encouraged. Recognition shall be given to the interest in adult education of organizations other than the State, the communes and the associations of communes (*Gemeindeverbände*) such as the churches and the free associations.

Art. 18. 1. Culture, art and science shall be promoted by the *Land* and communes.

2. The monuments of art, history and culture, as well as the beauties of the countryside and the monuments of nature, are under the protection of the State, the communes and the associations of communes.

Art. 19. 1. The right of the churches and religious societies to freedom of association is guaranteed. No restrictions may be imposed on the freedom of churches or religious societies to amalgamate within the boundaries of the *Land.*

2. Churches and religious societies may order and manage their affairs independently within the limits of general legislation. They are entitled to make or terminate appointments without the intervention of the State and the political communes.

Art. 20. Churches and religious societies are entitled to conduct religious worship in schools, hospitals, penitentiaries and similar public institutions, and to exercise therein a regularly organized cure of souls. In so doing they may not use any compulsion.

Art. 21. Contributions to the churches or religious societies payable by the State, the political communes or the associations of communes under statute, treaty or any other legal instrument may not be discontinued except by agreement. Where such agreements affect the *Land*, they shall require ratification by *Land* legislation.

Art. 22. In other respects, relations between the *Land* and the churches or religious societies shall be governed by article 140 of the Bonn Constitution of the Federal Republic of Germany of 23 May 1949,[1] which for this purpose is an integral part of this Constitution and directly applicable as the law of the *Land.*

Art. 23. 1. The provisions of treaties with the Catholic Church and the Protestant Church of the Old Prussian Union which were formerly valid in the Free State of Prussia shall be recognized as having the force of law in the parts of the territory of the State of North-Rhine–Westphalia which formerly belonged to Prussia.

2. In addition to the consent of the contracting parties, *Land* legislation shall be necessary for the purpose of amending such ecclesiastical treaties or of concluding new ones.

Section 4

WORK AND ECONOMIC AFFAIRS

Art. 24. 1. Human welfare is the centre of economic life. The protection of his working capacity has priority over the protection of material property. Every person has a right to work.

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[1] See *Yearbook on Human Rights for 1949*, p. 83.

2. Remuneration must be in keeping with the nature of the work and must cover the reasonable living requirements of the worker and his family. Every one has the right to equal pay for equal work and equal performance. This also applies in the case of women and young persons.

3. The right to adequate holidays with pay shall be established by legislation.

Art. 25. 1. Sundays and official holidays shall be recognized and legally protected as days of worship, spiritual improvement, physical recreation and rest.

2. The first of May shall be a legal holiday dedicated to freedom and peace, social justice, international concord and the dignity of the human person.

Art. 26. Since employers and workers are jointly responsible for and contributing to economic life, the right of the workers to participation on terms of equality, in the organization of the economic and social structure is recognized and guaranteed.

Art. 27. 1. Large undertakings of the primary industry, and enterprises which are of particular importance because of their position in the nature of monopolies, shall be transferred to public ownership.

2. Industrial combinations which abuse their economic power shall be prohibited.

Art. 28. Small and medium undertakings in agriculture, handicrafts, trade and industry as well as the liberal professions, are to be encouraged. Co-operative self-help is to be supported.

Art. 29. 1. An effort shall be made to arouse rural interest among broad sections of the population.

2. It is the duty of the *Land* to establish new residential and economic centres and strengthen the position of small and medium peasant land-owners in accordance with legislation.

3. The working of allotments and gardens is to be encouraged.

PART III

THE ORGANS AND RESPONSIBILITIES OF THE *LAND*

Section 1

THE DIET

. . .

Art. 31. 1. Deputies shall be elected by universal, equal, direct, secret and free suffrage.

2. Any person who, on the day when the electoral writ is issued, is domiciled in North-Rhine–Westphalia shall, provided that he has attained the age of twenty-one years, be entitled to vote; if he is over the age of twenty-five years he is also qualified to stand as candidate for election.

3. The elections shall take place on a Sunday or other legal holiday.

4. Details shall be prescribed by statute.

Art. 32. 1. Associations and persons proposing to suppress civic freedoms or to use force against the people, the *Land* or the Constitution may not take part in elections or referenda.

2. The Constitutional Court shall, on the application of the Government of the *Land* or of not less than fifty deputies of the *Landtag*, give a ruling to determine whether these circumstances exist.

. . .

Section 4

ADMINISTRATION OF JUSTICE

. . .

Art. 73. If a judge, whether in the exercise of his office or otherwise, violates the fundamental principles of the Basic Law or the constitutional order of the *Land*, the Federal Constitutional Court may, at the request of a majority of the statutory membership of the *Diet*, order, by a two-thirds majority, that the judge shall be transferred to other functions or retired. In the case of a wilful violation, the said court may order the judge to be removed from office.

. . .

CONSTITUTION OF SCHLESWIG-HOLSTEIN[1]

of 13 December 1949, as amended 20 November 1950

Art. 3. The elections to the popular representative bodies in the State, the communes (*Gemeinde*) and the associations of communes (*Gemeindeverbände*) shall be universal, direct, free, equal and secret.

Elections shall take place on a Sunday or public holiday. . . .

Art. 5. Any person is free to declare himself a member of a national minority; such a declaration does not relieve him of universal civic obligations.

[1] German text in *Gesetz- und Verordnungsblatt für Schleswig-Holstein* No. 2, of 12 January 1950, and No. 36, of 23 December 1950. English translation from the German text by the United Nations Secretariat. Schleswig-Holstein is in the United Kingdom Zone of Occupation. See also p. 100, footnote to the Constitution of North-Rhine–Westphalia.

Art. 6 (as amended 20 November 1950). School attendance is universal and compulsory.

[*The period of universal elementary education shall be not less than six school years.*][1]

To the extent that the capacity of the school permits, ability and performance shall be the sole criteria for admission to post-elementary schools, subject to the wishes of the parents or legal guardians.

[*Instruction in public schools shall be provided free of charge for all pupils throughout the period of compulsory education. Free attendance at public schools beyond this period is to be aimed at.*][1]

[*School supplies and teaching aids shall be provided within the framework of the law.*][1]

The public schools, in their capacity as community schools, shall accept pupils without distinction of religious or philosophical beliefs.

The parents or legal guardians shall decide whether their children are to attend the school of a national minority.

The details shall be regulated by law.

Art. 7. (1) The State shall encourage and protect art and science, research and teaching.

(2) The encouragement of adult education and its institutions, in particular of libraries and people's universities, is the duty of the State, the district (*Kreis*) and the commune (*Gemeinde*).

Art. 8.[1] [*In the interests of the new social order, land in individual ownership exceeding 100 hectares in area or 50,000 marks in value shall be made available for the purposes of agrarian reform. Compensation shall be paid according to the unit value.*

The details shall be regulated by law.]

. . .

[1]Deleted on 20 November 1950.

DECLARATION OF 26 SEPTEMBER 1949 BY THE GOVERNMENT OF THE *LAND* OF SCHLESWIG-HOLSTEIN CONCERNING THE POSITION OF THE DANISH MINORITY[1]

The Government of the *Land* of Schleswig-Holstein, imbued with the wish to ensure the peaceful coexistence of the Danish minority with the German population; to guarantee the legitimate interests of the Danish minority in Schleswig-Holstein; and to promote good neighbourly relations with the Danish people, makes the following declaration with the approval of the *Landtag* of Schleswig-Holstein and in the definite expectation that the Danish Government will grant and guarantee the same rights and freedoms to the German minority in Denmark:

I

The Basic Law of the Federal Republic of Germany, of 23 May 1949,[2] guarantees to every person and hence to every member of the Danish minority regardless of the language he uses:

(*a*) The right to free development of his personality as well as the inviolability of his individual freedom (article 2),

(*b*) Equality before the law (article 3, paragraph 1),

(*c*) The right that no person shall suffer prejudice or receive preference on account of his descent, language, origin or political opinions (article 3, paragraph 3),

(*d*) Freedom of faith and conscience (article 4),

(*e*) The right freely to express his opinion, and freedom of the press (article 5),

(*f*) Freedom of assembly and association (articles 8 and 9),

(*g*) The right freely to choose his occupation and place of work (article 12),

(*h*) Inviolability of the home (article 13),

(*i*) Freedom to form political parties and to engage in the activities of political parties, in accordance with article 21,

(*k*) Equal access to any public office in accordance with his aptitude, ability and professional record (article 33, paragraph 2)—*i.e.*, no distinction shall be made between members of the Danish minority and others in the case of officials, salaried employees and wage-earners in the public service,

(*l*) The right to universal, direct, equal, free and secret elections, including elections in the *Länder* and municipalities (article 28, paragraph 1),

(*m*) The right to appeal to the courts when his rights are infringed by public authorities (article 19, paragraph 4).

Hence, in pursuance of the federal law in force, which according to article 31 of the Basic Law enjoys unconditional precedence, no person shall suffer prejudice or receive privilege because he is a member of the Danish minority.

[1]German text in *Gesetz- und Verordnungsblatt für Schleswig-Holstein* No. 27, of 6 October 1949. English translation from the German text by the United Nations Secretariat.

[2]See *Yearbook on Human Rights for 1949*, pp. 79–84.

II

In application of these principles of law, the following provisions are hereby laid down:

1. The right to adhere freely and openly to the Danish people and Danish culture shall be recognized and may not be officially disputed or subjected to investigation;

2. The Danish minority, its organizations and members shall not be hindered in the oral, written or printed use of the language they prefer. The use of the Danish language in courts and before administrative authorities shall be regulated according to general law;

3. Kindergartens, and establishments of general and adult education (including those with special classes) may be set up by the Danish minority in accordance with law. Adequate instruction in the German language shall be given in schools where the language of instruction is Danish. Parents and guardians may freely decide whether their children shall attend schools in which Danish is the language of instruction;

4. The *Land* Government considers it a matter of course that use should be made, regardless of changing ratios of party strength, of the parliamentary custom of offering each political group in the representative bodies of communes, rural district councils, and counties, and the *Land* a fair measure of participation in the work of committees;

5. The *Land* Government considers it desirable for the Danish minority, like other political and cultural bodies, to have access to radio broadcasting facilities.

6. The *Land* Government considers it desirable for Danish clergymen and church communities, after prior agreement with the competent church or local government offices, to be able to use churches, cemeteries and similar facilities with freedom to use the language of their choice.

7. In connexion with the grant of relief or other benefits from public funds where decisions are based on an impartial assessment of the relevant circumstances, the fact of belonging to the Danish minority shall not be taken into consideration.

8. Advertising by public authorities shall not be withheld from newspapers of the Danish minority.

9. The special interest of the Danish minority in fostering religious, cultural and professional ties with Denmark shall be recognized.

10. Danish subjects who have received permission from the *Land* Government to work in a religious, cultural or professional capacity (*e.g.*, clergymen, teachers, agricultural advisers, etc.) shall be given equal consideration with others belonging to their respective professions in the distribution of settlement permits and housing facilities in the communities where they are employed. They may not engage in political activity.

11. The *Land* Government shall undertake to intervene with such competent agencies as may from time to time be concerned, in favour of the confirmation and enforcement of such of the foregoing provisions as are not wholly within the jurisdiction of the *Land*.

III

A committee shall be appointed to examine and deal with proposals, complaints and other petitions of the Danish minority. It shall consist of three members of the Danish minority and three other members appointed by the *Land* Commissioner for Schleswig.

The business of the committee shall be conducted by a secretary who, on selection by a majority of the Committee from three names proposed by the Danish minority, shall be employed by the *Land* Government. The secretary shall endeavour, in the first place, to settle all petitions by negotiation with the *Land* Commissioner for Schleswig or with the competent local agencies. If that is not possible, it shall be his duty to submit them to the committee for its opinion. The *Land* Commissioner for Schleswig may himself request the committee to give its views on these and other matters. In the absence of a majority opinion of the committee, two different views may be given.

The committee's views shall be transmitted to the *Land* Government for final decision. Where action by independent administrative bodies is involved, the *Land* Government shall, to the extent of its competence, take the necessary measures.

Further details shall be determined by the committee's rules of procedure, which shall also make provision for the election of the chairman and alternating occupancy of the Chair by the two groups forming the committee. The rules of procedure shall be adopted by the Committee and shall require the approval of the *Land* Government.

IV

The fundamental principles hereby established shall also apply to the Friesian population in Schleswig-Holstein.

BERLIN[1]

CONSTITUTION OF BERLIN[2]

dated 1 September 1950

PREAMBLE

In the resolve

To protect the freedoms and rights of all individuals,

To regulate the community and the economy on a democratic basis,

To serve the spirit of social progress and peace, and in the desire

To remain the capital of a new united Germany,

Berlin has adopted this Constitution:

CHAPTER I

FUNDAMENTAL PROVISIONS

Art. 1. (1) Berlin is a German *Land* and at the same time a city.

(2) *Berlin is a* Land *of the Federal Republic of Germany.*[3]

(3) *The Basic Law and the laws of the Federal Republic of Germany are binding on Berlin.*[3]

. . .

CHAPTER II

BASIC RIGHTS

Art. 6. (1) All men and women are equal before the law. They are entitled to equal opportunity for economic, social and intellectual development.

(2) Women are on an equal footing with men in all political, economic and social fields.

Art. 7. No one may be prevented from exercising civic rights or holding honorary office; such restriction shall not, in particular, be a condition of his employment.

Art. 8. (1) Everyone is entitled, within the limits of the law, to express his opinion freely and publicly, so long as he does not threaten or violate the constitutionally guaranteed freedoms.

(2) Everyone shall be entitled to inform himself, through the press or any other kind of communication, about the opinion of others, especially of other nations.

(3) Censorship is illegal.

Art. 9. (1) The freedom of the individual is inviolable. No one may be removed from the jurisdiction of his lawful judge.

(2) Any arrested or apprehended person is to be informed, within twenty-four hours, which authority has ordered the detention, and for what reason. His next of kin are entitled to information about the detention. Upon request of the arrested or apprehended person, other persons are likewise to be immediately informed of the arrest or apprehension.

(3) Within forty-eight hours, any arrested or apprehended person is to be brought before the competent judge, who shall decide on the arrest or apprehension.

Art. 10. Secrecy of the mail, as well as of the postal services and of telecommunications, is inviolable.

Art. 11. Freedom of movement, specially the free choice of residence, profession and place of work, are guaranteed. They are limited, however, by the obligation to help in overcoming public emergencies.

Art. 12. (1) Everyone has a right to work. This right is to be rendered effective by means of a policy aiming at full employment and economic planning. If work cannot be assigned, maintenance out of public means may legally be claimed.

(2) Women, juveniles and physically handicapped persons have a right to special protection in employment.

Art. 13. Everyone, irrespective of origin, sex, party affiliation and creed, shall have the chance of attaining

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[1] The Constitution and the electoral law, of which extracts are published herein, apply in those sectors of Berlin occupied by the western Powers.

[2] German and English text in *1950 Berlin Constitution and Electoral Law*, published by the Office of the United States High Commissioner for Germany, 1951.

[3] The Allied Kommandatura suspended article 1, paragraphs 2 and 3 of this Constitution. See also article 87.

any public office, provided he has the appropriate qualifications.

Art. 14. Any person who is in distress owing to disease, age or other reasons shall have a claim to be maintained out of public means, unless he is sufficiently protected by social insurance.

Art. 15. (1) Private property is guaranteed. Its definition and its limitations are contained in the laws.

(2) Expropriation may be enacted only for the welfare of the community at large on the basis of a law.

Art. 16. Every abuse of economic power is unlawful. Especially, any private monopolistic organization aiming at controlling production and distribution means an abuse of economic power and is prohibited.

Art. 17. The right of co-determination for workers and employees in economic and administrative management is to be guaranteed by law.

Art. 18. (1) All men and women have the right to assemble for lawful purposes, peacefully and unarmed, and to form associations and societies.

(2) Associations may not pursue objectives or take measures which endanger the performance of the duties of constitutional agencies and administrative bodies organized under public law.

(3) The right to strike is guaranteed.

Art. 19. (1) Everyone has a right to dwelling space.

(2) Such dwelling space is inviolable. Searches may be effected only upon the order of a judge or, in case of pursuit in the very act, by the police, whose measures, however, are subject to judicial approval within forty-eight hours.

Art. 20. (1) The practice of religion without interference is guaranteed.

(2) Racial incitement and display of national or religious hatred are inconsistent with the spirit of the Constitution and are to be made punishable offences.

Art. 21. (1) Actions liable to impair the peaceful co-existence of nations are inconsistent with the spirit of the Constitution and are to be made punishable offences.

(2) Everyone has the right to refuse military service without being subjected to any disadvantage.

Art. 22. (1) Sundays and legal holidays are protected as days of rest.

(2) The first of May is a legal holiday.

Art. 23. (1) The basic rights guaranteed by the Constitution are binding on the legislative, on the executive and on the judiciary.

(2) Basic rights may be restricted by legislation only to such an extent as not to violate the fundamental principles of such rights.

(3) If basic rights defined in the Constitution are patently being violated, everyone has the legal right to offer resistance.

Art. 24. Any person who wrongfully attacks or endangers basic rights, particularly by following National Socialist or other totalitarian or warlike objectives, may not invoke articles 8 and 18.

CHAPTER III

THE POPULAR REPRESENTATIVE BODY

Art. 25. (1) The City Council is the popular representative body elected by the German citizens having the right to vote.

(2) The City Council is composed of two hundred representatives.

Art. 26. (1) The representatives are elected, for a term of four years, by universal, equal, secret and direct ballot.

(2) Only political parties can present nomination lists (*Wahlvorschläge*). No seats will be allocated to nomination lists which, in the territory of Berlin, poll less than five per cent of the total vote.

(3) All German nationals having attained, on the day of the election, the age of twenty years and having resided in Berlin for at least six months have the right to vote.

(4) Any person who is legally incapacitated, has been placed under the care of a guardian on account of imbecility, or does not possess full civic rights, is excluded from the right to vote.

(5) All persons who are entitled to vote may stand for election if they have attained the age of twenty-five years on the day of the election.

(6) All details shall be regulated by an electoral law.

Art. 27. The political tasks of the parties and their duties toward the general public shall be determined by a law on parties.

. . .

CHAPTER VII

ADMINISTRATION OF JUSTICE

Art. 62. Justice is to be administered in the spirit of this Constitution and of social understanding.

Art. 63 (as amended 16 November 1950). (1) Judicial powers are exercised in the name of the people by independent courts, subject to the law only.

(2) In accordance with the legal provisions, men and women of all classes are to be given a share in the administration of justice.

Art. 65. (1) A person charged with an offence may avail himself, at any stage of the proceedings, of assistance by a counsel for the defence.

(2) A person charged with an offence shall be deemed not guilty until he has been convicted by a court.

Art. 66. No penal provision shall have retroactive force unless it is more favourable for the offender than that in effect at the time of the offence.

Art. 67. Extraordinary courts are illegal.

. . .

CHAPTER IX

TRANSITIONAL AND CONCLUDING PROVISIONS

. . .

Art. 86. The legal provisions enacted for the liberation from National Socialism and militarism, as well as for the elimination of their after-effects, are not affected by the provisions of this Constitution.

Art. 87. Article 1, paragraphs 2 and 3, of this Constitution shall come into force as soon as the application of the Basic Law for the Federal Republic of Germany is no longer subject to any restriction in Berlin.

In the transition period, the City Council may establish by law that any specific law of the Federal Republic of Germany is applicable also in Berlin without change.

. . .

Art. 88 . . .

(3) This Constitution will be revised as soon as a peace treaty is concluded or a constitution for Germany is promulgated.

Art. 89. This Constitution shall come into force on 1 October 1950.

ACT CONCERNING THE ELECTIONS TO BE HELD ON 3 DECEMBER 1950[1]

dated 28 September 1950

Art. 3. (1) According to the principles of proportional representation as laid down in the electoral regulations (*Wahlordnung*), two hundred representatives for the City Council shall be elected for a duration of four years by universal, free, equal, secret and direct ballot.

(2) Nomination lists may be submitted by political parties only.

(3) All German citizens who on the day of the election have passed their twentieth birthday and have had their domicile in Berlin for a minimum period of six months shall have the right to vote.

(4) Notwithstanding the provisions of article 1, those Germans shall also have the right to vote who have been recognized by the appropriate authorities as political refugees or expellees and have stayed in Berlin for a minimum period of six months on the day of the election.

(5) Germans returning from war captivity are not required to prove a stay of six months in Berlin, provided that they have passed their twentieth birthday on the day of the election and have received their residence permit by the fifth day prior to the election.

Art. 4. The following persons shall be excluded from the right to vote:

(*a*) Persons who are legally incapacitated or under temporary guardianship or who, owing to a mental defect, have been placed under care;

(*b*) Persons who, by virtue of final court decision, have been deprived of civic rights;

(*c*) Persons who, pursuant to legal provisions issued by the Occupation Powers, have been disfranchised by the day of the election.

Art. 5. The right of the following persons to vote shall be suspended:

(*a*) Persons who, owing to a mental disease or feeblemindedness, are accommodated in hospitals, sanatoria and insane asylums;

(*b*) Prisoners undergoing sentence.

Art. 6. (1) All persons having the right to vote and having passed their twenty-fifth birthday on the day of the election may stand for election.

[1] German and English texts in *1950 Berlin Constitution and Electoral Law*, published by the Office of the U.S. High Commissioner for Germany, 1951. This Act was approved by the Allied Kommandatura of Berlin on 22 September 1950. See also p. 106, footnote 1.

(2) Employees of borough offices should not be nominated as candidates for the borough councils of those boroughs in which they are employed. Employees of the Central Administration, of the Administration of Justice and of the Police, of the Finance Administration, of municipal enterprises and postal services, as well as judges and teachers, may be nominated as candidates for the borough councils, but should not be nominated as candidates for the City Council.

Art. 7. (1) Should the holding of the election be prevented in one or several districts by *force majeure*, the total number of representatives to be elected in those electoral districts where the election is held must bear the same ratio to the maximum number of representatives as the number of inhabitants of those electoral districts bears to the number of inhabitants of Berlin.

(2) The City Council may resolve that such City Assembly members as have formerly been elected in those electoral districts where, on 3 December 1950, the election is prevented by *force majeure* shall be deemed members of the City Council.

Art. 8. No seats shall be allocated to nomination lists which poll less than five per cent of the total vote within the territory of Berlin.

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GREECE

PENAL CODE[1]

Act No. 1492, of 17 August 1950

II. OFFENCES IN ELECTORAL MATTERS

Article 161

COERCION OF AN ELECTOR

Any person who, by acts or threats, prevents an elector from exercising his right of vote or forces him to exercise that right, or compels him to vote for or against a candidate, on the occasion of elections to the Chamber of Deputies, to the prefectoral councils, to the local councils or to the municipal councils, shall be liable to imprisonment. The court may, in addition, order him to be debarred from offices and honours as provided in article 63, paragraph 1.

Article 162

DECEIT OF ELECTORS

Any person who, by means of false information or slanderous rumours directed against the person of a candidate, or in any other manner, deceives an elector and induces him either to refrain from exercising his right of vote or to vote for another candidate in any of the elections mentioned in article 161, shall be liable to imprisonment for a period not exceeding two years and to a fine.

Article 163

VIOLATION OF THE SECRECY OF THE BALLOT

Any person who, in an election by secret ballot discovers or causes to be discovered, by any means whatever, the manner in which an elector has cast his vote, shall be liable to imprisonment for a period not exceeding one year.

Article 164

FALSIFICATION OF ELECTION

1. Any person who, in any of the elections mentioned in article 161, votes without being entitled to do so, votes several times, deposits several ballot papers, or in any other manner deliberately falsifies the result of an election, and any person who tampers with election returns, shall be liable to imprisonment for a period not exceeding two years. If the culprit has served in the election in any capacity, he shall be liable to imprisonment for a period not exceeding three years.

2. The last sentence of article 161 shall apply to the above-mentioned offence.

Article 165

BRIBERY IN CONNEXION WITH ELECTIONS

1. Any person who, on the occasion of any of the elections mentioned in article 161 and during the period between the opening of the elections and the closing of the polls, offers, procures for or promises an elector gifts or other advantages not due to him in order to induce him either to refrain from exercising his right of suffrage or to exercise that right in a particular manner, shall be liable to imprisonment for a period not exceeding two years and to a fine. The last sentence of article 161 shall apply to the above offence.

Article 247

STRIKES BY OFFICIALS

1. Officials who, as a result of planning and decision in which at least three persons took part, and with the intention of preventing or suspending the operation of a public service, either (*a*) submit their resignation, or (*b*) cease to discharge their functions, or (*c*) neglect the fulfilment of the duties of their office, or who (*d*) conspire, in any manner, to call a strike, or who threaten to call a strike, or who, in any manner whatever, directly or indirectly, make the continuance of their work conditional on the acceptance of their claims, shall be liable to imprisonment for a period not exceeding one year.

2. The same penalty shall be applicable to any official who becomes an accessory after the fact to any of the acts provided for in the preceding paragraph.

3. The officers of a group or association of officials which decides to call a strike shall be liable to imprisonment for a period of not less than three months and to a fine. The group or association of officials and the persons convicted shall be jointly responsible for the fine.

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[1] Greek text in *Official Journal* No. 182, of 17 August 1950. Text and information received through the courtesy of Mr. Alexis Kyrou, Permanent Representative of Greece to the United Nations. English translation from the Greek text by the United Nations Secretariat. The Act came into force on 1 January 1951.

4. A sentence pronounced for any of the acts referred to in paragraphs 1 to 3 shall carry with it temporary deprivation of political rights (articles 61 to 65).

XVIII. OFFENCES AGAINST INDIVIDUAL FREEDOM

[Articles 322 to 326 of the Penal Code prohibit and punish the crimes of kidnapping (article 322), slave trade (article 322) and abduction of minors (article 324), as well as the offences of illegal detention (article 325) and unconstitutional detention (article 326).]

Article 332

Compulsion with a View to causing Work Stoppage

Any person who, by force or threats, compels a person to take part in a compact the purpose of which is collective work stoppage with a view to procuring a change in working conditions, or prevents a person from withdrawing from such a compact, shall be liable to imprisonment for a period not exceeding one year or to a fine.

Article 333

Threats

Any person who, by threatening to resort to violence or to commit any other illegal act, or to abstain from an act which by law he is bound to perform, frightens or alarms another person, shall be liable to imprisonment for a period not exceeding one year or to a fine.

Article 334

Violation of Domicile

1. Any person who illegally enters another person's home, his working premises, or any enclosed space which he occupies or which is assigned to him for the performance of a public service, or who remains there against such other person's will shall be liable to imprisonment for a period not exceeding one year or to a fine.

2. Proceedings shall be instituted only on the complaint of the person or the chief of service concerned.

Article 335

Fraudulent Incitement to Emigration

Any person who, for the purpose of gain, and by fraudulent means, persuades a Greek citizen to emigrate, shall be liable to imprisonment for a period not exceeding two years.

. . .

XIX. INJURY TO A PERSON'S GOOD NAME

Article 361

Slander

1. Any person who, in cases other than defamation of character (articles 362 and 363), causes injury, by an allegation, or an act or any other means, to a person's good name, shall be liable to imprisonment for a period not exceeding one year or to a fine. The fine may be imposed in addition to the term of imprisonment.

2. If the injury to a person's good name, in view of the circumstances and of the person concerned, is not a very serious one, the offender shall be liable to imprisonment or a fine as for a minor offence.

3. Article 308, paragraph 3, shall apply to the offence provided for in the present article.

Article 362

Defamation of Character

Any person who, by any means whatever, and in the presence of third parties, makes an allegation or discloses a fact causing injury to the honour or reputation of any other person, shall be liable to imprisonment for a period not exceeding two years and to a fine. The fine may be imposed in addition to the term of imprisonment.

LAWS OF 1950 RELATING TO AMNESTY FOR CERTAIN OFFENCES[1]

SUMMARIES

Several legislative texts adopted in 1950 provide measures of clemency for certain categories of accused and convicted persons.

(1) Legislative decree No. 1093, of 14 September–5 October 1950, supplementing and amending Emergency Act No. 809 of 1948, which provides that members of armed bands which had actively assisted the authorities in suppressing the rebellion should be given favourable treatment.

This legislative decree extends the benefit of the Act to all members of armed bands fighting against the State, or of the outlawed Greek Communist Party (K.K.E.), who report voluntarily to the military or police authorities with effect from 14 June 1948, on which day the Grammos operations began. The clemency provisions apply to them in respect of crimes and offences committed by them in connexion with acts of brigandage or action by the E.A.M. or ELLAS,

[1] Greek text received through the courtesy of Mr. Alexis Kyrou, Permanent Representative of Greece to the United Nations. English summaries prepared by the United Nations Secretariat.

either during the occupation at the time of the insurrection of September 1944 or after the liberation, on condition that they supply the authorities with information useful in suppressing the Communist rebellion and subversive activities (*e.g.*, by handing over plans, documents or battle instructions; by indicating hidden stores of weapons, medical supplies or food, assembly points, etc.) or give assistance leading to the arrest or death of the chief of a band.

(2) Emergency Act No. 1403, of 1 and 2 February 1950, concerning suspension of prosecution for crimes committed during the suppression of the rebellion.

This Act applies to members of armed bands guilty of committing crimes in the course of the anti-terrorist campaign who report voluntarily to the judicial or police authorities and hand over their weapons; and also to prisoners convicted of such crimes. It provides for suspension of prosecution or of execution of sentence, as the case may be.

(3) Emergency Act No. 1504, of 9 October 1950, concerning the review of court-martial decisions, the granting of favourable treatment to bandits who surrender voluntarily, and the repeal of previous legislative provisions.

This act provides, *inter alia*, that persons sentenced by courts martial to penalties for major or minor offences or crimes, or to total or partial forfeiture of civic rights, may appeal against conviction. Their appeal will lie only if the criminal law has been misinterpreted or misapplied, or the prisoner is innocent or not clearly proved guilty, or the penalty is excessive. The Act lays down the membership and procedure of the appellate court, the decisions of which are final.

Açt No. 1504 also includes new provisions concerning the Pardons Council. Persons sentenced to death whose appeals have been rejected may apply again to the Council, through the prison governor, to review their cases.

GUATEMALA

JUDICIAL DECISIONS

RIGHT TO PROPERTY—RIGHT TO DISPOSE FREELY OF PROPERTY— CONFISCATION—SEIZURE—CONSTITUTION OF GUATEMALA—CIVIL RESPONSIBILITY OF OFFICIALS—ECONOMIC EMERGENCY ACT—MAXIMUM PRICE ORDINANCE

ADRIÁN RECINOS AVILA *v.* MINISTRY OF THE INTERIOR AND COMMANDANT OF THE CIVIL GUARD AT HUEHUETENANGO

Supreme Court of Justice[1]

21 February 1950

The facts. Adrián Recinos Avila, acting as the representative of a company, applied to the court for an injunction against the Ministry of the Interior and the Commandant of the Civil Guard at Huehuetenango. The latter acting on the orders of the Ministry of the Interior, had confiscated an amount of lead stored for sale by the company represented by the applicant. The court was asked to make an interim injunction in favour of the applicant's company and for a stay of the proceedings instituted by the Minister on the ground that the confiscation of the lead was illegal and *ultra vires* the Minister. The applicant also applied for an order for the return to the company of the lead which had been seized and for the rescission of the order restraining the company from trading freely in the said commodity. By way of defence the Minister of the Interior asserted that, on the issuing of the Governmental Ordinance of 29 June 1949 fixing a maximum price for lead, the applicant's firm had ceased to market its products although it continued working its mines. The Minister declared that lead was of vital importance in the carrying out of construction works of public interest and that it was precisely because of the vital importance of lead to the continuation of such works that the Government had issued the ordinance of 29 June 1949 through the Ministry of Economic Affairs and Labour. Lead was included in the provisions of the Economic Emergency Act embodied in Congress Decree No. 90, of which article 8, as amended by Congress Decree No. 577, provides that any person guilty of contravening the provisions of the Economic Emergency Act or any regulations made thereunder or any directive issued by the Ministry of Economic Affairs shall be liable to the penalties set forth therein, without prejudice to liability under the general criminal law and to the seizure of property. It was also argued that the lead had not been confiscated, as asserted by the applicant, but merely seized. It was asserted that the Office of the Minister of the Interior had confined itself to seeing that the appropriate penalties were inflicted by the subordinate authorities once the allegations contained in the information against the company represented by the applicant had been verified, and had ordered the goods which had been seized to be placed at the disposal of the General Department of Commerce which was qualified to decide the matter.

Held: that the application should be granted and the order made by the Minister of the Interior rescinded. Article 4 of the ordinance of 29 June 1949 states that "any person engaged in trade who makes sales of lead in bulk over and above the limits set by this ordinance shall be liable to the penalties set forth in the Economic Emergency Act". Thus the sole limitation prescribed by that ordinance is the setting of a maximum price for lead; it does not cover the practice of "cornering the market", which was the subject of the information received by the Minister of the Interior and was, incidentally, not proved. Hence it follows that the order of the Minister of the Interior, pursuant to which the seizure or sequestration of the lead in the possession of the company took place, could not properly be based upon that ordinance or upon any other legal provision, since the Constitution of the Republic guarantees in articles 28, 90 and 92[2] the existence of private property and declares that all persons may dispose freely of their property provided that in doing so they do not contravene the law. In accordance with article 24 of the Constitution, the injunction should take effect only against the Minister of the Interior, since the Commandant of the Civil Guard acted in pursuance of orders given by the Minister of the Interior and consequently could not be bound and was not bound to question the legality of those orders. The application for an injunction against the Minister of the Interior is therefore admissible; the immediate return to the company of the lead seized is ordered; and the restrictions imposed by the Minister of the Interior are declared null and void.

[1] Spanish text of the decision transmitted through the courtesy of the Government of Guatemala. English summary by the United Nations Secretariat.

[2] See *Yearbook on Human Rights for 1946*, pp. 136 and 142.

RIGHT TO PROPERTY—EXPROPRIATION—JUDICIAL REVIEW OF ADMINISTRATIVE DECISIONS—CONSTITUTION OF GUATEMALA—LAW OF GUATEMALA

EMILIO STERKEL ZOLLER *v.* MINISTRY OF FINANCE AND PUBLIC CREDIT

Supreme Court of Justice

21 November 1950[1]

The facts. The Minister of Finance and Public Credit dismissed an application duly made by the appellant for the reversal of his Ministry's order No. 9879. Under this order the appellant was "declared liable to expropriation" and was directed to execute within a time-limit of three days an instrument transferring the ownership of all his property to the State. After the expiration of this time-limit, the Ministry ordered the immediate transfer of all his property to the State although an application to set aside the administrative decision of the Ministry of Finance and Public Credit and an application for judicial review, under article 18 of Governmental Decree 1118 and the last part of paragraph 6 of article 164 of the Constitution, were still pending. The appellant applied to the court for an injunction.

The Ministry of Finance and Public Credit considered that a person's status governed the legal status of his property; that it was the function of the Ministry of Foreign Affairs to determine a person's status and that that Ministry had determined that the applicant's personal status was such as to make him liable to expropriation. The Ministry of Finance and Public Credit therefore declared that the applicant was liable to expropriation and that accordingly expropriation proceedings should be instituted against him. When the applicant applied to the Ministry for the reversal of this decision, the Ministry decided to dismiss the application as not having been substantiated; to confirm its original administrative decision; and since the time-limit notified to the applicant and prescribed for the execution of the instrument transferring ownership had expired, to empower the Attorney-General, in view of the non-compliance of the applicant, to execute the instrument transferring to the State the ownership of the applicant's property, the Ministry of Finance and Public Credit having been appointed to represent it for the purpose of accepting the transfer. The public prosecutor expressed the opinion that any other procedure would be tantamount to leaving the public authorities without any power to enforce and carry out their own decisions and such enforcement would, moreover, be subject exclusively to the will of applicants. He added that the applicant was still entitled to institute proceedings for the remedies applicable.

Held: that the application must be granted. Article 18 of Governmental Decree 1881 clearly prescribes the time-limit within which an application to set aside an administrative decision may be made in the case of a decision in the governmental procedure which is final and that such decisions are not to be carried into effect, and hence are not to be enforced *vis-à-vis* private persons, until a period of three months has elapsed after the day following the date on which the notification in question was communicated, an additional condition being the proviso that the parties have not applied to set aside the administrative decision. Otherwise undue limitations would be placed on the constitutional guarantee relating to the protection of rights and to the right to apply to the courts for the necessary action to protect those rights "in the manner prescribed by law". Moreover, the Constitution itself provides that: "The order and formalities of trials and of any other proceedings referred to in the legislation are applicable generally to all the inhabitants"; the term "proceedings" includes, of course, administrative proceedings, in which the statutory formalities are also required to be observed. Accordingly, the application is good in law, for at the time when, over the applicant's refusal to comply, the instrument transferring ownership of his property to the State was ordered to be executed, the statutory time-limit of three months within which applications to set aside administrative decisions may be made had not yet expired; and accordingly the three-day time-limit fixed in the peremptory notice served upon the applicant to carry out the transfer of the said property had not even begun to run.

The application for an injunction made by the applicant is admissible, in the sense that points 3 and 4 of the decision in respect of which the application was made [empowering the Attorney-General to execute an instrument transferring the applicant's property in his name to the State and appointing the Under-Secretary of the Ministry of Finance and Public Credit to represent the Ministry for the purpose of accepting the transfer] are not applicable to him; accordingly, the instrument transferring ownership of his property may not be executed over his objection until the time-limit within which he is entitled to apply for the setting aside of the administrative decision has expired without his having so applied. Costs are awarded against the Ministry.

[1] Spanish text of the decision received through the courtesy of the Government of Guatemala. English summary by the United Nations Secretariat.

HAITI

CONSTITUTION OF THE REPUBLIC OF HAITI[1]

of 25 November 1950

Note.[2] In April 1950, a dispute broke out between the Executive Power, which had the support of the Chamber of Deputies, and the Senate, which refused, by fourteen votes to seven, to proceed with the revision of certain articles of the Constitution of 22 November 1946 decided upon by the preceding session of the legislature.[3] The most important of the articles was article 81, prohibiting the re-election of the President of the Republic.

The dispute rapidly grew more acute. The President was compelled to resign, and a military junta of three members took power. The junta immediately ordered the dissolution of the two chambers and constituted itself as *de facto* Government with the addition of five civilian ministers. This Government was recognized by the States maintaining diplomatic relations with Haiti.

After prolonged and free discussion in the Press, the Constitution being regarded as abrogated, simultaneous elections were held on 8 October, by direct and universal suffrage, to elect the President of the Republic, new Senators and deputies, to take office after the constitutional reform, and, in addition, seventeen members of a Constituent Assembly, elected separately from the members of the legislature, with the special and exclusive function of providing the country with a new Constitution.

The Constituent Assembly met at Les Gonaives from 3 to 25 November 1950.

The new Constitution, proclaimed on 25 November 1950, came into force on its publication in the *Journal officiel* on 28 November. A number of felicitous amendments or additions extending human rights are embodied in over twenty of the articles of the new Constitution (articles 4, 8, 10, 13, 15, 17, 18, 20 to 22, 37, 41, 81, 88 and some others), in addition to other changes affecting the organization and working of the three powers of the State.

The main innovations relating to human rights are:

1. The granting to women of political rights, the franchise and eligibility to public office, in two stages, the second of which will be completed in 1957, the recognition of their fitness to perform all functions of public administration and the acceptance of the principle of equality of civil rights, to be carried into effect gradually by means of ordinary legislation (article 4).

2. The removal of the disabilities to which naturalized Haitians and their children were formerly subject, as compared with native-born Haitians, so far as the enjoyment of certain civil rights and eligibility to the political offices of Deputy, Senator, Secretary of State, and Under-Secretary of State are concerned (articles 9, 37, 41, 90).

3. The explicit affirmation of the equality of all Haitians before the law and with regard to the right to hold public office and to participate in the Government, without distinction of colour, sex or religion (article 9).

4. Guarantee of the right to life and liberty of all persons living in the territory of Haiti, without discrimination between nationals and aliens (article 10).

5. Extension of the protection and rights accorded to workers for the improvement of their physical, intellectual and moral conditions (article 17).

6. Strengthening of the guarantees regarding the rights of property, in the case of expropriation in the public interest, by the stipulation that a judicial decision shall be required concerning the deposit of the compensation due, or in the case of the liquidation of the assets of aliens who have ceased to reside in Haiti, by the repeal of the confiscation provisions of the previous Constitution (articles 8 and 15).

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[1] French text in *Le Moniteur* No. 137, of 28 November 1950, received through the courtesy of Dr. Clovis Kernisan, Professor at the University of Port-au-Prince.

[2] Note prepared by Professor Clovis Kernisan.

[3] See *Yearbook on Human Rights for 1949*, p. 92.

7. More explicit statements regarding the equal right of all to education at all levels, freedom of religion and worship, the encouragement to be given to the institution of marriage (articles 20, 21 and 22).

8. Special safeguards for the victims of arbitrary acts by State officials to enable them to obtain reparation for the injury suffered, and to persons accused before courts martial in order to ensure their defence and to allow them to make effective use of their right of appeal (articles 115, 116 and 146).

9. Provision for the establishment of labour tribunals and children's courts (article 102).

10. Election of the President of the Republic by universal and direct suffrage (articles 88, 89 and 125).

It is the first time that this method of electing the President of the Republic, which has been practised for some years in many American States, has been established by the Constitution in Haiti and at the same time applied in practice. Introduced in a complicated form in an earlier constitution—namely, that of 1935—on the initiative of the Executive Power for political reasons, it was abolished four years later in the same manner, for similar reasons, before it had even been employed.

TITLE II

CHAPTER I

RIGHTS

Art. 3. The aggregate of civil and political rights constitutes citizenship.

The exercise of these rights is governed by the law.

Art. 4. All Haitians, without distinction of sex, may exercise political rights on attaining the age of twenty-one years if they fulfil the other conditions prescribed by the Constitution and the law.

For the time being women may only vote in elections for and may only be elected to municipal office. Within a period not to exceed three years from the next general municipal elections the law shall grant to women full and complete exercise of all political rights.

After the expiry of this period, there shall be no bar whatsoever to the exercise of these rights.

The fitness of women to perform all the civil functions of public administration is hereby recognized.

Nevertheless, the law shall regulate the conditions to which women shall for the time being be subject in family and matrimonial relations, without prejudice to any reforms that may be deemed desirable for the achievement of a system of absolute equality between the sexes.

Art. 5. The rules regarding nationality shall be prescribed by law.

Aliens may acquire Haitian nationality in conformity with the rules prescribed by law.

Aliens who become naturalized Haitians shall not be admitted to the exercise of political rights until ten years have elapsed from the date of their naturalization.

Art. 6. Every alien in Haitian territory enjoys the protection due to Haitians, save for any measures which may be found necessary with respect to the nationals of countries in which Haitian citizens do not enjoy a like protection.

Art. 7. The exercise, enjoyment, suspension and forfeiture of political rights shall be governed by the law.

Art. 8. The right to own real property for the purpose of residence is granted to aliens residing in Haiti.

Aliens residing in Haiti may not, however, own more than one dwelling house in the same district. They may in no case engage in the business of land agents.

Nevertheless, foreign building companies shall be accorded special status governed by law.

Aliens residing in Haiti and foreign corporations are likewise granted the right to own real property for the purposes of their agricultural, commercial, industrial or educational establishments, within the limits and subject to the conditions prescribed by law.

This right shall cease within a period of two years following the date on which the alien ceases to reside in the country or following the termination of the operations of such corporations in accordance with the law which determines the rules governing the transmission and liquidation of the assets of aliens.

Any citizen is qualified to lay an information regarding infringements of these provisions.

CHAPTER III

PUBLIC LAW

Art. 9. Haitians are equal before the law, subject to any restrictions which may be prescribed by law concerning naturalized Haitians.

Every Haitian has the right to take an effective part in the government of his country, to hold public office or to be appointed to State employment, without distinction of colour, sex or religion.

There shall be no privilege, favour, or discrimination in the administration of the public services of the State, so far as appointments and terms and conditions of service are concerned.

Art. 10. The State guarantees the right to life and liberty of all persons within the territory of the Republic.

No person may be prosecuted, arrested or detained except in the cases defined and in the manner prescribed by law.

No person may be arrested or detained except on a warrant issued by an officail competent under the law. Such warrant may not be enforced unless.

1. It formally states the grounds for the detention and the statutory provisions under which the alleged act is punishable;

2. The warrant is served and a copy thereof is furnished to the accused at the time of enforcement, unless he is taken *in flagrante delicto.*

Any force or constraint that is not necessary to apprehend a person or to maintain him in detention and any moral pressure or physical brutality, in particular during interrogation, are prohibited. Injured parties may appeal to the competent courts by instituting proceedings, without prior authorization, against either the principals or the agents.

Art. 11. No person may be removed from the judges assigned to him by the Constitution or by the law.

A civilian may not be tried by a court martial and, in exclusively civil matters, military personnel may not be removed from the courts of ordinary law unless a state of siege has been lawfully declared.

Art. 12. No house search or seizure of papers may take place except in pursuance of and in the form prescribed by the law.

Art. 13. The law may not have retroactive effect, except if favourable to the offender in criminal cases.

A law shall be deemed to have retroactive effect whenever it destroys acquired rights.

Art. 14. A penalty may not be established except by law or applied except in the circumstances defined by law.

Art. 15. The right to own property is guaranteed; nevertheless, expropriation in the public interest, lawfully determined as such, may take place subject to payment or the deposit, under order of the court, of fair prior compensation in favour of the person or persons entitled.

The ownership of property also entails obligations. The right of ownership may not be exercised in a manner inconsistent with the general interest.

Land-owners must cultivate and work the soil and protect it, in particular, against erosion.

The sanction attaching to this duty is prescribed by law.

The right of ownership does not extend to springs, rivers, watercourses, mines and quarries, which are part of the public domain of the State.

The owner of the land on which springs, rivers, mines and quarries are situated shall be entitled to fair and prior compensation, for the land only, in the event of its being used or worked by the State or its concessionaires.

The conditions governing such use or working are prescribed by law.

Art. 16. Freedom to work shall be exercised under the control and supervision of the State and shall be subject to conditions laid down by law.

Nevertheless, save as otherwise provided by law, no importer, commission agent or manufacturer's agent may engage in retail trade, even through an intermediary.

The expression "intermediary" shall be defined by law.

Art. 17. Every worker is entitled to a fair wage, to the completion of his apprenticeship, to the protection of his health, to social security, and to the well-being of his family, so far as is compatible with the economic development of the country.

Employers are under a moral obligation to contribute, in accordance with their resources, to the education of those of their workers who are illiterate.

Every worker has the right to participate, through his representatives, in the collective establishment of working conditions and to defend his interest by trade union action.

Annual holidays with pay are compulsory.

Art. 18. The death penalty may not be established for political offences, with the exception of the crime of treason.

The crime of treason is committed by any Haitian who participates in armed action by a foreign State against the Republic of Haiti, joins such State or furnishes it with aid and support.

Art. 19. Every person has the right to express his opinions on any subject and by any means within his power.

The expression of thought, in whatever form, may not be subject to censorship, except when a state of war has been declared.

Abuses of the right of expression are defined by and punishable under the law.

Art. 20. All religions and forms of worship recognized in Haiti are free.

Everyone has the right to profess his religion and to perform his religious rites, provided that he does not disturb public order.

The Catholic religion professed by the majority of Haitians enjoys a special position under the Concordat.

Art. 21. Since marriage tends towards the purity of morals by contributing to a better organization of the family, the fundamental basis of society, the State shall by all possible and necessary means facilitate and encourage the institution of marriage among the people, in particular among the rural population.

Art. 22. Freedom of education shall be exercised in accordance with the law, under the control and supervision of the State, which should concern itself with the moral and civic training of young people.

Public education is a responsibility of the State and of the communes.

Primary education is compulsory.

Public education is free, at all levels.

Technical and vocational education shall become general.

Access to higher studies shall be open to all on an equal footing and shall be governed by merit alone.

Art. 23. In the cases prescribed by law, trial by jury is established in criminal matters. Political offences committed through the press or otherwise shall be tried with the assistance of a jury.

Art. 24. Haitians have the right to assemble peacefully and without arms, even for a political object, in compliance with the laws regulating the exercise of this right; prior authorization shall not be required.

This provision is not applicable to public gatherings, which are governed wholly by the police laws.

Art. 25. Haitians have the right to associate and to form political parties, trade unions and co-operatives.

This right may not be subject to any preventive measure. No one may be compelled to join an association or a political party.

The law shall by regulations prescribe the conditions governing the operation of such groups and settle the procedure of auditing the funds of trade unions.

Art. 26. The right of petition may be exercised personally by one or more individuals, and never in the name of a body.

Art. 27. The secrecy of correspondence is inviolable under the penalties applicable by law.

Art. 28. French is the official language.

Its use is compulsory in public services.

Art. 29. The right of asylum is recognized in the case of political refugees, provided that they obey the law.

Art. 30. Extradition shall neither be granted nor requested in political matters.

Art. 31. The law may not add to or depart from the Constitution.

The letter of the Constitution shall always prevail.

TITLE III

CHAPTER II
THE LEGISLATIVE POWER OR NATIONAL REPRESENTATION

Section 1
THE CHAMBER OF DEPUTIES

Art. 35. Legislative power is exercised by two representative chambers, a Chamber of Deputies and a Senate, which form the legislature.

Art. 36. . . . Deputies are elected by a relative majority of the votes cast in the Primary Assemblies, subject to the conditions and in the manner prescribed by law.

Art. 37. The qualifications of a member of a chamber of deputies are:

1. He must be a Haitian who has never renounced his nationality;
2. He must not be less than twenty-five years of age;
3. He must be in enjoyment of his civil and political rights;
4. He must have resided for at least one year in the district (*arrondissement*) to be represented.

. . .

Section 2
THE SENATE

. . .

Art. 41. The qualifications of a senator are:

1. He must be a Haitian who has never renounced his nationality;
2. He must not be less than thirty-five years of age;
3. He must be in enjoyment of his civil and political rights;
4. He must have resided for at least two years in the department (*département*) to be represented.

. . .

CHAPTER III
THE EXECUTIVE POWER

Section 2
THE ELECTION OF THE PRESIDENT OF THE REPUBLIC

Art. 88. The President of the Republic shall be elected by secret ballot, by direct suffrage and by a relative majority of the votes cast by the electors of all the communes of the Republic.

. . .

CHAPTER IV
THE JUDICIARY

. . .

Art. 107. The hearings of courts shall be public, unless such publicity is dangerous to public order and morality; in such case, the court shall make an order to that effect.

Political and press offences may never be tried *in camera.*

Art. 108. Every judgment or decision shall state the reasons on which it is based and shall be rendered in open court.

. . .

CHAPTER V
PROSECUTION OF PUBLIC OFFICIALS

. . .

Art. 115. The law shall determine the responsibility of the State or of public officials with regard to arbitrary acts causing prejudice to third persons, committed in violation of the Constitution and the laws.

. . .

TITLE IX
GENERAL PROVISIONS

. . .

Art. 154. All elections shall take place by secret ballot.

Art. 155. No place and no part of the territory may be declared to be in a state of siege except in the case of civil disturbance, or imminent invasion by a foreign force.

The instrument whereby the President of Haiti declares a state of siege requires the signature of all the Secretaries of State and shall summon the legislature to meet immediately for the purpose of ruling upon the desirability of the measure.

The legislature shall determine, in concert with the Executive Power, which constitutional safeguards may be suspended in the parts of the territory placed in a state of siege.

Art. 156. The effects of the state of siege shall be as determined by a special law.

Art. 157. All codes of laws are maintained, in so far as they are not inconsistent with the present Constitution.

Any legislative provisions, and any decrees, orders, regulations and other enactments inconsistent with this Constitution, are hereby repealed.

. . .

ELECTORAL DECREE OF 4 AUGUST 1950[1]

QUALIFICATIONS FOR ENFRANCHISEMENT

Art. 1. All male Haitians who have completed their twenty-first year and are entitled to exercise their civil and political rights are electors.

Art. 2. The right to exercise the franchise shall be lost if Haitian citizenship is lost, for the same reasons as cause the loss of the said citizenship, or in consequence of a final conviction following trial, if the sentence is for life and involves loss of all civic rights.

Art. 3. The right to exercise the franchise shall be suspended for such time as the grounds for such suspension continue to exist, *viz.*:

1. In consequence of punishable or fraudulent bankruptcy;
2. On judicial suspension of civic rights;
3. On committal for trial by process of law;
4. On convictions following trial in a court of law or by default if the sentence is for a term and involves loss of all civic rights or if the sentence is for correctional penalties involving the suspension, wholly or in part, either of civic rights or of political rights only;
5. In consequence of a conviction for refusal to serve as a juror if the conviction involves the suspension of political rights;
6. In consequence of conviction for electoral fraud. Suspension shall in this case be for three years.

Art. 4. Naturalized Haitians shall not be allowed to exercise the franchise unless they furnish proof of five years' unbroken residence in the territory of the Republic, since their naturalization.

Art. 5. A person shall be considered to be an elector if he is registered in the electoral roll, either in the commune in which the elector has his civil domicile or in the commune where he has his present political domicile, and is the holder of an elector's card.

[1] French text in *Le Moniteur* No. 92, of 4 August 1950. The present decree repeals the Electoral Act of 7 September 1949 and all other Acts, legislative provisions or decree-laws incompatible with this decree. Elections were held on 8 October 1950 to elect the President of the Republic, the new senators and deputies to take office after the constitutional reform and seventeen members of a Constituent Assembly with the special and exclusive function of providing the country with a new Constitution (see article 32 of the present decree and the note preceding the text of the Constitution, p. 115 of this *Yearbook*). The text of the 1949 Act repealed by the present decree is to be found in the *Yearbook on Human Rights for 1949*, p. 92.

Civil domicile is regulated by the Civil Code.

Political domicile is acquired by not less than one year's unbroken residence in the commune.

Persons required in the performance of public duties to reside in a commune may be registered in the electoral roll without regard to residence qualifications.

Every elector has the right to opt between his civil and his political domicile.

Art. 6. No citizen may register on more than one electoral roll, or vote in two Primary Assemblies; any person who contravenes this provision becomes liable to the penalties referred to in articles 66 and 67 below. . . .

[Articles 7–19 deal with the compilation of the electoral rolls.]

CANDIDATES AND DECLARATION OF CANDIDATURE

Art. 20. To be eligible as President of Haiti a person must fulfil the following conditions:

1. He must have been born a Haitian of a father who was himself Haitian by birth, and must never have renounced his nationality;
2. He must have completed his fortieth year of age;
3. He must be in possession of his civic and political rights;
4. He must own landed property in Haiti and have his regular domicile and residence there.

The qualifications of a member of the Constituent Assembly are:

1. He must be Haitian by birth;
2. He must have completed his thirtieth year of age;
3. He must be in possession of his civic and political rights;
4. He must own real property in Haiti or else be engaged in industry or a profession in Haiti;
5. He must not be a candidate for election to the Chamber of Deputies, the Senate or the Presidency of the Republic.

The qualifications of a senator of the Republic are:

1. He must be Haitian by birth;
2. He must have completed his thirtieth year of age;
3. He must be in possession of his civic and political rights;
4. He must own real property in Haiti or be engaged in industry or a profession in Haiti.

The qualifications of a deputy are:

1. He must be Haitian by birth;
2. He must have completed his twenty-fifth year of age;
3. He must be in possession of his civic and political rights;
4. He must have resided for at least two years in the district to be represented.

The qualifications of a member of the communal council are:

1. He must be Haitian by birth;
2. He must have completed his twenty-fifth year of age;
3. He must be in possession of his civic and political rights;
4. He must have his real domicile in the commune;
5. He must own property, or be engaged in industry or a profession in the commune.

[The remaining paragraphs of this articles and articles 21–24 deal with the ineligibility of persons holding other types of public office to the offices of member of the Constituent Assembly, senator, or deputy. They also deal with declarations of candidature. Article 25 deals with constituencies; article 26 provides that the President of the Republic shall be elected by direct, universal suffrage and by a relative majority of the votes cast; and article 27 states that the senators of departments shall be elected by the direct, universal suffrage of the Primary Assemblies. Articles 31–60 deal with the Primary Assemblies.]

Art. 32. The Primary Assemblies of the Republic referred to in this decree shall meet for the first time on Sunday, 8 October 1950.

Art. 33. It shall be the function of the Primary Assemblies in each constituency to elect, by direct suffrage and by a relative majority of the votes cast, in pursuance of the decree summoning them to convene:

The President of Haiti;

The members of the Constituent Assembly;

The senators of the department;

The deputy for the district, or for the constituency if the district elects more than one deputy;

The members of the communal councils for each communal constituency.

[Articles 61–67 deal with the counting of the votes and Articles 68–75 contain the final provisions.]

HONDURAS

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS

By decree No. 79, adopted on 22 February 1950, signed by the President on the same date and published in the *Gaceta Oficial* No. 14048, of 7 March 1950, Congress expressed its desire to improve the condition of the working classes in Honduras. Article 1 of the decree reads as follows:

"An *ad hoc* commission of Congress, composed of three permanent members and two substitutes, shall be established. During the present year, this commission shall study the exact conditions under which the workers of industrial enterprises established in Honduras live and work. On the basis of the information thus collected, the *ad hoc* commission shall draft a bill on industrial accidents and express itself on the opportunity for the Government of drafting other laws on social justice."

Article 2 of the decree states that Congress shall receive the bill at its next session.

HUNGARY

ACT II OF 1950 CONTAINING GENERAL PROVISIONS OF THE PENAL CODE[1]

The new general provisions of the Penal Code reflect the economic, social and political changes which have taken place in the country since liberation; give legal sanction to the fundamental principles of penal law underlying socialism; and provide for the protection of socialist property.

PART ONE

OFFENCES

Chapter I

INTRODUCTORY PROVISIONS

Art. 1. (1) The purpose of penal law is to protect society against socially dangerous acts.

(2) A socially dangerous act is defined as any action or omission which injures or endangers either the public, social or economic order of the People's Republic of Hungary or the persons and rights of Hungarian citizens.

(3) An offence is defined as any socially dangerous act for which a specified penalty is provided by law.

Art. 2. (1) An offence must be judged according to the law in force at the time it was committed.

(2) If a new law enters into force between the date on which the offence was committed and the date of judgment, it shall be applicable to an act committed before its entry into force, provided that:

(*a*) According to the new law the act in question ceases to be punishable or entails a lighter penalty than that provided for in the earlier law; or that

(*b*) The new law expressly states that it applies retrospectively to acts committed before its entry into force.

Art. 4. Hungarian law shall also apply to any offence committed abroad by a foreign national, if the act constituting the offence

(*a*) Is punishable not only under Hungarian law, but also under the law of the place where the offence was committed; or

(*b*) Injures a fundamental interest affecting the public or economic order established on democratic principles in the People's Republic of Hungary, whether or not the above-mentioned act is punishable under the law of the place where it was committed,

Provided that, in either case, the Minister of Justice orders criminal proceedings to be instituted.

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Chapter II

DEFENCE OF NECESSITY

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Art. 16. (1) Absolute necessity exists when an act is committed to avert an immediate danger which threatens either the fundamental interests of the community or the life, person or property of the author of the act or of other persons and which cannot be averted in any other manner.

(2) Any act committed in case of absolute necessity is not punishable if the cause of the danger is not imputable to the author of the act and if the act did not do greater harm than that which the author of the act sought to avert.

(3) The author of the act may not invoke absolute necessity if it is his professional duty to incur such danger.

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Chapter III

PENALTIES

Art. 30. The penalties are:

1. Death,
2. Imprisonment,
3. Fines,
4. Partial or total confiscation of property,
5. Deprivation of civic rights,
6. Prohibition from exercising a specified profession,
7. Local banishment and expulsion.

Art. 38. (1) Confiscation of property is pronounced in cases in which it is expressly prescribed by law.

(2) The offender's entire property, or a part or a given percentage of it, or some particular property, may be subject to confiscation.

[1] Hungarian text in *Magyar Közlöny* of 18 May 1950, p. 112. English translation by the United Nations Secretariat.

(3) Confiscation of property may also extend to property which the offender has transferred in order to evade the action of the authorities, provided that the receiver was aware of the purpose of the transfer, as well as to property which the offender transferred without valuable consideration after the commission of the offence . . .

Art. 43. (1) Prohibition from exercising a specified profession may be pronounced against any person who:

(*a*) Commits an offence either in violation of the regulations governing the exercise of a profession which requires special competence or in ignorance of the said regulations;

(*b*) Deliberately commits an offence by abuse of his profession.

(2) Prohibition from exercising a specified profession must in all cases be pronounced if any one of the above-mentioned offences is punishable by more than one year of imprisonment, or if continued exercise of his profession by the offender constitutes a danger to society.

. . .

Art. 45. (1) In cases expressly provided by law, the offender may, whatever his previous place of domicile, be punished by local banishment from one or several specified rural communities (or cities) or from any specified part of the territory, the penalty carrying with it the prohibition from staying in those localities even temporarily.

(2) Local banishment may be pronounced for a period of six months to five years; in computing this period, the provisions on the deprivation of civic rights shall be applied, *mutatis mutandis.*

Art. 46. (1) The offender shall be expelled from the territory of the People's Republic of Hungary if he is a foreign national and if, taking into account all the circumstances of the case, his deportation is desirable.

(2) Expulsion may be either permanent or for a period of three to ten years; in the computation of this period, only that time may be counted which the convicted person spends abroad after he has served his principal penalty or after it has ceased to be operative.

(3) Any person sentenced to expulsion is prohibited from residing, even temporarily, in the territory of the People's Republic of Hungary.

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Chapter IV

CORRECTIVE AND EDUCATIVE LABOUR

Art. 48. (1) If the offender's social status, the motives for the offence, and, generally speaking, the circumstances of the case justify the belief that the purpose of the punishment may be attained without deprivation of freedom, the court may, instead of imposing a penalty of imprisonment, sentence the offender to carry out a specified type of labour for a period of one month to two years.

(2) A person sentenced to corrective and educative labour must perform the work prescribed at the place to which he is assigned. His freedom is restricted only to the extent required for the purposes of the penalty and of the proper accomplishment of the work prescribed.

(3) A person sentenced to corrective and educative labour receives reduced wages for his work. The court shall determine the proportion of this reduction, which may not be less than one-tenth or more than one-fourth of the normal rate of pay. The reduction shall not apply to any allowances to which the members of the family of a person so sentenced may be entitled.

(4) If the person sentenced to labour does not loyally discharge the obligation imposed upon him, or if his attitude seriously endangers work discipline, he shall serve a term of imprisonment equal to the period of corrective and educative labour which he still has to serve.

(5) Corrective and educative labour measures may not be applied if the law prescribes for the offence committed a term of imprisonment in excess of five years.

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Chapter V

INFLICTION OF THE PENALTY

Art. 50. (1) The penalty must be applied, in the interests of the workers, in such a way as to correct and educate the offender and also to produce a general deterrent effect on the other members of society.

(2) Without losing sight of the general purpose of the punishment, the penalty imposed must, within the framework of the law, be commensurate with the threat to society presented by the offence and the danger to society constituted by the person of the offender, due account being taken of the degree of the offender's guilt, of his family responsibilities and of his moral interests, as well as of the harm caused by the offence (aggravating and extenuating circumstances).

Art. 51. (1) When the penalty, even the minimum penalty prescribed by law, seems too severe, it may be reduced, taking into account the purpose of its infliction, as well as the aggravating and extenuating circumstances which affect its determination.

(2) In conformity with the preceding provision:

(a) If the law prescribes the death penalty, the court may sentence the offender to life imprisonment or to imprisonment for a period of ten to fifteen years;

(*b*) If the law prescribes life imprisonment, the court may sentence the offender to imprisonment for a period of five to ten years;

(*c*) If the minimum term of imprisonment prescribed by law is five years or more, the court may sentence the offender to imprisonment for a period of less than five years, but not less than one year;

(*d*) If the minimum imprisonment prescribed by law is six months or more, but less than five years, the court may sentence the offender to imprisonment for a period of less than six months, but not less than three months;

(*e*) In cases other than those provided for above, the court may impose a fine instead of a term of imprisonment.

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ICELAND

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS[1]

In 1947 a Commission was established to deal with the revision of the Constitution of the Republic of 17 June 1944 and to propose necessary amendments. The work of the Commission had not been completed nor had any official report been released by the Commission by the end of 1950.

During 1950 legislation relating to personal liberties and cultural rights was not modified to any noteworthy degree. In the field of economic and social rights, Act No. 122, of 28 December 1950, which amends the Social Security Act No. 50 of 1946, is to be mentioned. Extracts from the Social Security Act, as amended by Act 122 of 1950, are published in the present *Yearbook*.

[1]Information through the courtesy of Professor Olafur Jóhannesson, University of Iceland, Reykjavik.

On 29 March 1950, the Althing adopted a resolution requesting the Government "to institute a thorough study of the legal status and conditions of employment of women. After the completion of this study, the Government shall introduce a Bill amending the existing law as may be deemed necessary to secure to women equal rights with men, and containing such new provisions as may be deemed appropriate to secure to women the same opportunities as men to provide for themselves and their families and to make use of their abilities in employment".

No judicial decisions which constitute important developments in the field of human rights were delivered in 1950.

SOCIAL SECURITY AMENDMENT ACT of 28 December 1950[1]

SUMMARY

By the Act of 7 May 1946, insurance covering accidents, old age, disablement, health, maternity, children and widows was made compulsory for the whole country. The Social Security Institute which administers this Act also administers sick relief and, in co-operation with the central health authority, matters of social hygiene.

The main objective of the Social Security Act of 1946 was to establish health services embracing both sick relief and preventive medicine and guaranteeing security of income. Hospital treatment, medicine and dressings supplied in hospitals were provided free of charge. Until the section of the Act devoted to health insurance becomes effective, the provisions of the Social Security Act of 1936 as amended in 1943 remain applicable. They provide for sick benefits through local insurance societies, which pay the entire cost of hospitalization, including medical care and medicine.

The object of income insurance is the payment of compensation should the breadwinner of a family fail to meet its needs, either for personal reasons, or because his income, for reasons beyond his control, is insufficient for all family requirements.

The principal types of compensation under the Act of 1946 are old-age and disablement pensions, sickness, family, maternity and children's allowances, and widows' compensation and pension.

The Social Security Act of 1946 also greatly extended the scope of accident insurance; it covers all wage-earners, including clerical and agricultural workers, except those engaged in domestic crafts or casual labour.

The right to a pension and other benefits is the same for all who satisfy the general requirements of the Act without regard to the financial status of the person concerned. During the first five years of the operation of the Act, however, the amount of old-age pensions and disablement benefits varied with the income of the recipient. In certain cases pensions may be either

[1]English text of the Icelandic Social Security Act (with introduction) in the following publication: *The Icelandic Social Security Act of 1946* (published by the Ministry of Social Affairs), Reykjavik, 1950. The Icelandic text of the Act of 1950 is published in *Stjórnartíoindi* (Government Gazette) 1950, pp. 295–302. Texts received through the courtesy of Professor Olafur Jóhannesson, University of Iceland, Reykjavik. The Act of 1946 is summarized in the first part of the following note; the summary of the Act of 1950 as contained in the second part of this note was prepared by Professor Jóhannesson. See also *Social Insurance in Iceland* (published by the Ministry of Social Affairs), Reykjavik, 1950.

reduced or cancelled entirely. Premiums vary according to the price zone—the country is divided into two zones—and according to the marital status of the person insured.

The Social Institute is administered by a director appointed by the Minister of Social Affairs. The director supervises the work of the Institute and is assisted by a Social Security Council of five members elected by both Houses of Parliament in joint session. A consultative committee under the chairmanship of the director of public health advises in medical matters and on questions of social hygiene. The Act also provides for district and local insurance bodies which supervise the administration of insurance on these levels.

II

Act No. 122 of 1950 contains some amendments and additions to the Social Security Act No. 50 of 1946. These do not, however, represent any major alterations or any change of policy by the legislature towards social security.

On the central level, provision is made for a new official, the Director of Health, who supervises all medical matters of the Institute in consultation with its director and who will also have charge of the execution and management of the Institute's public health activities when the section of the Act of 1946 dealing with such activities comes into operation. On the local level, it is provided that in insurance districts which do not include a town, the work of the insurance committees shall be performed by county committees until the end of 1954.

The application of the provisions in the Act of 1946 dealing with the health service is postponed to 1 January 1955. The Sick Benefit Societies Act of 1936, as amended in 1943, is continued in force until that date.

The new Act contains, moreover, provisions for the rate of benefits. These do not constitute a genuine increase, but the basic rate and the cost-of-living bonus have been combined in one figure. The new basic rates for benefits will rise with the cost-of-living index figure according to the same rule as that which governs wages. A few provisions of the Act are concerned with benefits and their payment, but do not constitute substantial changes from previous procedure.

Finally, the new Act contains provisions concerning the rates of premiums paid by insured persons and the rates of municipal contributions. Premiums paid by insured persons and municipal contributions will comprise, in addition to the fixed levy, a supplement based on the mean cost-of-living index figure for the preceding year.

INDIA

LEGISLATION

PREVENTIVE DETENTION ACT, 1950

Act No. IV of 1950, as amended by the Preventive Detention Ordinance No. XIX of 1950[1]

AN ACT TO PROVIDE FOR PREVENTIVE DETENTION IN CERTAIN CASES AND MATTERS CONNECTED THEREWITH

Be it enacted by Parliament as follows:

1. This Act may be called the Preventive Detention Act, 1950.

(2) It extends to the whole of India.

Provided that it shall not apply to the State of Jammu and Kashmir except to the extent to which the provisions of this Act relate to preventive detention for reasons connected with defence, foreign affairs or the security of India.

(3) It shall cease to have effect on the first day of April, 1951,[2] save as respects things done or omitted to be done before that date.

2. In this Act, unless the context otherwise requires,

(*a*) "State government" means, in relation to a Part C State,[3] the Chief Commissioner of the State; and

(*b*) "Detention order" means an order made under section 3.

3. (1) The Central Government or the State government may—

(*a*) If satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to—

(i) The defence of India, the relations of India with foreign powers, or the security of India, or

(ii) The security of the State or the maintenance of public order, or

(iii) The maintenance of supplies and services essential to the community, or

(*b*) If satisfied with respect to any person who is a foreigner within the meaning of the Foreigners Act, 1946 (XXXI of 1946), that with a view to regulating his continued presence in India or with a view to making arrangements for his expulsion from India, it is necessary so to do, make an order directing that such person be detained.

(2) Any of the following officers—namely,

(*a*) District magistrates,

(*b*) Additional district magistrates specially empowered in this behalf by the State government,

(*c*) Sub-divisional magistrates,

(*d*) In the presidency towns, commissioners of police, and

(*e*) In the State of Hyderabad, civil administrators,

may, if satisfied as provided in sub-clauses (ii) and (iii) of clause (*a*) of sub-section (1), exercise the power conferred by the said sub-section.

(3) When any order is made under this section by an officer mentioned in sub-section (2), he shall forthwith report the fact to the State government to which he is subordinate, together with the grounds on which the order has been made and such other particulars as in his opinion have a bearing on the necessity for the order.

4. So long as a detention order is in force in respect of any person, he shall be liable to be removed to, and detained in, such place and under such conditions, including conditions as to maintenance, discipline, and punishment for breaches of discipline, as the Central Government or, as the case may be, the State government, may from time to time by general or special order specify.

5. No detention order made by an officer mentioned in sub-section (2) of section 3 shall be deemed to be invalid merely by reason that the place of detention specified in the order is situate outside the limits of the territorial jurisdiction of such officer.

6. If the Central Government or the State government or an officer specified in sub-section (2) of section 3, as the case may be, has reason to believe that a person in respect of whom a detention order has been made has absconded or is concealing himself so that the order cannot be executed, that government or officer may—

(*a*) Make a report in writing of the fact to a Presidency magistrate or a magistrate of the first class

[1] English text of the Act in *The Gazette of India* of 26 February 1950 and of the Ordinance in *The Gazette of India* of 23 June 1950.—About the validity of this Act see the decision of the Supreme Court of India in the case of *Gopalan* v. the *State of Madras*, p. 130 of this *Yearbook*.

[2] Before that date, a modified Preventive Detention Act was promulgated in 1951.

[3] See *Yearbook on Human Rights for 1949*, p. 111.

having jurisdiction in the place where the said person ordinarily resides; and thereupon the provisions of sections 87, 88 and 89 of the Code of Criminal Procedure, 1898 (Act V of 1898), shall apply in respect of the said person and his property as if the order directing that he be detained were a warrant issued by the magistrate;

(*b*) By order notified in the *Official Gazette*, direct the said person to appear before such officer, at such place and within such period as may be specified in the order; and if the said person fails to comply with such direction he shall, unless he proves that it was not possible for him to comply therewith and that he had, within the period specified in the order, informed the officer mentioned in the order of the reason which rendered compliance therewith impossible and of his whereabouts, be punishable with imprisonment for a term which may extend to one year or with fine or with both.

7. (1) When a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, communicate to him the grounds on which the order has been made, and shall afford him the earliest opportunity of making a representation against the order, in a case where such order has been made by the Central Government, to that government, and in a case where it has been made by a State government or an officer subordinate thereto, to the State government.

(2) Nothing in sub-section (1) shall require the authority to disclose facts which it considers to be against the public interest to disclose.

8. (1) The Central Government and each State government shall, whenever necessary, constitute one or more advisory boards for the purposes of this Act.

(2) Every such board shall consist of two persons who are, or have been, or are qualified to be appointed as judges of a high court, and such persons shall be appointed by the Central Government or the State government, as the case may be.

9. In every case where a detention order has been made under sub-clause (iii) of clause (*a*), or clause (*b*), of sub-section (1) of section 3, the Government making the order, or if the order has been made by an officer specified in sub-section (2) of section 3, the State government to which such officer is subordinate, shall, within six weeks from the date of detention under the order, place before an advisory board constituted by it under section 8 the grounds on which the order has been made and the representation, if any, made by the person affected by the order, and in case where the order has been made by an officer, also the report made by such officer under sub-section (3) of section 3.

10. (1) The advisory board shall, after considering the materials placed before it and, if necessary, after calling for such further information from the Central Government or the State government or from the person concerned, as it may deem necessary, submit its report to the Central Government or the State government, as the case may be, within ten weeks from the date of detention under the detention order.

(2) The report of the advisory board shall specify in a separate part thereof the opinion of the advisory board as to whether or not there is sufficient cause for the detention of the person concerned.

(3) Nothing in this section shall entitle any person against whom a detention order has been made to attend in person or to appear by any legal representative in any matter connected with the reference to the advisory board, and the proceedings of the advisory board and its report, excepting that part of the report in which the opinion of the advisory board is specified, shall be confidential.

11. In any case where the advisory board has reported that there is in its opinion sufficient cause for the detention of the person concerned, the Central Government or the State government, as the case may be, may confirm the detention order and continue the detention of the person concerned for such period as it thinks fit.

12. (1) Any person detained in any of the following classes of cases or under any of the following circumstances may be detained without obtaining the opinion of an advisory board for a period longer than three months, but not exceeding one year from the date of his detention, namely, where such person has been detained with a view to preventing him from acting in any manner prejudicial to—

(*a*) The defence of India, relations of India with foreign powers or the security of India; or

(*b*) The security of a State or the maintenance of public order.

(2) The case of every person detained under a detention order to which the provisions of sub-section (1) apply shall, within a period of six months from the date of his detention, be reviewed where the order was made by the Central Government or a State government, by such government, and where the order was made by any officer specified in sub-section (2) of section 3, by the State government to which such officer is subordinate, in consultation with a person who is, or has been, or is qualified to be appointed as a judge of a high court nominated in that behalf by the Central Government or the State government, as the case may be.

13. (1) Without prejudice to the provisions of section 21 of the General Clauses Act, 1897 (X of 1897), a detention order may at any time be revoked or modified—

(*a*) Notwithstanding that the order has been made by an officer mentioned in sub-section (2) of section 3, by the State government to which that officer is subordinate or by the Central Government;

(*b*) Notwithstanding that the order has been made by a State government, by the Central Government.

(2) The revocation of a detention order shall not bar the making of a fresh detention order under section 3 against the same person.

14. (1) No court shall, except for the purposes of a prosecution for an offence punishable under sub-section (2), allow any statement to be made, or any evidence to be given before it of the substance of any communication made under section 7 of the grounds on which a detention order has been made against any person or of any representation made by him against such order; and, notwithstanding anything contained in any other law, no court shall be entitled to require any public officer to produce before it, or to disclose the substance of, any such communication or representation made, or the proceedings of an advisory board or that part of the report of an advisory board which is confidential.

(2) It shall be an offence punishable with imprisonment for a term which may extend to one year, or with a fine, or with both, for any person to disclose or publish without the previous authorization of the Central Government or the State government, as the case may be, any contents or matter purporting to be contents of any such communication or representation as is referred to in sub-section (1):

Provided that nothing in this sub-section shall apply to a disclosure made to his legal adviser by a person who is the subject of a detention order.

15. No suit, prosecution or other legal proceeding shall lie against any person for anything in good faith done or intended to be done in pursuance of this Act.

16. The Preventive Detention (Extension of Duration) Order, 1950,[1] is hereby repealed.

[1]Not reproduced in this *Yearbook*.

JUDICIAL DECISIONS

RIGHT TO CARRY ON TRADE—REASONABLENESS OF RESTRICTIONS THEREON—MUNICIPAL BY-LAW PRESCRIBING THE CARRYING ON OF WHOLESALE TRADE WITHOUT LICENCE—PROVISION IN BY-LAW PERMITTING THE GRANT OF MONOPOLY—LEGALITY OF BY-LAW—CONSTITUTION OF INDIA, ARTICLE 19

RASHID AHMED *v.* THE MUNICIPAL BOARD, KAIRANA

Supreme Court of India[1]

19 May 1950

The facts. By-law number 2 of the Municipal Board of Kairana provided that "no person shall establish any new market or place for wholesale transaction without obtaining the previous permission of the Board, and no person shall sell or expose for sale any vegetable, fruit, etc., at any place other than that fixed by the Board for the purpose". By-law number 4 permitted the grant of a monopoly to a contractor to deal in wholesale transactions at the place fixed as a market. In anticipation of these by-laws the exclusive right to do wholesale business in vegetable marketing for three years was auctioned by the Municipal Board and granted to the highest bidder, and a place was also fixed as the market where such business could be carried on. The petitioner, Rashid Ahmed, who had been carrying on wholesale business in vegetable marketing at a rented shop within the municipality for two years before the by-law came into force, applied for a licence to carry on his business at his shop. This application was rejected on the ground that there was no provision in the by-laws authorizing the grant of any such licence. He was prosecuted for contravening the by-laws. He applied to the Supreme Court under article 32 of the Constitution of India[2] for the enforcement of his fundamental right, guaranteed by article 19 of the Constitution,[3] as a citizen to carry on his business.

Held: that the application should be granted. The prohibition in by-law number 2 became absolute in the absence of a provision authorizing the issue of a licence and as the Municipal Board had by granting a monopoly surrendered its power to grant a licence to the petitioner, the restrictions imposed by the by-law on the petitioner's right to carry on trade were not reasonable within the meaning of article 19 of the Constitution and the by-laws were accordingly void. The court said:

". . . The second part of this by-law clearly contemplates that everybody will be entitled to do business at the place fixed by the respondent board, but as a result of a monopoly in favour of the contractor Habib Ahmad having been created, nobody else can do business at that place as conceded by the learned advocate for the respondent board. Under the first part of this by-law no person can establish a new

[1]Report [1950] S.C.R. 566. Text of the decision received through the courtesy of Sir Benegal N. Rau, Permanent Representative of India to the United Nations. Summary prepared by the United Nations Secretariat.

[2]See *Yearbook on Human Rights for 1949*, p. 103.

[3]See the text of article 19 on p. 131 of this *Yearbook*.

market or place for wholesale transaction without obtaining the permission of the respondent board. This part of the by-law clearly contemplates that the board may permit the establishment of a new market for wholesale dealings in vegetables. The petitioner applied for this permission, but it was refused. By-law 2 is still in force. If it requires a licence, then under section 241 (2) (*a*) the respondent board cannot refuse such licence except on the ground that the place where the market or shop is established fails to comply with any condition prescribed by or under the Act. It is conceded that the rejection of the petitioner's application was not based on any such ground, but that it was because there was no by-law authorizing the issue of any licence. The Constitution, by article 19 (1), guarantees to the Indian citizen the right to carry on trade or business subject to such reasonable restrictions as are mentioned in clause (6) of that article. The position, however, under by-law 2 is that while it provided that no person shall establish a market for wholesale transactions in vegetables except with the permission of the board, there is no by-law authorizing the respondent board to issue the licence. The net result is that the prohibition of this by-law, in the absence of any provision for issuing licence, becomes absolute. Further, by-law 4 contemplates the grant of monopoly to a contractor to deal in wholesale transactions at the place fixed as a market. Acting upon that provision, the respondent board has granted monopoly to Habib Ahmad and has put it out of its power to grant a licence to the petitioner to carry on wholesale business in vegetables either at the fixed market-place or at any other place within the municipal limits of Kairana. This certainly is much more than reasonable restrictions on the petitioner as are contemplated by clause (6) of article 19. This being the position, the by-laws would be void under article 13 (1) of the Constitution. On the other hand, if there is no by-law requiring the petitioner to take out licence, then there can be no justification for the respondent board to stop the petitioner's business or to prosecute him.

"Learned counsel for the respondent board faintly contended that, the by-laws having come into force on 1 January 1950—*i.e.*, before the Constitution came into force—the petitioner no longer had any right to continue the business, and therefore his case is not governed by article 19 (1) (*g*). There is no substance in this argument; for, if it were sound, article 19 (1) (*g*) would only protect persons who were carrying on business before the Constitution came into force.

"Learned Advocate-General of Uttar Pradesh appearing for the intervener drew our attention to section 318 of the United Provinces Municipalities Act, 1916, and submitted that the petitioner having adequate remedy by way of appeal, this court should not grant any writ in the nature of the prerogative writ of *mandamus* or *certiorari*. There can be no question that the existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs, but the powers given to this court under article 32 are much wider and are not confined to issuing prerogative writs only. The respondent board having admittedly put it out of its power to grant a licence and having regard to the fact that there is no specific by-law authorizing the issue of a licence, we do not consider that the appeal under section 318 to the local government which sanctioned the by-laws is, in the circumstances of this case, an adequate legal remedy.

"We are satisfied that in this case the petitioner's fundamental rights have been infringed and he is entitled to have his grievance redressed. The proper order in such circumstances would be to direct the respondent board not to prohibit the petitioner from carrying on the trade of wholesale dealer and commission agent of vegetables and fruits within the limits of the Municipal Board of Kairana, except in accordance with the by-laws as and when framed in future according to law and further to direct the respondent Municipal Board to withdraw the pending prosecution of the petitioner and we order accordingly. The respondents to pay the costs of the petitioner."

RIGHT TO PERSONAL FREEDOM—RELATIONSHIP TO THE RIGHT TO FREEDOM OF MOVEMENT—RESTRICTIONS ON RIGHT—"PROCEDURE ESTABLISHED BY LAW"—MEANING OF—PREVENTIVE DETENTION—VALIDITY—PREVENTIVE DETENTION ACT 1950—CONSTITUTION OF INDIA

GOPALAN *v.* THE STATE OF MADRAS[1]

Supreme Court of India

19 May 1950

The facts. The petitioner in these proceedings was detained by the State of Madras under the Preventive Detention Act (Act IV of 1950).[2] The petitioner applied under article 32 of the Constitution[3] for a writ

[1] Report [1950] S.C.R. 88. Text of the decision received through the courtesy of Sir Benegal N. Rau, Permanent Representative of India to the United Nations. Summary prepared by the United Nations Secretariat.

[2] See the text of this Act on p. 127 of this *Yearbook*.

[3] See *Yearbook on Human Rights for 1949*, p. 103.

of *habeas corpus* and for his release from detention on the ground that the said Act contravened the provisions of articles 13, 19, 21 and 22 of the Constitution and was consequently *ultra vires* and that his detention was therefore illegal. These last-mentioned articles of the Constitution are as follows:

Art. 13. (1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of the Part, shall, to the extent of such inconsistency, be void.

(2) The State shall not make any law which takes away or abridges the rights conferred by this part and any law made in contravention of this clause shall, to the extent of the contravention, be void.

(3) In this article, unless the context otherwise requires,

(*a*) "Law" includes any ordinance, order, by-law, rule, regulation, notification, custom or usage having in the territory of India the force of law;

(*b*) "Laws in force" includes laws passed or made by a legislature or other competent authority in the territory of India before the commencement of the Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas.

Art. 19. (1) All citizens shall have the right

(*a*) To freedom of speech and expression;

(*b*) To assemble peaceably and without arms;

(*c*) To form associations or unions;

(*d*) To move freely throughout the territory of India;

(*e*) To reside and settle in any part of the territory of India;

(*f*) To acquire, hold and dispose of property; and

(*g*) To practise any profession, or to carry on any occupation, trade, or business.

(2) Nothing in sub-clause (*a*) of clause (1) shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to, libel, slander, defamation, contempt of court or any matter which offends against decency or morality or which undermines the security of, or tends to overthrow, the State.

(3) Nothing in sub-clause (*b*) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of public order, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

(4) Nothing in sub-clause (*c*) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

(5) Nothing in sub-clauses (*d*), (*e*) and (*f*) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any scheduled tribe.

(6) Nothing in sub-clause (*g*) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, nothing in the said sub-clause shall affect the operation of any existing law in so far as it prescribes or empowers any authority to prescribe, or prevent the State from making any law prescribing or empowering any authority to prescribe, the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business.

Art. 21. No person shall be deprived of his life or personal liberty except according to procedure established by law.

Art. 22. (1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.

(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

(3) Nothing in clauses (1) and (2) shall apply

(*a*) To any person who for the time being is an enemy alien; or

(*b*) To any person who is arrested or detained under any law providing for preventive detention.

(4) No law providing for preventive detention shall authorize the detention of a person for a longer period than three months unless

(*a*) An advisory board consisting of persons who are, or have been, or are qualified to be appointed as judges of a high court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention:

Provided that nothing in this sub-clause shall authorize the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause (*b*) of clause (7); or

(*b*) Such person is detained in accordance with the provisions of any law made by Parliament under sub-clauses (*a*) and (*b*) of clause (7).

(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.

(6) Nothing in clause (5) shall require the authority making any such order as is referred to in that clause to disclose facts which such authority considers to be against the public interest to disclose.

(7) Parliament may by law prescribe:

(*a*) The circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an advisory board in accordance with the provisions of sub-clause (*a*) of clause (4);

(*b*) The maximum period for which any person may in any class or classes of cases be detained under any law providing for preventive detention; and

(*c*) The procedure to be followed by an Advisory Board in an inquiry under sub-clause (*a*) of clause (4).

Held: that the petition should be refused. With the exception of Section 14, the Preventive Detention Act, 1950 did not contravene any of the articles of the Constitution. Section 14 was *ultra vires* inasmuch as it contravened the provisions of article 22 (5) of the Constitution, but since this section was severable from the remaining sections of the Act the invalidity of section 14 did not affect the validity of the Act as a whole and the detention of the petitioner was accordingly not illegal.

Kania, C. J., in delivering an opinion which may be taken to be representative of the views of the majority of the court, said: ". . . It was argued that by the confinement of the petitioner under the preventive detention order his right to move freely throughout the territory of India is directly abridged and therefore the State must show that the impugned legislation imposes only reasonable restrictions on the exercise of that right in the interests of the general public or for the protection of the interests of any scheduled tribe, under article 19 (5). The court is thus enjoined to inquire whether the restrictions imposed on the detained person are reasonable in the interests of the general public. Article 14 of the Constitution gives the right to equality in these terms: 'The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.'

"It was argued that the words 'within the territory of India' are unnecessary in that article because the Parliament is supreme to make laws operative only within the territory of India. Without those words also the article will bear the same meaning. Similarly, it was urged that the words 'territory of India' in article 19 (1) (*d*) may be treated as superfluous, and preventive detention would thus be an abridgment of the right to move freely. In my opinion, this rule of construction itself is faulty. Because certain words may be considered superfluous (assuming them to be so in article 14 for the present discussion) it is quite improper to assume that they are superfluous wherever found in the rest of the Constitution. On the contrary, in my opinion, reading sub-clause (*d*) as a whole, the words 'territory of India' are very important. What is sought to be protected by that sub-clause is the right to freedom of movement—*i.e.*, without restriction—throughout the territory of India. Read with their natural grammatical meaning, the sub-clause only means that if restrictions are sought to be put upon movement of a citizen from State to State or even within a State such restrictions will have to be tested by the permissive limits prescribed in clause (5) of that article. Sub-clause (*d*) has nothing to do with detention, preventive or punitive. The Constitution mentions a right to freedom of movement throughout the territory of India. Every word of that clause must be given its true and legitimate meaning, and in the construction of a statute, particularly a Constitution, it is improper to omit any word which has a reasonable and proper place in it or to refrain from giving effect to its meaning. This position is made quite clear when clause (5) is read along with this subclause. It permits the imposition of reasonable restrictions on the exercise of such right either in the interest of the general public or the protection of the interest of any scheduled tribe. It is difficult to conceive of a reasonable restriction necessary in the interests of the *general* public for confining a person in a cell. Such restriction may be appropriate to prevent a person from going from one province to another or one area to another, having regard to local conditions prevailing in particular areas. The point however is made abundantly clear by the alternative—*viz.*, for the protection of the interests of any scheduled tribe. What protection of the interests of a scheduled tribe requires the confinement of a man in a cell? On the other hand, preventing the movement of a person from one part of the territory of India to another and the question of reasonable restriction imposed to protect the interests of a scheduled tribe is clearly intelligible and often noticed in the course of the administration of the country. Scheduled tribes have certain rights, privileges and also disabilities. They have their own civili-

zation, customs and mode of life and prevention of contact with persons or groups with a particular scheduled tribe may be considered undesirable during a certain time or in certain conditions. The legislative history of India shows that scheduled tribes have been given a separate place on these grounds. Reading article 19 as a whole, therefore, it seems to me that it has no application to a legislation dealing with preventive or punitive detention as its direct object. I may point out that the acceptance of the petitioner's argument on the interpretation of this clause will result in the court being called upon to decide upon the reasonableness of several provisions of the Indian Penal Code and several other penal legislations as abridging this right. Even under clause (5), the court is permitted to apply the test of reasonableness of the restrictions or limits not generally, but only to the extent they are either in the interests of the general public—*e.g.*, in case of an epidemic, riot, etc.—or for the protection of the interests of any scheduled tribe. In my opinion, this is not the intention of the Constitution. Therefore the contention urged in respect of article 19 fails.

"It was argued that article 19 and article 21 should be read together as implementing each other. Article 19 gave substantive rights to citizens, while article 21 prescribed that no person can be deprived of his life and personal liberty except by procedure established by law. Even so, on a true construction of article 19, it seems to me that both preventive and punitive detention are outside the scope of article 19.

"In order to appreciate the true scope of article 19 it is useful to read it by itself and then to consider how far the other articles in Part III affect or control its meaning. It is the first article under the caption 'Right to Freedom'. It gives the rights mentioned in 19 (1) (*a*) to (*g*) to all citizens of India. These rights read by themselves and apart from the controls found in clauses (2) to (6) of the same article, specify the different general rights which a free citizen in a democratic country ordinarily has. Having specified those rights, each of them is considered separately from the point of view of a similar right in the other citizens, and also after taking into consideration the principle that individual liberty must give way, to the extent it is necessary, when the good or safety of the people generally is concerned. Thus the right to freedom of speech and expression is given by 19 (1) (*a*). But clause (2) provides that such right shall not prevent the operation of a law which relates to libel, slander, defamation, contempt of court or any matter which offends against decency or morality or which undermines the security of, or tends to overthrow, the State. Clause (2) thus only emphasizes that while the individual citizen has a free right of speech or expression, he cannot be permitted to use the same to the detriment of a similar right in another citizen or to the detriment of the State. Thus, all laws of libel, slander, contempt of court or laws in respect of matters which offend against decency or morality are reaffirmed to be operative in spite of this individual right of the citizen to freedom of speech and expression. Similarly, that right is also subject to laws which prevent undermining the security of the State or against activities which tend to overthrow the State. A similar analysis of clauses (3) and (4) shows similar restrictions imposed on similar grounds. In the same way clause (5) also permits reasonable restrictions in the exercise of the right to freedom of movement throughout the territory of India, the right to reside and settle in any part of the territory of India or the right to acquire, hold and dispose of property, being imposed by law provided such reasonable restrictions on the exercise of such right are in the interest of the general public. The Constitution further provides by the same clause that similar reasonable restrictions could be put on the exercise of those rights for the protection of the interest of a scheduled tribe. This is obviously to prevent an argument being advanced that while such restriction could be put in the interest of the general public, the Constitution did not provide for the imposition of such restriction to protect the interests of a smaller group of people only. Reading article 19 in that way as a whole, the only concept appears to be that the specified rights of a free citizen are thus controlled by what the framers of the Constitution thought were necessary restrictions in the interest of the rest of the citizens.

"Reading article 19 in that way, it appears to me that the concept of the right to move freely throughout the territory of India is an entirely different concept from the right to 'personal liberty' contemplated by article 21. 'Personal liberty' covers many more rights in one sense and has a restricted meaning in another sense. For instance, while the right to move or reside may be covered by the expression 'personal liberty' the right to freedom of speech (mentioned in article 19 (1) (*a*)) or the right to acquire, hold or dispose of property (mentioned in 19 (1)(f)) cannot be considered a part of the *personal* liberty of a citizen. They form part of the liberty of a citizen, but the limitation imposed by the word 'personal' leads me to believe that those rights are not covered by the expression 'personal liberty'. So read, there is no conflict between articles 19 and 21. The contents and subject matters of articles 19 and 21 are thus not the same, and they proceed to deal with the rights covered by their respective words from totally different angles. As already mentioned in respect of each of the rights specified in sub-clauses of article 19 (1), specific limitations in respect of each are provided, while the expression 'personal liberty' in article 21 is generally controlled by the general expression 'procedure established by law'. The Constitution, in article 19, and also in other articles in Part III, thus attempts to strike a balance between individual liberty and the general interest of society. The restraints provided by the Constitution on the legislative powers or the

executive authority of the State thus operate as guarantees of life and personal liberty of the individuals.

"Deprivation (total loss) of personal liberty, which, *inter alia*, includes the right to eat or sleep when one likes or to work or not to work as and when one pleases and several such rights sought to be protected by the expression 'personal liberty' in article 21, is quite different from restriction (which is only a partial control) of the right to move freely (which is relatively a minor right of a citizen) as safeguarded by article 19 (1) (*d*). Deprivation of personal liberty has not the same meaning as restriction of free movement in the territory of India. This is made clear when the provisions of the Criminal Procedure Code in Chapter VIII relating to security of peace or maintenance of public order are read. Therefore article 19 (5) cannot apply to a substantive law depriving a citizen of personal liberty. I am unable to accept the contention that the word 'deprivation' includes within its scope 'restriction' when interpreting article 21. Article 22 envisages the law of preventive detention. So does article 246 read with schedule VII, list I, entry 9, and list III, entry 3. Therefore, when the subject of preventive detention is specifically dealt with in the chapter on fundamental rights, I do not think it is proper to consider a legislation permitting preventive detention as in conflict with the rights mentioned in article 19 (1). Article 19 (1) does not purport to cover all aspects of liberty or of personal liberty. In that article only certain phases of liberty are dealt with. 'Personal liberty' would primarily mean liberty of the physical body. The rights given under article 19 (1) do not directly come under that description. They are rights which accompany the freedom or liberty of the person. By their very nature they are freedoms of a person assumed to be in full possession of his personal liberty. If article 19 is considered to be the only article safeguarding personal liberty, several well-recognized rights, as for instance, the right to eat or drink, the right to work, play, or swim, and numerous other rights and activities—and even the right to life—will not be deemed protected under the Constitution. I do not think that is the intention. It seems to me improper to read article 19 as dealing with the same subject as article 21. Article 19 gives the rights specified therein only to the citizens of India, while article 21 is applicable to all persons. The word 'citizen' is expressly defined in the Constitution to indicate only a certain section of the inhabitants of India. Moreover, the protection given by article 21 is very general. It is of 'law'—whatever that expression is interpreted to mean. The legislative restrictions on the law-making powers of the legislature are not here prescribed in detail as in the case of the rights specified in article 19. In my opinion, therefore, article 19 should be read as a separate complete article.

. . .

"No extrinsic aid is needed to interpret the words of article 21, which in my opinion, are not ambiguous. Normally read, and without thinking of other constitutions, the expression 'procedure established by law' must mean procedure prescribed by the law of the State. If the Indian Constitution had wanted to preserve to every person the protection given by the due process clause of the American Constitution, there was nothing to prevent the Assembly from adopting the phrase, or if they had wanted to limit the same to procedure only, to adopt that expression with only the word 'procedural' prefixed to 'law'. However, the correct question is what is the right given by article 21? The only right is that no person shall be deprived of his life or liberty except according to procedure established by law. One may like that right to cover a larger area, but to give such a right is not the function of the court; it is the function of the Constitution. To read the word 'law' as meaning rules of natural justice will land one in difficulties because the rules of natural justice, as regards procedure, are nowhere defined, and in my opinion the Constitution cannot be read as laying down a vague standard. This is particularly so when in omitting to adopt 'due process of law' it was considered that the expression 'procedure established by law' made the standard specific. It cannot be specific except by reading the expression as meaning procedure prescribed by the legislature. The word 'law' as used in this part has different shades of meaning, but in no other article does it appear to bear the indefinite meaning of natural justice. If so, there appears no reason why in this article it should receive this peculiar meaning. Article 31, which is also in Part III and relates to the fundamental rights in respect of property, runs as follows: 'No person shall be deprived of his property save by authority of law.'

"It is obvious that in that clause 'law' must mean enacted law. The object of dealing with property under a different article appears more to provide the exceptions found in article 31 (2) to (6), rather than to give the word 'law' a different meaning than the one given in article 21. The word 'establish', according to the *Oxford Dictionary*, means 'to fix, settle, institute or ordain by enactment or agreement'. The word 'established' itself suggests an agency which fixes the limits. According to the dictionary this agency can be either the legislature or an agreement between the parties. There is therefore no justification for giving the meaning of 'jus' to 'law' in article 21.

"The phrase 'procedure established by law' seems to be borrowed from article 31 of the Japanese Constitution.[1] But other articles of that Constitution which expressly preserve other personal liberties in different clauses have to be read together to determine the meaning of 'law' in the expression 'procedure established by law'. These articles of the Japanese Constitution have not been incorporated in the Constitution of India in the same language. It is not shown that the word 'law' means 'jus' in the Japanese Constitution.

[1] See *Yearbook on Human Rights for 1946*, p. 172.

In the Japanese Constitution, these rights claimed under the rules of natural justice are not given by the interpretation of the words 'procedure established by law' in their article 31. The word 'due' in the expression 'due process of law' in the American Constitution is interpreted to mean 'just', according to the opinion of the Supreme Court of U.S.A. The deliberate omission of the word 'due' from article 21 lends strength to the contention that the justiciable aspect of 'law'—*i.e.* to consider whether it is reasonable or not by the court—does not form part of the Indian Constitution. The omission of the word 'due', the limitation imposed by the word 'procedure' and the insertion of the word 'established' thus brings out more clearly the idea of legislative prescription in the expression used in article 21. By adopting the phrase 'procedure established by law' the Constitution gave the legislature the final word to determine the law.

"Our attention was drawn to *The King* v. *The Military Governor of the Hair Park Camp*,[1] where articles 6 and 70 of the Irish Constitution are discussed. Under article 6 it is provided that the liberty of the person is inviolable and no person shall be deprived of such except 'in accordance with law'. . . . In article 70 it is provided that no one shall be tried 'save in due course of law' and extraordinary courts were not permitted to be established, except the military courts to try military offences. The expression 'in accordance with law' was interpreted to mean not rules of natural justice, but the law in force at the time. The Irish court gave the expression 'due course of law' the meaning given to it according to the English law and not the American law. It was observed by Lord Atkin in *Eshugbayi Eleko* v. *Officer administering the Government of Nigeria*,[2] that in accordance with British jurisprudence no member of the executive can interfere with the liberty or property of a British subject except when he can support the legality of his act before a court of justice. In *The King* v. *The Secretary of State for Home Affairs*,[3] Scrutton, L.J., observed: 'A man undoubtedly guilty of murder must yet be released if due forms of law have not been followed in his conviction'. It seems very arguable that in the whole set-up of Part III of our Constitution these principles only remain guaranteed by article 21.

"A detailed discussion of the true limits of article 21 will not be necessary if article 22 is considered a code to the extent that there are provisions therein for preventive detention. In this connexion it may be noticed that the articles in Part III deal with different and separate rights. Under the caption 'Right to Freedom', articles 19–22 are grouped, but each with a separate marginal note. It is obvious that article 22 (1) and (2) prescribe limitations on the right given by article 21. If the procedure mentioned in those articles is followed, the arrest and detention contemplated by article 22 (1) and (2), although they infringe the personal liberty of the individual, will be legal, because that becomes the established legal procedure in respect of arrest and detention. Article 22 is for protection against arrest and detention in certain cases. . . .

"The learned Attorney-General contended that the subject of preventive detention does not fall under article 21 at all, and is covered wholly by article 22. According to him, article 22 is a complete code. I am unable to accept that contention. It is obvious that in respect of arrest and detention article 22 (1) and (2) provide safeguards. These safeguards are excluded in the case of preventive detention by article 22 (3), but safeguards in connexion with such detention are provided by clauses (4) to (7) of the same article. It is therefore clear that article 21 has to be read as supplemented by article 22. Reading in that way, the proper mode of construction will be that to the extent the procedure is prescribed by article 22 the same is to be observed; otherwise article 21 will apply. But if certain procedural safeguards are expressly stated as not required, or specific rules on certain points of procedure are prescribed, it seems improper to interpret these points as not covered by article 22 and left open for consideration under article 21. To the extent that the points are dealt with, and included or excluded, article 22 is a complete code. On the points of procedure which expressly or by necessary implication are not dealt with by article 22, the operation of article 21 will remain unaffected. It is thus necessary first to look at article 22 (4) to (7) and next at the provisions of the impugned Act to determine if the Act or any of its provisions are *ultra vires*. It may be noticed that neither the American nor the Japanese Constitution contains provisions permitting preventive detention, much less laying down limitations on such right of detention, in normal times—*i.e.* without a declaration of emergency. Preventive detention in normal times—*i.e.*, without the existence of an emergency such as war—is recognized as a normal topic of legislation in list I, entry 9, and list III, entry 3, of the schedule VII. Even in the chapter on fundamental rights, article 22 envisages legislation in respect of preventive detention in normal times. The provisions of article 22 (4) to (7), by their very wording, leave unaffected the large powers of legislation on this point and emphasize particularly by article 22 (7) the power of the Parliament to deprive a person of a right to have his case considered by an advisory board. Part III and article 22 in particular are the only restrictions on that power, and but for those provisions the power to legislate on this subject would have been quite unrestricted. Parliament could have made a law without any safeguard or any procedure for preventive detention. Such an autocratic supremacy of the legislature is certainly cut down by article 21. Therefore, if the legislature prescribes a procedure by a validly enacted law and such procedure in the case of preventive detention does not come in

[1] [1924] 2 Irish Reports K.B. 104.

[2] [1931] A.C. 662 at 670.

[3] (1923) 2 K.B. 361 at 382.

conflict with the express provisions of Part III or article 22 (4) to (7), the Preventive Detention Act must be held valid notwithstanding that the court may not fully approve of the procedure prescribed under such Act.

"Article 22 (4) opens with a double negative. Put in a positive form, it will mean that a law which provides for preventive detention for a period longer than three months shall contain a provision establishing an advisory board (consisting of persons with the qualifications mentioned in sub-clause (*a*)), and which has to report before the expiration of three months if in its opinion there was sufficient cause for such detention. This clause, if it stood by itself and without the remaining provisions of article 22, will apply both to the Parliament and the state legislatures. The proviso to this clause further enjoins that even though the advisory board may be of the opinion that there was sufficient cause for such detention—*i.e.*, detention beyond the period of three months—still the detention is not to be permitted beyond the maximum period, if any, prescribed by Parliament under article 22 (7) (*b*). Again, the whole of this sub-clause is made inoperative by article 22 (4) (*b*) in respect of an Act of preventive detention passed by Parliament under clauses (7) (*a*) and (*b*). Inasmuch as the impugned Act is an Act of the Parliament purported to be so made, clause 22 (4) has no operation and may for the present discussion be kept aside. Article 22 (5) prescribes that when any person under a preventive detention law is detained, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order. This clause is of general operation in respect of every detention order made under any law permitting detention. Article 22 (6) permits the authority making the order to withhold disclosure of facts which such authority considers it against the public interest to disclose. It may be noticed that this clause only permits the non-disclosure of facts, and reading clauses (5) and (6) together a distinction is drawn between facts and grounds of detention. Article 22 (4) and (7) deal not with the period of detention only but with other requirements in the case of preventive detention also. They provide for the establishment of an advisory board, and the necessity of furnishing grounds to the detenue and also to give him a right to make a representation. Reading article 22 clauses (4) and (7) together, it appears to be implied that preventive detention for less than three months, without an advisory board, is permitted under the chapter on fundamental rights, provided such legislation is within the legislative competence of the Parliament or the State legislature, as the case may be.

"Article 22 (5) permits the detained person to make a representation. The Constitution is silent as to the person to whom it has to be made, or how it has to be dealt with. But that is the procedure laid down by the Constitution. It does not therefore mean that if a law made by the Parliament in respect of preventive detention does not make provision on those two points it is invalid. Silence on these points does not make the impugned Act in contravention of the Constitution, because the first question is: what are the rights given by the Constitution in the case of preventive detention? The contention that the representation should be to an outside body has no support in law. Even in the *Liversidge* case the representation had to be made to the Secretary of State and not to another body. After such representation was made, another advisory board had to consider it, but it was not necessary to make the representation itself to a third party. Article 22 (4) and (7) permit the non-establishment of an advisory board expressly in a parliamentary legislation providing for preventive detention beyond three months. If so, how can it be urged that the non-establishment of an advisory board is a fundamental right violated by the procedure prescribed in the Act passed by the Parliament?

"The important clause to be considered is article 22 (7). Sub-clause (*a*) is important for this case. In the case of an Act of preventive detention passed by the Parliament, this clause contained in the chapter on fundamental rights thus permits detention beyond a period of three months and excludes the necessity of consulting an advisory board, if the opening words of the sub-clause are complied with. Sub-clause (*b*) is permissive. It is not obligatory on the Parliament to prescribe any maximum period. It was argued that this gives the Parliament a right to allow a person to be detained indefinitely. If that construction is correct, it springs out of the words of sub-clause (7) itself, and the court cannot help in the matter. Sub-clause (*c*) permits the Parliament to lay down the procedure to be followed by the advisory board in an inquiry under sub-clause (*a*) of clause (4). I am unable to accept the contention that article 22 (4) (*a*) is the rule and article 22 (7) the exception. I read them as two alternatives provided by the Constitution for making laws on preventive detention.

"Bearing in mind the provisions of article 22 read with article 246 and schedule VII, list I, entry 9, and list III, entry 3, it is thus clear that the Parliament is empowered to enact a law of preventive detention (*a*) for reasons connected with defence, (*b*) for reasons connected with foreign affairs, (*c*) for reasons connected with the security of India; and (under list III), (*d*) for reasons connected with the security of a State; (*e*) for reasons connected with the maintenance of public order, or (*f*) for reasons connected with the maintenance of supplies and services essential to the community. Counsel for the petitioner has challenged the validity of several provisions of the Act. In respect of the construction of a Constitution, Lord Wright, in *James* v. *The Commonwealth of Australia*,[1] observed that 'a Con-

[1] [1936] A.C. 578 at 614.

stitution must not be construed in any narrow and pedantic sense'. Mr. Justice Higgins in *Attorney-General of New South Wales* v. *Brewery Employees' Union*,[1] observed: 'Although we are to interpret words of the Constitution on the same principles of interpretation as we apply to any ordinary law, these very principles of interpretation compel us to take into account the nature and scope of the Act that we are interpreting—to remember that it is a Constitution, a mechanism under which laws are to be made and not a mere Act which declares what the law is to be.' In *in re The Central Provinces and Berar Act XIV of 1938*,[2] Sir Maurice Gwyer, C.J., after adopting these observations said: 'especially is this true of a federal constitution with its nice balance of jurisdictions. I conceive that a broad and liberal spirit should inspire those whose duty it is to interpret it; but I do not imply by this that they are free to stretch or pervert the language of the enactment in the interest of any legal or constitutional theory or even for the purpose of supplying omissions or of correcting supposed errors.' There is considerable authority for the statement that the courts are not at liberty to declare an Act void because in their opinion it is opposed to a spirit supposed to pervade the Constitution but not expressed in words. Where the fundamental law has not limited, either in terms or by necessary implication, the general powers conferred upon the legislature we cannot declare a limitation under the notion of having discovered something in the spirit of the Constitution which is not even mentioned in the instrument. It is difficult upon any general principles to limit the omnipotence of the sovereign legislative power by judicial interposition, except so far as the express words of a written Constitution give that authority. It is also stated, if the words be positive and without ambiguity, there is no authority for a court to vacate or repeal a Statute on that ground alone. But it is only in express constitutional provisions limiting legislative power and controlling the temporary will of a majority by a permanent and paramount law settled by the deliberate wisdom of the nation that one can find a safe and solid ground for the authority of courts of justice to declare void any legislative enactment. Any assumption of authority beyond this would be to place in the hands of the judiciary powers too great and too indefinite either for its own security or the protection of private rights.

"It was first argued that by section 3 the Parliament had delegated its legislative power to the executive officer in detaining a person on his being satisfied of its necessity. It was urged that the satisfaction must be of the legislative body. This contention of delegation of the legislative power in such cases has been considered and rejected in numerous cases by our federal court and by the English courts. It is unnecessary to refer to all those cases. A reading of the various speeches in *Liversidge* v. *Anderson*[3] clearly negatives this contention. Section 3 of the impugned Act is no delegation of legislative power to make laws. It only confers discretion on the officer to enforce the law made by the legislature. Section 3 is also impugned on the ground that it does not provide an objective standard which the court can utilize for determining whether the requirements of law have been complied with. It is clear that no such objective standard of conduct can be prescribed, except as laying down conduct tending to achieve or to avoid a particular object. For preventive detention action must be taken on good suspicion. It is a subjective test based on the cumulative effect of different actions, perhaps spread over a considerable period. As observed by Lord Finlay in *The King* v. *Halliday*,[4] a court is the least appropriate tribunal to investigate the question of whether circumstances of suspicion exist warranting the restraint on a person. The contention is urged in respect of preventive detention and not punitive detention. Before a person can be held liable for an offence, it is obvious that he should be in a position to know what he may do or not do, and an omission to do or not to do will result in the State considering him guilty according to the penal enactment. When it comes, however, to preventive detention, the very purpose is to prevent the individual not merely from acting in a particular way, but, as the sub-heads summarized above show, from achieving a particular object. It will not be humanly possible to tabulate exhaustively all actions which may lead to a particular object. It has therefore been considered that a punitive detention Act which sufficiently prescribes the objects which the legislature considers have not to be worked up to is a sufficient standard to prevent the legislation being vague. In my opinion, therefore, the argument of the petitioner against section 3 of the impugned Act fails. It was also contended that section 3 prescribes no limit of time for detention, and that therefore the legislation is *ultra vires*. The answer is found in article 22 (7) (*b*). A perusal of the provisions of the impugned Act moreover shows that in section 12 provision is made for detention for a period longer than three months, but not exceeding one year, in respect of clauses (*a*) and (*b*) of that section. It appears, therefore, that in respect of the rest of the clauses mentioned in section 3 (1) (*a*) the detention is not contemplated to be for a period longer than three months, and in such cases a reference to the advisory board under section 9 is contemplated.

"Section 7 of the Act, which is next challenged, runs on the same lines as article 22 (5) and (6) and in my opinion infringes no provision of the Constitution. It was argued that this gave only the right of making a representation without being heard orally or without affording an opportunity to lead evidence, and therefore was not an orderly course of procedure, as required

[1](1908) 6 Com. L.R. 469 at 611–12.

[2](1939) F.C.R. 18 at 37.

[3][1942] A.C. 206.

[4][1917] A.C. 260 at 269.

by the rules of natural justice. The Parliament by the Act has expressly given a right to the person detained under a preventive detention order to receive the grounds for detention and also has given him a right to make a representation. The Act has thus complied with the requirements of article 22 (5). That clause, which prescribes what procedure has to be followed as a matter of fundamental right, is silent about the person detained having a right to be heard orally or by a lawyer. The Constituent Assembly had before them the provisions of clause (1) of the same article. The Assembly, having dealt with the requirements of receiving grounds and giving an opportunity to make a representation, has deliberately refrained from providing a right to be heard orally. If so, I do not read the clause as guaranteeing such right under article 22 (5). An 'orderly course of procedure' is not limited to procedure which has been sanctioned by settled usage. New forms of procedure are as much, held even by the Supreme Court of America, due process of law as old forms, provided they give a person a fair opportunity to present his case. It was contended that the right to make a representation in article 22 (5) must carry with it a right to be heard by an independent tribunal; otherwise the making of a representation has no substance because it is not an effective remedy. I am unable to read clause (5) of article 22 as giving a fundamental right to be heard by an independent tribunal. The Constitution deliberately stops at giving the right of representation. This is natural, because under article 22 (7), in terms, the Constitution permits the making of a law by Parliament in which a reference to an advisory board may be omitted. To consider the right to make a representation as necessarily including a right to be heard by an independent judicial, administrative or advisory tribunal will thus be directly in conflict with the express words of article 22 (7).

"Even according to the Supreme Court of U.S.A., a right to a judicial trial is not absolute. In the *United States* v. *Ju Toy*,[1] a question arose about the exclusion from entry into the States of a Chinese who claimed to be a citizen of the United States. At page 263 the majority judgment contains the following passage: 'If, for the purpose of argument, we assume that the Fifth Amendment applies to him, and that to deny entrance to a citizen is to deprive him of liberty, we nevertheless are of opinion that with regard to him due process of law does not require judicial trial. That is the result of the cases which we have cited, and the almost necessary result of the power of the Congress to pass exclusion laws. That the decision may be entrusted to an executive officer, and that his decision is due process of law, was affirmed and explained in several cases. It is unnecessary to repeat the often-quoted remarks of Mr. Justice Curtis, speaking for the whole Court, in *Den Exden Murray* v. *Hoboken Land and Improvement Company*,[2] to show that the requirement of a judicial trial does not prevail in every case.

"Again, I am not prepared to accept the contention that a right to be heard orally is an essential right of procedure even according to the rules of natural justice. The right to make a defence may be admitted, but there is nothing to support the contention that an oral interview is compulsory. In *Local Government Board* v. *Arlidge*,[3] the respondent applied to the board constituted under the Housing Act to state a special case for the opinion of the High Court, contending that the order was invalid because (1) the report of the inspector had been treated as a confidential document and had not been disclosed to the respondent, and (2) because the board had declined to give the respondent an opportunity of being heard orally by the person or persons by whom the appeal was finally decided. The board rejected the application. Both the points were urged before the House of Lords on appeal. Viscount Haldane, L.C., in his speech rejected the contention about the necessity of an oral hearing by observing, 'But it does not follow that the procedure of every tribunal must be the same. In the case of a court of law, tradition in this country has prescribed certain principles to which, in the main, the procedure must conform. But what that procedure is to be in detail must depend on the nature of a tribunal.' In rejecting the contention about the disclosure of the report of the Inspector, the Lord Chancellor stated: 'It might or might not have been useful to disclose this report, but I do not think that the Board was bound to do so any more than it would have been bound to disclose all the minutes made on the papers in the office before a decision was come to . . . What appears to me to have been the fallacy of the judgment of the majority in the court of appeal is that it begs the question at the beginning by setting up the test of the procedure of a court of justice instead of the other standard which was laid down for such cases in *Board of Education* v. *Rice*.[4] I do not think the board was bound to hear the respondent orally, provided it gave him the opportunities he actually had.' In spite of the fact that in England the Parliament is supreme I am unable to accept the view that the Parliament, in making laws, legislates against the well-recognized principles of natural justice accepted as such in all civilized countries. The same view is accepted in the United States in *Federal Communications Commission* v. *WJR The Goodwill Station*.[5]

"A right to lead evidence against facts suspected to exist is also not essential in the case of preventive detention. Article 22 (6) permits the non-disclosure of facts. That is one of the clauses of the Constitution dealing with fundamental rights. If even the non-disclosure of facts is permitted, I fail to see how there

[1](198) U.S. 253 at 263.

[2]18 H.O.W. 272 at 280.

[3][1915] A.C. 120.

[4][1911] A.C. 179.

[5]337 U.S. 265 at 276.

can exist a right to contest facts by evidence and the non-inclusion of such procedural right could make this Act invalid.

"Section 10 (3) was challenged on the ground that it excludes the right to appear in person or by any lawyer before the advisory board and it was argued that this was an infringement of a fundamental right. It must be noticed that article 22 (1), which gives a detained person a right to consult or be defended by his own legal practitioner, is specifically excluded by article 22 (3) in the case of legislation dealing with preventive detention. Moreover, the Parliament is expressly given power under article 22 (7) (*c*) to lay down the procedure in an inquiry by an advisory board. This is also part of article 22 itself. If so, how can the omission to give a right to audience be considered against the constitutional rights? It was pointed out that section 10 (3) prevents even the disclosure of a portion of the report and opinion of the advisory board. It was argued that, if so, how can the detained person put forth his case before a court and challenge the conclusions? This argument was similarly advanced in *Local Government Board* v. *Arlidge*[1] and rejected, as mentioned above. In my opinion, the answer is in the provision found in article 22 (7) (*c*) of the Constitution of India.

"It was argued that section 11 of the impugned Act was invalid, as it permitted the continuance of the detention for such period as the Central Government or the State government thought fit. This may mean an indefinite period. In my opinion this argument has no substance because the Act is for a year, and therefore the argument that the detention may be for an indefinite period is unsound. Again, by virtue of article 22 (7) (*b*), the Parliament is not obliged to fix the maximum term of such detention. It has not so fixed it, except under section 12, and therefore it cannot be stated that section 11 is in contravention of article 22 (7).

. . .

"Section 14 was strongly attacked on the ground that it violated all principles of natural justice and even infringed the right given by article 22 (5) of the Constitution. . . .

"By that section the court is prevented (except for the purpose of punishment for such disclosure) from being informed, either by a statement or by leading evidence, of the substance of the grounds conveyed to the detained person under section 7 on which the order was made, or of any representation made by him against such order. It also prevents the court from calling upon any public officer to disclose the substance of those grounds or from the production of the proceedings or report of the advisory board which may be declared confidential. It is clear that, if this provision is permitted to stand, the court can have no material before it to determine whether the detention is proper or not. I do not mean whether the grounds are sufficient or not. It even prevents the court from ascertaining whether the alleged grounds of detention have anything to do with the circumstances or class or classes of cases mentioned in section 12 (1) (*a*) or (*b*). In *Machindar Shivaji Mahar* v. *The King*,[2] the federal court held that the court can examine the grounds given by the Government to see if they are relevant to the object which the legislation has in view. The provisions of article 22 (5) do not exclude that right of the court. Section 14 of the impugned Act appears to be a drastic provision which requires considerable support to sustain it in a preventive detention Act. The learned Attorney-General urged that the whole object of the section was to prevent ventilation in public of the grounds and the representations, and that it was a rule of evidence only which the Parliament could prescribe. I do not agree. This argument is clearly not sustainable on the words of article 22 clauses (5) and (6). The Government has the right under article 22 (6) not to disclose facts which it considers undesirable to disclose in the public interest. It does not permit the Government to refrain from disclosing grounds which fall under clause (5). Therefore, it cannot successfully be contended that the disclosure of grounds may be withheld from the court in public interest, as a rule of evidence. Moreover, the position is made clear by the words of article 22 (5). It provides that the detaining authority shall communicate to such detained person the grounds *on which the order has been made*. It is therefore essential that the grounds must be connected with the order of preventive detention. If they are not so connected, the requirements of article 22 (5) are not complied with and the detention order will be invalid. Therefore, it is open to a detained person to contend before a court that the grounds on which the order has been made have no connexion at all with the order, or have no connexion with the circumstances or class or classes of cases under which a preventive detention order could be supported under section 12. To urge this argument, the aggrieved party must have a right to intimate to the court the grounds given for the alleged detention and the representation made by him. For instance, a person is served with a paper on which there are written three stanzas of a poem or three alphabets written in three different ways. For the validity of the detention order it is necessary that the grounds should be those on which the order has been made. If the detained person is not in a position to put before the court this paper, the court will be prevented from considering whether the requirements of article 22 (5) are complied with, and that is a right which is guaranteed to every person. It seems to me, therefore, that the provisions of section 14 abridge the right given under article 22 (5) and are therefore *ultra vires*."

. . .

[Report: (1950) S.C.R. 88.]

[1] [1915] A.C. 120.

[2] [1949–50] F.C.R. 827.

RIGHT TO FREEDOM OF SPEECH AND EXPRESSION—LAW IMPOSING RESTRICTIONS FOR SECURING PUBLIC SAFETY AND PREVENTING PUBLIC DISORDER—VALIDITY OF PRE-CENSORSHIP OF NEWSPAPERS—CONSTITUTION OF INDIA, ARTICLE 19

BRIJ BHUSHAN *v.* THE STATE OF DELHI

Supreme Court of India[1]

26 May 1950

The facts. Section 7 (1) (*c*) of the East Punjab Safety Act, 1949, as extended to the Province of Delhi provided, that "the Provincial Government or any authority authorized by it in this behalf, if satisfied that such action is necessary for preventing or combating any activity prejudicial to the public safety or the maintenance of public order may, by order in writing addressed to a printer, publisher or editor, require that any matter relating to a particular subject or class of subjects shall before publication be submitted for scrutiny."

Pursuant to the Act, an order was served upon the applicant, who was the printer and publisher of an English weekly circulating in Delhi and called the *Organizer*, calling upon him to submit for scrutiny before publication all communal matter and news and views about Pakistan, including photographs and cartoons other than those derived from official sources or supplied by certain specified news agencies. The applicant applied under Article 32 of the Constitution of India for the issue of writs of *certiorari* and *prohibition* with a view to the quashing of the order in respect of his newspaper.

Held: that the order was illegal and should be quashed.

The imposition of pre-censorship on a journal is a restriction on the liberty of the press which, is an essential part of the right to freedom of speech and expression declared in article 19 of the Constitution. The above-quoted provisions of the East Punjab Public Safety Act was not a law relating to "a matter which undermines the security of, or tends to overthrow the State", within the meaning of that phrase in article 19 of the Constitution, and was therefore unconstitutional and void.

The Court said:

"... The only point argued before us relates to the constitutional validity of section 7 (1) (*c*) of the impugned Act, which, as appears from its preamble, was passed 'to provide special measures to ensure public safety and maintenance of public order'. ...

"The petitioners claim that this provision [section 7 (1) (*c*) of the Act] infringes the fundamental right to the freedom of speech and expression conferred upon them by article 19 (1) (*a*) of the Constitution inasmuch as it authorizes the imposition of a restriction on the publication of the journal which is not justified under clause (2) of that article.

"There can be little doubt that the imposition of pre-censorship on a journal is a restriction on the liberty of the press, which is an essential part of the right to freedom of speech and expression declared by article 19 (1) (*a*). As pointed out by Blackstone in his *Commentaries* 'the liberty of the press consists in laying no previous restraint upon publications, and not in freedom from censure from criminal matter when published. Every freeman has an undoubted right to lay what sentiments he pleases before the public; to forbid this, is to destroy the freedom of the press.[2] The only question, therefore, is whether section 7 (1) (*c*), which authorizes the imposition of such a restriction falls within the reservation of clause (2) of article 19.

"As this question turns on considerations which are essentially the same as those on which our decision in petition No. XVI of 1950[3] was based, our judgment in that case concludes the present case also. Accordingly, for the reasons indicated in that judgment, we allow this petition and hereby quash the impugned order of the Chief Commissioner, Delhi, dated 2 March 1950."

[1] Report [1950] S.C.R. 605. Text of the decision received through the courtesy of Sir Benegal N. Rau, Permanent Representative of India to the United Nations. Summary prepared by the United Nations Secretariat.

[2] Blackstone's *Commentaries*, Vol. IV, pp. 151, 152.

[3] *Romesh Thappar* v. *The State of Madras*; see below, p. 143 of this *Yearbook*.

FREEDOM OF MOVEMENT—LAW IMPOSING RESTRICTIONS—VALIDITY—ORDER OF EXTERNMENT—CONSTITUTION OF INDIA, ARTICLE 19

KHARE *v.* THE STATE OF DELHI

Supreme Court of India[1]

26 May 1950

The facts. Section 4, sub-section (1) (*c*), of the East Punjab Public Safety Act of 1949, which was passed on 29 March 1949 and was to be in force until 14 August 1951, provided that

"The Provincial Government or the district magistrate, if satisfied with respect to any particular person that with a view to preventing him from acting in any manner prejudicial to the public safety or the maintenance of public order it is necessary to do so, may, by order in writing, give a direction that such person shall remove himself from, and shall not return to, any area that may be specified in the order."

Sub-section (3) of section 4 provided that

"an order under sub-section (1) made by the district magistrate shall not, unless the provincial government by special order otherwise directs, remain in force for more than three months from the making thereof,"

and sub-section (6) laid down that

"when an order has been made in respect of any person under any of the clauses under section 4, sub-section (1) or sub-section (2), the grounds of it may be communicated to him by the authority making the order, and in any case when the order is to be in force for more than three months, he shall have a right of making a representation which shall be referred to the Advisory Tribunal constituted under section 3, sub-section (4)."

The petitioner, who is the President of the All-India Hindu Mahasabha and against whom an order under section 4 (1) (*c*) of the Act was passed, applied to the court under article 32 of the Constitution for a writ of *certiorari* contending that the order was illegal inasmuch as the provisions of the above-mentioned Act under which the order was made infringed the fundamental right to move freely throughout the territory of India which was guaranteed by article 19 (1) (*d*) of the Constitution[2] and were accordingly void under article 13 (1) of the Constitution.

Held: that the writ should be denied. The East Punjab Public Safety Act of 1941 prescribed restrictions on the right to freedom of movement proclaimed in the Constitution of India which were reasonable, and therefore the order of externment made under the Act was valid.

Delivering the judgment, in which the majority of the court concurred, the Chief Justice said:

". . .

"It is necessary first to ascertain the true meaning of article 19 (1) (*d*) read with clause (5) of the same article. There is no doubt that by the order of externment the right of the petitioner to freedom of movement throughout the territory of India is abridged. The only question is whether the limits of permissible legislation under clause (5) are exceeded. . . . It is clear that the clause permits imposition of reasonable restrictions on the exercise of the right conferred by sub-clause (*d*) in the interests of the general public. The rest of the provision of clause (5) is not material and neither side relies on it. Two interpretations of the clause are put before the court. It is argued that, grammatically understood, the only question before the court is whether the impugned legislation imposes reasonable restrictions on the exercise of the right. To put it in other words, the only justiciable issue to be decided by the court is whether the restrictions imposed by the legislation *on the exercise of the right* are reasonable. If those restrictions on the exercise of the right are reasonable, the court has not to consider whether the law imposing the restrictions is reasonable. The other interpretation is that while the Constitution permits a law laying down reasonable restrictions on the exercise of the rights mentioned in sub-clause 19 (1) (*d*), the reasonableness has to be of the law also. It is submitted that, in deciding whether the restrictions on the exercise of the right are reasonable, the court has to decide not only on the extent and nature of the restrictions on the exercise of the right, but also as to whether the conditions under which the right is restricted are reasonable. The majority judgments of the Patna and Bombay High Courts, although the impugned Acts of the State legislatures before them were materially different on certain important points, have given clause (5) of article 19 the latter meaning.

"In my opinion, clause (5) must be given its full meaning. The question which the court has to consider is whether the restrictions put by the impugned legislation on the exercise of the right are reasonable or not. The question of whether the provisions of the Act provide reasonable safeguards against the abuse of the power given to the executive authority to administer the law is not relevant for the true interpretation of the clause. The court, on either interpretation, will be entitled to consider whether the restrictions on the

[1] Report [1950] S.C.R. 519. Text of the decision received through the courtesy of Sir Benegal N. Rau, Permanent Representative of India to the United Nations. Summary prepared by the United Nations Secretariat.

[2] See the text of article 19 on p. 131 of this *Yearbook*.

right to move throughout India—*i.e.*, both as regards the territory and the duration—are reasonable or not. The law providing reasonable restrictions on the exercise of the right conferred by article 19 may contain substantive provisions as well as procedural provisions. While the reasonableness of the restrictions has to be considered with regard to the exercise of the right, it does not necessarily exclude from the consideration of the court the question of reasonableness of the procedural part of the law. It is obvious that if the law prescribes five years' externment or ten years' externment, the question of whether such period of externment is reasonable, being the substantive part, is necessarily for the consideration of the court under clause (5). Similarly, if the law provides the procedure under which the exercise of the right may be restricted, the same is also for the consideration of the court, as it has to determine if the exercise of the right has been reasonably restricted. It do not think that by this interpretation the scope and ambit of the word 'reasonable', as applied to restrictions on the exercise of the right, is in any way unjustifiably enlarged. It seems that the narrow construction sought to be put on the expression, to restrict the court's power to consider only the substantive law on the point, is not correct. In my opinion, this aspect of the construction of article 19 (5) has escaped the minority judgment in the two matters mentioned above. I am not concerned with the conclusions of the two courts about the invalidity of the provisions of the Acts they were asked to consider. To the extent that they help in the interpretation of article 19 (5) only, they are helpful.

"The next question is whether the impugned Act contains reasonable restrictions on the exercise of the right given under article 19 (1) (*d*) or (*e*). It was argued on behalf of the petitioner that under section 4 the power to make the order of externment was given to the provincial government or the district magistrate, whose satisfaction was final. That decision was not open to review by the court. On that ground it was contended that there was an unreasonable restriction on the exercise of the citizen's right. In my opinion, this argument is unsound. This is not legislative delegation. The desirability of passing an individual order of externment against a citizen has to be left to an officer. In the Act, such a provision cannot be made. The satisfaction of the officer thus does not impose an unreasonable restriction on the exercise of the citizen's right. So far as the Bombay High Court is concerned, Chagla, C.J., appears to have decided this point against the contention of the petitioner.

"It was next urged that under section 4 (3) the order made by the district magistrate shall not, unless the provincial government by special order otherwise direct, remain in force for more than three months. It was argued that the period of three months itself was unreasonable, as the externee had no remedy during that time. It was contended that when the provincial government directed the renewal of the order no limit of time was prescribed by the legislature for the duration of the order. The order therefore can be in operation for an indefinite period. This was argued to be an unreasonable restriction on the exercise of a citizen's right. In this connexion it may be pointed out that, in respect of preventive detention, which is a more severe restriction on the right of the citizen, the Constitution itself, under article 22 (4) to (7), permits preventive detention for three months without any remedy. The period of three months therefore *prima facie* does not appear unreasonable. Under the proviso to section 4 (5), the provincial government is not permitted to direct the exclusion or removal from the province of a person ordinarily residing in the province, and similarly the district magistrate is not permitted to order the exclusion or removal of a person ordinarily resident in his district from that district. This is a great safeguard provided under the East Punjab Public Safety Act. The further extension of the externment order beyond three months may be for an indefinite period, but in that connexion the fact that the whole Act is to remain in force only up to 14 August 1951, cannot be overlooked. Moreover, this whole argument is based on the assumption that the provincial government, when making the order, will not perform its duty and may abuse the provisions of the section. In my opinion, it is improper to start with such an assumption and decide the legality of an Act on that basis. Abuse of the power given by a law sometimes occurs; but the validity of the law cannot be contested because of such an apprehension. In my opinion, therefore, this contention of the petitioner cannot be accepted.

"It was next argued that there is no provision in the Act for furnishing grounds of externment to the citizen. Section 4 (6) provides that, when an externment order has been made, its grounds *may* be communicated to the externee by the authority making the order, and in any case when the order is to be enforced for more than three months he *shall* have the right of making a representation which shall be referred to the advisory tribunal constituted under section 3 (4). While the word 'may' ordinarily conveys the idea of a discretion and not compulsion, reading it with the last part of the clause it seems that when an externment order has to be enforced for more than three months an absolute right is given to the externee to make a representation. He cannot make a representation unless he has been furnished grounds for the order. In no other part of the Act is the right to obtain the grounds for the order in such a case given to him. Therefore, that right has to be read as given under the first part of section 4 (6). That can be done only by reading the word 'may' for that purpose as having the meaning of 'shall'. If the word 'may' has to be so read for that purpose, it appears to be against the well-recognized canons of construction to read the same 'may' as having a different meaning when the order is to be in force for less than three months. I do not think that, in putting the meaning of 'shall' on 'may' in the clause, I am unduly

straining the language used in the clause. So read, this argument must fail.

"It was next argued that there is no provision in the Act showing what the advisory board has to do when it receives a representation. A reference to the advisory board necessarily implies a consideration of the case by such board. The absence of an express statement to that effect in the impugned Act does not invalidate the Act.

"It was finally contended on behalf of the petitioner that the grounds for the externment order supplied to him are vague, insufficient and incomplete. The grounds are stated as follows:

" 'Your activities generally and particularly since the recent trouble in East and West Bengal have been of a communal nature tending to excite hatred between communities, and whereas in the present composition of the population of Delhi and the recent communal disturbances of Delhi feelings are roused between the majority and minority communities, your presence and activities in Delhi are likely to prove prejudicial to the maintenance of law and order, it is considered necessary to order you to leave Delhi.'

"These grounds cannot be described as vague, insufficient or incomplete. It is expressly stated that the activities of the petitioner, who is the President of the Hindu Mahasabha, since the recent disturbances between two communities in the East and West Bengal have particularly been of a communal nature which excites hatred between the communities. It is further stated that, having regard to the recent disturbances in Delhi, the population of which is composed of both these communities, the excitement of such hatred is likely to be dangerous to the peace and the maintenance of law and order. Apart from being vague, I think that these grounds are specific, and if honestly believed can support the order. The argument that the order was served to stifle opposition to the Government policy of appeasement has little bearing, because the district magistrate of Delhi is not concerned with the policy of the Government of appeasement or otherwise. The order is made because the activities of the petitioner are likely to prove prejudicial to the maintenance of law and order and the grounds specified have a direct bearing on that conclusion of the district magistrate. I therefore think that this contention of the petitioner must be rejected."

RIGHT TO FREEDOM OF SPEECH AND EXPRESSION—LAW IMPOSING RESTRICTIONS FOR SECURING PUBLIC ORDER AND MAINTAINING PUBLIC SAFETY—VALIDITY—CONSTITUTION OF INDIA, ARTICLE 19—MADRAS MAINTENANCE OF PUBLIC ORDER ACT, SECTION 9 (1-A)

ROMESH THAPPAR *v.* THE STATE OF MADRAS

Supreme Court of India[1]

26 May 1950

The facts. The petitioner was the printer, publisher and editor of an English weekly journal called *Cross Roads*, printed and published in Bombay. In exercise of its powers under section 9 (1-A) of the Madras Maintenance of Public Order Act of 1949, the Government of Madras purported to issue an order imposing a ban upon the entry and circulation of the journal in the State of Madras. The order recited that it was made for the purpose of securing the public safety and the maintenance of public order. The petitioner claimed that the order contravened the fundamental right of freedom of speech and expression enunciated in article 19 (1) (a) of the Constitution, and that the section of the Act under which it was made was void on the ground that it was repugnant to the fundamental right above mentioned.

Held: that the petition should be granted. Unless the law restricting freedom of speech and expression, which includes freedom of propagation of ideas, is directed solely against the undermining of the security of the State, or the overthrow of it, such law cannot fall within the category of valid restrictions which may be imposed under Article 19 of the Constitution, even though the restrictions which it seeks to impose may have been conceived generally in the interests of public order.

The Court said:

". . . Turning now to the merits, there can be no doubt that freedom of speech and expression includes freedom of propagation of ideas, and that freedom is ensured by the freedom of circulation. 'Liberty of circulation is as essential to that freedom as the liberty of publication. Indeed, without circulation the publication would be of little value': *ex parte Jackson.*[2]

[1] Report [1950] S.C.R. 594. Text of the decision received through the courtesy of Sir Benegal N. Rau, Permanent Representative of India to the United Nations. Summary prepared by the United Nations Secretariat.

[2] 96 U.S. 727.

See also *Lovell* v. *City of Griffin*.[1] It is therefore perfectly clear that the order of the Government of Madras would be a violation of the petitioner's fundamental right under article 19 (1) (*a*), unless section 9 (1-A) of the impugned Act under which it was made is saved by the reservations mentioned in clause (2) of article 19, which (omitting immaterial words regarding laws relating to libel, slander, etc., with which we are not concerned in this case) saves the operation of any 'existing law in so far as it relates to any matter which undermines the security of, or tends to overthrow, the State'. The question accordingly arises whether the impugned Act, in so far as it purports by section 9 (1-A) to authorize the provincial government 'for the purpose of securing the public safety or the maintenance of public order, to prohibit or regulate the entry into or the circulation, sale or distribution in the Province of Madras or any part thereof of any document or class of documents' is a 'law relating to any matter which undermines the security of or tends to overthrow the State'.

"The impugned Act was passed by the provincial legislature in exercise of the power conferred upon it by section 100 of the Government of India Act, 1935, read with entry 1 of list II of the Schedule VII to that Act, which comprises among other matters, 'public order'. Now 'public order' is an expression of wide connotation, and signifies that state of tranquillity which prevails among the members of a political society as a result of the internal regulations enforced by the government which they have established. Although section 9 (1-A) refers to 'securing the public safety' and 'the maintenance of public order' as distinct purposes, it must be taken that 'public safety' is used as a part of the wider concept of public order, for, if public safety were intended to signify any matter distinct from and outside the content of the expression 'public order', it would not have been competent for the Madras legislature to enact the provision so far as it relates to public safety. This, indeed, was not disputed on behalf of the respondents. But it was urged that the expression 'public safety' in the impugned Act, which is a statute relating to law and order, means the security of the province, and, therefore, 'the security of the State' within the meaning of article 19 (2), as 'the State' has been defined in article 12 as including, among other things, the government and the legislature of each of the erstwhile provinces. Much reliance was placed in support of this view on *Rex* v. *Wormwood Scrubbs Prison*,[2] where it was held that the phrase 'for securing the public safety and the defence of the realm' in section 1 of the Defence of the Realm (Consolidation) Act, 1914, was not limited to securing the country against a foreign foe, but included also protection against internal disorder such as a rebellion. The decision is not of much assistance to the respondents, as the context in which the words 'public safety' occurred in that Act showed unmistakably that the security of the State was the aim in view. Our attention has not been drawn to any definition of the expression 'public safety'; nor does it appear that the words have acquired any technical signification as words of art.

"'Public safety' ordinarily means security of the public or their freedom from danger. In that sense, anything which tends to prevent dangers to public health may also be regarded as securing public safety. The meaning of the expression must, however, vary according to the context. In the classification of offences in the Indian Penal Code, for instance, Chapter XIV enumerates the 'offences affecting the public health, safety, convenience, decency, and morals', and it includes rash driving or riding on a public way (section 279) and rash navigation of a vessel (section 280), among others, as offences against public safety, while Chapter VI lists waging war against the Queen (section 121), sedition (section 124-A), etc., as 'offences against the State', because they are calculated to undermine or affect the security of the State, and Chapter VIII defines 'offences against the public tranquillity', which includes unlawful assembly (section 141), rioting (section 146), promoting enmity between classes (section 153-A), affray (section 159), etc. Although in the context of a statute relating to law and order 'securing public safety' may not include the securing of public health, it may well mean securing the public against rash driving on a public way and the like, and not necessarily the security of the State. It was said that an enactment which provided for drastic remedies such as preventive detention and ban on newspapers must be taken to relate to matters affecting the security of the State rather than trivial offences like rash driving or an affray. But whatever ends the impugned Act may have been intended to subserve, and whatever aims its framers may have had in view, its application and scope cannot, in the absence of limiting words in the statute itself, be restricted to those aggravated forms of prejudicial activity which are calculated to endanger the security of the State. Nor is there any guarantee that those authorized to exercise the powers under the Act will in using them discriminate between those who act prejudicially to the security of the State and those who do not.

"The Government of India Act, 1935, nowhere used the expression 'security of the State' though it made provision under section 57 for dealing with crimes of violence intended to overthrow the Government. While the administration of law and order, including the maintenance of public order, was placed in charge of a Minister elected by the people, the Governor was entrusted with the responsibility of combating the operations of persons who 'endangered the peace or tranquillity of the province' by committing or attempting to commit 'crimes of violence intended to

[1] 303 U.S. 444.

[2] [1920] 2 K.B. 305.

overthrow the Government'. Similarly, article 352 of the Constitution empowers the President to make a proclamation of emergency when he is satisfied that the 'security of India or any part of the territory thereof is threatened by war or by external aggression or by internal disturbance'. These provisions recognize that disturbance of public peace or tranquillity may assume such grave proportions as to threaten the security of the State.

"As Stephen in his *Criminal Law of England*[1] observes: 'Unlawful assemblies, riots, insurrections, rebellions, levying of war, are offences which run into each other and are not capable of being marked off by perfectly defined boundaries. All of them have in common one feature—namely, that the normal tranquillity of a civilized society is in each of the cases mentioned disturbed either by actual force or, at least, by the show and threat of it.' Though all these offences thus involve disturbances of public tranquillity and are in theory offences against public order, the difference between them being only a difference of degree, yet for the purpose of grading the punishment to be inflicted in respect of them they may be classified into different minor categories, as has been done by the Indian Penal Code. Similarly, the Constitution, in formulating the varying criteria for permissible legislation imposing restrictions on the fundamental rights enumerated in article 19 (1), has placed in a distinct category those offences against public order which aim at undermining the security of the State or overthrowing it, and made their prevention the sole justification for legislative abridgment of freedom of speech and expression—that is to say, nothing less than endangering the foundations of the State or threatening its overthrow could justify curtailment of the rights to freedom of speech and expression, while the right of peaceable assembly (sub-clause (*b*)) and the right of association (sub-clause (*c*)) may be restricted under clauses (3) and (4) of article 19 in the interests of 'public order', which in those clauses includes the security of the State. The differentiation is also noticeable in entry 3 of list III (Concurrent List) of the schedule VII, which refers to the 'security of a State' and 'maintenance of public order' as distinct subjects of legislation. The Constitution thus requires a line to be drawn in the field of public order or tranquillity, marking off—maybe roughly—the boundary between those serious and aggravated forms of public disorder which are calculated to endanger the security of the State and the relatively minor breaches of the peace of a purely local significance, treating for this purpose differences in degree as if they were differences in kind.

"It is also worthy of note that the word 'sedition', which occurred in article 13 (2) of the draft Constitution prepared by the drafting committee was deleted before the article was finally passed as article 19 (2). In this connexion it may be recalled that the federal court had, in defining sedition in *Niharendu Dutt Majumdar* v. *The King Emperor*,[2] held that 'the acts or words complained of must either incite to disorder or must be such as to satisfy reasonable men that that is their intention or tendency', but the Privy Council overruled that decision and emphatically reaffirmed the view expressed in *Tilak's* case[3] to the effect that 'the offence consisted in exciting or attempting to excite in others certain bad feelings towards the Government and not in exciting or attempting to excite mutiny or rebellion, or any sort of actual disturbance, great or small'—*King Emperor* v. *Sadashiv Narayan Bhalerao*.[4] Deletion of the word 'sedition' from the draft article 13 (2), therefore, shows that criticism of the Government exciting disaffection or bad feelings towards it is not to be regarded as a justifying ground for restricting the freedom of expression and of the press, unless it is such as to undermine the security of or tend to overthrow the State. It is also significant that the corresponding Irish formula of 'undermining the public order or the authority of the State' [article 40 (6) (*i*) of the Constitution of Eire, 1937][5] did not apparently find favour with the framers of the Indian Constitution. Thus, very narrow and stringent limits have been set to permissible legislative abridgment of the right of free speech and expression, and this was doubtless due to the realization that freedom of speech and of the press lay at the foundation of all democratic organizations, for without free political discussion no public education, so essential for the proper functioning of the processes of popular government, is possible. A freedom of such amplitude might involve risks of abuse. But the framers of the Constitution may well have reflected, with Madison, who was 'the leading spirit in the preparation of the First Amendment of the Federal Constitution', that 'it is better to leave a few of its noxious branches to their luxuriant growth than, by pruning them away, to injure the vigour of those yielding the proper fruits' (quoted in *Near* v. *Minnesota*[6]).

"We are therefore of opinion that unless a law restricting freedom of speech and expression is directed solely against the undermining of the security of the State or the overthrow of it, such law cannot fall within the reservation under clause (2) of article 19, although the restrictions which it seeks to impose may have been conceived generally in the interests of public order. It follows that section 9 (1–A), which authorizes imposition of restrictions for the wider purpose of securing public safety or the maintenance of public order, falls outside the scope of authorized restrictions under clause (2), and is therefore void and unconstitutional.

[1] Vol. II, p. 242.

[2] [1942] F.C.R. 38.

[3] 22 Bom. 112.

[4] L.R. 74 I A. 89.

[5] See the complete text in *Yearbook on Human Rights for 1946*, p. 99.

[6] 282 U.S. 607, 717–8.

"It was, however, argued that section 9 (1-A) could not be considered wholly void, as, under article 13 (1), an existing law inconsistent with a fundamental right is void only to the extent of the inconsistency, and no more. In so far as the securing of the public safety or the maintenance of public order would include the security of the State, the impugned provision, as applied to the latter purpose, was covered by clause (2) of article 19 and must, it was said, be held to be valid. We are unable to accede to this contention. Where a law purports to authorize the imposition of restrictions on a fundamental right in language wide enough to cover restrictions both within and without the limits of constitutionally permissible legislative action affecting such right, it is not possible to uphold it even so far as it may be applied within the constitutional limits, as it is not severable. So long as the possibility of its being applied for purposes not sanctioned by the Constitution cannot be ruled out, it must be held to be wholly unconstitutional and void. In other words, clause (2) of article 19 having allowed the imposition of restrictions on the freedom of speech and expression only in cases where danger to the State is involved, an enactment which is capable of being applied to cases where no such danger could arise cannot be held to be constitutional and valid to any extent.

"The application is therefore allowed, and the order of the respondents prohibiting the entry and circulation of the petitioner's journal in the State of Madras is hereby quashed."

State Legislation

UNITED STATE OF TRAVANCORE AND COCHIN

THE UNITED STATE OF TRAVANCORE AND COCHIN REMOVAL OF SOCIAL DISABILITIES ACT[1]

Act VIII of 1950

AN ACT TO PROVIDE FOR THE REMOVAL OF SOCIAL DISABILITIES

Whereas it is deemed expedient to provide for the removal of social inequalities;

It is hereby enacted as follows:

1. (1) This Act may be called the United State of Travancore and Cochin Removal of Social Disabilities Act, 1950.

(2) It extends to the whole of the United State of Travancore and Cochin.

(3) It shall come into force at once.

2. For the purposes of this Act, the expression "secular institution" means—

(1) Any refreshment room, restaurant, café, coffee-house, eating-house, boarding-house, lodging-house, hostel, hotel or any other place where persons are provided with food, drink, shelter or sleeping or other accommodation;

(2) Any place of public entertainment or amusement; and

(3) Any premises where goods are sold, any laundry, any shaving or hair-dressing saloon, or any other place where services are rendered to customers.

3. No person owning or being in charge of any secular institution shall impose or cause or suffer to be imposed on or against any person, any restriction or discrimination in the matter of admission to or service in such secular institution on the ground that he belongs to a particular religion or caste or creed.

4. No person shall, on grounds only of his religion, caste or creed, be prevented or disabled from having access to or using any stream, river, well, tank, bathing-place, pathway, sanitary convenience or means of transport maintained wholly or partly out of State funds or the funds of a local authority or used as of right by or dedicated to or for the benefit of the general public.

5. Notwithstanding any law, custom, usage or prescription to the contrary, no Hindu shall, by reason merely of his belonging to any particular class or caste or sub-caste among Hindus, be prevented or disabled from having access to or using any stream, river, well, tank, bathing-place, pathway, sanitary convenience or

[1] English text received through the courtesy of Sir Benegal N. Rau, Permanent Representative of India to the United Nations. This Act received the assent of the Raj Pramukh (Governor) of the State on 5 January 1950. The Act is an example of the kind of legislation referred to in Sir Benegal N. Rau's statements on "Human Rights in India" in *Yearbook on Human Rights for 1947*, p. 153, and *Yearbook on Human Rights for 1948*, p. 98.

means of transport which all or any of the other classes, castes or sub-castes among Hindus have a right of access to or a right to use.

6. No dealer shall refuse to sell or withhold from sale any article which is kept by him for sale to any person on the ground that he belongs to a particular religion or caste or creed.

7. (1) Whoever contravenes the provisions of section 3 or section 4 or section 5 or section 6, or molests or obstructs any person in the exercise of any right conferred by or under this Act shall be punishable with imprisonment for a term which may extend to six months or with a fine which may extend to 1,000 rupees or with both.

8. (2) Whoever attempts to commit or abets the commission of any offence punishable under subsection (1) of this section shall be punishable with imprisonment for a term which may extend to six months or with a fine which may extend to 1,000 rupees or with both.

9. Notwithstanding anything contained in the Code of Criminal Procedure for the time being in force, all offences punishable under this Act shall be cognizable.

THE TRAVANCORE-COCHIN REMOVAL OF CIVIL DISABILITIES ACT[1]

Act XX of 1950

Whereas it is necessary to prevent forfeiture of right of inheritance or of rights to property of a person who renounces or is excluded from the communion of any religion or is deprived of his caste;

It is hereby enacted as follows:

1. (1) This Act may be called the Travancore-Cochin Removal of Civil Disabilities Act, 1950.

(2) It extends to the whole of the State of Travancore-Cochin.

(3) It shall come into force at once.

2. No person shall incur forfeiture of his right of inheritance or of rights to property by reason of his renouncing or having been excluded from the communion of any religion or being deprived of caste, notwithstanding any law, custom or usage to the contrary:

Provided that where a member of a joint Hindu or Marumakkathayam family renounces or is excluded from the communion of his religion or is deprived of caste, he shall be deemed to have severed his joint status from such family with full rights to partition of his share of the family properties, and he shall not be entitled to the right of residence in the family house or to exercise the rights of a manager or karanavan of such family.

[1] English text received through the courtesy of Sir Benegal N. Rau, Permanent Representative of India to the United Nations. See also footnote 1 on p. 146 of this *Yearbook*.

INDONESIA

PROVISIONAL CONSTITUTION OF THE REPUBLIC OF INDONESIA[1] of 15 August 1950

I. Comparative Survey of the Provisions on Human Rights in the provisional Constitution of the Republic of Indonesia of 1950, the provisional Constitution of the Republic of the United States of Indonesia of 1949, and the Universal Declaration of Human Rights[2]

1. *Historical Background*

The provisional Constitution of the Republic of Indonesia of 1950 is, in the formal sense, a modification of the provisional Constitution of the Republic of the United States of Indonesia of 1949. This modification was made possible by virtue of article 190 of the provisional Constitution of the United States of Indonesia. Except for the fact that the House of Representatives and the Senate were not permitted to take action with regard to a proposed modification unless a two-thirds quorum had been obtained, article 190 did not specifically mention any other limitations to be taken into consideration in case of modification.

In accordance with the agreement of 19 May 1950 concluded between the Republic of the United States of Indonesia and the (former) Republic of Indonesia, the provisional Constitution of the (new unitary) Republic of Indonesia was to modify the provisional Constitution of the Republic of the United States of Indonesia to the effect that the essential parts of the provisional Constitution of the (former) Republic of Indonesia—amongst others articles 27, 29 and 33—combined with the essential parts of the provisional Constitution of the Republic of the United States of Indonesia, would be included. The aforesaid agreement also contained certain principles to be embodied in the provisional Constitution of the new Republic of Indonesia.

As set forth in the Government's "Elucidation to the Parliament on the Provisional Constitution" of the (new) Republic of Indonesia, the following principles were to be observed:

(*a*) The basic principles which were already recognized by the Republic of the United States of Indonesia as well as the (former) Republic of Indonesia, but which were not, or were not clearly enough, expressed in both provisional Constitutions, were to be set out in detail in the provisional Constitution of the new Republic.

(*b*) The basic principles which were contained in both provisional Constitutions, but were formulated in a different way, were to be expressed concurrently in order to manifest the common views of both Governments.

(*c*) The general drafting, specifically of those terms which might arouse misunderstanding, was to be improved.

(*d*) The general structure was to be improved.

A joint committee was set up by the Government of the Republic of the United States of Indonesia and the Government of the (former) Republic of Indonesia, which was entrusted with the task of drafting the aforementioned agreement and the provisional Constitution of the new Republic, as outlined by the agreement.

The result of the work of this joint committee was submitted to both Governments on 30 June 1950. With some modifications, this draft provisional Constitution of the new Republic of Indonesia was accepted by both Governments, and after being approved by the working committee of the Central National Committee (Parliament) of the (former) Republic of Indonesia and by the House of Representatives and Senate of the Republic of the United States of Indonesia, it became the provisional Constitution of the new Republic of Indonesia.

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[1] Authorized English translation and information through the courtesy of the Permanent Representative of the Republic of Indonesia to the United Nations. This Constitution was approved on 15 August 1950 by the President of the Republic of the United States of Indonesia and promulgated on the same day by the Minister of Justice. It was published in the *Official Gazette* of the Republic of the United States of Indonesia No. 56 of 1950 and came into force on 17 August 1950. Act No. 7 of 1950 provided for the conversion of the Provisional Constitution of the Republic of the United States of Indonesia into the Provisional Constitution of the Republic of Indonesia of which the provisions on human rights are printed here. The provisions on human rights of the Provisional Constitution of the United States of Indonesia are reproduced in the *Yearbook on Human Rights for 1949*, pp. 113-117.

[2] This survey was prepared by Miss Artati Sudirdjo, Second Secretary of Embassy, Member of the Indonesian Mission to the United Nations. The contents of the note are based on the Government's "Elucidation to the Parliament on the Provisional Constitution" (published in the *Supplementary Gazette of the Republic of the United States of Indonesia*, No. 37 of 1950) and on Professor Dr. R. Soepomo's "*Undang-Undang Dasar Sementara Republik Indonesia*" (Constitution of the Republic of Indonesia).

2. *Basic Principles with regard to Human Rights*

When we compare the basic contents of the new provisional Constitution with those of the provisional Constitution of the Republic of the United States of Indonesia, the differences, except the differences with regard to the form of the State, are briefly as follows:

In general, the fundamental human rights and freedoms and the basic principles embodied in the provisional Constitution of the Republic of the United States of Indonesia, which were in accordance with the Universal Declaration of Human Rights and the fundamental human rights and freedoms enumerated in the appendix to the Union Statute of the Kingdom of the Netherlands and the Republic of the United States of Indonesia,[1] have also been included in the new provisional Constitution (sections V and VI).

As to the fundamental right to freedom of religion, conscience and thought, it has not been mentioned specifically in article 18 of the new provisional Constitution of the Republic of Indonesia whether this right also includes the freedom to change one's religion or belief. According to article 18 of the provisional Constitution of the Republic of the United States of Indonesia the right to freedom of religion mentioned therein also included the freedom to change one's religion or belief.

Article 43, paragraph 2, guarantees the freedom of every resident to manifest and practise his own religion and to worship according to his religion and belief, as had also been guaranteed by article 29, paragraph 2, of the provisional Constitution of the Republic of the United States of Indonesia.

According to the Government's "Elucidation to the Parliament on the Provisional Constitution", articles 18 and 43 (paragraph 2) contain sufficient guarantees for the recognition of freedom of religion and freedom to change one's religion, and include everything that is contained in article 18 of the Universal Declaration of Human Rights.

The new provisional Constitution mentions the right to demonstrate and the right to strike work (article 21), neither of which was mentioned in the provisional Constitution of the Republic of the United States of Indonesia. The recognition of both rights had been for a long time an objective of the Indonesian workers.

The right to own property, individually as well as in association with others, was contained in article 26, paragraphs 1 and 2, which is similar to article 17, paragraphs 1 and 2, of the Universal Declaration of Human Rights. However, another paragraph—3—stating the social function of the right to own property, has been added. The social function of this right was also recognized in article 153, paragraph 3, of the German (Weimar) Constitution of 1919, and in article 42, paragraph 2, of the Italian Constitution of 1947.[2]

By a comparison of the two constitutional texts in a more detailed way and an examination of some other important points, further changes which have been made with regard to style, language and arrangement will be revealed.

3. *Section V: Fundamental Human Rights and Freedoms*

Article 7 of the provisional Constitution of the Republic of Indonesia is similar to article 7 of the provisional Constitution of the Republic of the United States of Indonesia. Paragraph 1 of this article was adapted from article 6; paragraphs 2 and 3, from article 7; and paragraph 4, from article 8 of the Universal Declaration of Human Rights.

Article 8 of the provisional Constitution of the Republic of Indonesia is similar to article 8 of the provisional Constitution of the Republic of the United States of Indonesia.

Article 9 of the provisional Constitution of the Republic of Indonesia is similar to article 9 of the provisional Constitution of the Republic of the United States of Indonesia, adapted from article 13, paragraphs 1 and 2, of the Universal Declaration of Human Rights.

Article 10 of the provisional Constitution of the Republic of Indonesia is similar to article 10 of the provisional Constitution of the Republic of the United States of Indonesia, adapted from article 4 of the United Nations Declaration of Human Rights.

Article 11 of the provisional Constitution of the Republic of Indonesia is similar to article 11 of the provisional Constitution of the Republic of the United States of Indonesia, adapted from article 5 of the Universal Declaration of Human Rights.

Article 12 of the provisional Constitution of the Republic of Indonesia is similar to article 12 of the provisional Constitution of the Republic of the United States of Indonesia, adapted from article 9 of the Universal Declaration of Human Rights.

Article 13 of the provisional Constitution of the Republic of Indonesia is similar to article 13 of the provisional Constitution of the Republic of the United States of Indonesia, of which paragraph 1 was adapted from article 10 of the Universal Declaration of Human Rights.

Article 14 of the provisional Constitution of the Republic of Indonesia is similar to article 14 of the provisional Constitution of the Republic of the United States of Indonesia. Paragraph 1 of this article was adapted from article 11, paragraph 1, of the Universal Declaration of Human Rights; paragraphs 2 and 3 were adapted from article 11, paragraph 2, of the Universal Declaration.

[1] See *Yearbook on Human Rights for 1949*, p. 322.

[2] See *Yearbook on Human Rights for 1947*, p. 166.

Article 15 of the provisional Constitution of the Republic of Indonesia is similar to article 15 of the provisional Constitution of the Republic of the United States of Indonesia.

Article 16 of the provisional Constitution of the Republic of Indonesia is similar to article 16 of the provisional Constitution of the Republic of the United States of Indonesia, of which paragraph 1 was adapted from article 22 of the Universal Declaration of Human Rights.

Article 17 of the provisional Constitution of the Republic of Indonesia is similar to article 17 of the provisional Constitution of the Republic of the United States of Indonesia, also adapted from article 12 of the Universal Declaration of Human Rights.

Article 18 of the provisional Constitution of the Republic of Indonesia has been discussed above.

In a session of the House of Representatives, the Government of the Republic of Indonesia explained that articles 18 and 43 do not limit any efforts to develop the religions existing in Indonesia. However, as the Government does not desire to create the impression that it is advocating a change of religion, article 18 has been given its present form. In the opinion of the Government, articles 18 and 43, paragraph 2, guarantee the right to change one's religion; they do not at all limit the right to develop any religion or the right to educate children in the belief of their parents.

Furthermore, it is significant to note that No. 7 of the appendix to the Netherlands Indonesian Union Statute, which is still applicable to the new unitary Republic, contains the same provision as article 18 of the provisional Constitution of the Republic of the United States of Indonesia. For these reasons, also on the basis of aforementioned provision of the Union Statute, the freedom to change one's religion is still guaranteed in Indonesia.

Article 19 of the provisional Constitution of the Republic of Indonesia is similar to article 19 of the provisional Constitution of the Republic of the United States of Indonesia, adapted from article 19 of the Universal Declaration of Human Rights.

Article 20 of the provisional Constitution of the Republic of Indonesia slightly differs from the text of article 20 of the provisional Constitution of the Republic of the United States of Indonesia, adapted from article 20, paragraph 1, of the Universal Declaration of Human Rights. The words: "peaceful assembly and association" in the former article have been replaced by the words: "assembly and association" only, while the words: "as far as necessary guaranteed by law" were replaced by: "stipulated by law".

The "Elucidation to the Parliament on the Provisional Constitution" declares that although no legislation to this effect has been enacted, the abovementioned right may be exercised, as it has been recognized by the provisional Constitution.

To the proposal of a member of the House of Representatives to replace the word "stipulated" by "guaranteed", the Government replied that the right to assembly had been guaranteed by the Constitution. Considering the relationship between Constitution and statutory laws, it is self-evident that this guarantee is to be provided in the Constitution. Legislation covering the right to assembly will be enacted to meet the provision contained in article 33 of the provisional Constitution.

Article 21 of the provisional Constitution of the Republic of Indonesia contains the right to demonstrate and to strike, a new right which was included neither in the provisional Constitution of the (former) Republic of Indonesia nor in the provisional Constitution of the Republic of the United States of Indonesia. The Universal Declaration of Human Rights does not contain this right either, though it is included in certain constitutions promulgated after World War II. Thus, article 40 of the Italian Constitution of 22 December 1947 and the preamble of the French Constituion of 27 October 1946 both recognize the right to strike within the framework of the law governing this right. The Constitution of the Union of Soviet Socialist Republics of 5 December 1936 also contains a provision in article 125, which, amongst others, "in conformity with the interests of the working people, and in order to strengthen the socialist system," guarantees the citizens of the Union of Soviet Socialist Republics the right to "freedom of street processions and demonstrations".[1]

With reference to the right to demonstrate and strike, the "Elucidation to the Parliament on the Provisional Constitution" also states that although no legislation to this effect has been enacted, this right may be exercised, as it has been recognized by the provisional Constitution. Legislation covering this subject will be enacted to meet the requirements of article 33 of the provisional Constitution.

Article 22 of the provisional Constitution of the Republic of Indonesia originates from article 21 of the provisional Constitution of the Republic of the United States of Indonesia, with the following modifications and additions:

The word "everyone" has been replaced by the words "all persons". In addition, the right mentioned in this article may now be exercised individually as well as "in association with others". This is in accordance with Indonesian common law, under which the people collectively have the right to lodge complaints freely with or present petitions to the public authorities.

The words "competent authority" in article 21 of the provisional Constitution of the Republic of the United States of Indonesia have been replaced by the word "authorities", since in every legal system the word "authority" means the competent authority.

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[1] See *Yearbook on Human Rights for 1947*, p. 307.

The contents of this article are in line with the draft article on petitions in United Nations document A/C.3/306 of 25 October 1948.

Article 23 of the provisional Constitution of the Republic of Indonesia is similar to article 22 of the provisional Constitution of the Republic of the United States of Indonesia, adapted from article 21, paragraphs 1 and 2, of the Universal Declaration of Human Rights.

Article 24 of the provisional Constitution of the Republic of Indonesia is similar to article 23 of the provisional Constitution of the Republic of the United States of Indonesia, with a slight difference in the original Indonesian text as far as the last word of this article is concerned. However, the wording indicates the same in both texts, and there is no difference in the English translation.

Article 25 of the provisional Constitution of the Republic of Indonesia is similar to article 24 of the provisional Constitution of the Republic of the United States of Indonesia. Paragraph 1 of this article is in line with the contents of article 7, paragraph 2, of the Universal Declaration of Human Rights and stipulates that there shall be no discrimination based on race, colour, religion or origin. The "different social needs and wants in respect of law of the population" mentioned in paragraph 2 of this article refers to existing differences. The "Elucidation to the Parliament on the Provisional Constitution" declares that the Government, far from intending to create new differences, earnestly hopes that the existing differences may be gradually eliminated or at least reduced.

Paragraphs 1 and 2 of article 26 of the provisional Constitution of the Republic of Indonesia are similar to paragraphs 1 and 2 of article 25 of the provisional Constitution of the Republic of the United States of Indonesia, adapted from article 17, paragraphs 1 and 2, of the Universal Declaration of Human Rights.

Paragraph 3 of this article is a new provision as mentioned above. The "Elucidation to the Parliament on the Provisional Constitution" states that the social function of the right to own property means that it should not be applied or maintained to the detriment of the general public interest.

In a session of the House of Representatives, the Government explained that ownership of property does not denote power, but the assumption of a social obligation. If necessary, the Government has the right to intervene when this right has been abused contrary to the general interest. In another declaration to the House of Representatives the Government explained that paragraph 3 should be interpreted as follows: "The right to own property invests a social function."

Article 27 of the provisional Constitution of the Republic of Indonesia is similar to article 26 of the provisional Constitution of the Republic of the United States of Indonesia.

Article 28 of the provisional Constitution of the Republic of Indonesia is a revision of article 27 of the provisional Constitution of the Republic of the United States of Indonesia, adapted from article 23, paragraphs 1, 2 and 3, of the Universal Declaration of Human Rights.

The revised text of paragraph 1 is based on the wording of article 27, paragraph 2, of the provisional Constitution of the (former) Republic of Indonesia.

Article 29 of the provisional Constitution of the Republic of Indonesia is similar to article 28 of the provisional Constitution of the Republic of the United States of Indonesia, adapted from article 23, paragraph 4, of the Universal Declaration of Human Rights.

However, instead of "the protection of his interests" in the text of the latter, the text of the provisional Constitution reads: "the protection *and the promotion* of his interests".

Paragraph 1 of article 30 of the provisional Constitution of the Republic of Indonesia originates from article 31, paragraph 1, of the provisional Constitution of the (former) Republic of Indonesia and is in accordance with the first sentence of article 26, paragraph 1, of the Universal Declaration of Human Rights.

Paragraph 2 of this article is similar to article 29, paragraph 2, of the provisional Constitution of the Republic of the United States of Indonesia, while paragraph 3 is similar to article 29, paragraph 1, of the provisional Constitution of the Republic of the United States of Indonesia.

Article 31 of the provisional Constitution of the Republic of Indonesia is similar to article 30 of the provisional Constitution of the Republic of the United States of Indonesia, with the addition that this right does not eliminate the supervision to be exercised by public authority in accordance with the law.

Article 32 of the provisional Constitution of the Republic of Indonesia is similar to article 31 of the provisional Constitution of the Republic of the United States of Indonesia, with the exception of the words "lawful and lawfully acting public authorities" which were replaced by "public authorities". In a session of the House of Representatives, the Government explained that "authority" implies "lawful authority" and that any authority should act lawfully. For this reason it is self-evident that "obedience to the public authorities" means "obedience to the lawful and lawfully acting public authorities".

Article 33 of the provisional Constitution of the Republic of Indonesia has a similar meaning to article 32 of the provisional Constitution of the Republic of the United States of Indonesia. The limitations which have to be observed by the legislature when defining legally the rights and freedoms enumerated in section V are clearly outlined in this article.

The "Elucidation to the Provisional Constitution" states that this article amongst others provides that limitations of rights and freedoms are not to be exercised arbitrarily or by making a distinction based on religion. This article is in accordance with article 29, paragraph 2, of the Universal Declaration of Human Rights.

Article 34 of the provisional Constitution of the Republic of Indonesia is similar to article 33 of the provisional Constitution of the Republic of the United States of Indonesia, adapted from article 30 of the Universal Declaration of Human Rights.

4. *Section VI: Fundamental Principles*

Article 35 of the provisional Constitution of the Republic of Indonesia is similar to article 34 of the provisional Constitution of the Republic of the United States of Indonesia. However, the words "if possible" in the original Indonesian text of article 34 of the provisional Constitution of the Republic of the United States of Indonesia, which were not contained in the English text, have been omitted.

This article is in accordance with article 21, paragraph 3, of the Universal Declaration of Human Rights.

The revised text of article 36 as it appears in the provisional Constitution of the Republic of Indonesia is similar to article 35 of the provisional Constitution of the Republic of the United States of Indonesia.

The principle of social security dealt with in this article is to be found in the first part of article 22 of the Universal Declaration of Human Rights.

The revised text of article 37, paragraph 1, as it appears in the provisional Constitution of the Republic of Indonesia is similar to article 36, paragraph 1, of the provisional Constitution of the Republic of the United States of Indonesia.

Paragraph 2 is similar to article 36, paragraph 2, of the provisional Constitution of the Republic of the United States of Indonesia.

Article 39, paragraph 1, of the provisional Constitution of the Republic of Indonesia is similar to article 37 of the provisional Constitution of the Republic of the United States of Indonesia, adapted from article 16, paragraph 3, of the Universal Declaration of Human Rights.

Paragraph 2 of article 39 originates from the provisional Constitution of the (former) Republic of Indonesia and is similar to article 34 of this Constitution.

Article 40 of the provisional Constitution of the Republic of Indonesia is similar to article 38 of the provisional Constitution of the Republic of the United States of Indonesia; the first part contains a principle similar to that embodied in article 27, paragraph 1, of the Universal Declaration of Human Rights.

Article 41 of the provisional Constitution of the Republic of Indonesia, in its present revised form, is similar to article 39 of the provisional Constitution of the Republic of the United States of Indonesia.

A decided difference between article 41, paragraph 4, of the provisional Constitution of the Republic of Indonesia and article 26, paragraph 1, third sentence, of the Universal Declaration of Human Rights may appear to exist. To understand this difference, however, it is necessary to view the text of the provisional Constitution against the background of the present conditions in Indonesia.

Article 42 of the provisional Constitution of the Republic of Indonesia is similar to article 40 of the provisional Constitution of the Republic of the United States of Indonesia.

Paragraphs 1 and 2 of article 43 of the provisional Constitution of the Republic of Indonesia have been adapted from article 29, paragraphs 1 and 2, of the provisional Constitution of the (former) Republic of Indonesia.[1] The first part of paragraph 3 and the whole paragraph 4 have been adapted from article 41, paragraphs 1 and 2, of the provisional Constitution of the Republic of the United States of Indonesia. The second part of paragraph 3 contains the new fundamental principle of equal rights of all religions to public aid given in any form.

II. Text

PREAMBLE

Since independence is the birthright of every nation, and any form of colonialism in the world is contrary to humanity and justice, all colonialism must be eradicated.

Our struggle for an independent Indonesia has been victorious, and the Indonesian people have achieved a free Indonesian State whose ideals are independence, unity, sovereignty, justice and prosperity.

Having arrived at this stage, thanks to God's blessings and by His mercy, our independence is ordained and established under the Charter of our Unitary Republican State, based on the recognition of the Divine Omnipotence, Humanity, National Consciousness, Democracy and Social Justice;

So that we may enjoy prosperity, peace and freedom in our nation—the sovereign constitutional State of Free Indonesia—governed by justice.

CHAPTER I

THE STATE OF THE REPUBLIC OF INDONESIA

Section I

THE FORM OF GOVERNMENT AND SOVEREIGNTY

Art. 1. 1. The independent and sovereign Republic of Indonesia is a democratic state of unitary structure, governed by justice.

[1] See also pp. 149 and 150 and article 18.

2. The sovereign authority of the Republic of Indonesia is vested in the people and is exercised by the Government together with the House of Representatives.

Section IV

CITIZENSHIP AND RESIDENTS OF THE STATE

Art. 5. 1. The law defines the citizenship of the Republic of Indonesia.

2. Naturalization is effectuated by law or in virtue of the law.

The law stipulates the consequences of naturalization as regards the wife and the children of minor age of the person naturalized.

Art 6. Residents of the State are they who reside in Indonesia in accordance with rules laid down by law.

Section V

FUNDAMENTAL HUMAN RIGHTS AND FREEDOMS

Art. 7. 1. Everyone is recognized as a person before the law.

2. All are entitled to equal treatment and equal protection under the law.

3. All are entitled to equal protection against any discrimination and against any incitement to such discrimination.

4. Everyone has the right to effective remedy by the competent tribunals for acts violating the fundamental right granted him by the law.

Art. 8. All persons within the territory of the State are entitled to equal protection of person and property.

Art. 9. 1. Everyone has the right of freedom of movement and residence within the borders of the State.

2. Everyone has the right to leave the country and—being a citizen or resident—to return thereto.

Art. 10. No one shall be held in slavery, servitude or bondage.

Slavery, the slave trade and bondage, and any actions in whatever form giving rise thereto are unlawful.

Art. 11. No one shall be subjected to torture, or to cruel, inhuman or degrading treatment or punishment.

Art. 12. No one shall be arrested or detained unless by order of the authority declared competent by law and in the cases and the manner prescribed by law.

Art. 13. 1. Everyone is entitled in full equality to a fair and public hearing by an impartial tribunal for the determination of his rights and obligations and of any criminal charge against him.

2. No person shall against his will be denied the judge assigned to him as a consequence of the law.

Art. 14. 1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he enjoys all the guarantees prescribed necessary for his defence.

2. No one shall be prosecuted or sentenced unless by virtue of a law applicable to him at the time the penal offence was committed.

3. In the event of a revision of the law referred to in the preceding paragraph, the provision most favourable to the accused shall be applied.

Art. 15. 1. No transgression or crime shall be made punishable by total forfeiture of the property of the offender.

2. No sentence may cause civic death or the loss of all civic rights.

Art. 16. 1. Everyone's home is inviolable.

2. To enter a compound or a dwelling against the occupant's will shall be permitted only in those cases provided for in a law applicable to him.

Art. 17. The freedom and secrecy of correspondence are inviolable except by order of a judge or other authority declared competent by law and in the cases defined by that law.

Art. 18. Everyone is entitled to freedom of religion, conscience and thought.

Art. 19. Everyone has the right to freedom of opinion and expression.

Art. 20. The right of all residents to freedom of assembly and association is recognized and shall be stipulated by law.

Art. 21. The right to demonstrate and to strike work is recognized and shall be stipulated by law.

Art. 22. 1. All persons have the right, individually as well as in association with others, freely to lodge complaints with the public authorities, either orally or in writing.

2. All persons have the right, individually as well as in association with others, to present petitions to the public authorities.

Art. 23. 1. Every citizen has the right to take part in the government, directly or by means of representatives freely elected in accordance with a procedure established by law.

2. Every citizen shall be eligible for appointment to any public office. Aliens may be appointed to public office in accordance with rules laid down by law.

Art. 24. Every citizen has the right and the duty to take an active share in the national defence.

Art. 25. 1. The authorities shall not attach any advantages or disadvantages to the fact that citizens belong to a particular group of the population.

2. The different social needs and wants in respect of law of the population shall be taken into account.

Art. 26. 1. Everyone has the right to own property individually, as well as in association with others.

2. No one shall be arbitrarily deprived of his property.

3. Property is a social function.

Art. 27. 1. Expropriation of any property or right for the general benefit cannot take place except with indemnification and in accordance with regulations as established by law.

2. If any property has to be destroyed by public authority or has to be rendered useless either permanently or temporarily for the general benefit, such actions can be taken only with indemnification and in accordance with regulations as established by law, unless this law stipulates to the contrary.

Art. 28. 1. Every citizen according to his ability has the right to work worthy of a human being.

2. Everyone has the right to free choice of occupation and to just conditions of work.

3. Everyone has under equal conditions the right to equal pay for equal work and to equally favourable labour contracts.

4. Everyone who works has the right to a just remuneration, ensuring an existence consistent with human dignity for himself and his family.

Art. 29. Everyone has the right to form and to join trade unions for the protection and the promotion of his interests.

Art. 30. 1. Every citizen is entitled to education.

2. The choice of education is free.

3. Teaching is free, except for the supervision to be exercised by public authority in accordance with the law.

Art. 31. The freedom is recognized to perform social and charitable work, to found organizations for this purpose, as well as for private education and to acquire and own property to these ends, except for the supervision to be exercised by public authority in accordance with the law.

Art. 32. Everyone in the territory of the State owes obedience to the law, common law included, and to the public authorities.

Art. 33. The limitations on the exercise of rights and freedoms described in this section can only be imposed by regulations as established by law, exclusively for the purpose of securing the indispensable recognition and respect for the rights and freedoms of others and to comply with the just requirements of public order, morality and welfare in a democratic community.

Art. 34. No provision in this section may be interpreted as implying for any public authority, group or person any right to engage in any activity or to perform any act aiming at the destruction of any of the rights or freedoms set forth herein.

Section VI

FUNDAMENTAL PRINCIPLES

Art. 35. The will of the people is the basis of public authority. This will is expressed in periodic and genuine elections which are held by universal and equal suffrage and by secret vote or by equivalent free voting procedure.

Art. 36. The authorities shall promote social security and social guarantees, and shall particularly promote the securing and guaranteeing of favourable conditions of labour, checking and preventing unemployment and establishing old-age provisions and care for widows and orphans.

Art. 37. 1. The raising of the people's prosperity is an object of continuous concern of the authorities, the aim at all times being that everyone be ensured a standard of living in accordance with human dignity for himself and his family.

2. Except for restrictions to be imposed by law for the general benefit, the opportunity shall be given to all, in accordance with their nature, aptitude and ability to take part in the development of the sources of prosperity of the country.

3. The authorities shall prevent, in accordance with rules to be laid down by law, the existence of organizations monopolistic in character and harmful to the national economy.

Art. 38. 1. The national economy shall be organized on a co-operative basis.

2. Branches of production of importance to the State and which vitally affect the life of the people, shall be controlled by the State.

3. Land and water and the natural riches contained therein shall be controlled by the State and exploited for the greatest benefit of the people.

Art. 39. 1. The family is entitled to protection by society and the State.

2. The State shall provide for the needs of the poor and waifs.

Art. 40. The authorities shall protect cultural, artistic and scientific freedom. Upholding this principle, the authorities shall promote the national development of culture and of the arts and sciences wherever they are able to do so.

Art. 41. 1. The authorities shall promote the spiritual and physical development of the people.

2. The authorities shall in particular aim at the speediest possible abolition of illiteracy.

3. The authorities shall provide for the need of public education, with, as its basic objects, the deepening of national consciousness, the strengthening of the unity of Indonesia, the stimulation and deepening of the sense of humanity, of tolerance and of equal respect for everyone's religious conviction, and the provision within school hours of the opportunity for religious teaching in accordance with the parents' wishes.

4. As regards elementary education, the authorities shall aim at a speedy introduction of general compulsory education.

5. The pupils of the private schools which comply with the standards of efficiency laid down by law for public education have the same rights as accorded to pupils of public schools.

Art. 42. The promotion of public hygiene and public health shall be an object of continuous concern of the authorities.

Art. 43. 1. The State is founded on the belief in the Divine Omnipotence.

2. The State guarantees the freedom of every resident to profess his own religion and to worship according to his religion and belief.

3. The authorities give equal protection to all recognized religious denominations and organizations.

Aid in any form given by the authorities to ministers of religion and to religious denominations or organizations shall be rendered on the basis of equality.

4. The authorities shall see to it that all religious denominations and organizations obey the law—common law included.

CHAPTER II

THE ORGANS OF THE STATE

Section II

THE HOUSE OF REPRESENTATIVES

Art. 56. The House of Representatives, representing the whole Indonesian people, consists of a membership the number of which is determined on the basis of one representative to every 300,000 residents of Indonesian citizenship, without prejudice to the provision in the second paragraph of article 58.

Art. 57. The members of the House of Representatives are elected in a general election by Indonesian citizens who fulfil the conditions, and in accordance with rules to be laid down by law.

Art. 58. 1. The Chinese, European and Arab minority groups shall be represented in the House of Representatives by at least 9, 6 and 3 members respectively.

2. If these numbers are not attained by election in accordance with the law as referred to in article 57, the Government of the Republic of Indonesia shall appoint additional representatives of these minorities. The number of the membership of the House of Representatives referred to in article 56 shall then, if necessary, be increased by the number of these appointments.

Art. 60. Indonesian citizens who have attained the age of twenty-five years and who have not been debarred from suffrage or from the exercise thereof and who have not been deprived of the right to be elected, can be members of the House of Representatives.

. . .

CHAPTER V

THE CONSTITUENT ASSEMBLY

Art. 134. The Constituent Assembly, together with the Government, shall enact as soon as possible the Constitution of the Republic of Indonesia, which shall replace this provisional Constitution.

Art. 135. 1. The Constituent Assembly shall have a membership, the number of which shall be determined on the basis of one representative to every 150,000 residents of Indonesian citizenship.

2. The members of the Constituent Assembly shall be elected by Indonesian citizens in general elections and by free and secret vote, in accordance with regulations to be laid down by law.

3. The provisions of article 58 shall also apply to the Constituent Assembly, with the proviso that the number of the representatives referred to shall be doubled.

Art. 136. The provisions in articles 60 . . . are correspondingly applicable to the Constituent Assembly.

. . .

CHAPTER VI

CHANGES, TRANSITIONAL AND FINAL PROVISIONS

Section III

FINAL PROVISIONS

Art. 145. Immediately after this Constitution becomes valid, the Government shall institute one or more commissions which shall be entrusted with the task of promoting, in general, the adaptation of the existing legislation to the Constitution, in accordance with the Government's instructions.

Art. 146. Immediately after the Constitution becomes valid, the Government shall, by reorganizing the existing powers, implement a complete State organization so as to carry into effect the constitutional principles which are basic to the national fighting spirit.

. . .

IRAN

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS[1]

During the year 1950, no new laws were promulgated concerning human rights; nor were laws amended relating to human rights.

Several court decisions which present an interest for the development of human rights were given during 1950.

(1) In accordance with laws in force in Iran, the principle *nulla poena sine lege* is applicable. During 1950, two decisions of the *Cour de Cassation* gave new force to this provision.

A. A penal court convicted and sentenced to six months' imprisonment a guardian accused of criminal breach of trust in respect of property belonging to a minor. The court of appeal confirmed the judgment of the penal court. The *Cour de Cassation*, however, reversed the judgment, and quashed the conviction on the ground that the penal court had based its judgment on a law enacted after the offence had been committed.

B. A driver was convicted of manslaughter by a penal court and sentenced to two years' imprisonment and a fine of 10,000 rials. The *Cour de Cassation* quashed the conviction on the ground that the law on which the penal court based its decision was promulgated after the offence had been committed.

(2) In accordance with a law of 18 July 1933, the courts of Iran are bound to apply such usages and customs of those Iranians who do not adhere to the Shiite sect and whose religion is officially recognized as govern their personal status, and testate and intestate succession, except when the application of this rule would be repugnant to the principles of public policy. A police court consulted a rabbi on a question relating to the inheritance of a Jewish person. The *Cour de Cassation* reversed the decision reached by the lower court in reliance upon this evidence, and declared that the court was bound to apply the established usages and customs of persons adhering to the Jewish religion and should not have been satisfied with consulting a rabbi before inquiring into such usages and customs as were well established.

[1] This note is based on information received through the courtesy of Dr. A. Matine-Daftary, Senator, Professor in the Faculty of Law of the University of Teheran, President of the Iranian Association of the United Nations.

IRAQ

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS[1]

No laws were enacted or regulations issued during the year 1950 which have a relation to human rights, with the exception of law No. 1 of 1950 concerning the voluntary relinquishment of Iraqi nationality.

No decisions of importance for the development of human rights were rendered by Iraqi courts during the year 1950.

[1] Information received through the courtesy of the Acting Permanent Representative of Iraq to the United Nations.

IRELAND

LEGISLATION

AGRICULTURAL WORKERS (HOLIDAYS) ACT, 1950[1]

Act No. 21 of 1950

AN ACT TO MAKE PROVISION FOR THE ALLOWANCE OF HOLIDAYS TO AGRICULTURAL WORKERS AND TO PROVIDE FOR CERTAIN OTHER MATTERS CONNECTED THEREWITH (26 JULY 1950)

3. (1) In each year, an agricultural employer shall allow to an agricultural worker holidays to the following extent:

(*a*) Six holidays where the worker is continuously employed by him during that year, or

(*b*) One holiday in respect of each period in that year of two months' duration during which the worker is continuously employed by him.

(2) Where a worker is entitled to three or more holidays under this section, the holidays shall be allowed on consecutive days.

(3) The holidays to be allowed in respect of any year or period in a year shall be allowed before the end of the year, and, if the employment terminates during the year, the holidays shall be allowed before it terminates.

(4) Sundays and such half-holidays, church holidays and public holidays as may be allowed to the worker by arrangement with his employer shall not be reckoned as holidays for the purposes of this Act.

(5) Subject to the other provisions of this section, the worker and his employer may make such arrangements as they think fit for the allowance of holidays.

(6) Interruptions of employment not exceeding in the aggregate eight days in any period of two months shall not be regarded as breaking the continuity of employment, provided that the worker did not work for any other agricultural employer on those days.

(7) Where a worker, instead of taking holidays which he is to be allowed under this section, remains at work with his employer's consent, the employer shall be deemed to have allowed the holidays to the worker if he pays him holiday remuneration in respect of them, in addition to wages, before the end of the year in which the holidays are to be allowed, or, if the employment terminates during the year, before it terminates.

4. (1) An agricultural employer who is required under this Act to allow holidays to an agricultural worker shall pay to the worker in respect of those holidays a sum in lieu of wages, in this Act referred to as "holiday remuneration", calculated at not less than the appropriate minimum rate fixed by order under section 5.

(2) Holiday remuneration shall become payable on the day before the holidays begin.

(3) Where a worker ceases to be employed without having been allowed a holiday to which he had become entitled under this Act, the employer shall thereupon pay to him a sum, in this Act also referred to as "holiday remuneration", equal to the holiday remuneration in respect of that holiday.

5. The power conferred on the Board[2] by section 17 of the Agricultural Wages Act, 1936 (No. 53 of 1936), to make orders fixing minimum rates of wages shall extend to the making of orders fixing minimum rates of holiday remuneration, and the provisions of that Act relating to orders under that section shall apply accordingly.

[Section 6 deals with offences committed under this Act, and section 7 with the procedure for the recovery of holiday remuneration in case of a default in payment of such remuneration.]

8. The annual report which the Board is required by section 21 of the Agricultural Wages Act, 1936, to make to the Minister for Agriculture shall include a report of their proceedings under this Act.

. . .

[1] English and Irish texts received through the courtesy of the Embassy of Ireland, Washington.

[2] According to section 2 of the Act "the Board" means the Agricultural Wages Board.

JUDICIAL DECISION

RIGHT TO PROPERTY—CONSTITUTIONAL GUARANTEE—PROPERTY IN HANDS OF TRUSTEES—STATUTE DIVESTING TRUSTEES OF TITLE TO PROPERTY—VALIDITY OF STATUTE—CONSTITUTION OF IRELAND

BUCKLEY AND ORS *v.* ATTORNEY-GENERAL OF IRELAND AND POWER

Supreme Court of Justice[1]

6 August 1947

The facts. The trustees of the Sinn Fein Organization had in their hands certain sums of money which they were holding and applying in accordance with the trusts established by the Organization. Controversies having arisen in the Organization owing to political differences arising out of the ratification of the agreement between the United Kingdom and the Irish Free State of 6 December 1921, the trustees were unable to determine who were the persons interested in or entitled to the trust moneys. The officers of the Organization instituted an action against the personal representative of the surviving trustee and the Attorney-General of Ireland for a declaration that they were entitled to the trust moneys. Before the action was brought to trial the legislature of Ireland (Oireachtas) enacted the Sinn Fein Funds Act, 1947, which vested the trust moneys in a board and stayed the proceedings instituted by the officers of the Organization. Pursuant to the Act, the Attorney-General applied to the High Court for an order dismissing the action brought by these officers. The Attorney-General's application was refused by the High Court and an appeal was, accordingly, brought to the Supreme Court of Justice.

Held: That the appeal should be dismissed. The Sinn Fein Funds Act, 1947, was repugnant to the solemn declarations as to the rights of private property contained in article 43 of the Constitution.

The Court said: "... The plaintiffs contend that the said Act contravenes the Constitution in that it is repugnant to the constitutional declarations and guarantees as to the fundamental rights of citizens of the State. ...

"The article upon which the argument before us principally turned is article 43, which deals with private property.[2]

"We do not feel called upon to enter upon an inquiry as to the foundation of natural rights or as to their nature and extent. They have been the subject-matter of philosophical discussion for many centuries. It is sufficient for us to say that this State, by its Constitution, acknowledges that the right to private property is such a right and that this right is antecedent to all positive law. This, in our opinion, means that man by virtue, and as an attribute, of his human personality is so entitled to such a right that no positive law is competent to deprive him of it, and we are of opinion that the entire article is informed by, and should be construed in the light of, this fundamental conception. Consistently with, and as an adjunct to, this recognition, the Constitution proclaims (1) that in a civil society such as ours the exercise of such rights should be regulated by principles of social justice, and (2) that, for this purpose, the State may pass laws delimiting the exercise of such rights so as to reconcile their exercise with the requirements of the common good.

"It was contended by counsel for the Attorney-General that the intendment and effect of article 43 (1), (2°), was merely to prevent the total abolition of private property in the State and that, consistently with that clause, it is quite competent for the Oireachtas to take away the property rights of any individual citizen or citizens. We are unable to accept that proposition. It seems to us that the article was intended to enshrine and protect the property rights of the individual citizen of the State, and that the rights of the individual are thereby protected, subject to the right of the State, as declared in clause 2, to regulate the exercise of such rights in accordance with the principles of social justice, and to delimit the exercise of such rights so as to reconcile their exercise with the exigencies of the common good.

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[1] English text of the decision received through the courtesy of the Irish Legation, Washington. Summary prepared by the United Nations Secretariat.

[2] This article provides as follows:

"1. 1°. The State acknowledges that man, in virtue o his rational being, has the natural right, antecedent to positive law, to the private ownership of external goods.

"2°. The State accordingly guarantees to pass no law attempting to abolish the right of private ownership or the general right to transfer, bequeath, and inherit property.

"2. 1°. The State recognizes, however, that the exercise of the rights mentioned in the foregoing provisions of this article ought, in civil society, to be regulated by the principles of social justice.

"2°. The State, accordingly, may as occasion requires delimit by law the exercise of the said rights with a view to reconciling their exercise with the exigencies of the common good."

"Clause 2 of this article introduces a principle of paramount importance. It recognizes, in the first instance, that the exercise of the rights of private property ought, in a civil society such as ours, to be regulated by the principles of social justice, and for this purpose (*i.e.* to give effect to the principles of social justice) the State may, as occasion requires, delimit by law the exercise of such rights so as to reconcile their exercise with the exigencies of the common good. In particular cases this may give rise to great difficulties. It is claimed that the question of the exigencies of the common good is peculiarly a matter for the legislature and that the decision of the legislature on such a question is absolute and not subject to or capable of being reviewed by the courts. We are unable to give our assent to this far-reaching proposition. If it were intended to remove this matter entirely from the cognizance of the courts, we are of opinion that it would have been done in express terms as it was done in article 45 with reference to the directive principles of social policy, which are inserted for the guidance of the Oireachtas, and are expressly removed from the cognizance of the courts.

"Article 15 (4) of the Constitution provides (1°) that the Oireachtas shall not enact any law which is in any respect repugnant to the Constitution or to any provision thereof, and (2°) that every law enacted by the Oireachtas which is in any respect repugnant to the Constitution or to any provision thereof, shall, to the extent only of such repugnancy, be invalid. Where it is alleged that a law is repugnant to the Constitution, the jurisdiction and duty to determine such question is expressly conferred on the High Court by article 34 (3) (2°) with appeal in all such cases to this court (article 34 (4) (4°)). This is a duty of fundamental importance which must be discharged in every case where such a question arises, however onerous that duty may be.

"In the present case there is no suggestion that any conflict had arisen, or was likely to arise, between the exercise by the plaintiffs of their rights of property in the trust moneys and the exigencies of the common good, and in our opinion it is only the existence of such a conflict and an attempt by the legislature to reconcile such conflicting claims that could justify the enactment of the statute under review.

"In the opinion of this court, the Sinn Fein Funds Act, 1947, is repugnant to the solemn declaration as to the rights to private property contained in article 43 of the Constitution, and, accordingly, we are of opinion that it was not within the power of the Oireachtas to pass such an Act. . . ."

ISRAEL

HUMAN RIGHTS IN ISRAEL[1]

During the year 1950, the Knesseth, as the legislature of Israel is known, continued its task of adapting the laws of the country to the requirements of a modern State. While the subject matter of many of these laws touches upon the scope of human rights as defined in the Universal Declaration of Human Rights, it has not been considered necessary here to include references to those of the new laws which merely amend existing legislation. On the other hand, several enactments have been passed dealing more squarely with fundamental aspects of the maintenance or the protection of human rights.

Among the laws relating to the dignity of the human personality, the most important yet adopted is the Age of Marriage Act, 5710—1950.[2] It will be recalled that matters of personal status, including marriage, to a certain extent, can fall within the jurisdiction of the religious courts, which, of course, apply religious law; or be governed by religious law even when arising in the civil courts. From this it follows that it is exceedingly difficult, if not impossible, for a secular legislative body to effect alterations in the substantive law. However, as all the courts, whether religious or civil, derive their power to exercise jurisdiction from the secular law of the land, the exercise by them of their jurisdiction must be in conformity with any general rules of law applicable to all persons by virtue of the general law of the land, whether civil or criminal. This dichotomy provided the key for the approach of the legislature to the problem of enacting a minimum age for marriage which would be somewhat higher than the minimum age recognized by the various systems of religious law, which is on the whole based on the age of puberty. Without affecting the essential validity of any marraige which would be valid in accordance with the appropriate legal system governing personal status in any given case, the Age of Marriage Act makes it a criminal offence for any person to marry, celebrate the marriage of, or give away in marriage (in the case of a parent or guardian) any woman under the age of seventeen years completed. Permission for the marriage of such a woman can, however, be granted by the appropriate district court (civil). At the same time, having regard to the fact that a marriage celebrated in violation of this Act is none the less valid, the law goes on to provide that the fact that a marriage has been celebrated in violation of this provision shall be a ground for its dissolution in the appropriate forms available under the relevant religious law. Such an action for dissolution may be initiated by the woman herself, or by her parents or guardians, or by a welfare officer of the State, in each case under various conditions as specified in the Act. The law also makes certain consequential amendments to the Criminal Code Ordinance.

In the same category of laws relating to the dignity of the human person comes the Abolition of Corporal Punishment Act, 5710—1950.[3] Introducing a fundamental change in the system of punishment of convicted persons, this law proclaims, in section 1:

"There is no corporal punishment in the State."

This Act also introduces consequential amendments to antecedent legislation, particularly the Criminal Code Ordinance.

A group of articles in the Universal Declaration on Human Rights deals with the right of asylum, nationality, and freedom of movement. In the year 1950 a start was made on the complex and interconnected problems of immigration and nationality. While immigration in general is regulated by the terms of the Immigration Ordinance, 1941, No. 5 of 1941,[4] under which Jewish immigration was controlled by a quota system, the Declaration of Independence of Israel[5] proclaimed that the State of Israel will be open for Jewish immigration and for the Ingathering of the Exiles, and already by section 13 (*a*) of the Law and Administration Ordinance of 1948[6] those provisions of the Immigration Ordinance which restricted the free flow of Jewish immigration were repealed, with retroactive effect.[7] This somewhat negative aspect has now been followed by a positive one in the Law of Return, 5710—1950,[8] in which the right of every Jew to come to Israel and to make his permanent home there is enshrined. This right is, of course, enforceable through the courts by means of the "order *nisi*" procedure described in last year's issue of this *Yearbook*. In

[1] This note was prepared by Mr. Shabtai Rosenne, Legal Adviser, Ministry for Foreign Affairs.

[2] Reproduced in the present *Yearbook*, p. 166. See also for the following, *Yearbook on Human Rights for 1949*, p. 123.

[3] *Reshumot, Sefer ha Hukkim* (Official Records, the Statute Book) No. 52, of 21 July 1950, p. 175.

[4] *Palestine Gazette* No. 1082, of 6 March 1941, Supplement No. 1, p. 6.

[5] Authorized English translation in *Laws of the State of Israel*, Vol. I (1948), p. 3.

[6] *Ibid.*, p. 7.

[7] The retroactive provisions legalized the status of the so-called "illegal immigrants"—*i.e.*, persons who entered the country in violation of the Immigration Ordinance.

[8] Reproduced in the present *Yearbook*, p. 163.

addition to establishing this right of immigration, the law provides for the complete civic equality between the new immigrants and the general body of the citizenry.

Finally, mention should be made of two laws of an exceptional character which have a bearing on the protection of human rights in time of war—namely, the Nazis and Nazi Collaborators Punishment Act 5710—1950,[1] which relates back to the Second World War, and the Crime of Genocide (Prevention and Punishment) Act 5710—1950[2] the object of which is to implement the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide of December 1948.[3]

[1] Reproduced in the present *Yearbook*, p. 163.

[2] Reproduced in the present *Yearbook*, below.

[3] See *Yearbook on Human Rights for 1948*, pp. 482–486.

In the period under review the courts have likewise made a substantial contribution to the clarification of the problems which we are discussing, especially in dealing with orders *nisi*. Most of these cases deal more with problems of a constitutional nature than with the nature of human rights, and for that reason it has not been thought necessary to include here more than a cursory mention of their existence. Thus among the topics upon which jurisprudence has been developed, generally speaking along the path already marked out by the common law, but at the same time with a heavy undercurrent of Talmudic and Rabbinic influence, are general aspects of the exercise of discretion by government officials, the jurisdiction of various quasi-judicial and administrative tribunals (including military courts and courts martial) and the fundamental elements of criminal responsibility.

THE CRIME OF GENOCIDE (PREVENTION AND PUNISHMENT) ACT, 1950[1]

1. (*a*) In this Act, "genocide" means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group (hereinafter referred to as "group"), as such:

(1) Killing members of the group;

(2) Causing serious bodily or mental harm to members of the group;

(3) Inflicting on the group conditions of life calculated to bring about its physical destruction, in whole or in part;

(4) Imposing measures intended to prevent births within the group;

(5) Forcibly transferring children of the group to another group.

(b) In sub-section (*a*) "child" means a person under eighteen years of age.

2. A person guilty of genocide shall be punishable with death: provided that if he committed the act constituting the offence under circumstances which, but for section 6, would exempt him from criminal responsibility or would be a reason for pardoning the offence, and he tried to the best of his ability to mitigate the consequences of the act, he shall be liable to imprisonment for a term of not less than ten years.

3. (*a*) A person guilty of any of the following acts shall be treated like a person guilty of genocide:

(1) Conspiracy to commit genocide;

(2) Incitement to commit genocide;

(3) Attempt to commit genocide;

(4) Complicity in genocide.

(*b*) The terms "conspiracy", "incitement" and "attempt" in sub-section (*b*) shall be construed with reference to the provisions of the Criminal Code Ordinance, 1936.[2]

(*c*) For the purpose of sub-section (*a*) (4), a person shall be deemed to be an accomplice in genocide if he is so deemed under section 23 (1) (*b*), (*c*) or (*d*) of the Criminal Code Ordinance, 1936."[2]

4. A person guilty of an offence under this Law shall be punished whether he is a constitutionally responsible ruler, a member of a legislative body, a public official or a private individual.

5. A person committing outside Israel an act which is an offence under this Act may be prosecuted and punished in Israel as if he had committed the act in Israel.

6. The provisions of sections 16, 17, 18 and 19 of the Criminal Code Ordinance 1936, shall not apply to offences under this Act.[3]

7. The provisions of Part I of the Criminal Code Ordinance 1936, shall apply to offences under this Act in so far as this Act does not otherwise provide.

8. Notwithstanding anything contained in any other law, in considering the extradition of a person

[1] Hebrew text in *Reshumot*, *Sefer ha Hukkim* No. 42, of 7 April 1950, p. 137. Authorized English translation received through the courtesy of Mr. Shabtai Rosenne, Legal Adviser, Ministry for Foreign Affairs. This Act was passed by the Knesseth on 29 March 1950.

[2] *Palestine Gazette* No. 652, of 14 December 1936, Supplement I, p. 263.

[3] These provisions relate to the defence of the exercise of judicial function, constraint, necessity and justification.

charged with, or convicted of, genocide or any of the acts enumerated in section 3 (*a*), the plea that the offence with which such person is charged, or of which he has been convicted, is an offence of a political character, shall not be entertained.

9. The Minister of Justice is charged with the implementation of this Act.

10. This Act, which is consequent upon the Convention on the Prevention and Punishment of the Crime of Genocide,[1] adopted by the United Nations General Assembly on 7 Kislev 5709 (9 December 1948), signed on behalf of the State of Israel and, in accordance with a decision of the Knesseth, ratified by the State of Israel, shall come into force on the date of its publication in the *Official Records* and shall remain in force whether or not the Convention comes into or remains in force.

[1] *Conventions*, *5*, of 15 Kislev 5710 (6 December 1949), p. 66. See also *Yearbook on Human Rights for 1948*, pp. 482–486.

LAW OF RETURN, 1950[1]

1. Every Jew has the right to come to this country as an *oleh*.[2]

2. (*a*) *Aliyah*[3] shall be by oleh's visa.

(*b*) An oleh's visa shall be granted to every Jew who expresses his desire to settle in Israel, unless the Minister of Immigration is satisfied that the applicant—

(1) Is acting against the Jewish people, or

(2) Is likely to endanger public health or the security of the State.

3. (*a*) A Jew who comes to Israel and subsequent to his arrival expresses his desire to settle in Israel is entitled, while in Israel, to receive an oleh's certificate.

(*b*) The restrictions specified in section 2 (*b*) shall also apply to the grant of an oleh's certificate, but a person shall not be considered to be endangering public health on account of an illness contracted after his arrival in Israel.

4. Every Jew who came to this country as an oleh before the coming into force of this Act and every Jew born in this country, whether before or after the coming into force of this Act, shall have the same status as a person who comes to this country as an oleh under this Act.

5. The Minister of Immigration is charged with the implementation of this Act and may make regulations as to all matters relating to its implementation and also as to the grant of oleh's visas and oleh's certificates to minors up to the age of eighteen years.

[1] Hebrew text in *Reshumot*, *Sefer ha Hakkim* No. 51, of 6 July 1950, p. 159. Authorized English translation received through the courtesy of Mr. Shabtai Rosenne, Legal Adviser, Ministry for Foreign Affairs.

[2] *Oleh* (plural *olim*): a Jew immigrating to Israel for permanent residence.

[3] *Aliyah* (from the same root as *oleh*): immigration to Israel.

NAZIS AND NAZI COLLABORATORS (PUNISHMENT) ACT, 1950[1]

1. (*a*) A person who

(1) Has committed, during the period of the Nazi regime, in any enemy country, an act constituting a crime against the Jewish people;

(2) Has committed, during the period of the Nazi regime, in an enemy country, an act constituting a crime against humanity; or

(3) Has committed, during the period of the Second World War, in an enemy country, an act constituting a war crime,

is liable to the death penalty.

(*b*) In this section, "crime against the Jewish people" means any of the following acts, committed with intent to destroy the Jewish people in whole or in part:

(1) Killing Jews;

(2) Causing serious bodily or mental harm to Jews;

(3) Placing Jews in living conditions calculated to bring about their physical destruction;

(4) Imposing measures intended to prevent births among Jews;

(5) Forcibly transferring Jewish children to another national or religious group;

(6) Destroying or desecrating Jewish religious or cultural assets of value;

(7) Inciting to hatred of Jews;

"Crime against humanity" means any of the following acts: murder, extermination, enslavement, starvation or deportation and other inhumane acts

[1] Hebrew text in *Reshumot*, *Sefer ha Hukkim* No. 57, of 9 August 1950, p. 281. English text based on the authorized translation received through the courtesy of Mr. Shabtai Rosenne, Legal Adviser, Ministry for Foreign Affairs.

committed against any civilian population, and persecution on national, racial, religious or political grounds;

"War crime" means any of the following acts: murder, ill-treatment or deportation to slave labour or for any other purpose, of civilian population of or in occupied territory; murder or ill-treatment of prisoners of war or persons on the seas; killing of hostages; plunder of public or private property; wanton destruction of cities, towns or villages; and devastation not justified by military necessity.

2. If a person, during the period of the Nazi regime, committed in an enemy country an act by which, had he committed it in Israel territory, he would have become guilty of an offence under one of the following sections of the Criminal Code, and he committed the act against a persecuted person as a persecuted person, he shall be guilty of an offence under this Act and be liable to the same punishment as that to which he would have been liable had he committed the act in Israel territory:

(*a*) Section 152 (rape, sexual and unnatural offences);
(*b*) Section 153 (rape by deception);
(*c*) Section 157 (indecent act with force, etc.);
(*d*) Section 188 (child stealing);
(*e*) Section 212 (manslaughter);
(*f*) Section 214 (murder);
(*g*) Section 222 (attempt to murder);
(*h*) Section 235 (acts intended to cause grievous harm or prevent arrests);
(*i*) Section 236 (preventing escape from wreck);
(*j*) Section 238 (grievous harm);
(*k*) Section 240 (maliciously administering poison with intent to harm);
(*l*) Section 256 (abducting in order to murder);
(*m*) Section 258 (abducting in order to subject person to grievous hurt);
(*n*) Section 288 (robbing and attempted robbery);
(*o*) Section 293 (demanding property with menaces with intent to steal).

3. (*a*) A person who, during the period of the Nazi regime, in an enemy country, was a member of, or held any post or exercised any function in, an enemy organization is liable to imprisonment for a term not exceeding seven years.

(*b*) In this section, "enemy organization" means—

(1) A body of persons which, under article 9 of the Charter of the International Military Tribunal, annexed to the Four-Power Agreement of 8 August 1945, on the trial of the major war criminals, has been declared, by a judgment of that Tribunal, to be a criminal organization;

(2) Any other body of persons which existed in an enemy country and the object or one of the objects of which was to carry out or assist in carrying out measures of an enemy administration directed against persecuted persons.

4. (*a*) A person who, during the period of the Nazi regime, in an enemy country and while exercising some function in a place of confinement on behalf of an enemy administration or of the person in charge of that place of confinement, committed in that place of confinement an act against a persecuted person by which, had he committed it in Israel territory, he would have become guilty of an offence under one of the following sections of the Criminal Code, shall be guilty of an offence under this Act and be liable to the same punishment as that to which he would have been liable had he committed the act in Israel territory:

(1) Section 100 (c) (threatening violence);
(2) Section 162 (procuring defilement of females by threats, fraud or administering drugs);
(3) Section 241 (wounding and similar acts);
(4) Section 242 (failure to supply necessaries);
(5) Section 249 (common assault);
(6) Section 250 (assault causing actual bodily harm);
(7) Section 261 (unlawful compulsory labour);
(8) Section 270 (theft).

(*b*) "Place of confinement", in this section, means any place in an enemy country which, by order of an enemy administration, was assigned to persecuted persons, and includes any part of such a place.

5. A person who, during the period of the Nazi regime, in an enemy country, was instrumental in delivering up a persecuted person to an enemy administration, is liable to imprisonment for a term not exceeding ten years.

6. A person who, during the period of the Nazi regime, in enemy country, received or demanded a benefit—

(*a*) From a persecuted person under threat of delivering up him or another persecuted person to any enemy administration; or

(*b*) From a person who had given shelter to a persecuted person, under threat of delivering up him or the persecuted person sheltered by him to an enemy administration,

is liable to imprisonment for a period not exceeding seven years.

7. The provisions of the first part of the Criminal Code shall, save as this Act otherwise provides, apply to offences under this Act.

8. Sections 16, 17, 18 and 19 of the Criminal Code shall not apply to offences under this Act.[1]

9. (*a*) A person who has committed an offence under this Act may be tried in Israel even if he has already been tried abroad, whether before an international tribunal or a tribunal of a foreign State, for the same offence.

[1]These sections relate to the defence of the exercise of judicial function, constraint, necessity and justification.

(*b*) If a person is convicted in Israel of an offence under this Act after being convicted of the same act abroad, the Israel court shall, in determining the punishment, take into consideration the sentence which he has served abroad.

10. If a persecuted person has done or omitted to do any act, such act or omission constituting an offence under this Act, the court shall release him from criminal responsibility—

(*a*) If he did or omitted to do the act in order to save himself from the danger of immediate death threatening him and the court is satisfied that he did his best to avert the consequences of the act or omission; or

(*b*) If he did or omitted to do the act with intent to avert consequences more serious than those which resulted from the act or omission, and actually averted them;

however, these provisions shall not apply to an act or omission constituting an offence under sections 1 and 2(*f*).

11. In determining the punishment of a person convicted of an offence under this Act, the court may take into account, as grounds for mitigating the punishment, the following circumstances:

(*a*) That the person committed the offence under conditions which, but for section 8, would have exempted him from criminal responsibility or constituted a reason for pardoning the offence and that he did his best to reduce the gravity of the consequences of the offence;

(*b*) That the offence was committed with intent to avert, and was indeed calculated to avert, consequences more serious than those which resulted from the offence;

however, in the case of an offence under section 1, the court shall not impose on the offender a lighter punishment than imprisonment for a term of ten years.

12. (*a*) The rules of prescription laid down in the fifth chapter of the Ottoman Code of Criminal Procedure shall not apply to offences under this Act.

(*b*) No person shall be prosecuted for an offence under this Act, except an offence under sections 1 or 2(*f*), if twenty years have passed since the time of the offence.

13. The provisions of the General Amnesty Ordinance, 5709—1949,[1] shall not apply to offences under this Act.

14. A prosecution for an offence under this Act may be instituted only by the Attorney-General to the Government of Israel or his representative.

15. (*a*) In an action for an offence under this Act, the court may deviate from the rules of evidence if it is satisfied that this will promote the ascertainment of the truth and the just handling of the case.

(*b*) Whenever the court decides to deviate, under sub-section (*a*), from the rules of evidence, it shall place on record the reasons which prompted its decision.

16. In this Act,

"The period of the Nazi regime" means the period which began on the 3rd Shevat, 5693 (30 January 1933) and ended on the 25th Iyar, 5705 (8 May 1945);

"The period of the Second World War" means the period which began on the 17th Elul, 5699 (1 September 1939) and ended on the 5th Elul, 5705 (14 August 1945);

"The Allied Powers" means the states which signed the Declaration of the United Nations of 1 January 1942, or acceded to it during the period of the Second World War;

"Axis State" means a State which during the whole or part of the period of the Second World War was at war with the Allied Powers; the period which began on the day of the beginning of the state of war between a particular Axis State and the first, in time, of the Allied Powers and ended on the day of the cessation of hostilities between that State and the last, in time, of the Allied Powers, shall be considered as the period of the war between that State and the Allied Powers;

"Enemy country" means—

(*a*) Germany during the period of the Nazi regime;

(*b*) Any other Axis State during the period of the war between it and the Allied Powers;

(*c*) Any territory which, during the whole or part of the period of the Nazi regime, was *de facto* under German rule, for the time during which it was *de facto* under German rule as aforesaid;

(*d*) Any territory which was *de facto* under the rule of any other Axis State during the whole or part of the period of the war between it and the Allied Powers, for the time during which that territory was *de facto* under the rule of that Axis State as aforesaid;

"Enemy administration" means the administration which existed in an enemy country;

"Persecuted person" means a person belonging to a national, racial, religious or political group which was persecuted by an enemy administration;

"The Criminal Code" means the Criminal Code Ordinance, 1936.[2]

[1] *Official Gazette* No. 50, of 12th Shevat, 5709 (11 February 1949), Supplement I, p. 173.

[2] *Palestine Gazette* No. 652, of 14 December 1936, Supplement I, p. 285 (English edition).

AGE OF MARRIAGE ACT, 1950[1]

1. In this Act—

"Woman under marriage age" means a female person under the age of seventeen years completed;

"Marriage" includes celebration of marriage, and the verb "marry", in all its grammatical forms, shall be construed accordingly;

"Welfare officer" means a person appointed by the Minister of Welfare to be a welfare officer for the purposes of this Act.

2. A person who—

(*a*) Marries a woman under marriage age; or

(*b*) Celebrates, or in any capacity assists at or in connection with the celebration of, the marriage of a woman under marriage age; or

(*c*) Gives away in marriage a woman under marriage age, being his daughter or ward,

shall be liable to imprisonment for a term not exceeding two years or to a fine not exceeding six hundred pounds or to both such penalties.

3. (*a*) Where a marriage which is valid according to the law applicable to matters of personal status of the parties has been celebrated in contravention of section 2, the fact of its having been so celebrated shall be a ground for an action for dissolution of marriage by way of letter of divorce, annulment or in any other manner, as the law applicable to matters of personal status may provide.

(*b*) An action for the dissolution of a marriage on the ground mentioned in sub-section (*a*) may be filed by the wife or one of her parents or guardians or a welfare officer.

(*c*) Where an action for the dissolution of a marriage on the ground mentioned in sub-section (*a*) is filed otherwise than by a welfare officer, and the wife is under the age of eighteen years completed at the time of its being filed, and a welfare officer is of the opinion that the hearing of the action is a matter of general interest, such welfare officer may, at his discretion, appear at the hearing and plead thereat.

(*d*) No action for the dissolution of a marriage on the ground mentioned in sub-section (*a*) shall be entertained unless—

(1) It is filed by the wife while she is under the age of nineteen years completed; or

(2) It is filed by one of the wife's parents or guardians or a welfare officer while the wife is under the age of eighteen years completed.

4. In determining the punishment of a person convicted of an offence under paragraph (*a*) of section 2, the court shall take into account, as a ground for mitigating the punishment, the fact that—

(*a*) Such person has, upon the wife's demand, dissolved the marriage in accordance with the provisions of the law applicable to matters of personal status of the parties; or

(*b*) Such person has abided by a judgment of a competent court or tribunal for dissolution of the marriage.

5. (*a*) Where a woman under marriage age has borne child to a man or is pregnant by him, the district court in whose area of jurisdiction the place of residence of the woman is situated may, on the application of the woman or one of her parents or guardians, or of the man, permit her marriage to that man.

(*b*) The provisions of section 2 shall not apply where a marriage of a woman under marriage age is celebrated for which permission has been granted under sub-section (*a*).

[Section 6 provides for amendments of the Criminal Code Ordinance, 1936, in accordance with the foregoing provisions, and section 7 charges the Minister of Justice with the implementation of this Act.]

[1]Hebrew text in *Reshumot, Sefer ha Hukkim* No. 57, of 9 August 1950, p. 286. Authorized English translation received through the courtesy of Mr. Shabtai Rosenne, Legal Adviser, Ministry for Foreign Affairs.

ITALY

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS

1. Act No. 23, of 5 January 1950, modifies and ratifies legislative decree No. 1033, of 7 May 1948, containing rules for the reinstatement of university professors dismissed for political or racial reasons. Extracts from this Act are reproduced in the present *Yearbook*.

2. Act No. 64, of 23 February 1950, modifies the provisions on compulsory accident insurance for agricultural labourers. This Act was published in *Gazzetta Ufficiale* No. 63, of 16 March 1950. It provides for increased payments to agricultural workers temporarily disabled for a period of more than six days; to agricultural workers permanently disabled; and to widows and children of agricultural workers whose death has occurred as the result of an accident.

3. Act No. 375, of 3 June 1950, modifies the Act concerning obligatory placement of war invalids. This Act was published in *Gazzetta Ufficiale* No. 146, of 28 June 1950. It provides that war invalids capable of working be engaged by State, provincial and municipal authorities, railroads and private enterprises which employ more than ten persons; the Act regulates the percentage of jobs to be reserved for war invalids in each shop or plant.

4. Act No. 698, of 21 August 1950, establishes rules for the protection and assistance of deaf mutes. This Act was published in *Gazzetta Ufficiale* No. 207, of 9 September 1950. It provides for the creation and financing of a National Association for the protection and assistance of deaf mutes, under the supervision of the Ministry of the Interior. The Association shall aim at the integration of deaf mutes into the life of the community by helping them to participate in productive and intellectual pursuits, by developing their capacities in their post-school years, by promoting their employment in appropriate occupations, and by representing and protecting their moral and economic interests in co-operation with the public authorities, organizations and institutes which strive to assist, educate and develop mutual aid among deaf mutes.

5. Act No. 860, of 26 August 1950, provides for the protection of working mothers. This Act was published in *Gazzetta Ufficiale* No. 253, of 3 November 1950. The English translation of the Act is to be found in: International Labour Office, *Legislative Series*, 1950—Italy 2.

RATIFICATION, WITH AMENDMENTS, OF LEGISLATIVE DECREE No. 1033, OF 7 MAY 1948, CONCERNING SUPPLEMENTARY PROVISIONS TO THE REGULATIONS ON THE REINSTATEMENT OF UNIVERSITY TEACHERS FORMERLY DISMISSED FOR POLITICAL OR RACIAL REASONS[1]

Act No. 23, of 5 January 1950

Sole Article. Legislative Decree No. 1033, of 7 May 1948, is hereby ratified, with the following amendment:

Art. 1: Replace by the following:

"Existing provisions notwithstanding, university teachers formerly dismissed or otherwise removed from their posts for political or racial reasons shall be reinstated as members of university staffs, in accordance with provisional Legislative Decrees Nos. 255 and 264 (article 5) of 7 September 1944, provisional Legislative Decree No. 238 of 5 April 1945 and Royal Legislative Decree No. 535 of 27 May 1946, even if on the date of entry into force of this decree they do not satisfy the requirement of Italian citizenship, provided that in the State whose citizenship they have acquired Italian citizens are admitted to teaching posts in universities or university institutes.

"Reinstatement pursuant to the present article shall be effected within one year after the entry into force of this decree, provided that the person concerned applies within the specified period for reinstatement and that he ceased to satisfy the requirement of Italian citizenship before Royal Decree-Law No. 9 of 6 January 1944 came into force . . ."

[1] Italian text in *Gazzetta Ufficiale* No. 41, of 18 February 1950. English translation from the Italian text by the United Nations Secretariat.

JAPAN

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS[1]

PART I

LAWS AND AMENDMENTS TO LAWS AFFECTING HUMAN RIGHTS

A. Texts concerning Personal Liberties

Criminal Indemnity Act—Act No. 1, promulgated on 1 January 1950

The purpose of this Act is to implement the provisions regarding criminal indemnity contained in article 40 of the Constitution of Japan of 3 November 1946.[2] It constitutes a more effective guarantee than the former Criminal Indemnity Act (Act No. 60 of 1931).

The new Act broadens the grounds for criminal indemnity, which had formerly been limited to illegal arrest or detention purporting to have been made under the Code of Criminal Procedure, by providing for criminal indemnity in cases of illegal arrest or detention purporting to have been made under the Juvenile Act (Act No. 168 of 1948),[3] and the Economic Investigation Agency Act.

The rates of indemnity which were previously fixed to Y5 per day have been raised in the new Act to not less than Y200 and not more than Y400 per day. The Act further provides for the payment of the indemnity of not more than Y500,000 to the family of the innocent person on whom the death penalty has been executed, and, in addition to the indemnity of Y500,000, provides, upon the production of satisfactory proof, for the payment of compensation for the financial loss caused by the death of such person.

The new Act also extends the right to indemnity for illegal arrest and detention to any person who has been the subject of a public prosecution which has been subsequently discontinued. Indemnity will be paid where there are sufficient grounds for believing that, even if criminal proceedings had not been discontinued, the court would have returned a verdict of not guilty.[4]

Juvenile Amendment Act—Act No. 98, promulgated on 15 April 1950

Prior to the passing of this amendment there existed no legal provisions for the revocation of an order of the Family Court placing a juvenile under protective custody after the court had found on a consideration of subsequent evidence that it had no jurisdiction for the trial of the juvenile or that it had made a decision in the case of a juvenile under fourteen years of age notwithstanding the fact that such juvenile had not been referred to the court by the Governor of the Prefecture or the Director of the Child Welfare Department.

This legislative omission has been remedied in the Juvenile Amendment Act, which also provides that where the District Youth Offenders Prevention and Rehabilitation Commission, or the superintendent of the Home for Juvenile Training and Education, or the Protection Institution, or the superintendent of the reformatory discovers facts which indicate the existence of grounds for the revocation of an order placing a juvenile in protective custody, the family court shall be notified accordingly.

Reformatory Amendment Act[5]—Act No. 99, promulgated on 15 April 1950

This Act, which was drafted with the purpose of putting into application the year's experience since the coming into force of the principal Act, amalgamates Juvenile Detention Homes and Juvenile Classification Offices, the new institutions being known as Juvenile Detention and Classification Homes.

The minimum age-limit for the admission of juveniles into reformatories for persons of confirmed criminal tendencies has, in the present Act, been lowered from eighteen to sixteen years of age, since their admission, under the principal Act before its amendment, to reformatories for juveniles of the middle age-group restricted the reformative education of juveniles in the lower age-group between the ages of fourteen and sixteen years.

At the same time, the procedure for transferring inmates from one reformatory to another has been simplified for the convenience of reformative education.

[1] The selection of the legislative texts and judicial decisions indicated hereunder has been made by Mr. Alva C. Carpenter, Chief, Legal Section, General Headquarters of the Supreme Commander for the Allied Powers, Japan. The explanation of the Acts referred to in this note is based upon material supplied by Mr. Carpenter.

[2] Article 40 of the Constitution reads as follows: "A person, in case he is acquitted after he has been arrested or detained, may sue the State for redress as provided by law."

[3] See the summary of this Act in *Yearbook on Human Rights for 1948*, p. 125, and also the Amendments to this Act in *Yearbook on Human Rights for 1949*, p. 132.

[4] For a court decision illustrating the application of this provision of the Criminal Indemnity Act, see below, p. 174.

[5] For a summary of the Reformatory Act (Act No. 169 of 1948) see *Yearbook on Human Rights for 1948*, p. 125.

Broadcasting Act—Act No. 132, promulgated on 2 May 1950. Extracts from this Act are reproduced in the present *Yearbook*.

The purposes of this Act as stated in article 1 are:

(i) To secure the maximum availability and benefits of broadcasting to the people;

(ii) To ensure freedom of expression through broadcasting by guaranteeing the impartiality, integrity and autonomy of the broadcasting system; and

(iii) To make broadcasting contribute to the development of a healthy democracy by clarifying the responsibility of those persons engaged in broadcasting.

Article 3 of the Act prohibits any form of interference or regulation of broadcasting programmes except by virtue of the powers provided for by law.

Article 4 provides that if any statement alleged to be false is broadcast, any person injured thereby may demand an inquiry into the truth of his allegation and may require that a correction of the original statement be broadcast within two days after it has been determined that his allegation is well founded.

In accordance with article 45, the Broadcasting Corporation of Japan, which is a public corporation, must provide equal opportunities for all candidates to elective offices to broadcast their political views or to make speeches in their campaign for election. To secure the impartial administration of broadcasting a Radio Regulatory Commission has been established as a semi-independent agency by the Radio Regulatory Commission Establishment Act (Act No. 133 of 1950).

Local Autonomy Amendment Act—Act No. 143, promulgated on 4 May 1950

This amendment deals mainly with the prohibition of undesirable practices connected with the institutions of demand and recall. It contains penal provisions directed against persons who, with respect to the collection of signatures in petitions asking for the enactment, amendment, or abolition of a by-law of a local body, intimidate persons canvassing signatures for such petition or interfere with the public signing thereof by obstructing traffic or public meetings or by disturbing public speeches. The Act also imposes penalties on persons attempting by force to influence persons signing or canvassing for the signatures to such petitions by taking unfair advantage of such special interests as the lease of farm lands, contributions to shrines, temples, and trade unions with which they may be connected.

Nationality Act—Act No. 147, promulgated on 4 May 1950. Extracts from this Act are reproduced in the present *Yearbook*.

The most important changes effected by this Act in the previous law are the following:

(*a*) The former Nationality Act provided that the status of a married woman was dependent upon her husband's nationality. Previously, the marriage of an alien woman to a Japanese national automatically resulted in the acquisition of Japanese nationality by the wife; conversely, the loss or alteration of the husband's nationality affected the status of the wife correspondingly. In order to apply the new constitutional principle of the equality of the sexes, the present Act recognizes the independent status of married women with respect to the acquisition, change, and renunciation of nationality.

(*b*) The former rule that the nationality of children followed that of their parents was considered contrary to the constitutional emphasis upon the dignity of the individual. Accordingly, the present Act provides for the abolition of the acquisition of Japanese nationality by a child merely by virtue of recognition of parentage or adoption by Japanese nationals. The Act also provides that the nationality of a child shall not be affected merely by the acquisition or loss of nationality by his father or mother.

(*c*) The former provisions dealing with the old semi-feudal home (family) system have been omitted in the present Act, following upon the abolition of this system in the revised Civil Code.

(*d*) The present Act also omits provisions violating the principle of equality before the law, such as discrimination against naturalized citizens who under the former Act were not eligible as Ministers of State, as members of the Diet, or as President of the Supreme Court.

(*e*) To give effect to the provisions of article 22, paragraph 2, of the Constitution guaranteeing the freedom of all persons to divest themselves of their nationality[1] the requirements for the renunciation of nationality have been relaxed in the present Act. The approval of the Attorney-General is no longer a prerequisite for such renunciation.

NOTE. *Safeguards against Compulsory Self-incrimination*

Many statutes empower officials of certain administrative agencies to enter into private houses, offices, and business premises and there to inspect books and papers of corporations or individuals when such action is deemed necessary in order to ensure that businesses regulated by the statutes in question are being conducted in compliance with the law. The same statutes also require persons responsible for the conduct of such business concerns to answer such questions as may be asked by authorized agents and inspectors. Criminal penalties may be imposed on those who refuse to allow inspection or who refuse to answer such questions.

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[1] See *Yearbook on Human Rights for 1946*, p. 171.

Article 35 of the Constitution[1] guarantees the right of all persons to be secure in their homes, papers and effects and permits entries, searches, and seizures only upon judicial warrant. Such warrants have, however, not been considered necessary in the above-mentioned instances, because they are not carried out within the sphere of criminal procedure but are of a purely administrative nature. Because of the omission of a provision requiring a judicial warrant and because of the fact that refusal to submit to insepction and to testify has been made a punsihable offence, it has been apparent that information obtained in the course of these administrative inspections might be used as evidence in a subsequent criminal action. Such a procedure would not only be a circumvention of article 35, but also a clear violation of article 38, paragraph 1, of the Constitution, which guarantees that no person shall be compelled to testify against himself. Therefore, a safeguarding clause has been inserted in most statutes in question, providing that the authorization for administrative controls of the above-described character shall not be construed as authorization for the use in any subsequent criminal investigation of information received in the course of enforcing such controls.

Article 33, paragraph 4, of the Land Adjustment Commission Establishment Act (Act No. 292 of 1950); article 190, paragraph 3, of the Mineral Mining Act (Act No. 289 of 1950); article 42, paragraph 3, of the Stone Mining Act (Act No. 291 of 1950); article 56, paragraph 3, and article 786, paragraph 4, of the Local Tax Act (Act No. 226 of 1950); and article 17, paragraph 3, of the Poisons and Poisonous Medicines Control Act (Act No. 303 of 1950) are cases in point.

B. Texts concerning Social and Economic Rights

Labour Ministry Establishment Amendment Act—Act No. 120, promulgated on 1 May 1950.

This act makes provision for the establishment of a Training Institute for Inspectors of Labour Standards.

The function of this institute will be to train persons to carry out inspections in accordance with the Labour Standards Act (Act No. 49 of 1947).

Daily Life Security Act—Act No. 144, promulgated on 4 May 1950. Extracts from this Act are reproduced in the present *Yearbook*.

The purpose of this Act, as set forth in article 1, is to ensure that the State will provide assistance to all indigent citizens according to the degree of their need by guaranteeing a minimum standard of living and by encouraging such persons to be financially self-supporting. In comparison with the Livelihood Assistance Act (Act No. 17 of 1946), which previously regulated the provision of aid to indigent persons, the present Act makes an advance toward the realization of "the right to maintain the minimum standards of wholesome and cultured living" as enunciated in article 25 of the Constitution.[2] The Act declares the principles of non-discrimination and equal treatment according to which assistance will be granted; it makes provision for the granting of aid on application; and it creates machinery for the bearing of appeals from decisions with respect to such applications by persons dissatisfied with the payments of assistance made by protective agencies. It enlarges the scope of assistance by making provision for education and housing benefits, as well as for livelihood and occupational assistance and medical, maternity and funeral benefits. Benefits are payable only when, after the complete utilization of moneys and facilities available to the applicant and after recourse to such persons as may be under a legal obligation to support him further assistance is necessary. Under the Act, the mayor of a city, or the headman of a town or village board, is designated as the agency for determining applications for assistance and for providing benefits under the Act; the social welfare secretary is designated as an assistant (see also Act No. 182 of 1950 summarized below); and the District Welfare Commissioner is designated as an auxiliary agency: all these officials exercise their functions under the general supervision of governors of prefectures and the Ministry of Welfare.

The Housing Loan Corporation Act—Act No. 156, promulgated on 6 May 1950

The purpose of the Housing Loan Corporation established by this Act is stated in article 1 to be the provision of funds for the construction of dwelling units suitable for the maintenance of wholesome and cultured living as provided in article 25 of the Constitution.

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[1] This article reads as follows:

"The right of all persons to be secure in their homes, papers and effects against entries, searches, and seizures shall not be impaired except upon warrant issued for adequate cause, and particularly describing the place to be searched and things to be seized, or except as provided by Article 33."

Article 33 reads as follows:

"No person shall be apprehended except upon warrant issued by a competent judicial officer which specifies the offence with which the person is charged, unless he is apprehended, the offence being committed."

[2] See *Yearbook on Human Rights for 1946*, p. 172.

Social Welfare Secretaries Appointment Act—Act No. 182, promulgated on 15 May 1950

This Act authorizes the appointment of social welfare secretaries by prefectures, cities, towns and villages to assist in the administration by the government or by the mayor of the city, town or village respectively of the Daily Life Security Act (Act No. 144 of 1950, summarized above), the Child Welfare Act (Act No. 164 of 1947) and the Disabled Persons Welfare Act (Act No. 283 of 1949).[1] The Act prescribes the qualifications of social welfare secretaries and provides that the number to be appointed by any local body shall be determined in accordance with a local by-law in order that there may be sufficient social welfare secretaries to ensure the effective and economic administration of the above-mentioned Acts.

The Released Offenders Aid Act—Act No. 203, promulgated on 25 May 1950

The Act provides that those persons who are not eligible for aid under the Offenders Prevention and Rehabilitation Act[2] may, on their release from custody imposed by the sentence of a criminal court, receive from the State, or from local bodies or from prisoners aid societies rehabilitation assistance for return travel to their normal place of residence, for the loan of money or goods, for the provision of lodging accommodation, or for aid in obtaining employment. The Act further provides that only licensed prisoners aid societies may carry on rehabilitation work and stipulates that such rehabilitation work shall be under the supervision of the National Offenders Commission.

Rehabilitation Workers Act—Act No. 204, promulgated on 25 May 1950

In order to ensure the efficient operation of the Offenders Prevention and Rehabilitation Act, the present Act makes provision for the establishment of various standards for rehabilitation workers engaged in employment coming under the jurisdiction of District Youth Offenders Prevention and Rehabilitation Commissions and District Adult Offenders Prevention and Rehabilitation Commissions.

Child Welfare Amendment Act—Act No. 213, promulgated on 30 May 1950

The present Act amends the principal Act (Act No. 164 of 1947) by abolishing the homes for medical treatment established by that Act and setting up in their place separate homes for crippled children and for children of delicate health. The present Act also stipulates that the minimum standards required for the establishment and operation of child welfare agencies shall also be applicable to foster parents.

The Disaster Relief Amendment Act—Act No. 229, promulgated on 31 July 1950

The present Act contains certain amendments consequential upon the Local Tax Amendment Act. It facilitates the granting of subsidies from the national treasury in cases of disaster in order to meet such expenses for the relief of victims as may be necessary for their protection and the maintenance of social order.

C. Cultural Rights

Library Act—Act No. 118, promulgated on 30 April 1950

This Act makes regulations for libraries established by local public bodies and by private persons in accordance with the spirit of the Social Education Act (Act No. 207 of 1949) in order to contribute to the raising of the educational and cultural standards of the nation. It provides that libraries which have reached certain minimum standards and which are established by local public bodies shall be given subsidies by the State, provided that they do not charge any fee for admission.

Furthermore the Act respects the independence and autonomy of private libraries by prohibiting the payment of subsidies to them and by guaranteeing them against interference in their management by the State and local public bodies.

D. Electoral Rights

Public Officers Election Act—Act No. 100, promulgated on 15 April 1950

This Act consolidates previous legislation for the election of members of the House of Representatives, members of the House of Councillors, members of the Assemblies, chairmen of local bodies, and members of the Board of Education.

Its provisions, compared to those of previous statutes, extend voting rights, increase the number of persons eligible to vote and liberalize the requirements of residence for voters. It grants the right of suffrage to persons who have been convicted of an offence not related to elections if execution of the sentence has been suspended. It authorizes voting by proxy for the convenience of illiterate persons. It also extends the scope of lawful activities in electoral campaigns by allowing canvassing from house to house under certain specified conditions and by allowing publication in newspapers and magazines of news and comments on elections.

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[1] See *Yearbook on Human Rights for 1949*, p. 133.

[2] *Ibid.*, p. 131.

PART II

FINAL DECISIONS OF JAPANESE COURTS WHICH CONSTITUTE IMPORTANT DEVELOPMENTS IN THE FIELD OF HUMAN RIGHTS

A. Decisions on Human Rights in General

1. DECISIONS OF THE SUPREME COURT OF JAPAN

THE RIGHT OF THE INDIVIDUAL TO LIBERTY—INVIOLABILITY OF PRIVATE DWELLINGS—CONFLICT BETWEEN PRIVATE RIGHTS AND PUBLIC NEEDS—TRESPASS TO PROPERTY—ARTICLE 13 OF THE CONSTITUTION OF JAPAN[1]

Re: Sugino Chutari

Supreme Court of Japan, Grand Bench
11 October 1950

The facts. At the time of extreme scarcity of foodstuffs after the cessation of hostilities in 1945, a mob forced the director of the Public Food Corporation of Kawasaki City to appear on a stage and while standing there to approve directions imposed on him for the immediate distribution of bread. Another mob forced the mayor of the same city to consent to a search of her residence for the alleged purpose of confiscating valuables. The accused in this case were indicted and found guilty of the offence of criminal trespass to a private dwelling. On appeal to the Supreme Court,

Held: that they were rightly convicted and that there was no legal justification for their acts.

In dismissing their appeal, the court said:

"However right it might be as an objective to try to obtain foodstuffs for the benefit of the citizens and to cause the mayor and officials of the Food Corporation to reflect on their own acts, it does not necessarily follow that every measure taken in order to attain this purpose is justified thereby. The measure should be effected in compliance with order and without any encroachment upon the liberty and rights of individuals; for both the maintenance of order and the upholding of the fundamental human rights of individuals are by themselves integral parts of the public welfare." [Case *Re* No. 1601 of 1949]

THE RIGHT OF THE INDIVIDUAL TO LIBERTY—FREEDOM OF THE PERSON—FREEDOM OF CONTRACT—ILLEGAL CONTRACT—CONTRACT TO ENGAGE IN PROSTITUTION—LAW OF JAPAN

Re: Sotozaki Kura

Supreme Court of Japan, First Petty Bench
16 March 1950

The facts. A restaurant proprietor was convicted of having entered into a contract with a woman by which she agreed to engage in prostitution. On appeal to the Supreme Court, he contended that the conviction was bad in law because the woman concerned entered into the contract freely and engaged in prostitution under the contract of her own free will.

Held: that the appeal should be dismissed on the grounds that the consent of the female party to the contract was irrelevant.

The Supreme Court pointed out that the kind of contract in question always results in the last analysis in direct or indirect coercion, whether the female party thereto was actually coerced into prostitution or not; and that the woman prostitutes herself under a greater or lesser degree of bondage and duress. That such a contract prevents a woman from exercising her individual freedom is obvious. Conclusion of a contract whereby a woman agrees to engage in prostitution is therefore punishable regardless of the question whether, apart from the contract in issue, the woman would, or would not, have engaged in prostitution. [Case *Re* No. 2905 of 1948.]

THE RIGHT TO OWN AND HOLD PROPERTY—RIGHTS OF OWNERS AND MANAGERS OF BUSINESS ENTERPRISES—WORKER-MANAGEMENT IN LABOUR DISPUTES—LEGALITY—ARTICLE 29 OF THE CONSTITUTION OF JAPAN[2]

Re: Odaka Eiji

Supreme Court of Japan, Grand Bench
15 November 1950

The facts. During a labour dispute in certain enterprises, employees occupied and managed factories and other places of work under a scheme of "production control". The Supreme Court was called upon to give a decision on the legality of these measures.

Held: that they were illegal as being contrary to the property rights of the owners as guaranteed in article 29 of the Constitution. The Supreme Court pointed out that under the existing order of law founded upon the system of private property the power of controlling the management and production of business enterprises belongs to the owner or his representative, the manager. Consequently, the resort by employees to such acts as threaten the core of this system may not be permitted. In contradiction to legitimate acts in the course of a strike the scheme of "production control" whereby employees occupy and manage factories and other places of work means that persons exercise the power of management in defiance of the will of the rightful owner without having any authority to exercise such power. [Case *Re* No. 1049 of 1948.]

[1] Article 13 of the Constitution reads:

"All the people shall be respected as individuals. Their right to life, liberty, and the pursuit of happiness shall, to the extent that it does not interfere with the public welfare, be the supreme consideration in legislation and in other governmental affairs."

[2] Article 29 of the Constitution reads:

"The right to own or to hold property is inviolable. Property rights shall be defined by law in conformity with the public welfare.

"Private property may be taken for public use upon just compensation therefor."

THE RIGHTS OF ACCUSED PERSONS—THE RIGHT OF EXAMINING WITNESSES—ARTICLE 37 OF THE CONSTITUTION OF JAPAN[1]

Re: Kobayashi Hiroo

Supreme Court of Japan, First Petty Bench
6 April 1950

The facts. In a criminal trial the court admitted the notes of evidence given by a witness before a judicial police officer and at the same time dismissed a motion by the accused asking for an order summoning the witness for cross-examination in the trial. On conviction, the accused appealed to the Supreme Court.

Held: that the admission of the evidence and the dismissal of the motion were in contravention of paragraph 1 of article 12 of the law concerning Temporary Measures for the Code of Criminal Procedure;[2] that the conviction should be quashed and that the case should be remitted for re-trial to the Court of First Instance. [Case *Re* No. 3041 of 1949.]

Note. A similar decision was delivered by the Supreme Court, Third Petty Bench, on 30 May 1950, in case *Re* No. 94 of 1950.

THE RIGHTS OF ACCUSED PERSONS—THE RIGHT TO ASSISTANCE OF COUNSEL—ARTICLE 37, PARAGRAPH 3, OF THE CONSTITUTION OF JAPAN[3]

Re: Hatanaka Masao

Supreme Court of Japan, Third Petty Bench
5 September 1950

The facts. In a criminal trial the accused waived the right to submit arguments to the court through his counsel. The failure of the trial court to summon counsel to submit arguments was the ground upon which the accused appealed to the Supreme Court against his conviction.

Held: that the lower court had unlawfully imposed an improper restriction on the exercise of accused's right to have the assistance of counsel; that the conviction should be quashed; and that the case should be remitted to the lower court. [Case *Re* No. 1093 of 1949.]

[1]Article 37, paragraphs 1–2, of the Constitution reads:
"In all criminal cases the accused shall . . . be permitted full opportunity to examine all witnesses, and he shall have the right of compulsory process for obtaining witnesses on his behalf at public expense."

[2]A new Code of Criminal Procedure came into force on 1 January 1949. (See the summary of that Code in *Yearbook on Human Rights for 1948*, pp. 128–129.) However, it was provided that all cases which had already been indicted before that time should still be tried under the old procedure.

[3]Article 37, paragraph 3, reads:
"At all times the accused shall have the assistance of competent counsel, who shall, if the accused is unable to secure the same by his own efforts, be assigned to his use by the State."

THE RIGHTS OF ACCUSED PERSONS—RESTRICTIONS ON THE USE OF CONFESSIONS IN CRIMINAL TRIALS—ARTICLE 38, PARAGRAPH 3, OF THE CONSTITUTION OF JAPAN[4]

Re: Kiriyama Hisataro

Supreme Court of Japan, Third Petty Bench
2 May 1950

The facts. The only evidence supporting an indictment of habitual gambling consisted in the confession of the accused. On his conviction, the accused appealed to the Supreme Court.

Held: that the conviction should be quashed as being in violation of paragraph 3 of article 38 of the Constitution and of paragraph 3 of article 10 of the law concerning Temporary Measures for the Code of Criminal Procedure[5] and that the case should be remitted for trial in the Court of First Instance. [Case *Re* No. 5 of 1950.]

THE RIGHTS OF ACCUSED PERSONS—RESTRICTIONS ON THE USE OF CONFESSIONS IN CRIMINAL TRIALS—ARTICLE 38, PARAGRAPH 3, OF THE CONSTITUTION OF JAPAN[6]

Re: Schibazaki Fumio

Supreme Court of Japan, Grand Bench
12 July 1950

The facts. During criminal proceedings in the Court of Second Instance, the testimony of the accused before the Court of First Instance was admitted as evidence. The court also admitted a record of the interrogation of the accused before a judicial police officer. Both of these types of evidence contained a confession which had been made by the accused. On conviction, the accused brought an appeal to the Supreme Court.

Held: that the conviction should be quashed as being in conflict with paragraph 3 of article 38 of the Constitution and paragraph 3 of article 10 of the Law of Temporary Measures for the Code of Criminal Procedure.[5] [Case *Re* No. 927 of 1948.]

2. FINAL DECISIONS OF LOWER COURTS

THE RIGHT TO LIBERTY OF THE PERSON—GUARANTEE AGAINST ILLEGAL ARREST—PUBLIC HEALTH—POWERS AND DUTIES OF THE POLICE—ARTICLE 13 OF THE CONSTITUTION OF JAPAN[7]

Re: Sasaki Jetsuo

Tokyo District Court
7 September 1950

The facts. Articles 11 and 32 of the Venereal Disease

[4]Article 38, paragraph 3, reads:
"No person shall be convicted or punished in cases where the only proof against him is his own confession."

[5]See footnote 2.

[6]See the text of article 38, paragraph 3, in the preceding footnote.

[7]See the text of article 13 of the Constitution, p. 172, footnote 1.

Prevention Act,[1] which authorizes the administrations of prefectures to order a physical examination of any person who is reasonably suspected of being an habitual prostitute, do not authorize any physical restraint for the purpose of such examination. In this case, a man was arrested for obstructing a policeman who was attempting to arrest the wife of the accused for the purpose of compelling her as a person reasonably suspected of prostitution to undergo an examination for venereal disease.

Held: that the acts of the accused were justifiable as constituting lawful acts falling under the definition of self-defence. The court stated that because articles 11 and 32 of the Venereal Disease Prevention Act do not authorize any physical restraint for the purpose of medical examinations, the act of the policeman could not be considered as being in the performance of his duty, and the act of the accused in obstructing him could not be considered as constituting the offence of obstructing a policeman in the performance of his duties. The act of the policeman constituted rather an imminent and unlawful encroachment on the physical freedom of the accused's wife. The action of the accused was caused by a desire to protect the physical freedom of his wife and thus fell under the definition of acts of self-defence contained in paragraph 1 of article 36 of the Penal Code. [Case "*Kei Wa*" No. 2431 of 1950.]

THE RIGHT TO LIBERTY OF THE PERSON—GUARANTEE AGAINST ILLEGAL ARREST—FREEDOM OF CHOICE OF OCCUPATION—ARTICLE 13 OF THE CONSTITUTION OF JAPAN[2]

Re: Kanida Yutaka

Kyoto Summary Court
19 September 1950

The facts. A rag-picker was accused under the provision of the Petty Offences Act[3] of being a person without lawful means of support. It was charged that he had the physical ability, but no intention to work, and wandered from place to place without having any fixed place of residence.

Held: that he was not guilty of the offence charged, since in the actual circumstances in which he found himself at the time no other means of earning his livelihood were available to him; that in fact the accused did earn his living by his work; and that he was not a person who wandered about from place to place without any intention of working. [Case "*Ko*" No. 655 of 1950.]

RIGHT OF ACCUSED PERSONS—WRONGFUL CONVICTION—INDEMNITY—CRIMINAL INDEMNITY ACT[4]—LAW OF JAPAN

Re: Horiguchi Ichiro

Tokyo District Court
30 September 1950

The facts. In this case, the applicant for indemnity under the Criminal Indemnity Act had been arrested, detained and indicted on a charge of murder. After the presentation of the indictment, the real offender was identified; criminal proceedings were instituted against him, and the prosecution discontinued proceedings against the applicant in the present case.

Held: that the applicant should receive an indemnity of 23,200 yen. The court found that there were sufficient grounds for believing that, if criminal proceedings against the applicant had not been discontinued, a verdict of not guilty would have been returned by the court before which he was tried, and that therefore he was entitled to indemnity under the Act. [Case "*So*" No. 30 of 1950.]

B. Summary of Decisions under the Criminal Indemnity Act

The following details of the application of the Criminal Indemnity Act may be of interest:

1. Number of persons to whom indemnity was made in accordance with the decisions of courts, 656;
2. Total amount of indemnity adjudged, Y13,953,175;
3. Amount of indemnity per day:

Not less than 400 yen	15 persons.
Not less than 350 yen	12 persons
Not less than 300 yen	115 persons.
Not less than 250 yen	96 persons.

[1] Act No. 167, promulgated on 15 July 1948, and published on the same date in the *Official Gazette*, English edition. (See *Yearbook on Human Rights for 1948*, p. 125.)

[2] See the text of article 13 of the Constitution, p. 172, footnote 1.

[3] Act No. 39 of 1938, promulgated on 1 May 1948. (See the summary of this Act in *Yearbook on Human Rights for 1948*, p. 124.)

[4] Act No. 1, of 1 January 1950; for a summary of this Act, see p. 168 of this *Yearbook*.

BROADCASTING ACT[1]

Act No. 132, promulgated on 2 May 1950

CHAPTER I

GENERAL PROVISIONS

Art. 1. The purpose of this Act is to regulate broadcasting so as to serve the public welfare, and to strive for the sound development thereof, in accordance with the principles stated below:

1. To secure the maximum availability and benefits of broadcasting to the people;

2. To ensure freedom of expression through broadcasting by guaranteeing the impartiality, integrity and autonomy of the broadcasting system (organizations);

3. To make broadcasting contribute to the development of a healthy democracy by clarifying the responsibility of those persons engaged in broadcasting.

[Article 2 contains definitions.]

Art. 3. Broadcast programmes shall not be interfered with or regulated by any person, except by virtue of the powers provided for by law.

Art. 4. Any person who has been granted a licence to operate a radio station, in accordance with the provisions of the Radio Act (Act No. 131 of 1950)[2] (such person hereinafter being referred to as an "operator of a broadcasting enterprise"), and who broadcasts any matter alleged to be false, shall, if so requested not later than two weeks after the day of such broadcast by any person who was directly concerned therein, or whose rights were infringed thereby, cause an immediate inquiry to be made into the allegation. If upon such inquiry it is found that the broadcast has been proved untrue, the operator of the broadcasting enterprise shall, not later than two days after the completion of the inquiry, broadcast in a manner which corresponds as nearly as may be to the circumstances of the original broadcast a withdrawal or correction, as the case may be, of such untrue matter.

2. The provision of the preceding paragraph shall apply, *mutatis mutandis*, when the operator of the broadcast entreprise has himself discovered any untrue matter in his broadcasting.

3. The provisions of the preceding two paragraphs shall not preclude the claim for damages in accordance with the provisions of the Civil Code (Act No. 89 of 1896).

Art. 5. Overseas broadcasts and programmes prepared within Japan and transmitted overseas for broadcast in foreign countries shall not be of such a nature as to impair the maintenance of friendly relations among States.

Art. 6. The operators of broadcasting enterprises shall not re-broadcast the programme of any other broadcasting enterprises, unless their consent is obtained.

[Chapter II deals with the purposes of the Broadcasting Corporation of Japan, its offices, its Board of Governors and the powers of this board, and provides that the governors shall be appointed by the Prime Minister with the consent of both houses of the Diet from among persons capable of exercising fair judgment concerning the public welfare and having wide experience and knowledge.

This chapter further provides for the composition and powers of the Board of Directors, the budget of revenues and expenditure, various business matters and the suspension and abolition of broadcasting stations. Article 44 deals with the compilation of broadcasting programmes.]

Art. 44. In the preparation of programmes for broadcasting, the Corporation shall strive as well to satisfy the wishes of listeners as to contribute to the raising of cultural standards.

2. For the purpose of ascertaining the wishes of listeners, the Corporation shall, at regular intervals, conduct in a scientific manner and publish the results of listening polls.

3. In the preparation of programmes for broadcasting, the Corporation shall comply with the following principles—that is to say:

(1) It shall not disturb public security;

(2) It shall be politically impartial;

(3) It shall broadcast news without distorting the facts;

(4) It shall clarify controversial issues by allowing the presentation of differing points of views.

Art. 45. Whenever the Corporation allows any candidate for an elective office to broadcast his political views or to make a speech in his campaign for election, it shall, upon application, allow other candidates for that office in the same election to broadcast under similar conditions.

Art. 46. The Corporation shall not broadcast any advertisement related to the commercial business of any other person.

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[1] Text based on the English translation in *Official Gazette*, English edition, Extra No. 39, of 2 May 1950, received through the courtesy of Mr. Alva C. Carpenter, Chief, Legal Section, General Headquarters of the Supreme Commander for the Allied Powers, Japan. The Act deals with general provisions, the Broadcasting Corporation of Japan, private broadcasting enterprises and penal provisions. See also the comment, page 169 of this *Yearbook*.

[2] Published in the same *Official Gazette* as the Broadcasting Act.

2. Where it may be necessary in the preparation of programmes and where the material to be broadcast is not regarded as an advertisement related to the commercial business of any other person, the provisions of the preceding paragraph shall not preclude the broadcasting of the name or title of the author or producer of materials used in programmes for broadcasting.

. . .

CHAPTER III

PRIVATE BROADCASTING ENTERPRISES

Art. 51. Whenever the operator of any broadcasting enterprise other than the Corporation (hereinafter referred to as "the operator of a private broadcasting enterprise") broadcasts any advertisement in consideration of money payments, he shall announce that this broadcasting is an advertisement.

Art. 52. Whenever the operator of a private broadcasting enterprise allows any candidate for an elective office to broadcast his political views or to make a speech in his campaign for election, he shall, upon application, allow other candidates for that office in the same election to broadcast under similar conditions whether with or without charge.

Art. 53. The provisions of article 44, paragraph 3, shall apply, *mutatis mutandis*, to private broadcasting enterprises.

[Chapter IV contains certain penal provisions.]

NATIONALITY ACT[1]

Act No. 147, promulgated on 4 May 1950

PURPOSE OF THIS ACT

Art. 1. The conditions necessary for being a Japanese national shall be determined by the provisions of this Act.

ACQUISITION OF NATIONALITY BY BIRTH

Art. 2. A child shall, in any of the following cases, be a Japanese national when:

(1) At the time of his birth, his father is a Japanese national;

(2) The father who died prior to the birth of the child was a Japanese national at the time of his death;

(3) The mother is a Japanese national if the father is unknown or has no nationality;

(4) Both parents are unknown or have no nationality, in cases where the child is born in Japan.

NATURALIZATION

Art. 3. (1) Any person who is not a Japanese national (hereinafter referred to as "an alien") may acquire Japanese nationality by naturalization.

(2) The permission of the Attorney-General shall be obtained for naturalization.

Art. 4. The Attorney-General shall not permit the naturalization of an alien unless he or she fulfils all the following conditions:

(1) That the alien has had a domicile in Japan for five or more years consecutively;

(2) That the alien is twenty years of age or more and a person of full legal capacity according to the law of his or her native country;

(3) That the alien is a man or woman of upright conduct;

(4) That the alien has sufficient property or ability to support himself by independent means;

(5) That the alien has no nationality, or his acquisition of Japanese nationality will cause the loss of his nationality;

(6) That the alien is not a person who, since the coming into force of the Constitution of Japan has plotted or advocated, or formed or belonged to a political party or other organization which has plotted or advocated the overthrow of the Constitution of Japan or the Government existing thereunder.

Art. 5. With respect to an alien who falls under any one of the following items, and has at present a domicile in Japan, the Attorney-General may permit the naturalization of the alien even when the said alien does not fulfil the condition mentioned in item (1) of the preceding article.

(1) An alien who is the husband of a Japanese national and has a domicile or residence in Japan consecutively for three years or more;

(2) An alien who is the child, other than an adopted child, of a person who was a Japanese national and has had a domicile or residence in Japan consecutively for three years or more;

(3) An alien who was born in Japan and has had a domicile or residence in Japan consecutively for

[1] Text based on the English translation in *Official Gazette*, English edition, Extra No. 41, of 4 May 1950. According to Supplementary Provision No. 1, this Act came into force on 1 July 1950.

three years or more, or whose father or mother, other than an adoptive father and mother, was born in Japan;

(4) An alien who has had a residence in Japan consecutively for ten years or more.

Art. 6. With respect to an alien who falls under any one of the following items, the Attorney-General may permit the naturalization of the alien even when the said alien does not fulfil the conditions indicated in items (1), (2) and (4) of article 4:

(1) The wife of a Japanese national;

(2) A child, other than an adopted child, of a Japanese national who has a domicile in Japan;

(3) A child by adoption of a Japanese national, who has been domiciled in Japan for one or more years consecutively and who was a minor according to the law of its native country at the time of the adoption;

(4) An alien who has lost Japanese nationality (other than an alien whose naturalization as a Japanese national has been revoked), and who has a domicile in Japan.

Art. 7. With respect to an alien who has rendered meritorious service to Japan, the Attorney-General may, notwithstanding the provision of article 4, permit the naturalization of the alien with the approval of the Diet.

Loss of Nationality

Art. 8. A Japanese national shall lose his Japanese nationality when he voluntarily acquires a foreign nationality.

Art. 9. A Japanese national who has acquired a foreign nationality by reason of birth in the foreign country shall lose Japanese nationality retroactively as from the time of birth, unless the Japanese national declares his intention of retaining Japanese nationality in accordance with the provisions of the Family Registration Act (Act No. 224 of 1947).

Art. 10. (1) A Japanese national having a foreign nationality may renounce his Japanese nationality.

(2) The renunciation of nationality shall be made by notifying the Attorney-General.

(3) Loss of Japanese nationality shall result from such a renunciation.

Procedure for Renunciation of Nationality

Art. 11. If the person who intends to become naturalized or to renounce his nationality is under fifteen years of age, application for a grant of naturalization, or notification of renunciation of nationality, shall be made by the legal representative of such minor.

Art. 12. (1) When he has granted an application for naturalization or accepted a notification of renunciation of nationality, the Attorney-General shall make an announcement thereof by public notice in the *Official Gazette.*

(2) Naturalization or renunciation of nationality shall come into effect as from the day of the public notice in accordance with the preceding paragraph.

Art. 13. The procedure concerning naturalization and renunciation of nationality, other than that provided for in the preceding two articles, shall be prescribed by the Attorney-General.

DAILY LIFE SECURITY ACT[1]

Act No. 144, promulgated on 4 May 1950

Chapter I

GENERAL PROVISIONS

Art. 1. The purpose of this Act shall be that the State will, in accordance with the principle declared in article 25 of the Constitution of Japan,[2] provide necessary assistance to all indigent citizens, according to the degree of need, thus guaranteeing their minimum standard of living and encouraging them to become self-supporting.

Art. 2. All citizens, in so far as they satisfy the requirements of this Act, are entitled without discrimination or preference to receive assistance under this Act (hereinafter to be referred to as "assistance").

Art. 3. The minimum standard of living guaranteed by this Act shall be such as to enable the maintenance of healthy and cultural living conditions.

Art. 4. 1. Assistance shall be provided on condition that the person in need will make full use of all re-

[1] Text based on the English translation in *Official Gazette*, English edition, Extra No. 41, of 4 May 1950, received through the courtesy of Mr. Alva C. Carpenter, Chief, Legal Section, General Headquarters of the Supreme Commander for the Allied Powers, Japan. This Act deals with the following subjects, each in a separate chapter: General provisions; principles of assistance; kinds and scope of assistance; organs and administration of assistance; method of assistance; protective institutions; medical agency and maternity agency; rights and obligations of the recipient; appeals; expenses; miscellaneous provisions and supplementary provisions. Extracts from Chapters I, II, III, VI and VIII are reproduced hereunder.

[2] See *Yearbook on Human Rights for 1946*, p. 172.

sources available to him, his property, ability and other resources to maintain his minimum standard of living.

2. Support by the person who is under duty to furnish support in accordance with the provisions of the Civil Code (Act No. 89 of 1896) and benefits prescribed in other laws shall be provided prior to the assistance under this Act.

3. The provisions of the preceding paragraphs of this article shall not preclude the granting of assistance in cases of special need.

Art. 5. The provisions of the four preceding articles are the fundamental principles of this Act and any interpretation and application of this Act shall be made in accordance with these principles.

. . .

CHAPTER II
PRINCIPLES OF ASSISTANCE

Art. 7. Assistance shall be given on the basis of an application submitted by the person requiring assistance (hereinafter referred to as "the applicant"), or by the person under a legal duty to furnish support to him, or by other relatives living with him; provided, however, that in case the person requiring assistance is in a state of exigency, necessary assistance may be provided, notwithstanding that no application for assistance has been submitted.

Art. 8. 1. Assistance shall be provided on the basis of the total need of the person requiring assistance as measured in accordance with the standard established by the Minister of Welfare and to the extent to which this need cannot be met from the money or goods of the applicant.

2. The standard under the preceding paragraph shall be sufficient to meet, but not in excess of, the needs of minimal living standards; differences in age, sex, family composition and residence and other necessary circumstances of the applicants which correspond to the kind of assistance for which application is made shall be taken into consideration.

Art. 9. The assistance to be provided shall be effective and adequate and shall take into consideration variations in individual and family requirements, such as differences in age, sex, and state of health of the applicants.

Art. 10. The unit for measuring the necessity for and the extent of assistance shall be a household; provided, however, that in cases where difficulty might arise from adopting this unit, the unit shall be an individual.

CHAPTER III
KINDS AND SCOPE OF ASSISTANCE

Art. 11. 1. The kinds of assistance shall be as follows: (1) livelihood aid, (2) educational aid, (3) housing aid, (4) medical aid, (5) maternity aid, (6) occupational aid, (7) funeral aid.

2. Aid under any item enumerated in the preceding paragraph may, according to the need of the person requiring assistance, be provided in addition to aid under any other item.

Art. 12. Livelihood aid shall be provided to any person who is not able to maintain a minimum standard of living by reason of needy circumstances in respect of the following matters—namely (1) clothing, food, and other daily needs; (2) transportation.

Art. 13. Educational aid shall be provided to any person who is not able to maintain a minimum standard of living by reason of needy circumstances in respect of the following matters—namely, (1) textbooks or other school supplies required in connexion with compulsory education; (2) clothing and other expenses incurred for school attendance in connexion with compulsory education; (3) school lunch, and other necessaries required in connexion with compulsory education.

Art. 14. Housing aid shall be provided to any person who is not able to maintain a minimum standard of living by reason of needy circumstances in respect of the following matters—namely, (1) housing; (2) repairs and other services necessary for the maintenance of dwellings.

Art. 15. Medical aid shall be provided to any person who is not able to maintain a minimum standard of living in respect of the following matters—namely, (1) medical examination; (2) drugs or other pharmaceutical materials; (3) surgical operations and medical treatment; (4) accommodation in a hospital or a clinic; (5) nursing care; (6) transportation in connexion with medical services.

Art. 16. Maternity aid shall be provided to any person who is not able to maintain a minimum standard of living by reason of needy circumstances in respect of the following matters—namely, (1) midwife service; (2) pre-natal and post-natal care; (3) absorbent cotton, gauze and other sanitary materials.

Art. 17. Occupational aid shall be provided to any person who is or is liable to be unable to maintain a minimum standard of living in respect of the following matters: (1) finance, instruments, or materials necessary for occupational undertakings; (2) acquisition of skill necessary for occupational undertakings; (3) vocational equipment:

Provided, however, that occupational aid shall be granted only where by the provision of such aid there is a reasonable prospect of increasing the income of the recipient or of encouraging him to be self-supporting.

Art. 18. Funeral aid shall be provided to any person who is not able to maintain a minimum

standard of living by reason of needy circumstances in respect of the following matters, namely:

(1) Post-mortem examination; (2) transportation of the dead body; (3) cremation or interment; (4) urn for holding the ashes; and (5) similar reasonable expenses incurred for funeral services.

(2) (i) Where, in the event of the death of a recipient, there is no person under a legal duty to bear the expenses of his funeral services; or

(ii) Where there is no person under a legal duty to bear the expenses of the funeral services of a deceased person and where the personal estate of the deceased is insufficient to meet the expenses of funeral services, funeral aid, of the type specified in the preceding paragraph may be made available to any person who performs the funeral service.

CHAPTER VI

PROTECTIVE INSTITUTIONS

Art. 38. (1) There shall be the following protective institutions, namely:

(i) Institution for the Aged;
(ii) Relief Institution;
(iii) Rehabilitation Institution;
(iv) Medical protective Institution;
(v) Work-providing Institution;
(vi) Lodging Protective Institution;

(2) It shall be the function of the Institution for the Aged to accommodate and provide with livelihood aid persons requiring assistance who, by reason of old age nd infirmity, are unable to care for themselves.

(3) It shall be the function of the Relief Institution to accommodate and provide with livelihood aid persons requiring assistance, who, by reason of physical or mental disability, are unable to maintain themselves in a state of financial independence.

(4) It shall be the function of the Rehabilitation Institute to accommodate and provide with livelihood aid persons requiring assistance who, for physical or mental reasons, need care and guidance.

(5) It shall be the function of the Medical Protective Institution to provide assistance to persons in need of medical care.

(6) It shall be the function of the Work-providing Institution:

(*a*) To furnish the necessary opportunities and facilities as well for gaining employment as for the acquisition of occupational skill to persons requiring assistance who lack opportunities for employment by reason either of physical or mental disability or of family circumstances; and

(*b*) To encourage such persons to attain a state of financial independence.

(7) It shall be the function of the Lodging Protective Institution to provide housing aid to families who lack housing accommodation.

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CHAPTER VIII

RIGHTS AND OBLIGATIONS OF THE RECIPIENT

Art. 56. The terms of assistance provided for any recipient shall not, without good cause, be modified to his disadvantage.

Art. 57. No recipient shall, in respect of assistance provided for under this Act, be liable to pay any taxes, duty or other imposts.

Art. 58. Money or goods delivered or appropriated for delivery to a recipient shall not be subject to attachment or garnishment proceedings.

Art. 59. No recipient may assign, transfer or dispose of the right to receive assistance.

Art. 60. Every recipient shall at all times exercise due diligence to work to the best of his ability, to endeavour to limit expenditure, and to make efforts to maintain and improve his standard of living.

Art. 61. Whenever there has been a change in the income or expenditure and other living conditions, or in the place of residence or in the family status of the recipient, he shall report such change forthwith to the mayor of the city, town or village, as the case may be.

Art. 62. Whenever the mayor of a city, town or village, as the case may be, has decided to provide assistance by placing a recipient in an institution hereinbefore mentioned or by entrusting him to an institution or private home in accordance with the provisions of the proviso to article 30, paragraph 1,[1] or has given necessary guidance or instructions to a recipient in accordance with the provisions of article 27,[2] the recipient shall conform thereto.

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[1]Article 30, paragraph 1, stipulates as follows:

"Livelihood aid shall be made available to the recipient at his residence: provided, however, that if it should be impossible to follow this procedure in any particular case; or if it should prove difficult by following this procedure to achieve the purpose for which assistance was granted; or if the recipient so desires, livelihood aid may be made available to a recipient by placing him in one of the institutions hereinbefore mentioned or by entrusting him to an institution or a private home."

[2]Article 27 makes the mayor of a city, town or village, as the case may be, responsible for giving the recipient such guidance or instructions as may be necessary for the achievement of the purpose of assistance; provided, however, that guidance may not be forced upon the recipient against his will, and that the freedom of the recipient shall not be infringed any more than necessary.

HASHEMITE KINGDOM OF THE JORDAN

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS[1]

No new developments in the field of human rights are to be recorded for the year 1950.

[1]Information received through the courtesy of the Minister for Foreign Affairs, Amman.

LAOS

CONSTITUTION OF THE KINGDOM OF LAOS[1]

of 11 May 1947

Note. An Act of 2 February 1950[2] ratified the exchange of the letters of 25 November 1947 and 14 January 1948 between the President of the Republic, President of the French Union on the one hand, and the King of Laos on the other hand, as well as the general convention of 19 July 1949 between the French Republic and the Kingdom of Laos.

The exchange of letters refers, *inter alia*, to the Constitution of Laos of 11 May 1947 by which it was specified that the Kingdom of Laos was a member of the French Union as a free and associated State. The provisions on human rights in this Constitution are reproduced below.

In accordance with a convention between France and Laos signed on 6 February 1950, the services in the field of Press, information and radio, labour and social legislation, hygiene and public health were transferred to the authorities of the Kingdom of Laos. Prior to that Convention, local technical services in the field of education, public health, social affairs and labour inspection had been transferred to the authorities of Laos.

PREAMBLE

At a time when the French Union is being established on new foundations, Laos, conscious of the part assigned to it by its past history, and convinced that its future lies only in the union of all the provinces of the country, hereby solemnly proclaims its unity through its elected representatives.

The peoples of Laos assert their loyalty to the Monarchy, their attachment to democratic principles, and proclaim as Sovereign of Laos His Majesty Sisavang Vong.

Laos declares itself an autonomous State and a member of the French Union.

It recognizes as fundamental rights of the inhabitants of Laos: liberty of the person, freedom of conscience, the right of private property, freedom of speech, writing and publication, freedom of teaching, freedom of assembly and association, freedom to practise a profession, equality before the law, and the right to a decent living.

It places upon them the following obligations: service of their country, respect for the beliefs of others, the practice of solidarity, the fulfilment of family obligations, the performance of contracts freely entered into, diligent work, honesty, and observance of the law.

It invites the support of France to assist it towards civic, moral and material advancement, and the help of French advisers and technicians until it has trained its own staff.

Thus, in enjoyment of its freedom and of an organization suitable to the development of all its resources, Laos will be in a position to assume the role which is its due and to demonstrate within the framework of the French Union the high quality of its *élite*.

TITLE I
GENERAL PRINCIPLES

Art. 1. The Kingdom of Laos is a unitary, indivisible, democratic and social State, formed by the union of the former Kingdom of Luang-Prabang and the provinces formerly under direct French administration.

Its capital is Vientiane.

Art. 3. National sovereignty belongs to the people of Laos. It is exercised through representatives elected by universal suffrage.

Art. 4. All persons belonging to races permanently established in the territory of Laos, and not already possessing another nationality, are citizens of Laos. The conditions governing the acquisition and loss of nationality shall be prescribend by law.

[1] French text in *Notes documentaires et études. La documentation française*, Paris, No. 725 of 11 September 1947. English translation from the French text by the United Nations Secretariat. Introductory note based on: "The transfer of powers to the Associated States of Viet Nam, Laos and Cambodia", issued in May 1950 by the Press and Information Service of the French Embassy, New York. See also "*Actes définissant les rapports entre les Etats associés du Viet-Nam, du Cambodge et du Laos avec la France*" in *Notes et Etudes documentaires* No. 1295, of 14 March 1951.

[2] French text of this Act in *Journal officiel de la République française* of 2 February 1950. English translation by the Press and Information Service of the French Embassy, New York (quoted in footnote 1). The Constitution came into force on 25 May 1947 (article 44).

Art. 5. All male citizens having reached their majority and enjoying civil and political rights shall be entitled to vote, subject to the conditions prescribed by law.

Art. 6. Laotian is the official language. The French language shall be used concurrently as an official language and in case of dispute shall prevail. The French language is the official language in all transactions involving the French Union.

Art. 7. Buddhism is the State religion. The King is its High Protector.

. . .

ACT No. 48 CONCERNING ASSOCIATIONS FORMED AMONG NATIONALS OF LAOS IN THE KINGDOM OF LAOS [1]

dated 13 January 1950

Art. 1. There shall be freedom of association for nationals of Laos in the Kingdom of Laos.

CHAPTER I

PRINCIPLES

Art. 2. An association is formed when two or more persons permanently pool their knowledge or energies for a purpose other than sharing profits or protecting corporate interests. Commercial companies and trade unions shall continue to be governed by the laws specifically applicable to them.

Art. 3. Any association formed for an illicit purpose, contrary to law and morality, shall be null and void.

Art. 4. Any member of an association which is not established for a specified period may withdraw from that association at any time after payment of past and current dues, notwithstanding any provision to the contrary.

CHAPTER II

Section I

AUTHORIZED ASSOCIATION

Art. 5. Any association among nationals of Laos in the Kingdom of Laos shall be free, provided it makes a declaration of its existence.

Any association which does not make such declaration shall be null and void.

The declaration shall be addressed to the Minister of the Interior through the *Shaobueng* of the place where the provisional headquarters are set up. It shall state the name and purpose of the association, the location of its branches, names, occupation and address of those who in any capacity administer or manage it.

Two copies of the provisional articles shall be attached to the declaration.

A signed and dated receipt from the Minister of the Interior shall be given for each declaration.

Art. 6. Any declared association, which has proved its capacity for existence may, after one year of existence, acquire the capacity to perform validly, through the representatives designated in its articles, all the acts provided for in article 8 below. That capacity shall be granted by decree of the Prime Minister.

Art. 7. Any association having acquired the capacity defined in articles 6 and 8 shall be made public within one month of the notification of the decree referred to in the preceding article, by the insertion in the *Bulletin officiel* of the Kingdom of Laos of a notice giving the date of the declaration, the date of the decree conferring said capacity, the name and purpose of the association, and its headquarters.

Art. 8. In virtue of the decree granting capacity, any declared association may, without special authorization, purchase, possess and administer property.

Its assets shall consist of:

1. Contributions from members;
2. The premises used for the administration of the association and meetings of its members;
3. The building strictly necessary for carrying out its aims.

It may also, without special authorization, appear before the courts within the scope of its activities as governed by its articles, and may receive subsidies from the budget of the State or secondary groups and the French Union. Authorization to receive gifts and legacies and to transfer property must be granted by decree of the Prime Minister.

Acquisitions made in violation of the special provisions shall be declared null and void by the local Court at the request of any party concerned or of the competent authority. The property acquired must be sold by public auction and the proceeds paid into the treasury of the association.

[1] French text received through the courtesy of the Prime Minister, President of the Council of the Royal Government of Laos. This Act was adopted by the National Assembly on 12 January 1950 and promulgated by the King on 4 March 1950.

Art. 9. Associations shall inform the Shaohueng, who will transmit the information to the Minister of the Interior, of all changes in their administration or management, as well as of all amendments to their articles.

Those changes may be invoked against third parties only as from the day on which they were declared.

Amendments to the articles shall be valid only as from the day on which they are declared to the Minister of the Interior.

[Articles 10 to 12 deal with declarations regarding changes in the administration or management of the association.]

Art. 13. Any person shall be entitled to consult, at the offices of the Minister of the Interior, the articles of association and declarations and the documents notifying amendments to the articles and changes in the administration or management. The person concerned may, at his own expense, obtain duplicate copies or extracts from those documents.

Art. 14. Any association which has been formed without making a declaration shall, at the request of any interested party, be dissolved by decision of the local court of the place where it has its headquarters.

Art. 15. The promoters, directors or administrators of any association formed without making a declaration or maintained or reconstituted illegally after a court order to dissolve it, shall be punishable, when found to be responsible as principals, in accordance with the provisions of the Penal Code in force, as well as any person who aided and abetted the meeting of the members of an undeclared or dissolved association, by permitting them to use his premises.

The promoters, directors or administrators of any association who have contravened the provisions of articles 9, 10 and 12 or have departed from its declared purpose without coming under the provisions of article 3 shall be punished as principals.

Similarly, principal promoters, directors or administrators who have departed from the purpose stated in the articles in order to pursue an illicit aim, contrary to law and morality, shall be punished as principals in accordance with the provisions of the Penal Code.

Section II

PROVISIONS APPLICABLE TO ALL AUTHORIZED ASSOCIATIONS

Art. 16. When an association is dissolved voluntarily, in accordance with its articles or by a court order, its assets shall be disposed of in pursuance of the articles or, in the absence of any provision in its articles of association, in accordance with rules drawn up at a general meeting.

Art. 17. If the articles of an association fail to provide in any way for the liquidation and transfer of its assets after dissolution, or if the general meeting which voluntarily decided to dissolve the association took no decision in that respect, the local court shall determine how the assets are to be disposed of.

Art. 18. When a general meeting is called upon to decide on the disposal of the assets of an association, it cannot, in virtue of article 2 of the present Act, assign to the members any portion of those assets, apart from the refund of their own contributions.

CHAPTER III

GENERAL AND TRANSITIONAL PROVISIONS

Art. 19. Existing associations which have not made a declaration shall have two months after promulgation of this Act to make such declaration.

LEBANON

LEBANESE REPUBLIC ELECTIONS ACT[1]
of 10 August 1950

CHAPTER I

ALLOCATION AND DISTRIBUTION OF SEATS AND METHOD OF BALLOT

Art. 1. The Chamber of Deputies of the Lebanese Republic shall consist of seventy-seven members.

Art. 2. The District (Mouhafazat)[2] shall constitute the electoral ward. Nevertheless, any District which contains fifteen seats shall be divided into electoral wards as set out in Table No. 1 annexed to this Act.[3]

Art. 3. In the electoral wards the seats of deputies shall be distributed in accordance with Table No. 2 annexed to this Act.

Art. 4. All the electors in the electoral wards shall vote for the candidates, without distinction as to religious denomination.

Art. 5. Suffrage shall be universal and direct, by secret ballot.

Art. 6. A person may not be elected to the Chamber of Deputies unless he is a Lebanese national registered in the roll of electors, is over the age of twenty-five years, is in possession of his civic and political rights, and is able to read and write.

A person who has acquired Lebanese nationality shall not be eligible until five years have elapsed since the date of his naturalization.

If a deputy during his term of office is convicted and sentenced to a penalty involving removal of his name from the roll of electors, he shall by a resolution of the Chamber be debarred from the function of deputy.

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CHAPTER II

COMPILATION AND REVISION OF THE ROLLS OF ELECTORS

Art. 9. An Electors Registration Commission shall be set up in each electoral ward, consisting of a magistrate, as president, the chairman of one of the ward's municipal councils or a member thereof, the local registrar and two persons in possession of their electoral rights, as members.

The president of the commission shall be appointed by order of the Minister of Justice, and the members by order of the District Administrator.

Art. 10. The Commission shall draw up the rolls of electors in the ward in accordance with the entries in the census registers. The lists shall give the surname and first name of each elector, his age, religious denomination, occupation and domicile.

Art. 11. The following persons shall not be placed on the rolls of electors:

(1) A person sentenced to loss of civic rights;

(2) A person sentenced to permanent disqualification for public rank and office; a person who has been disqualified for office for a term may not be placed on the roll of electors until the term of the sentence has expired;

(3) A person sentenced to a *peine criminelle* or a *peine correctionnelle* for an offence involving loss of civic rights; the following offences shall be deemed to involve loss of civic rights: theft, fraud, breach of trust, embezzlement, rape, blackmail, preparing and uttering forged instruments, and the offences against public decency enumerated in Book 7 of the Penal Code;

(4) A person placed under a disability by order of a court, for the duration of such disability;

(5) A person who has been declared bankrupt; a person who has been declared bankrupt shall not be placed on the roll of electors until his discharge;

(6) A person sentenced to the penalties referred to in Articles 329–334 of the Penal Code.

Art. 20. The rolls of electors, as amended in accordance with the decisions of the Supreme Commission

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[1] Arabic text in *Official Journal of the Lebanese Republic* No. 33, of 16 August 1950. English translation from the Arabic text by the United Nations Secretariat. The Act repeals Order No. 2, of 2 January 1934 (see *Yearbook on Human Rights for 1948*, pp. 347–348, for extracts from this order) as well as all enactments concerning elections to the Chamber of Deputies and all other provisions in conflict or inconsistent with the Act.

[2] Large city with the surrounding district. Lebanon comprises five *Mouhafazats*.

[3] Not reproduced in this *Yearbook*.

adopted within the statutory time-limits specified above, and subject to the removal of the names of electors who have died or have suffered the loss of all or some of their civic and political rights in virtue of a final judgment, shall remain in force until 30 April of the following year.

CHAPTER III

ELECTORATE AND ELIGIBILITY

Art. 21. The rolls of electors shall include the names of all male Lebanese nationals who are over the age of twenty-one years, who are in possession of their civic and political rights and have had their principal and actual domicile in the electoral ward for not less than six months.

To these lists shall be added the names of those who ulfil the requirements as to age and residence after the compilation of the rolls of electors, but before their final closure in accordance with the provisions of this Act.

Art. 22. No elector may be placed on more than one roll of electors. If through error an elector is placed on more than one roll of electors, he shall within the revision period notify his new place of residence, provided that the conditions prescribed in the foregoing article are satisfied.

Any application for the transfer of registration from one electoral ward to another shall be submitted in duplicate to the president of the commission in the new ward. If the new registration is admitted, a copy of the decision admitting it shall be sent to the president of the commission in the ward where the applicant was previously registered so that his name may be removed from the roll of electors.

Art. 23. A member of the armed forces or person of equivalent status, whatever his rank, whether a member of the Army, the gendarmerie, the police or the public security forces, may not vote while attached to his unit or post or while exercising his functions.

Any such person who at the time of the elections is retired on half pay or is in possession of a regular leave permit may vote in the ward in which he is registered.

Art. 24. A member of the armed forces or person of equivalent status, whatever his rank, whether a member of the army, the gendarmerie, the police or the public security forces, may not be elected to the Chamber of Deputies even if retired on half pay or placed on the reserve. Nevertheless, he may be elected if he was retired from service six months before the date of the elections.

Art. 25. Membership of the Chamber of Deputies shall be incompatible with the holding of a public or religious office remunerated by the State. Accordingly, if an official is elected to the Chamber of Deputies, he shall *ipso facto* be deemed to be relieved of his office if, during the eight days following the examination of credentials, he fails to give notice of his refusal to accept the mandate of deputy. Any member of the Chamber of Deputies who is appointed to a paid public office shall by his very acceptance thereof cease to be a member of the Chamber.

Nevertheless, a deputy may with the consent of the Chamber of Deputies be appointed to a temporary political mission abroad not constituting a regular State appointment, for a term of not more than six months, which may not be renewed.

Art. 26. The following persons may not be elected in any ward during the exercise of their functions and for six months after the date of their final relinquishment of office:

1. Judges of the Court of Cassation;
2. Directors-general, directors and heads of public departments and offices;
3. Inspectors-general and inspectors whose competence extends to all State departments.

Art. 27. The following persons may not be elected in the wards in which they exercise their jurisdiction, during the exercise of their functions and for six months after the date of their final relinquishment of office:

1. Judges of the Court of Appeal;
2. District administrators and administrators of subdivisions;
3. Engineers in charge of inspection departments and offices in a particular area;
4. Inspectors of the Ministry of National Education;
5. *Mouhassibchis*,[1] *moudirmals*,[2] and officials of all ranks serving under them and, in general, all officials employed in the fiscal and tax-collection offices.

Subject to the provisions of article 6 of the Status of Members of the Judiciary Act, promulgated on 10 May 1950, if any of the officials referred to in the present article proposes to stand as candidate in an election outside the electoral ward in which he performs his functions, he shall be required to apply for official leave of absence immediately on publication of the decree ordering the election to be held. If he fails to obtain such leave of absence, he shall be debarred from standing as a candidate.

Art. 28. Any conditional or restricted electoral mandate shall be deemed null and void.

Art. 29. A person may not stand for election in more than one electoral ward. Nevertheless, any person who is eligible for membership of the Chamber of

[1] Supervisors and auditors of accounts in the Ministry of Finance [ED. NOTE.]

[2] Finance officers, of varying grades [ED. NOTE.]

Deputies may stand for election in any ward whatsoever.

[Chapter IV deals with electoral procedure.]

CHAPTER V

POSTERS AND ELECTION PUBLICATIONS

Art. 52. Election posters shall be exempt from stamp duty.

Art. 53. The administrative authority in each town or central locality shall designate special places reserved for the display of electoral notices during the election period. It shall be unlawful to display notices elsewhere than in the designated places. A notice may not be posted unless three copies thereof signed by the candidate or candidates are sent not less than twelve hours before posting to the office of the district administrator or administrator of sub-division who exercises jurisdiction over the electoral ward in which the notice is to be posted.

Art. 54. It shall not be lawful to sign or post a notice or to despatch or circulate a publication, circular or public declaration in support of one or more candidates unless the latter have offered themselves as candidates and, in general, satisfy the conditions prescribed in this Act.

If any notice, advertisement or manifesto is posted or distributed in an unauthorized place, it shall be removed and confiscated.

[Chapter VI contains provisions relating to the penalties applicable in cases of offences against the Act.]

Table No. 2

DISTRIBUTION OF SEATS BY SECTS AND ELECTORAL WARDS

(Annex to the Act promulgated on 10 August 1950)

Mouhafazat of Beirut	
Sunnite	4
Shiite	1
Maronite	1
Greek Catholic	1
Greek Orthodox	1
Protestant	1
Armenian Catholic	1
Armenian Orthodox	2
Minorities	1
	13
Caza[1] *of Kesrouan*	
Maronite	4
Shiite	1
	5
Cazas of Chouf and Aaley	
Maronite	3
Druze	3
Greek Catholic	1
Sunnite	1
Greek Orthodox	1
	9
Caza of Tripoli	
Sunnite	5
Greek Orthodox	1
	6
Caza of Aakkar	
Sunnite	2
Maronite	1
Greek Orthodox	1
	4
Cazas of Baabda and Metene	
Maronite	5
Shiite	1
Druze	1
Armenian Orthodox	1
Greek Orthodox	1
	9
Mouhafazat of South Lebanon	
Sunnite	2
Shiite	8
Maronite	2
Greek Catholic	1
Greek Orthodox	1
	14
Mouhafazat of Bekaa	
Sunnite	2
Shiite	3
Druze	1
Maronite	2
Greek Catholic	2
Greek Orthodox	1
	11
Cazas of Zgorta, Batroun and Koura	
Maronite	5
Greek Orthodox	1
	6

[1] The *caza* is a sub-division of the *mouhafazat*—ED.

ACT CONCERNING CONTAGIOUS DISEASES[1]

of 20 December 1950

SUMMARY

The text of the Act defines, enumerates and classifies contagious diseases in Lebanon. Chapter III prescribes means by which these diseases are to be combated: The existence of the disease in any part of the country is to be declared, patients suffering from contagious diseases and those who have been in contact with them are to be isolated. Preventive measures and treatment are to be given to those who have been in contact with affected persons. Disinfection is made compulsory and other hygienic measures are to be taken. Special measures required for each category of contagious diseases are listed depending on the seriousness of each of these categories.

In those cases where epidemics spread over all or part of the Republic and when local preventive measures prove inadequate, the President may issue a decree after consultation with the appropriate department to take the necessary preventive measures and to localize the epidemic. The presidential decree shall set forth the administrative machinery with adequate powers and financial allocations.

Certain preventive measures are made compulsory at all times—such as vaccination of infants against smallpox four months after birth.

Besides making special provisions for all eventualities in connexion with the appearance and spread of contagious diseases, this Act also provides for certain penalties for violation of its provisions.

A table indicating the names of the contagious diseases and the period of isolation is attached to the Act.

[1] Arabic text of the Act in *Official Journal* No. 52, of 27 December 1950. Summary prepared by the United Nations Secretariat.

DECREE CONCERNING THE ESTABLISHMENT OF PRIVATE SCHOOLS[1]

of 23 May 1950

SUMMARY

This decree supersedes decree No. 7962 of 1 May 1931, as amended. The establishment of a private educational institution requires previous approval by the Minister of National Education and Fine Arts, who, in case of approval, will issue a permit. A private educational institution is defined as any institution for educational and teaching purposes presided over or organized by an individual, an association, or a religious body.

Teachers and principals in such schools are required to satisfy certain standards with regard to education, age and character. The premises must be healthy and safe, and in cases of boarding schools or colleges additional sanitary and health requirements must be met.

An association making an application for the establishment of an educational institution must submit its articles of constitution and its official permit. The qualifications of directors of proposed educational institutions, as well as certificates of good conduct issued by the appropriate authority, must be submitted with the application to the Ministry of National Education and Fine Arts.

The Minister of National Education and Fine Arts may, for good reasons and subject to a decision of the Council of Ministers, refuse the permission for the establishment of new private educational institutions.

The teaching of the Arabic language to Lebanese students is made compulsory in private national and foreign educational institutions.

Private schools shall follow the official curricula, but may use any teaching methods which they deem advisable from an educational point of view, or may include subjects other than those prescribed by the official curricula. They may also issue to their graduates certificates bearing the name of the graduating school.

In the teaching of Lebanese history, geography, Lebanese civics, form of government and matters of national concern, no other texts except those prescribed by the Ministry of National Education and Fine Arts may be used.

Private educational institutions—Lebanese or foreign—are subject to the supervision and inspection of the Ministry of National Education and Fine Arts.

[1] Arabic text of the decree in *Official Journal* No. 13, of 29 May 1950. Summary prepared by the United Nations Secretariat.

LIBERIA

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS[1]

By Executive Order No. 1 of 1950, issued on 20 November 1950 and published in the *Official Gazette*, 1950, p. 1, the President called upon all citizens and foreigners to observe the Sabbath (Sunday) and ordered the immediate cessation of all secular activities on Sundays between 6 a.m. and 6 p.m. Administrative officials are directed to enforce this order, and the police are authorized to arrest and detain any persons disregarding it. Detained persons "shall be released unconditionally after the expiration of the time-limit specified herein of the Sabbath (Sunday) on which the arrest was effected or upon bail to appear and answer such charges upon which they were arrested".

An Act of 22 December 1949 (published in *Acts passed by the Legislature of Liberia*, 1950, p. 46) amends Part VI of the Electoral Act of 19 December 1945, which is devoted to "Limitation of election expenses".[2] The provisions limiting such expenses have proved to be too restrictive and inadequate, and the limits of expenses authorized are therefore raised to $2,000 for a representative, and to $3,000 for a senator. The limits are correspondingly raised for the election of the President and Vice-President.

[1] This note is based on texts contained in *The Liberia Official Gazette* 1950 and *Acts passed by the Legislature of the Republic of Liberia*, Monrovia, 1950, pp. 46–47.

[2] See *Yearbook on Human Rights for 1948*, p. 350.

LIECHTENSTEIN

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS[1]

No enactments are to be recorded as having modified to an appreciable degree, during 1950, the existing legislation on human rights.

No judicial decisions constituting important new developments in the field of human rights are to be reported for the year 1950.

[1]Information received through the courtesy of Mr. Joseph Büchel, Secretary of the Government, Vaduz.

Liechtenstein became a party to the Statute of the International Court of Justice on 29 March 1950.[2]

[2]See *Liechtensteinisches Landes-Gesetzblatt* No. 6, of 10 March 1950; Declaration of the Government of Liechtenstein of the same date recognizing as compulsory the jurisdiction of the Court, in conformity with article 36, paragraph 2, of the Statute of the International Court of Justice (registered on 29 March 1950; see United Nations, *Treaty Series*, Vol. 51 1950, pp. 119–121).

LUXEMBOURG

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS

Three Acts of 1950 deal with pardon and remission of penalties for offences committed during the war or the occupation or in the period of liberation:

The Act of 24 March 1950 declares certain punishable acts not to be illegal and grants amnesty in the case of certain other acts committed under the impulsion of patriotic feelings during the occupation or in the period of the liberation. Extracts from this Act are reproduced in the present *Yearbook.*

The Act of 31 March 1950 mitigates certain penalties attached to convictions for offences against the external security of the State.

The Act of 11 April 1950 grants amnesty for certain offences against the *droit commun;* it also interprets or modifies certain provisions of the decree of the Grand Duchess of 21 April 1948 determining the effect of the measures taken by the enemy, and certain other previous legislative measures.

Summaries of these two Acts are reproduced in this *Yearbook.*

A Decree regulating the conditions for the establishment and utilization of certain categories of private broadcasting stations was issued by the Grand Duchess on 22 May 1950 and published in the *Mémorial du Grand-Duché de Luxembourg* No. 32, of 1 June 1950. It provides that the owners of private transmitters and receivers must be Luxembourg nationals and must obtain a licence from the Minister of the Post, Telegraph and Telephone. They are forbidden under penalty of revocation of their licence to violate the secrecy of correspondence. Private stations are placed under the control and supervision of the postal administration.

A regulation of 31 January 1950, published in the *Mémorial* No. 8, of 7 February 1950, provides for organization of services of social defence in penitentiaries and educational institutions.

ACT RELATING TO PENALTIES FOR CERTAIN PUNISHABLE ACTS COMMITTED UNDER THE IMPULSE OF PATRIOTIC SENTIMENTS DURING THE OCCUPATION OR AT THE TIME OF THE LIBERATION[1]

dated 24 March 1950

Art. 1. The following shall not constitute offences:

(*a*) Acts regarded as offences or misdemeanours committed after 10 May 1940 and prior to the liberation either to compensate for the lack of national institutions or authorities or primarily with a view to furthering the cause of liberation, resistance to the enemy or the major interests of the population or of the occupied territory;

(*b*) Acts regarded as offences or misdemeanours by law, committed after the liberation, and motivated primarily by the desire to maintain public order, or to safeguard the internal or external security of the State, when these acts were performed without opposition from the legitimate authorities by private individuals acting in a public capacity or by persons with status as officials or agents of the State or communes acting in an administrative capacity beyond the limits of their competence or in disregard of proper legal forms;

Such act is also justified if it represents the exercise of a power legally granted to an administrative authority after the liberation.

(*c*) Acts regarded as crimes by law, committed in the circumstances specified in sub-paragraphs (*a*) and (*b*) above, provided that the necessity or extreme usefulness of the acts in relation to the patriotic purpose sought, or that excusable error regarding the existence of those conditions, is demonstrated.

Art. 2. A full and complete amnesty is accorded to the authors of acts regarded as offences or misdemeanours by penal law committed prior to 1 January 1947 for exclusively or primarily patriotic reasons and aimed directly against persons guilty of attacks on the external security of the State.

[1] French text in *Mémorial du Grand-Duché de Luxembourg* No. 22, of 31 March 1950. English translation from the French text by the United Nations Secretariat. The Act was adopted by the Chamber of Deputies on 16 March 1950 and promulgated by the Grand Duchess on 24 March 1950.

Cases of excusable error regarding the existence of the latter circumstance shall be treated in the same way as cases in which that circumstance was present.

Art. 3. If, in the cases referred to in article 1 (*c*), proof of necessity or extreme usefulness is not given, the acts may be punished by the penalties provided in cases of involuntary commission and lack of precaution or forethought and shall assume the nature of such offences.

If no penalty is provided in cases of involuntary commission of the act or lack of precaution or forethought, the act shall be covered by the amnesty.

Art. 4. When the act was performed in conditions other than those referred to in articles 1 and 3, but prior to 1 January 1949, and was directed against a person guilty of an attack on the external security of the State, the authors of acts regarded as crimes committed for exclusively or primarily patriotic reasons and the authors of offences committed for similar reasons but not covered by article 2 above shall be entitled to plead provocation as a legal defence.

The above-mentioned plea entails a reduction in penalty equal to that prescribed in articles 79 and following of the Penal Code.[1] It may be combined with more far-reaching extenuating circumstances and pleas including those provided for in articles 411 to 415 of the Penal Code.[2]

If appropriate, the provisions of the Act of 18 June 1879 empowering courts and tribunals to take extenuating circumstances into account shall apply to the pleas referred to in the preceding paragraphs.

Art. 5. Without prejudice to the possible application of the provisions of article 4 above, the authors of acts which revealed particular cruelty or brutality are excluded from amnesty and from justification. All violations of articles 372 to 382 of the Penal Code are also excluded.

Art. 6. The amnesty prescribed in articles 2 and 3, paragraph 2, may not be invoked against the rights of third parties.

The court or tribunal before which a civil action is brought at the same time as the penal action shall be competent to judge the civil action, notwithstanding the amnesty.

. . .

[1] These articles deal with extenuating circumstances.

[2] These articles deal with cases in which murder, assault and battery are excusable.

ACT MITIGATING CERTAIN PENALTIES ATTACHED TO CONVICTIONS FOR OFFENCES AGAINST THE EXTERNAL SECURITY OF THE STATE[1]

dated 31 March 1950

SUMMARY

By Act of 31 March 1950, certain disabilities attached to minor penalties imposed pursuant to a decree of 1945 on persons guilty of activities against the external security of the State are removed.

Article 21 of the Penal Code is supplemented by a paragraph declaring that persons sentenced for offences against the external security of the State shall not be deprived of their legal capacity. On the other hand, persons sentenced to a *peine criminelle*[2] shall be deprived of their Luxembourg nationality if sentenced for an offence against the external security of the State provided that they are not Luxembourgian by birth.

[1] French text of the Act in *Mémorial du Grand-Duché de Luxembourg* No. 26, of 8 April 1950. Summary prepared by the United Nations Secretariat. The Act was approved by the Chamber of Deputies on 21 March 1950 and promulgated by the Grand Duchess on 31 March 1950.

[2] Penalties such as the death penalty, hard labour from ten years to life, *réclusion* (from five to ten years) and *détention* (a confinement in a special section of a prison for a period of at least five years) belong to the category of *peines criminelles*.

ACT OF 11 APRIL 1950 GRANTING AMNESTY FOR CERTAIN OFFENCES AGAINST THE *DROIT COMMUN* AND INTERPRETING OR MODIFYING CERTAIN PROVISIONS OF THE DECREE OF THE GRAND DUCHESS OF 21 APRIL 1948 DETERMINING THE EFFECT OF THE MEASURES TAKEN BY THE ENEMY AS WELL AS PROVISIONS OF THE ACT OF 5 DECEMBER 1911 CONCERNING LEGAL REHABILITATION OF PERSONS SENTENCED TO A *PEINE CORRECTIONNELLE* OR A *PEINE DE POLICE*, AND OF THE ELECTORAL ACT OF 31 JULY 1924[1]

SUMMARY

This Act proclaims an amnesty for a great number of offences committed during the Second World War, the period of occupation and/or the period of liberation until the end of 1948. In cases of political offences or offences connected with certain political or military matters which fall under the amnesty, pardon is granted only if the offences were motivated by patriotic reasons.

[1] French text of the Act in *Mémorial du Grand-Duché de Luxembourg* No. 27, of 15 April 1950. Summary prepared by the United Nations Secretariat. The Act was approved by the Chamber of Deputies on 21 March 1950 and promulgated by the Grand Duchess on 11 April 1950. An imprisonment from eight days to five years is a *peine correctionnelle*. Prisoners sentenced to a *peine correctionnelle* are compelled to work. An imprisonment of one to seven days is a *peine de police*. The prisoners sentenced to a *peine de police* may not be compelled to work.

MEXICO

DECISIONS OF THE SUPREME COURT RELATING TO OR SUPPORTING HUMAN RIGHTS[1]

I. FIRST CHAMBER (CRIMINAL)

1. *Abuse of Authority*

According to clause IV of article 214 of the Penal Code, it is not necessary that the offender should be a public official or a government employee in order to establish that an abuse of authority has been committed. Whatever the category of his post—in this connexion the circumstances of holding office does not imply the exercise of power or use of authority—it is sufficient merely to show that a post has been entrusted to a person and that such person, going beyond the terms of his office, has committed arbitrary acts or acts against rights guaranteed by the Constitution (petition for writ of *amparo*[2] decision of 15 March 1950).

2. *Order for Committal to Prison*

(*a*) If an order for committal to prison contains imperfections of form and style only, without imperfections of substance which would involve violations of guarantees, it is correct and lawful for the district judge to issue a writ of *amparo* for the sole purpose of correcting the order so that it will satisfy the conditions as to form and style and comply more explicitly with the requirements laid down in article 19 of the Constitution.[3] If as a result of compliance with the writ aforesaid a situation more favourable for the offender may be created by causing a change in his legal situation, the situation which is more favourable to his freedom shall prevail (judgment of 28 June 1950).

It is inadmissible that under an order for committal to prison a person should be held in custody as an accessory and not for the offence committed. Being an accessory does not constitute a specific form of the offence itself, but is a degree of participation in the commission thereof; the determination of the degree of participation of each offender in the commission of an offence is a substantive part of the judgment and not of the order for committal to prison (judgment of 29 June 1950).

3. *Conditional Sentence*

If a person who has been convicted satisfies the conditions laid down in article 85 of the Penal Code of the State of Chiapas—*i.e.* that he was of good behaviour and led an honest life, the courts of this Federated State are clearly required to accord him the benefit of conditional sentence even though the clerk of the court has issued a certificate to the effect that the convicted person is liable to imprisonment for other offences, since such statements by their very nature are not conclusive evidence of the guilt of the convicted person (judgment of 20 April 1950).

4. *Freedom on Bail*

Once the freedom as provided by article 20 of the Constitution[4] has been granted, it becomes a right due to the offender and may not be taken away from him except by a judgment which complies with the formalities of procedure as set forth in article 14 of the Constitution,[5] irrespective of the processes laid down in laws issuing administrative regulations. Although the latter establish certain obligations to be carried out by the person wishing to benefit thereby they cannot conflict with the guarantee which is contained in article 20—and which, in its widest sense, protects human rights and prescribes the rules that must be followed before anyone may lawfully restrict him in the exercise of his rights (decision of 27 February 1950).

5. *Release on Probation* (libertad preparatoria)

If an offender who has served two-thirds of his sentence, has been of good behaviour since the commission of the offence for which he was sentenced and obeyed the relevant prison regulations, he may be considered to have shown repentance and to be fit to return to society, for the reformation of a defendant is a subjective process which can only be presumed from his behaviour. Medical opinion concerning the degree of danger which the offender represents should be taken

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[1] This survey was prepared by Dr. Javier Rondero, Consultant at the Ministry of Foreign Affairs, Mexico. English translation from the Spanish text by the United Nations Secretariat.

[2] See Dr. Garcia Robles' discussion of the *amparo* procedure in *Yearbook on Human Rights for 1946*, p. 203.

[3] See *Yearbook on Human Rights for 1946*, p. 191.

[4] See *Yearbook on Human Rights for 1948*, pp. 144–145 (Guarantees of accused persons in criminal cases).

[5] *Idem* for 1946, p. 191.

into account in granting release on probation in relation to the above factors of good behaviour. There is no criminal criterion for the observation and periodic examination of the prisoner while serving his term; it is therefore necessary to follow criteria which take into account the *de facto* conditions under which prisoners live in the country's jails when deciding the petition of any prisoner to whom release on probation may be granted (decision of 27 February 1950).

6. *Order of Detention and Deportation*

A detention and deportation order made against a person by the Ministry of the Interior to be carried out by other administrative authorities, constitutes a violation of guarantees if it is not based on certain facts justifying such a measure and if it has not been proved that the said person has contravened the provisions of the General Population Act (judgment of 28 September 1950).

7. *Judicial Proceedings by the "Preventive" Police*

Judicial proceedings by the "preventive" police for the purpose of investigating any act which might be of a criminal nature must be deemed to be in violation of guarantees, since, under the provisions of article 21 of the Constitution,[1] the Public Prosecutor's department and the judicial police are alone responsible for instituting a prosecution; the latter acts under the authority and on the orders of the former, and the preventive police are not entitled to investigate any act of a criminal nature (judgment of 20 April 1950).

8. *Acquittal*

There is no legal justification for the view that an acquittal merely means that the liability of the defendant was not fully proved, but that he was guilty of misconduct: on the contrary, an acquittal must be regarded as unassailable and as liberating the defendant from the charges brought against him, and therefore cannot have any prejudicial effect or consequence for the acquitted person (decision of 27 February 1950).

[1] See *Yearbook on Human Rights for 1946*, p. 192.

II. FOURTH CHAMBER (LABOUR)

1. *Payment of Sick Benefit and Wages*

When a claim for medical care in consequence of an industrial accident has been made—except where the accident occurred as a result of a fight, in which case it must be clearly shown that a physical clash existed and was an essential element of the fight—and if this is not proved, and the accident was due to the negligence or clumsiness of the worker and occurred in the place and during the hours of work, the employer is obliged to pay sick benefit and wages during the time that the worker is incapacitated, as prescribed by article 317 of the Federal Labour Act (decision of 17 February 1950).

2. *Acts of God not extraneous to the Employment; Liability of the Employer for Accidents caused thereby*

With respect to acts of God as an element of exemption from liability, the Federal Labour Code adopts a criterion which is distinct from that prevailing in civil law, since clause XIII of article 316 of the Federal Act relating to occupational risks provides that the employer is exempt from liability when the act of God is extraneous to the employment; this condition is considered to exist only when the act of God is in no way connected with the exercise of the occupation in question and does not merely aggravate the risks inherent in the undertaking, since any unforeseen or unavoidable event not occurring independently of the contingencies of the normal work performed by the worker does not, if it causes an injury to the latter, exempt the employer from the liability for occupational risks placed upon him by the law (decision of 10 July 1950).

3. *Occupational Risks; the Employers are liable even when they enter into a Contract through an Agent* (intermediario)

When an agent contracts for the services of a person for the performance of work for an employer, the latter is liable for the occupational injuries suffered by the person whose services were contracted for by the agent (decision of 21 November 1949).

THE NETHERLANDS

ACT CONCERNING THE ORGANIZATION OF INDUSTRY[1]

of 14 February 1950

A. *INTRODUCTORY NOTE*

Two leading ideas underlie the Dutch scheme of organizing industries by means of representative bodies possessing powers of public legislation.

The first is that a healthy growth of trade and industry cannot take place where there is an utter lack of social and economic discipline. Some measure of social and economic regulation is indispensable. In the social sphere there is the need for regulating labour conditions to guarantee a proper legal status and social position to workers. In the economic sphere unfair competition must be opposed, the development of trade and industry promoted and waste of capital and energy prevented.

This regulation to prevent social and economic confusion should, according to the Dutch view, be effected as much as possible by trade and industry themselves, so that there is no need for constant drastic interference by the Government except in extraordinary times. The responsibility for a healthy development of industries should be borne primarily by the industries themselves.

To undertake this responsibility, organizations will be formed in each branch of industry. These "industrial committees" (*bedrijfschappen*) are organisms of economic life. The Government will not, as a rule, intervene in their affairs, and they are not official bodies. They are designed to promote co-operation between the members of particular branches of industry, in order to secure achievements the attainment of which would exceed the possibilities of one individual enterprise—as, for instance, vocational education to enhance the skill of the workers, a joint export campaign, joint research, exchange of experience and improvement of labour conditions. This functional co-operation within each branch of industry will also make it possible to point up the significance of a particular industry in the Dutch economy and to bring the needs and wants of a given industry to the knowledge of the proper authorities.

The second idea underlying the scheme of industrial organization is that workers should be given a share in the management of social and economic affairs. It is urgently necessary that workers be allowed to share responsibility in social and economic life. Whenever the interests of an industry or an even greater unit of industrial life are at stake, workers ought to be granted the right to express their opinion. They are no less interested in the proper conduct of affairs than their employers. Workers have shown that they understand the demands of present-day economic life and have made sacrifices to meet them.

The bodies to be instituted will therefore comprise employers as well as workers, represented in equal numbers in order to promote close co-operation of employers and employees, to avoid class strife, and to ensure a common effort by employers and employees for the recovery and prosperity of the Netherlands, a recovery which cannot be achieved without their co-operation.

The industrial organization is to be built upon an economic system of private enterprise.

B. *THE ACT*

SUMMARY

Under articles 1 and 2 there will be a Social and Economic Council (hereafter briefly called Council), which is to be a permanent advisory board to the Government both in the economic and social field. Under articles 41–45 the Government is required to ask the advice of the Council before making provisions of a more general character with respect to economic and social questions.

Two-thirds of the members of the Council will be representatives of employers' and workers' organizations, and one-third independent persons appointed by the Crown.

Apart from its advisory function the Council has important responsibilities as a public authority for industrial relations in general, pursuant to article 152 of

[1] Dutch text of the Act in *Staatsblad* of the Kingdom of the Netherlands, No. K. 22. Introductory note and summary received through the courtesy of Dr. A. A. van Rhijn, Secretary of State for Social Affairs.

the Constitution.[1] It has been given legal power to make binding regulations for the whole of industry with regard to those matters whose regulation had been entrusted to it by law. The Act also provides that no regulations shall be made or maintained which are contrary to law or the public interest. Thus the Government retains considerable supervisory powers.

Articles 66–137 provide for the institution of so-called "vertical" and "horizontal" industrial organizations. A "vertical" organization comprises all those industries concerned with the production and distribution of some commodity or group of commodities. Thus a commodity committee for agricultural produce may include farmers, milkers, corn dealers and bakers. "Horizontal" organizations include undertakings engaged in similar work. The vertical organizations are called commodity committees (*productschappen*) in the Act, while the horizontal ones are called industrial committees (*bedrijfschappen*).

The commodity committees as well as the industrial committees have a twofold responsibility: on the one hand they shall promote the efficiency of the work so as best to serve the interests of the Netherlands population, while on the other hand they shall look after the common interests of the undertakings and persons concerned with the enterprises. This twofold responsibility includes advisory duty in the social and economic field.

The Act contains only general directives concerning the structure, legal powers, functions, etc., of these committees. They will be instituted at a later date either by ordinance or by a separate Act of Parliament, and the preparatory work is left as much as possible to the initiative of the persons concerned. In principle each committee will consist of an equal number of representatives of employers' and workers' organizations.

The new committees will collaborate with the higher authorities on request; they shall enjoy legal autonomy, which shall be restricted by law in so far as is required by the protection of the general interest.

The Council is to act as a stimulating and organizing agency in relation with the aforesaid committees. Moreover, the Council shall, to a large extent, control them as soon as they have been instituted.

A separate Act of Parliament will shortly be prepared concerning the jurisdiction by administrative tribunals with respect to the statutory organization of industry. That Act will indicate the cases in which appeals to an administrative tribunal against decisions of the new committees may be made by the parties concerned, and specify the procedure to be followed in such cases.

[1] Art. 152 of the Constitution reads: "Bodies for certain professions and trades and groups thereof, and also for professional and economic life in general, may be instituted by law in order to take regulatory action. The composition, institution and powers of these bodies shall be regulated by law."

ACT CONCERNING THE WORKS COUNCILS[1]

of 4 May 1950

SUMMARY

The concept of co-operation in each industrial and commercial establishment, as regulated in this Act, is not new to the Netherlands. Several decades ago, shop committees (*kernen*) or other forms or workers' representation were created in various establishments. The second world war gave a new impetus to this development, so that at present personnel committees, works councils, shop committees, and the like are to be found in a great many branches of industry or commerce. They are mostly based on a collective agreement or on an employer's contract. The Act continues to build on this development by regulating the obligation to establish works councils and recognizing the right of the worker to make his voice heard concerning the problems of the establishment in which he is employed.

The new Act conceives of the enterprise as a community of work in which employer and workers have each their own function and in which the workers are considered as collaborators in their own right and at the same time bear their share of responsibility.

The Works Councils Act is closely related to the Act of 14 February 1950 concerning the Organization of Industry.[2] Pursuant to the new Act, the head or director of an enterprise with twenty-five or more workers must establish a works council. To facilitate the application of this statutory obligation, the date of its coming into operation shall be fixed by the Social and Economic Council.[3]

This date may vary for the different branches of industry or commerce. However, within three years after the enforcement of the new Act, works councils must have been set up in every establishment with the exception of those branches of industry or commerce for which exemption has been granted. A works council of from three to a maximum of twenty-five members is an advisory as well as a negotiatory body where internal affairs of the enterprise are discussed. The chairman is the head or director of the enterprise; the

[1] Dutch text of the Act in *Staatsblad* of the Kingdom of the Netherlands, No. K. 174. Summary received through the courtesy of Dr. A. A. van Rhijn, Secretary of State for Social Affairs

[2] See the preceding text.

[3] See about the functions of this Council, p. 195 of this *Yearbook*.

members are representatives of the workers elected by those workers who are twenty-one years old, and who have been employed in the enterprise for at least one year.

The members of the works council are elected—with the exception of the chairman—on the basis of one or more lists of candidates, nominated by the workers' organizations concerned. Apart from this nomination by the trade-union movement to which the new Act gives priority, it also provides for an alternative method of designating members of the works council. This shows the flexibility of the Act and its ease of operation.

The works council has the responsibility—without prejudice to the independent function of the chairman—to contribute to the best of its ability to a smooth working of the enterprise. To accomplish this task article 6 authorizes the council:

(*a*) To deal with the wishes, complaints and comments of the workers as far as they are important to the position of the workers in the enterprise;

(*b*) To deliberate concerning holidays, time-tables, shift arrangements and meal-times, in so far as these decisions are not made by committees of higher competence in that branch of industry;

(*c*) To supervise the observance of the working conditions in the enterprise;

(*d*) To supervise the observance of statutory measures for the protection of workers in the enterprise as well as the institutions for safety, health and hygiene, and the canteens and lavatories;

(*e*) To participate in the management of institutions on behalf of the workers unless otherwise provided for by law;

(*f*) To advise and make suggestions concerning measures which may contribute to the improvement of the technical and economic management of the enterprise.

The same article lays down the following obligations of the head or director of the enterprise without prejudice to the legally recognized independence of his function:

(*a*) To co-operate with the works council and in particular to give all information which the council deems necessary for the exercise of powers conferred upon it under (*a*)-(*f*);

(*b*) To inform the works council periodically about the economic management in the enterprise;

(*c*) To consult the works council before laying down, altering or supplementing labour rules as indicated in the article 1637 *j* up to and including 1637 *m* of the Civil Code.[1]

It is evident from this article that the powers of the works council chiefly cover the social field. Only the responsibility listed under (*f*) may be considered to be of an economic nature.

On request, the Social and Economic Council or the Industrial Committee concerned created under the terms of the Act concerning the Organization of Industry, can confer upon one or more works councils legal powers in addition to those mentioned above. Thus, in those branches of industry where consultation between employers and workers has already made further progress, this development can be fully taken into account. The Act only indicates a minimum limit.

The supervision of the works councils rests with the Industrial Committees, a proof of the close relationship between the Works Councils Act and the Act concerning the Organization of Industry. During the transitional period when the industrial committees have not yet begun to operate this responsibility will be entrusted to committees set up for this purpose by the Social and Economic Council. These committees shall consist of an equal number of representatives from employers' and workers' organizations.

[1] These sections of article 1637 provide that regulations, as laid down by the employer, are binding only when the worker agrees with these regulations in writing. The employer must provide the worker with a complete copy of the regulations; in addition a complete copy must be posted in an easily accessible place and be clearly legible to the worker. If, during the time of duty, new regulations are established or existing regulations are altered, refusal of the worker to comply with these changes is considered as his resignation from his work. A statement by the worker declaring himself in agreement with any future regulation or with any change in an existing regulation is void.

ACT FOR COMPULSORY INSURANCE OF EMPLOYEES AGAINST FINANCIAL CONSEQUENCES OF INVOLUNTARY UNEMPLOYMENT (UNEMPLOYMENT ACT)[1]

of 9 September 1949

SUMMARY

The Act distinguishes between two kinds of insurance—namely, interim-compensation insurance (*wachtgeldverzekering*) and unemployment insurance (*werkloosheidsverzekering*), the latter being a continuation of the former. Interim-compensation insurance presupposes a certain connexion between the unemployed person and a particular branch of industry or type of occupation and is intended for the labour reserve of such

[1] Dutch text of the Act in *Staatsblad* of the Kingdom of the Netherlands, No. J 423. Summary received through the courtesy of Dr. A. A. van Rhijn, Secretary of State for Social Affairs. English translation from the Dutch summary by the United Nations Secretariat.

branch or type. If unemployment continues beyond a certain period, the connexion with a particular branch of industry or type of occupation is deemed no longer to exist, and the unemployed person is considered as belonging to the general labour reserve. It is for this *general labour reserve* that the unemployment insurance is intended.

The system has been designed to provide insurance for as many persons as possible. Under article 2, the Act applies to all persons gainfully employed within the Kingdom. Under article 4, however, the following categories of employees are excluded: civil servants, domestic staff, persons regularly earning more than 6,000 guilders a year and persons who have reached the age of sixty-five.

The insurance is administered by:

(*a*) Industrial associations, the governing bodies of which consist of representatives equally divided between employers and employees;

(*b*) The General Unemployment Fund, on the governing body of which both industry and the State are represented, the State accounting for one-third of the membership.

The industrial associations determine applications for the payment of benefits under both interim-compensation insurance and unemployment insurance. All applications for benefits must be addressed to these associations.

One industrial association can act as the administrative organ for each of the groups into which industry is divided for the purposes of the insurance. Each employer is, in the interest of his employees, attached to a particular industrial association. Administration by industrial associations thus makes it necessary to establish groups for various kinds of industrial and occupational activities. Such groups were established on 31 December 1949 by order of the Minister of Social Affairs on the advice of the Labour Foundation (*Stichting van de Arbeid*). Under this order industrial and occupational activities were divided into twenty-six groups, each embracing one or more branches of industry or types of occupation or portions thereof.

The General Unemployment Fund is to be regarded as exercising general supervision over the activities of the industrial associations.

In order to obtain benefits, an employee must be unemployed through no wish of his own and must have been employed in industry for a specified length of time.

Under article 36 an employee is entitled to benefits from the interim-compensation fund of an industrial association if during the twelve months immediately preceding his unemployment he has been gainfully employed in the branch of industry concerned for at least 156 days.

In order to receive benefits under *unemployment insurance*, an employee must, under article 44, have been gainfully employed in any industry for at least seventy-eight days during the twelve months immediately preceding the commencement of his unemployment. These benefits are paid from the General Unemployment Fund.

Benefits under interim-compensation insurance are paid, as provided in the interim-compensation regulations, for a period not exceeding forty-eight days; but the industrial association may increase the number of days. Unemployment-insurance benefits are paid, as provided in the unemployment-insurance regulations of the General Unemployment Fund, for a period of seventy-eight days. The total number of days is thus 126. If interim compensation is paid for more than forty-eight days, the total number of days is correspondingly increased. An unemployed person not entitled to interim compensation, but covered by unemployment insurance, receives unemployment-insurance benefits for 126 days.

Article 38 provides that the interim-compensation regulations of an industrial association may not fix the amount of interim compensation to be paid daily at less than:

80 per cent of the daily wage in the case of a married man, a married woman supporting a family or an unmarried man or woman supporting a family;

70 per cent of the daily wage in the case of an unmarried person eighteen years of age or over who does not support a family or live with his parents;

60 per cent of the daily wage in the case of any other employee.

A daily wage is defined as the average daily sum that an employee in receipt of unemployment benefits could be earning if he were employed in his usual occupation; provided, however, that such sum is deemed to be never more than sixteen guilders.

Unemployment-insurance benefits are in all circumstances equal to the above-mentioned minimum percentages prescribed for persons receiving interim compensation.

Half of the premium for interim-compensation insurance is paid by the employers and half by the employees. One half of the premium for unemployment insurance is met by the State, and the other half is raised by employers and employees, each group contributing an equal sum. The premiums for interim-compensation insurance may vary in accordance with the risk of unemployment in the branch of industry or type of occupation in question. On the other hand, the premium for unemployment insurance is uniform. The premium

is expressed as a specified percentage of the wages, which are deemed never to exceed sixteen guilders a day.

Article 32 provides for appeal to a court of arbitration against a decision of the governing body of an industrial association. An employer may appeal against decisions concerning premiums, and an employee against decisions relating to his right to receive benefits under the present Act. Appeal against a decision of a court of arbitration lies to the Central Appeals Board, but no such appeal lies from a decision concerned with questions of fact or questions of minor importance. (The Central Appeals Board is the highest appeals authority in the field of social insurance.)

The Act was partly put into effect by royal decree of 17 October 1949.[1] The provisions regarding assessment of premiums and payment of benefits will probably come into force on 1 July 1952.

[1] *Staatsblad* No. J 465.

LEGISLATION IN 1949 AND 1950 CONCERNING FINANCIAL AID AND WORK PROJECTS FOR UNEMPLOYED[1]

SUMMARY

Early in 1949 certain remedies by way of appeal were instituted with respect to the financial assistance payable to unemployed persons under existing Netherlands legislation. For this purpose, local reviewing authorities and a central reviewing authority were created. In addition to the State and the local authorities, recognized trade unions are also represented on these advisory appeal bodies.

Since 1 January 1950 there has been in force in the Netherlands a set of regulations (the "Regulations for communal social provision of work for manual workers") which enable the authorities of the communes by means of State subsidies, to provide work on special local projects for unemployed manual workers who cannot be employed with the State Works Service. Only work on behalf of a public or private body which could not be carried out without a State subsidy, can be chosen for such projects. This State subsidy amounts to 75 per cent of the costs of wages and social benefits.

The State also takes an active part in the provision of assistance to artists in straitened circumstances. This assistance takes the form, chiefly, of a subsidy granted each year by the State to the Artists' Provident Fund. The object of this institution, which was set up in 1935, is to meet to a certain extent the difficulties experienced by these artists in earning a livelihood, through the formation of a fund to which affiliated artists' associations pay periodic contributions for their members and to which—if appropriate—the authorities of these artists' communes of residence and the State make grants. Secondly, there are the regulations for social assistance to artists, which were introduced in 1949. Under these regulations the authorities of the communes, with a large (75 per cent) State subsidy, can provide assistance for artists who satisfy certain requirements of proficiency and are in urgent need of social assistance. The assistance here referred to is supplemented by the purchase of works of art (whether or not executed on commission), the price of which is paid in instalments. The State acquires a proprietary interest, not exceeding three-quarters of the purchase price, in the works of art so purchased.

[1] Summary received through the courtesy of Dr. A. A. van Rhijn, Secretary of State for Social Affairs. English translation from the Dutch summary by the United Nations Secretariat. See also the survey in *Yearbook on Human Rights for 1948*, pp. 153–154.

ACTS OF 22 JUNE AND 21 DECEMBER 1950 RELATING TO THE PROMOTION OF HEALTH AND TO SICKNESS INSURANCE[1]

SUMMARY

Pursuant to the Act of 22 June 1950, there was set up the Preventive Fund, into which 4,000,000 florins are paid annually by the Sick Fund Board. The Fund pays the expenses entailed in the prevention of disease and the promotion of health.

Under the Act of 21 December 1950 the category of persons who must be insured with Sick Fund Insurance was extended to include (among others) persons in receipt of benefits under the Emergency Old Age Benefit Act or of pensions under the Invalidity Act or one of the Accidents Acts.

[1] Dutch text of the Acts in *Staatsblad* No. K 259 and K 590. Summary received through the courtesy of Dr. A. A. van Rhijn, Secretary of State for Social Affairs. English translation from the Dutch summary by the United Nations Secretariat.

PRIMARY EDUCATION ACT[1]

of 19 January 1950

SUMMARY

Under the transitional provision contained in article 26 of the Act of 4 August 1947 (*Staatsblad* No. H 288) the period of eight years' compulsory schooling that had been introduced following the occupation measure of 26 August 1942 was reduced to one of seven years up to 1 January 1950. The shortage and inadequate equipment of the requisite premises constituted the main reason for this provision.

These factors made it necessary to consider, well before 1 January 1950, what measures might be required for the proper organization of primary education. The outcome of these deliberations was the Act of 19 January 1950, which consists mainly of provisions concerning the organization of ordinary elementary education and "continued ordinary elementary education".[2]

With regard to the organization of ordinary elementary education and continued ordinary elementary education the body of the Act provides for six years of elementary education and two years of continued ordinary elementary education. In the transitional provisions of the Act, however, it is laid down that, until a date to be appointed by the Act, the following shall apply:

I. Ordinary elementary education shall be given in schools offering eight consecutive school-years;

II. Continued ordinary elementary education shall be given in schools offering not less than two consecutive school-years following upon the sixth school-year of an ordinary elementary school.

Accordingly, the eight years of compulsory schooling can be completed entirely in an ordinary elementary school. It is also possible, however, for a child to leave elementary school after completing six school-years there. In that case, the compulsory schooling may be completed in schools for preparatory higher education, in intermediate schools, in industrial schools or in schools for continued ordinary elementary education. The syllabus of the last-named schools includes the subjects taught in the elementary schools and general history; in addition to this, boys receive instruction in handicrafts and girls receive instruction in domestic science and needlework. One or more of the following subjects: mathematics, commercial course, agriculture and gardening; as well as two of the following subjects: French, German and English, may be added to the curriculum. Girls, also, may receive instruction in handicrafts.

In the seventh and eighth school-year of an ordinary elementary school the same syllabus may be followed as in schools for continued ordinary elementary education.

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[1] Dutch text of the Act in *Staatsblad* of the Kingdom of the Netherlands, No. K 14. Summary received through the courtesy of Dr. A. A. van Rhijn, Secretary of State for Social Affairs. English translation from the Dutch summary by the United Nations Secretariat.

[2] See the explanation of this term in the penultimate paragraph of this summary.

NEW ZEALAND

NOTE ON LEGISLATION[1]

Annual Holidays Amendment

Abolishes holiday cards and provides for payment in cash instead. Holidays may be taken in any two periods mutually agreed on instead of two exact weeks as at present. Employers who close their premises over Christmas may give proportionate holidays on pay based on period of employment. Agricultural workers to receive in holiday pay full allowance for board and lodging instead of half as at present.

Capital Punishment

Restores capital punishment for murder. Sentence must still be confirmed by Executive Council.

Capital punishment is not to be imposed in respect of offences committed before the passing of the Act. The Act prohibits the discharge or release on probation, until the approval of the Governor-General in Council has been obtained, of any person who has been convicted of murder and who is serving a term of imprisonment for life under the previous law or whose sentence under the present Act has been commuted to imprisonment for life. A sentence of imprisonment with hard labour for life, instead of a sentence of death shall be imposed on any woman convicted of an offence punishable with death (murder, treason, or piracy) who is found to be pregnant. A person convicted of an offence punishable with death who is under the age of eighteen years shall not be sentenced to death but shall be sentenced to be detained during His Majesty's pleasure. Any detention under this section is deemed to be legal custody for the purposes of the Habeas Corpus Acts. The Act empowers the Minister of Justice to discharge on licence any person detained under this section during His Majesty's pleasure: the form and condition of the licence are within the absolute discretion of the Minister of Justice. A licence may at any time be revoked by the Minister and the convicted person is then taken back into custody.

Cook Islands Amendment

Provides for conservation of native antiquities and makes miscellaneous amendments to Act.

Crown Proceedings

Consolidates and amends law relating to court actions brought by or against Crown. Limits certain procedural privileges of Crown and makes certain Acts bind Crown.

Electoral Amendment[2]

Electorates to be based on total and not adult population.

Elections to be on Saturday.

Maori elections to be on same day as European.

Legislative Council Abolition

Provides for abolition of Council as from 1 January 1951.

Local Elections and Polls Amendment

Local body elections to be held on a Saturday. In future electors must enrol separately on local body rolls as well as on parliamentary rolls.

New Zealand University Amendment

Increases value of University National Scholarships from £45 to £70.

Political Disabilities Removal Amendment

Use of union funds for political purposes must be approved by majority of union members.

Shipping and Seamen Amendment

Provides that on conviction for the offence of desertion seamen on overseas ships shall be deported to the country in which they were engaged.

Social Security Amendment[3]

Provides for increase of 2/6 a week in benefits; for increase of 10. a week in allowable income; for reduction of age and invalids' benefits by £1 for every £15 instead of £10 of accumulated property. Benefits for age beneficiaries who postpone their application for them will be increased by 2*s.* 6*d.* a year for each year they delay application. Women beneficiaries may earn an additional £78 a year in domestic work in private homes without affecting benefits.

Superannuation Amendment

Makes various amendments to Superannuation Act, 1947. *Inter alia,* no contributor may count any period when he was a military defaulter for superannuation purposes.

Tuberculosis Amendment

Provides for better inspection and control of patients.

[1] This note is based on texts and information received through the courtesy of the New Zealand Government.

[2] See texts concerning electoral legislation in *Yearbook on Human Rights for 1948*, pp. 362–364.

[3] For a survey of New Zealand's Social Security system, see *Yearbook on Human Rights for 1949*, pp. 154 *seq.*

PUBLIC SERVICE REGULATIONS 1950[1]

PART II
DUTIES OF EMPLOYEES

Hours of Attendance

10. Except where otherwise provided in any Act or regulation or by direction of the Commission, the hours of attendance to be observed by employees engaged on clerical duties shall be from 8 a.m. until 4.35 p.m. daily, from Monday to Friday inclusive in each week, less an hour for lunch each day. Other employees shall observe such hours of attendance as the Commission shall from time to time direct.

Additional Hours of Duty

1.1 (1) Permanent heads and controlling officers shall ensure that overtime work is kept to a minimum, and where attendance of employees beyond the usual hours of duty is considered necessary, permanent heads shall immediately report the fact and circumstances in writing to the Commission, which, if satisfied as to the necessity for overtime, may sanction it. Every such report shall specify the employees or group of employees to be employed, the nature of the work and the probable duration of overtime, and shall certify that the work intended to be performed in overtime cannot be carried out otherwise.

(2) Every employee who is called upon to work overtime shall attend during such additional hours of duty as may be specified by his controlling officer, but only in special circumstances may an employee be required to perform more than three hours of overtime duty on any one day in addition to the usual hours of work.

(3) Overtime on Sundays and holidays shall not be ordered except under very special circumstances.

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PART III
DUTIES OF CONTROLLING OFFICERS

Incriminating Questions

. . .

37. No employee shall be compelled to answer any question tending to incriminate him.

. . .

[1]English text: Serial Number 1950/215, received through the courtesy of the Permanent Delegation of New Zealand to the United Nations. The regulations were made by the Public Service Commission in pursuance of the Public Service Act 1912 and were approved on 13 December 1950 by the Governor-General of New Zealand in Council. The regulations were to come into force on 1 April 1951. The Schedule includes a list of repealed regulations (issued between 1913 and 1950). The agency administering these regulations is the Public Service Commission. Those provisions which may be regarded as coming within the purview of articles 23–25 of the Universal Declaration of Human Rights have been selected for publication in the present *Yearbook*.

PART IV
LEAVE OF ABSENCE

Annual Leave

41. (1) Employees who complete ten years of service before the end of a leave year may be granted not more than three weeks' annual leave in that and succeeding leave years.

(2) Other employees may be granted not more than two weeks' annual leave each year.

(3) Notwithstanding the foregoing provisions of this regulation, the Commission, in special circumstances, may grant annual leave in excess of two weeks in any year.

[The following paragraphs deal with definitions and special cases.]

Special Leave

43. In special cases the Commission may grant special leave of absence with or without pay on such terms and conditions as the Commission thinks fit.

Furlough

44. The Commission may grant to any employee of at least ten years' continuous service twelve months' leave of absence, and to any employee of less than ten years' continuous service leave of absence not exceeding six months, in each case on half salary. Any annual increment becoming due during any such absence shall not be payable until the employee resumes duty; but when he resumes, the increment shall commence and be payable on and from the date of the resumption and shall be added to his salary; and the next increment shall be payable one year after the date on which the preceding increment would have become due if no leave of absence had been granted.

Maternity Leave

46. Maternity leave shall be granted to women as leave without pay:

Provided that an employee resuming duty after a period of maternity leave of not more than six months may be granted by the Commission retrospective pay in respect of any such period of absence in accordance with the schedule set forth in respect of sick leave in regulation 47 hereof upon the employee furnishing to the Commission a certificate signed by a registered medical practitioner in support of the reason for the leave of absence.

Sick Leave

47. (1) The Commission may grant leave of absence on account of illness or accident on such conditions as the Commission thinks fit.

(2) Pay during sick leave may be granted in accordance with the following schedule:

Length of service	*Aggregate period for which sick leave on pay may be granted during service*
	Days on full pay
Up to 3 months	7
Over 3 months and up to 6 months .	14
Over 6 months and up to 9 months .	31
Over 9 months and up to 5 years ...	46
Over 5 years and up to 10 years	92
Over 10 years and up to 20 years ...	183
Over 20 years and up to 30 years ...	275
Over 30 years	365

Sick leave with pay for any one period of absence from duty allowed under this schedule is to be reckoned in consecutive days. The aggregate period for which sick leave on pay may be granted may consist of one or more periods, but shall be computed in respect of the whole period of an employee's service.

(3) The Commission may, in cases which it considers special, vary, modify, or extend the period and conditions of pay during sick leave as stated in subclause (3) of this regulation, particularly when in its opinion the illness results from causes that are due to conditions under which an employee has been working or where an employee, in the discharge of his duties and through no fault of his own, sustains injuries of such a nature as to incapacitate him from duty.

(4) Any employee practising imposition under the plea of sickness shall be guilty of an offence and liable to such penalty as the Commission may determine.

Short Study Leave

51. The Commission, on such terms and conditions as it thinks fit, may grant leave not exceeding five hours weekly to an employee to enable him to attend lectures approved by the Commission. In special cases additional leave may be granted.

Study Leave

52. (1) The Commission may, upon such conditions as it thinks fit, grant special leave of absence to any employee to enable him to attend a course of study and training at a university or other educational institution, whether in New Zealand or elsewhere, in furtherance of the employee's training in the public service.

(2) Where leave of absence has been granted under the provisions of sub-clause (1) of this regulation, the following provisions shall apply:

(*a*) The Commission may authorize the payment on behalf of the employee of his college and tuition fees and may arrange for the supply or loan to the employee of the text books necessary for the course of study. All such text books shall be returnable on demand;

(*b*) The Commission may refund to the employee the whole or such part as it thinks fit of the amount expended by him in the purchase of approved text books;

(*c*) The employee shall, if so required, enter into a bond as security for compliance by him with the conditions upon which leave is granted.

Retiring Leave

53. (1) The Commission may, in its discretion, grant to a male employee who retires after completing not less than forty years' service or to a female employee who retires after completing not less than thirty-five years' service leave on full pay for a period not exceeding six months or a payment by way of allowance not exceeding the amount of three months' salary instead thereof.

(2) The Commission may, in its discretion, grant to an employee who resigns or retires before completing forty years' service leave on full pay as follows:

On completion of 10 years' service, but less than 20 years' service	1 month
On completion of not less than 20 years' service	6 weeks

[The following provisions qualify the above-quoted part of paragraph 2 and deal with special cases, particularly of women resigning from the public service to be married or having married while in the public service, and employees dispensed with through no fault of their own before reaching the retiring age.]

PART V
ALLOWANCES AND EXPENSES

Meal Allowance

. . .

56. (1) An employee who is directed to work additional hours of duty, and whose additional duty, in the opinion of the Commission, necessitates his buying a meal away from home which he would not otherwise have bought, may be granted, in addition to any payment for overtime, a meal allowance for each such meal at such rate as the Commission may from time to time determine.

(2) If the additional duty does not prevent the employee from taking a meal at home and he regularly travels there by public conveyance, he may be paid the fares to and from his residence instead of meal allowance.

. . .

JUDICIAL DECISION

EQUALITY BEFORE THE LAW—NON-DISCRIMINATION—LANDLORD SEEKING POSSESSION OF DWELLING HOUSE—RELATIVE STANDARD OF HARDSHIP AS BETWEEN MAORI LANDLORD AND PAKEHA (EUROPEAN) TENANT—LAW OF NEW ZEALAND

NGARO KING *v.* JOHNSON

Supreme Court of New Zealand[1]

20 May 1948

The facts. This was a claim for the possession of a dwelling house brought by the owner, who was a member of the Maori race in New Zealand, against the tenant, who was of European extraction. According to the law of New Zealand it is a good defence to a claim for possession of a dwelling house for a tenant to show that the granting of an order of possession would cause him to suffer greater hardship than would be caused to the landlord by the refusal to grant such an order. In this case it was admitted that, had both the landlord and the tenant been of European extraction, such a defence on the part of the tenant could not possibly have succeeded. It was claimed however that, as the landlord was a member of the Maori race, her present living conditions were, judged by Maori standards, adequate; because, it was contended, many Maori families lived under worse conditions than the landlord and her household.

Held: that the plaintiff was entitled to succeed in her claim for possession.

The Court said: "If the plaintiff (Ngaro King) had been a European in like circumstances, no question could ever have arisen between landlord and tenant as to their respective degrees of hardship in the event of an order for possession being made or refused, as the case may be. But because the plaintiff is a member of the Maori race, it has been suggested, in effect, that the hardship that would be suffered by her and her household in the event of an order for possession being refused could not possibly equal the hardship that would be suffered by the defendant and his much smaller household in the event of an order for possession being made.

"A few days ago, I said here, in this court, that our Maori fellow-citizens shared our privileges and responsibilities, and must learn to conform to our standards. It would be making a mockery of my own words if, in the circumstances that have been revealed on behalf of the plaintiff, I should now hold that she and her household are not entitled to possession of her own house, which was purchased more than three years ago with the express purpose of providing a home for herself and her household.

"I am satisfied that the hardship that would be suffered by the plaintiff if an order for possession were refused would be immeasurably greater than the hardship that would be suffered by the defendant if it became necessary for him to find other accommodation for himself.

"I make an order accordingly that the defendant vacate the premises within six weeks of the date of this order."

[1] Report: [1948] *New Zealand Law Reports* 803. Summary prepared by the United Nations Secretariat.

NICARAGUA

POLITICAL CONSTITUTION OF NICARAGUA[1]

of 1 November 1950

PRELIMINARY TITLE

1. THE STATE

Art. 1. Nicaragua is a unitary, free, sovereign and independent State.

Art. 2. The people is the source of all political power and exercises that power through the Government of the State.

Art. 3. No person or assembly of persons may usurp the representation of the people or its rights, or make petitions in its name. Violation of this article shall constitute a crime.

Art. 8. The State has no official religion.

Art. 9. Nicaragua rejects aggressive war and intervention in the affairs of other States. She welcomes the principles of the Atlantic Charter, the American Declaration of the Rights and Duties of Man[2] and the principles of the Inter-American Charter of Social Guarantees,[3] approved at the Ninth International Conference of American States at Bogotá. She recognizes the right of peoples to self-determination, arbitration as a means of settling international disputes, and the other principles which form American international law for the organization of peace.

2. THE GOVERNMENT

Art. 10. The Government of the State is representative republican and democratic.

Art. 12. The principle of the representation of minorities in the organization of the powers of the State is established.

Art. 14. The organs of the Government and the public officials have no authority or powers, even on the grounds of exceptional circumstances, other than those expressly conferred upon them by the law. Any act contrary hereto is invalid.

. . .

TITLE I

NATIONALITY

[Art. 17–21 deal with acquisition and loss of Nicaraguan nationality. Art. 19 (3) provides that alien women contracting matrimony with Nicaraguans and residing in Nicaragua, if they declare their desire to acquire Nicaraguan nationality, are Nicaraguan by naturalization.]

Art. 20. Neither matrimony nor its dissolution shall affect the nationality of spouses or of their children.

Art. 21 . . .

(3) Naturalized Nicaraguans who propagate political doctrines which deny the concept of fatherland, impair the national sovereignty or tend to destroy the republican form of the Government shall forfeit Nicaraguan nationality and may not recover it.

Art. 23. Nicaraguans are obliged to obey the laws, to defend the fatherland, to contribute to its maintenance and spiritual, moral and material advancement, to perform military service and any other services that may be established by law. They may not claim compensation from the State for any injuries they may sustain in their persons or property as a result of acts which were not executed by lawful authorities in the exercise of their functions.

TITLE II

ALIENS

Art. 24. Aliens in Nicaragua enjoy all the civil rights and guarantees accorded to Nicaraguans, subject to the limitations established by the laws.

They are required to obey the law, to respect the authorities, and to pay all the ordinary and extraordinary taxes to which Nicaraguans are subject.

Art. 25. Aliens shall not interfere, directly or indirectly, in the political activities of the country. An alien doing so may, without prejudice to any other responsibilities he may incur, be expelled, without previous trial, by the President of the Republic in the

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[1] Spanish text in *La Gaceta* No. 325 of 6 November 1950. English translation from the Spanish text by the United Nations Secretariat. According to article 329, this Constitution came into force the day of its publication in *La Gaceta*. It supersedes the Constitution of 22 January 1948 (see the provisions on human rights of that Constitution in *Yearbook on Human Rights for 1948*, pp. 160–166.

[2] See *Yearbook on Human Rights for 1948*, pp. 440–442.

[3] *Ibid.*, pp. 446–450.

Council of Ministers, unless the alien has a Nicaraguan spouse or legitimate or illegitimate children by a Nicaraguan mother recognized before the punishable act.

Art. 26. Aliens may not make claims or demand compensation from the State, except in the cases and in the manner in which Nicaraguans may do so.

Art. 27. The rules and conditions for the expulsion of aliens from the national territory shall be prescribed by law.

Art. 29. Aliens may hold public employment in the Social Welfare and Works Departments, or in departments in which special technical knowledge is required, provided that no authority or jurisdiction attaches to such employment.

Art. 30. The extradition of aliens for political offences or for offences in ordinary law connected with political offences may not be granted. Offences of both classes shall be defined by the law and in treaties.

TITLE III
CITIZENSHIP

Art. 31. Nicaraguan nationals, of either sex, over twenty-one years of age, Nicaraguan nationals over eighteen years of age who can read and write or who are married, and Nicaraguan nationals under eighteen years of age holding an academic certificate are citizens.

Art. 32. The following are the rights of citizens: to hold public office, to assemble, to associate, and to present petitions, in accordance with the law.

Women may be elected or appointed to public office, save as expressly excepted by the Constitution.

Art. 33. The following are the obligations of citizens:

1. To register in the electoral register;

2. To vote in popular elections. Women shall exercise the right to vote, in accordance with such law as may be enacted thereon, by a vote of two-thirds of each Chamber;

3. To discharge local offices, unless excused by law.

A law shall be issued laying down regulations for these obligations and the penalties for their infringement.

Art. 34. A citizen's rights are suspended if he:

1. Is mentally incapacitated;

2. Is the subject of a warrant for imprisonment or a declaration that a prosecution against him is pending for an offence to which a penalty acting on the person is annexed;

3. Is sentenced to a penalty acting on the person;

4. Is a fraudulent debtor;

5. Is a vagrant or an habitual drunkard;

6. Is employed in Nicaragua by a foreign nation, without due permission;

7. Has committed violence, coercion, corruption or fraud in elections, or advocated or proclaimed abstention from the vote;

8. Has behaved improperly towards his parents or legitimate or recognized illegitimate minor children;

9. Has assisted any other country or any alien citizen in a diplomatic dispute against Nicaragua or in a suit before an international tribunal;

10. Is for any other reason in law liable to penal suspension.

For suspension under items 1, 4, 5, 7, 8 and 10 hereof a final sentence of a court shall be required.

The citizen's suffrage also is suspended for all the reasons in this article, except that of advocating or proclaiming abstention from the vote.

The law shall regulate restoration of the exercise of citizenship.

Art. 35. The popular vote is personal, non-transferable, equal and direct.

TITLE IV
RIGHTS AND GUARANTEES

Art. 36. All Nicaraguans are equal before the law. In Nicaragua, privilege on the grounds of birth, social status or race, or on any grounds other than ability or virtue, is not recognized.

Art. 37. The death penalty shall be applied only for the crime of high treason committed in a foreign war, for grave offences of a purely military character, and for the heinous crimes of murder, parricide, or robbery resulting in death, in aggravating circumstances defined by law.

Art. 38. The State guarantees individual liberty. It may be restricted only in accordance with the law.

Art. 39. No person may be detained except by written order of the competent official. In the case of *flagrante delicto*, the offender may be arrested by any private person for delivery to the authority empowered to make arrests.

Any order for detention not issued by the competent authority, or not issued in accordance with the legal formalities, is punishable.

Art. 40. Every person detained shall be set at liberty or brought before the competent judge within twenty-four hours of his detention, in addition to a time reasonably allowable for distance, where necessary.

Art. 41. Any person detained or threatened with detention, or any other inhabitant of the Republic on his behalf, may apply orally or in writing to the competent tribunal for the remedy of *habeas corpus.*

Art. 42. No person shall be punished for an act or omission not previously declared punishable by law.

Art. 43. The hearing shall be public. The accused shall be entitled to intervene personally or by counsel, even at the preliminary proceedings.

Art. 44. Trial by jury is established for criminal cases involving offences for which penalties greater than correctional penalties may be imposed.

Art. 45. Detention for investigation shall cease and be of no effect, or shall be commuted to imprisonment, within ten days, in addition to a time reasonably allowable for distance, of the bringing of the person detained before the competent judicial authority.

Art. 46. A warrant for imprisonment may not be issued without full proof that an offence has been committed and at least a strong presumption regarding the identity of the offender.

Art. 47. Restriction of personal liberty for purely civil obligations is prohibited, except for attachment in accordance with the law.

Art. 48. No one shall be removed from his lawful judge, nor subject to exceptional jurisdiction, except in accordance with a previous law.

Art. 49. No one may be deprived of the right of defence.

Art. 50. Penalties shall not extend beyond the person of the offender.

Art. 51. Prisons are establishments for the purposes of security, social defence, the prevention of crime, the re-education of offenders and training for work.

Cruelty or torture against persons detained pending trial or after conviction is prohibited. Violation of this guarantee shall constitute an offence.

Art. 52. No one may be obliged in a criminal, correctional, or police case to incriminate himself, his spouse, or his relations to the fourth degree of consanguinity or the second degree of affinity.

Art. 53. The State may not deliver up its nationals; but if the extradition of a national is requested, he shall be tried in a Nicaraguan court for any non-political offence.

Art. 54. The territory of Nicaragua shall afford asylum to any person persecuted for political reasons. If the expulsion of such person is lawfully ordered, he may in no case be sent to the country where he was persecuted.

Art. 55. A court shall not be entitled to deal with cases distinct from, even if related to, matters falling strictly within its competence.

Art. 56. The enactment of proscriptive laws and of laws prescribing penalties involving infamy or penalties of more than thirty years' duration is prohibited.

Art. 57. If a constitutional rule is infringed to the detriment of any person, the orders of a superior official do not exempt the agent from responsibility. Serving military personnel are exempted from this provision, and in their case the responsibility shall fall on the superior officer issuing the order.

Art. 58. The State guarantees the inviolability of the home. The dwelling of any person may be entered upon by the authorities only in the following cases:

(1) The actual pursuit of an offender;

(2) To seize a criminal in *flagrante delicto;*

(3) An appeal made from inside the house or if an offence is committed in it, or if some disgraceful disorder calls for immediate action;

(4) Fire, earthquake, flood, epidemic, or the like;

(5) Visits for purposes of statistics, health or hygiene;

(6) To set free an unlawfully detained person;

(7) To seize objects sought in view of legal proceedings, provided there is at least a strong presumption of the existence of such objects in the house to be entered;

(8) To carry out a lawful decision, injunction or order of a court;

(9) To apprehend an offender for whose detention or imprisonment a warrant has been issued, provided that there is at least a strong presumption that he is hiding in the house to be entered.

In the last four cases entry may be made only in virtue of the written order issued by the competent authority and containing reasons for its issuance; such order may not be executed between 7 o'clock in the evening and 6 o'clock in the morning without the consent of the head of the household.

Art. 59. All persons may move freely throughout national territory and freely choose their residence and domicile therein, and may not be compelled to change it, except in virtue of an enforceable judgment or when dangerous infectious or contagious diseases require the isolation of the patient to prevent the spread of infection, as defined and regulated by law.

Art. 60. The right to emigrate and immigrate is recognized within the limitations established by law.

Art. 61. No one is obliged to do anything which the law does not prescribe; no one may be prevented from doing anything which the law does not prohibit.

Art. 62. International agreements may not be concluded whereby Nicaraguans are subjected to repressive legislation, such as the black lists or proclaimed lists, issued in time of war, by foreign countries.

Similar laws affecting Nicaraguans may not be enacted in Nicaragua.

Art. 63. Property is inviolable. No one may be deprived of his property save by judgment of a court, in virtue of a general contribution, or for reasons of public utility or social interest defined in accordance with the law and after fair compensation in cash. In case of national war, internal disturbance or public calamity, the competent authorities, may make use of private property in so far as the public good requires, but the right to subsequent compensation shall be reserved.

Art. 64. The State guarantees and protects intellectual property, the rights of authors, inventors and artists. The law shall regulate the exercise and duration of such rights.

Art. 65. Property, in virtue of its social function, entails obligations. The law shall determine their content, nature and extent.

Art. 66. The exercise of the right of property is subject to the limitations imposed by the maintenance and progress of social order. The law may impose obligations or servitudes on property in the public interest and may regulate the relations of landlord and tenant.

Art. 67. Property, whoever the owner may be, is governed exclusively by the laws of the Republic and is liable to taxation for the support of public expenditure, in accordance with the Constitution and the laws.

Art. 68. For reasons of public or social benefit, the law may lay down restrictions or prohibitions on the acquisition and transfer of stated classes of property by reason of their nature, condition or situation on national territory.

Art. 69. The State may supervise industrial and mining undertakings in order to guarantee the safety and health of the workers.

Art. 70. In the general interest, the State may intervene in the exploitation and management of public services, and may, after paying compensation, nationalize them.

Art. 71. The State shall promote the proper subdivision of uncultivated large estates and shall encourage the maintenace and generalization of medium and small rural properties.

Art. 72. There is no confiscation of property, except that of enemy nationals. If such enemy nationals are married to Nicaraguans, not less than 50 per cent of the confiscated properties shall be applied for the benefit of the spouse and children.

The products of confiscation or the remainder, as appropriate, shall be applied as a first charge to compensation for any confiscation or other damage suffered by Nicaraguans in the enemy country.

The right to reclaim property illegally confiscated shall not be limited by prescription.

Art. 73. Property, except that of enemy nationals, may not in any case be seized or administered for political reasons of offences if such nationals are married to Nicaraguans or have Nicaraguan children. 50 per cent of the revenue from the property seized or administered shall be applied for the benefit of the spouse and children.

In the cases to which this article and the preceding article refer, authorities infringing these provisions shall at all times answer with their persons and property for any damage incurred.

Art. 74. Any person may freely dispose of his property under any legal title. In the case of will, the statutory provisions regarding marriage portions and maintenance shall apply.

Entail of property and arrangements in mortmain are prohibited except to create a family patrimony or to benefit social welfare establishments and official educational and cultural centres.

Art. 75. The family patrimony is established on the basis that it shall be inalienable, unattachable and exempt from any public charge. This precept shall be regulated by law.

Art. 76. Marriage, the family and maternity are protected and defended by the State.

Art. 77. The education of their children is the first duty of parents.

Art. 78. Parents without economic resources are entitled to request the assistance of the State in the education of their offspring.

Art. 79. The State shall adopt measures for the grant of special allowances for large families.

Art. 80. Parents have the same duties towards children born out of wedlock as towards those born in it.

Art. 81. The right to investigate paternity is established in accordance with the law.

Art. 82. The assignment in accordance with laws of any legal title to property for the public benefit may not be varied or amended by law or by any act of the authorities. The State shall supervise the management and investment of such property.

Art. 83. The cultural wealth of the nation is under the protection and care of the State. All archaeological, artistic or historical assets, regardless of ownership, constitute part of that wealth, and the State may, by law, regulate their alienation and prohibit their exportation.

Art. 84. Places of worship used exclusively for the services of a religious sect, and their endowments, are exempt from taxation.

The State may not use places of worship or religious subjects for other purposes.

Churches, communities and religious institutions of any denomination, which are persons before the law, have the same rights as individuals in relation to their property.

Art. 85. The State recognizes the unrestricted freedom of commerce, contract and industry. The conditions for the exercise of this freedom and the safeguards accorded shall be prescribed by law.

Art. 86. A state of economic emergency may be proclaimed, if so required to secure the stability of the nation's economy, the protection of its external financial position or its stability and social welfare.

Art. 87. Private monopolies and any type of industrial or commercial monopolization are prohibited. The law may establish State monopolies.

The granting of concessions such as to constitute monopolies over the natural wealth of the State is likewise prohibited.

Art. 88. The basic conditions on which the State may grant concessions for the exploitation of natural wealth shall be established in a general law.

Art. 89. All services, except those which must be performed gratuitiously under a law or judgment based thereon, shall be equitably remunerated.

Art. 90. Usury is prohibited. The law limiting the interest on loans is a public law, and shall prescribe the penalties for its breach.

Art. 91. Unions or associations may be established for any legal purpose, but the State is responsible for authorizing corporate, moral, cultural and economic bodies.

Art. 92. The State guarantees freedom of work and the right freely to adopt any profession, industry or trade, not contrary to morality, health or public security.

Art. 93. Work is a social duty. Every inhabitant of the Republic is under an obligation to apply his physical and mental energies in a manner that is of benefit to the community.

Art. 94. The State shall endeavour to afford all inhabitants an opportunity for productive work, preference being given to nationals.

Art. 95. Workers are guaranteed:

1. Moral and civic independence;

2. A compulsory weekly period of rest;

3. A maximum working day regulated and laid down by law, in accordance with the nature of their work. Managers, administrators, agents and all persons not working in a position of legal subordination are excluded from this limitation;

4. Equal pay for equal work, subject to equal efficiency;

5. A minimum wage which will ensure them the minimum of wellbeing compatible with human dignity. This wage shall be fixed in accordance with conditions and needs in the various parts of the country;

6. The payment of wages in legal tender, on a working day, at the place in which the worker gives his services, at the intervals and in the amount stated in the contract or resulting from the labour relation, the interval being not longer than one week in the case of a wage-earner or fifteen days in the case of a salaried employee.

In no case may payment be made in merchandise vouchers, tokens, or any other substitutes for currency.

7. Compensation for accidents and industrial hazards in the cases and form prescribed by law.

8. Special regulation of the work of women and children;

9. Medical assistance administered by social institutions established for the purpose;

10. For pregnant women, a rest period of twenty days before and forty days after confinement. The mother shall be paid during this period by the employer in whose service she is, provided that she has worked for him over a continuous period of six months;

11. Payment at double rates for special or night work, except regular shift work and subject to the limitations established by law;

12. The prohibition of attachment, set off or rebate in respect of the minimum wage, except in the case of attachment under a maintenance order;

13. Fifteen days' leave with pay after six months' continuous work in the service of the same employer. Of this leave, one week shall be a compulsory rest period and for the remainder of the time the manual or clerical worker may continue his work;

14. If working on an indeterminate contract, at least one month's notice, unless the manual or clerical worker has given grounds for lawful dismissal.

Persons in the employment of the State or its institutions shall be governed by the relevant title of the Constitution and by special laws. Pending the enactment of special laws regulating the application, con-

ditions and scope of the guarantees contained in sub-paragraphs 7, 10, 13 and 14, those guarantees shall apply, in full, to day labourers and other agricultural workers;

15. The law shall regulate the application, conditions and scope of the guarantees contained in sub-paragraphs 7, 10, 13 and 14 in the case of small industrial undertakings and domestic service.

Art. 96. In a contract of service the following conditions are void and not binding on the parties:

1. Those restricting or varying the guarantees and the rights accorded to the man and citizen by the Constitution;
2. Those involving a direct or indirect obligation to purchase consumer goods in specified shops or places;
3. Those fixing the duration of a contract at more than two years, if the term is prejudicial to the worker.

Art. 97. The State shall establish a National Institute of Social Insurance for workers, to cover the risk or ordinary sickness, invalidity, old age and unemployment, on the basis of proportionate contributions by the State, the insured person and the employer.

The corresponding regulations shall be established by law.

Art. 98. Public education is a special duty of the State.

Art. 99. The system of primary, secondary and professional education is subject to technical inspection by the State.

Art. 100. Primary education is compulsory, and that provided by the State and public bodies is free and secular.

Art. 101. The State shall promote secondary and higher education, technical instruction for workers and agricultural and industrial guidance schools.

Art. 102. In all school establishments, attention shall be paid to the moral education of the child and to the development of civic sentiment, character and vocational ability.

Art. 103. Academic and professional licences may be awarded only by the State, which shall determine the professions for the practice of which a licence is needed and the evidence and requirements necessary for qualification. A licence to practise a profession may not be issued unless academic evidence is produced that the appropriate courses have been completed.

Art. 104. Nationals obtaining academic degrees abroad shall be granted professional status and shall be authorized to practise their profession on production of proof of the authenticity of their degrees and the fact that they were obtained in universities recognized as such in the State concerned.

The recognition of the status of alien professional workers qualified abroad shall be subject to reciprocity, where possible.

This provision shall be regulated by law.

Art. 105. Only diplomas relating to a profession or university degree shall be issued and recognized.

Art. 106. Freedom of teaching is guaranteed provided that it shall not offend against decency and public order.

Art. 107. Teaching is a public service and teaching in State schools carries with it the right to the following benefits:

1. Permanency of appointment;
2. Promotion and seniority in their profession;
3. A basic minimum salary, consistent with the dignity of the profession and corresponding to the cost of living in the place of appointment;
4. Proportional retirement benefits;
5. Paid holidays;
6. Further cultural and professional training at the public expense.

The rights and benefits to which this article refers shall be established and regulated by law and shall extend to teachers in private schools in so far as sub-paragraphs 3, 5 and 6 are concerned.

Such teachers shall enjoy permanency of appointment. The service of teachers in private schools entering State service shall be taken into account for the purposes of sub-paragraphs 2 and 4 in accordance with the statutory provisions.

Art. 108. Teaching shall be free of political bias and shall be directed along democratic, patriotic and national lines.

Art. 109. Agricultural or industrial undertakings, situated in an area not covered by national schools, in which there are more than thirty children of school age, shall be obliged to maintain a mixed elementary school.

Art. 110. Freedom of conscience and freedom to profess any creed and practise any religion not contrary to morality, decency or public order are guaranteed. Acts of religious worship likely to cause death or physical injury are excepted. Acts contrary to morality or subversive of public order carried out during or on pretext of a religious ceremony are liable to penalty of law.

The enactment of laws protecting or placing restrictions on particular denominations is prohibited.

Art. 111. No one may be compelled to make an official declaration of his religious beliefs, except in the cause of a statistical investigation ordered by law.

Art. 112. Public cemeteries are secular, and ministers of any denomination may celebrate their especial rites therein.

Art. 113. No one may be molested or persecuted for his opinions. The State guarantees freedom to express and to publish ideas without prejudice to liability for offences and abuses which may be committed in the exercise of that freedom, in the form and cases prescribed by law.

Art. 114. The introduction, circulation and sale of books, pamphlets, reviews or periodicals, shall be exempt from any type of fiscal or local tax.

Art. 115. The right to assemble in the open air and the right to demonstrate shall be governed by police regulations. No previous permission is necessary for peaceful and unarmed assembly indoors.

Art. 116. The State prohibits the formation and activities of internationally organized political parties. Individuals belonging to those parties may not discharge any public office. Only parties directed exclusively towards the Union of Central America are excepted.

Art. 117. All persons are entitled to direct written petitions or complaints to the competent powers and the authorities. The authorities are under a duty to deal with such petitions or claims and to notify their decision.

Art. 118. Taxes may be introduced, existing taxes increased and payment may be waived wholly or partly only for the public benefit and by law.

Art. 119. There shall be no personal privileges in respect of taxes and other public charges. Taxes shall be established in proportion to the taxpayer's capacity to pay at proportional or progressive rates and shall be collected in the manner prescribed by law.

The tax system shall as far as possible be based on direct taxation.

Art. 120. No public power may transfer to itself a case pending before a competent authority.

Art. 121. A process or suit once closed may not be reopened. In criminal procedure, an application may be made on behalf of the offender for the reopening of a completed trial in which the penalty imposed was greater than a correctional penalty.

Art. 122. The civil registry is within the exclusive competence of the State.

Art. 123. No law has a retroactive effect, except in favour of the offender in a criminal case.

Art. 124. The inviolability of all forms of correspondence and of private documents and papers is guaranteed. They may at no time be opened, inspected or intercepted, except in virtue of a previous law and on the instructions of the competent authority.

Art. 125. Correspondence, documents and papers seized from the mails or elsewhere, in violation of the law, shall be without legal effect in a court of law or elsewhere.

Art. 126. The enumeration of rights, duties and guarantees made in this Constitution does not exclude others inherent in the human personality or derived from the established form of government.

TITLE V

LEGISLATIVE POWER

Chapter I

CONSTITUTION AND ATTRIBUTIONS

. . .

Art. 139. The following may not be elected members of the legislative power:

[1–4 refer to incompatibilities between the office of membership in the Congress and other public office.]

5. Persons whose rights of citizenship have been suspended.

. . .

Chapter II

CHAMBER OF DEPUTIES

Art. 151. Only Nicaraguan-born citizens who are in possession of their civil rights and have not taken clerical orders and have completed their twenty-fifth year of age, can be elected deputies.

. . .

Chapter III

CHAMBER OF THE SENATE

Art. 154. Only Nicaraguan-born citizens who are in possession of their civil rights and have not taken clerical orders and have completed their thirty-fifth year of age can be elected senators.

. . .

TITLE VI

EXECUTIVE POWER

Chapter II

DUTIES AND ATTRIBUTIONS OF THE EXECUTIVE

. . .

Art. 197. The President of the Republic, in the Council of Ministers, may suspend or restrict in all or part of the national territory, the exercise of constitutional guarantees, in any of the following cases:

(*a*) When the Republic is in a state of international or civil war;

(*b*) When there is danger that such a state may arise;

(*c*) In the case of epidemic, earthquake or any other public calamity;

(*d*) When in any other circumstance, the defence, peace or security of the nation or of its institutions or form of government so require.

The President of the Republic and the Ministers of State shall be held responsible if they declare suspension or restriction of the constitutional system, although any of the causes justifying it have not occurred; they shall also be held responsible, together with other officials concerned, for any wrongful act they may have committed during the period of suspension or restriction.

The decree suspending or restricting safeguards shall contain:

(*a*) The reasons justifying it;

(*b*) The definition of the guarantee or guarantees restricted or suspended; and

(*c*) The territory which will be affected by the suspension or restriction.

Neither the suspension nor the restriction of guarantees shall in any way affect the operation of the Government, and its members shall continue to enjoy the prerogatives accorded to them by law.

In the case of foreign war, the Executive shall, in the same decree in which he suspends or restricts the execution of the constitutional guarantees, convene the Congress within the next thirty days, and the Congress may if it is not convened assemble of its own right.

In no case may the decree of suspension or restriction affect the following guarantees:

(*a*) The inviolability of human life;

(*b*) The prohibition of trial by judges other than those appointed by law;

(*c*) The prohibition of cruelty or torture and penalties involving infamy;

(*d*) The prohibition against retroactive or confiscatory laws; and

(*e*) The prohibition of the levying of taxes by decree.

If international or civil war has broken out, the President may in the Council of Ministers decree taxation of a general character.

The decree suspending guarantees shall be abrogated on the cessation of the causes for which it was made and the Executive Power shall immediately account to Congress in plenary session for the measures taken.

TITLE VII
THE JUDICIAL POWER

Single Chapter

ORGANIZATION AND ATTRIBUTIONS

. . .

Art. 231. The administration of justice in the Republic shall be free of charge.

Art. 235. The hearings of tribunals and courts shall be public, except in the special cases prescribed by law or in cases in which publicity would be prejudicial to order and decency.

Art. 236. The members of the judicial power shall enjoy independence in the exercise of their functions.

They shall be subject only to the Constitution and to the laws.

. . .

TITLE XI

Single Chapter

PUBLIC SERVANTS

. . .

Art. 298. Public servants are personally responsible for any damages they may cause by neglect, omission or wrongful act in the exercise of their office.

. . .

[Title XII contains electoral provisions. It provides for the establishment of a National Electoral Council, regional electoral councils and electoral directorates, defines the composition and functions of the National Electoral Council and provides for an electoral law to regulate further details.][1]

TITLE XV

Single Chapter

SUPREMACY OF THE CONSTITUTION AND ITS REFORM

Art. 324. The Constitution is the supreme law of the Republic. Laws, decrees, regulations, orders, provisions, pacts or treaties which are repugnant to it or modify its provisions in any way shall be invalid.

Art. 325. The organs of the Government are prohibited, jointly or separately, from suspending the Constitution or restricting the rights accorded thereby, except in the cases provided therein.

Laws regulating the exercise of constitutional guarantees and rights shall be invalid in so far as they abridge, restrict or vitiate these.

Officials violating this provision shall be responsible for any damage so caused.

. . .

[1] See the following text.

ELECTORAL ACT[1]
of 21 December 1950

TITLE I

Art. 1. The term "citizen" means: a Nicaraguan national of either sex who is over the age of twenty-one years; a Nicaraguan national who is over the age of eighteen years and can read and write or is married; a Nicaraguan national who, being under the age of eighteen years, is the holder of an academic certificate (article 31 of the Constitution).[2]

In addition to university degrees, the lawfully awarded degrees of Bachelor of Science and Bachelor of Letters shall constitute academic certificates.

Art. 2. It is the obligation of male citizens to register in the electoral registers and to vote in popular elections in accordance with the provisions of this Act.

Likewise, a male Nicaraguan who has not attained the age prescribed by the Constitution for citizenship, but who will attain the said age on or before the date of the elections, shall be required to register.

Art. 3. Women shall register and shall exercise the right to vote when legislation to this effect is enacted in accordance with sub-paragraph 2 of article 33 of the Constitution.[2]

The registration of women, when it becomes effective, shall be governed by the terms of the said legislation.

Art. 4. The following persons may not register and may not vote even if they are registered:

(*a*) Persons whose citizenship rights have been suspended, other than persons sentenced for advocating or proclaiming abstention from the vote (article 34 of the Constitution);[2]

(*b*) Persons sentenced for electoral offences, for a period of five years to run from the date of the sentence;

(*c*) Members of the armed forces on active service.

Art. 5. Citizens shall be obliged to register and to cast their votes in the polling places of the electoral districts in which they habitually reside, even if they are temporarily elsewhere.

. . .

TITLE III
POLITICAL PARTIES

Art. 7. Any group which maintains a national organization, with duly elected directors, and which obtained not less than 10 per cent of the votes cast in the popular election for President of the Republic, is a political party.

Art. 8. Likewise, any group which submits to the National Electoral Council a petition signed by qualified citizens numbering not less than 10 per cent of the votes cast in the last election for supreme authorities shall also be a political party. The National Electoral Council shall rule on the validity of such petition within fifteen days after its submission.

[The following paragraphs of article 8 contain further particulars concerning these petitions.]

Art. 9. The two political parties which received the largest number of votes in the popular election for President of the Republic shall be the principal political parties of the nation.

Art. 10. Each political party shall maintain a national legal board of directors with headquarters in the capital, and regional legal boards of directors, one in each province (*departamento*) of the Republic with headquarters in each provincial capital. The organization and the duties of these boards shall be determined by the statutes of each party, in so far as they do not conflict with the provisions of this Act.

Art. 11. Any question concerning the board of directors of a party shall be decided in accordance with its statutes.

Art. 12. Until the official announcement of the results of the next presidential election, the National Liberal Party (*Partido Liberal Nacionalista*) and the Conservative Party of Nicaragua (*Partido Conservador de Nicaragua*) are the principal political parties of the nation.

TITLE IV

Chapter I
ELECTORAL BODIES

Art. 13. A National Electoral Council, with its seat in the capital of the Republic, and regional electoral councils, one for each province, with their seats in the provincial capitals, and electoral directorates, one for each polling place, shall be responsible for dealing with electoral matters.

Art. 14. The National Electoral Council shall consist of a Chairman and two political members, each representing one of the two principal political parties of the nation. The Chairman shall be appointed by majority vote by the Supreme Court. . . .

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[1] Spanish text in *La Gaceta* No. 56, of 14 March 1951. The Act was adopted by the Constituent Assembly on 21 December 1950 and promulgated on the same day by the President of the Republic.

[2] See above, p. 206 of this *Yearbook*.

[The following paragraphs of article 14 and the following articles contain particulars concerning the National Electoral Council and provisions for the composition of and other details affecting the regional electoral councils and the electoral directorates. Title V deals with registration of citizens in an "electoral register", registration to take place every six years in the month of November of the year preceding the election year.]

TITLE VI

NOMINATIONS

Art. 61. Not less than sixty days before the date of the elections, each political party shall have the right to present to the National Electoral Council its list of candidates for the offices of President of the Republic, senators and deputies.

These nominations shall be made in accordance with the Constitution and with the by-laws of each party.

If a political party fails to present its list of candidates in time, it shall lose the right of nominating candidates for the election in question.

Art. 62. It shall not be permissible for any political party to nominate more than one candidate for any one office. Should there be more than one nomination, the National Electoral Council shall bring the fact to the attention of the national legal board of directors of the party concerned, which shall then determine which is the official nomination of the party.

If, within one week after being notified, the national legal board of directors of the party fails to determine which nomination is the official nomination of the party, the person nominated first shall be deemed to be the official candidate.

Art. 63. Political parties shall use names and symbols identical with those used by them in the last presidential elections unless they have been lawfully changed in accordance with the by-laws.

Art. 64. A candidate may withdraw or refuse to accept the nomination for an elective post by addressing a note to the National Electoral Council within the sixty-day period preceding the election. The National Council shall advise the appropriate national legal board of directors accordingly, so that it may take immediate steps to replace the candidate if the official ballots have not yet been printed and there is time to make the necessary changes.

If such change is not made, or if a candidate dies or is disqualified from holding office, the election shall proceed on the basis of the list originally presented; but if such candidate wins the election the office shall be filled by the person who is designated by the Constitution to take his place.

TITLE VII

Chapter I

ELECTIONS

Art. 65. Elections for President of the Republic, senators and deputies shall be held within a single day, which shall be the first Sunday in February of the year in which the terms of office expire as prescribed in the Constitution.

Art. 66. It shall not be permissible for any person to vote unless he is a citizen registered in the electoral register.

Art. 67. The popular vote is personal, not transferable, equal and direct.

[Other provisions of title VII deal with guarantees for the security of voting, secrecy of the vote, maintenance of order in and near the polling places, ballot boxes, etc. Title VIII deals with the count of the votes cast and the final proclamation of the results by the National Electoral Council. Title IX deals with the right of each citizen to contest the result of an election before the National Electoral Council and the reasons for which the election of a candidate may be declared invalid.]

TITLE X

REPRESENTATION OF MINORITIES

Art. 111. The representation of minorities in the legislature, as referred to in article 127 of the Constitution, is the concern of the party or the political group which obtained the second highest number of votes in the last direct popular election for supreme authorities.

Art. 112. In conformity with the terms of the said article 127 of the Constitution, the following rules shall govern the organization of the National Congress.

Each one of the two principal parties and political groups which are to participate in the elections for supreme authorities shall present to the National Electoral Council, in accordance with the Constitution and this Electoral Act, a list of twenty-eight candidates for deputies and alternate deputies, as well as a list of twelve candidates for senators and alternate senators.

When the final results of the elections have been announced by the National Electoral Council, in accordance with the aforementioned provisions of the Constitution, the twenty-eight candidates for deputy on the list of the party or political group which received a majority of the votes in the election, and the first fourteen candidates for deputies on the list presented for that office by the party or political group which received the second highest number of votes in the same election, shall be held to be the legally elected deputies and alternate deputies; and the twelve candidates for senators on the list of the party which received the

highest number of votes in the election and the first four candidates for that office on the list presented by the party which received the second highest number of votes in the same election shall be held to be the legally elected senators and alternate senators.

Art. 113. It is the duty of the National Electoral Council to declare such deputies and senators and their respective alternates elected and to provide them with the proper credentials.

Art. 114. Likewise, there shall be declared to be legally elected as senators and alternate senators by the party representing the minority, in conformity with the rule prescribed above, as many senators and alternate senators as may be necessary to give the said party, so far as possible, one-third of the total membership of the Senate.

[Title XI declares that the chapter of the Penal Code which deals with electoral offences is part of this Act and provides for penalties for several additional electoral offences.]

NORWAY

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS[1]

On 8 December 1950, Norway passed a new Nationality Act, which came into force on 1 January 1951. The Act is in all essentials identical with the Danish and Swedish nationality Acts passed the same year.[2] It repeals the previous Nationality Act of 8 August 1924 and the Nationality Amendment Act of 13 December 1946, and declares that in case of conflict between its provisions and a provision of any treaty, the provision of the treaty shall prevail.

Article 10 of the Act empowers the Crown to enter into agreements with Denmark, Finland, Iceland and Sweden for the application of one or more of the provisions specified therein. The agreement concluded between Denmark, Norway and Sweden on the basis of that article of the Norwegian Act and the corresponding articles of the Danish and Swedish Acts is reproduced in this *Yearbook*.[3]

No court decisions constituting important new developments in the field of human rights were delivered during 1950.

[1] This note is based on texts and information received through the courtesy of the Royal Justice and Police Department at Oslo.

[2] See the text of the Swedish Citizenship Act, p. 265; Professor Sørensen's discussion of the Danish Act in his "Note on the Development of Human Rights" on p. 67 of this *Yearbook*.

[3] See p. 434.

PAKISTAN

SURVEY OF HUMAN RIGHTS[1]

A complete survey of human rights was published in the *Yearbook on Human Rights for 1949*.[2] The present survey contains supplementary or new material which has been received by the Secretariat since the publication of the preceding *Yearbook*.

1. Constitutional Aims and Objects

A resolution on constitutional aims and objects for Pakistan was adopted by the Constituent Assembly of Pakistan on 12 March 1949. An extract of the Objectives Resolution relating to Human Rights follows:

"In the name of Allah, the Beneficent, the Merciful;

"*Whereas* sovereignty over the entire universe belongs to God Almighty alone, and the authority which He has delegated to the State of Pakistan through its people for being exercised within the limit prescribed by Him is a sacred trust;

"This Constituent Assembly representing the people of Pakistan resolves to frame a constitution for the sovereign independent State of Pakistan;

"Wherein the State shall exercise its powers and authority through the chosen representatives of the people;

"Wherein the principles of democracy, freedom, equality, tolerance and social justice, as enunciated by Islam, shall be fully observed;

"Wherein the Muslims shall be enabled to order their lives in the individual and collective spheres in accord with the teachings and requirements of Islam as set out in the Holy Quran and the Sunna;

"Wherein adequate provision shall be made for the minorities freely to profess and practise their religions and develop their cultures;

"Wherein shall be guaranteed fundamental rights including equality of status, of opportunity and before law, social, economic and political justice, and freedom of thought, expression, belief, faith, worship and association, subject to law and public morality;

"Wherein adequate provision shall be made to safeguard the legitimate interests of minorities and backward and depressed classes."

2. Fundamental Rights of the Citizens of Pakistan and Matters relating to Minorities[3]

On 6 October 1950, an Interim Report on Fundamental Rights of the Citizens of Pakistan and on matters relating to minorities was adopted by the Constituent Assembly of Pakistan. The text of this document reads as follows:

PART I

CITIZENSHIP

At the date on which this Constitution comes into force every person shall be deemed to be a citizen of Pakistan,

(*a*) Who, or either of whose parents or grandparents, was born in the territory comprising Pakistan and who after the fourteenth day of August 1947 has not been permanently resident in any foreign State; or

(*b*) Who or either of whose parents or grandparents was born in the territories which on 31 March 1937 comprised India and who has his domicile in Pakistan as described in Part II of the India Succession Act, 1925, had the provisions of that part been applicable:

Provided that in case of his having, before the date of the commencement of this Constitution, acquired the citizenship of any foreign State, he has renounced such citizenship by depositing a declaration in writing to this effect with an authority appointed for that purpose.

The legislature of Pakistan may make further provision in respect of acquisition and loss of citizenship and all other matters pertaining thereto.

PART II

FUNDAMENTAL RIGHTS

1. (1) (*a*) All citizens are equal before the law; and

(*b*) All persons are entitled to the equal protection of the law.

(2) No person shall be deprived of life or liberty, save in accordance with law.

2. No person shall be punished in respect of an act the doing of which was not punishable at the time when it was done.

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[1] The present survey is based on documents and information received through the courtesy of the Government of Pakistan.

[2] Pp. 160–163.

[3] See also the agreement between the Government of India and the Government of Pakistan, dated 8 April 1950, on p. 435 of this *Yearbook*.

3. The right of a citizen to move the High Court for a writ of *habeas corpus* shall not be suspended, except in case of an external or internal threat to the security of the State or other grave emergency.

4. There shall be no discrimination on grounds only of religion, race, caste, sex or place of birth with regard to access to places of public entertainment, recreation, welfare or utility.

Provided that nothing in this article shall derogate from the powers of the State to make special provision for the benefit of women and children:

Provided further that the provisions of this article shall not apply to places of religious worship, shrines or other similar sacred premises.

5. (1) No one shall be held in slavery or servitude.

(2) All forms of forced labour are declared unlawful:

Provided that the State shall not be prevented from imposing compulsory service for public purposes.

(3) No one shall be subjected to torture or to cruel or inhuman treatment or punishment.

6. The employment of children under fourteen years of age in a factory or a mine, or in occupations involving danger to life or injury to health, is prohibited.

7. Every duly qualified citizen shall be eligible to appointment in the service of the State irrespective of religion, race, caste, sex, descent or place of birth:

Provided that it shall not be unlawful to make provision for the reservation of posts in favour of any minority or backward section of citizens in order to give them adequate representation:

Provided further that it shall be lawful to prescribe that only a person belonging to a particular religion or denomination shall be eligible to hold office in connexion with any religious or denominational institution or governing body thereof.

8. (1) No person shall be deprived of his property except in accordance with law.

(2) No property shall be requisitioned or acquired for public purposes under any law authorizing such requisition or acquisition unless the law provides for adequate compensation.

Nothing in this clause shall affect the provisions of any existing law or the provisions of any law which may hereafter be made for the purpose of imposing or levying any tax or for the promotion of public health or for the prevention of danger to life or property.

9. (1) Every citizen of Pakistan is guaranteed:

(*a*) Freedom of speech, expression, association, profession, occupation, trade or business, acquisition and disposal of property and peaceful assembly without arms;

(*b*) The right to move freely throughout Pakistan and to reside or settle in any part thereof;

(*c*) The right to equal pay for equal work.

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law relating to libel, slander, defamation, sedition or any other matter which offends against decency or morality or undermines the authority or foundation of the State; or from restricting or regulating, in the public interests or in the interest of public order, morality or health, any freedom or right guaranteed by this article.

10. Freedom of conscience and the right to profess, practise and propagate religion are guaranteed subject to public order and morality:

Provided that this article shall not affect the operation of any existing law or prohibit the making of any law regulating or restricting any activity of a secular nature.

11. Subject to public order and morality, every religious denomination or any section thereof shall enjoy freedom in the management of its religious affairs including the establishment and maintenance of religious and charitable institutions and the acquisition of movable and immovable property for that purpose.

12. Subject to regulations to be made in this behalf every religious denomination or any section thereof shall have the right to procure exclusively for religious purposes all articles which are proved as being essential for worship in accordance with the rules, rites, ceremonies and customs of that denomination.

13. (1) No person attending any educational institution shall be required to take part in any religious instruction or to attend any religious worship other than that of his own community or denomination.

(2) No community or denomination shall be prevented from providing religious instruction for pupils of that community or denomination in any educational institution maintained by that community or denomination.

(3) No educational institution maintained wholly out of funds provided by a particular community or denomination shall be refused recognition by the State solely on the ground that it refuses admission to persons of a different community or denomination.

14. No person shall be compelled to pay any special taxes, the proceeds of which are specifically appropriated in payment of expenses for the propagation or maintenance of any particular religion other than his own.

15. (1) Save with regard to matters governed by the personal law of a community, or otherwise expressly provided in this Constitution, any law in force in any part of Pakistan at the time of commencement of this Constitution shall be void in so far as it is repugnant to any provisions of this part, and any

law made hereafter which contravenes any of the provisions of this part shall, to the extent of such contravention, be void.

(2) The term "law" in this article includes an ordinance, regulation, custom or usage having the force of law, by-law, rule, order or notification.

16. The notion of untouchability being inconsistent with human dignity, its practice is declared unlawful and shall be an offence in accordance with law.

3. Suffrage

As reported in the *Yearbook on Human Rights for 1949*,[1] property qualifications as provided for in the Government of India Act 1935, as adapted by the Pakistan (Provisional Constitution) Order 1947, are still legally in force as conditions for the exercise of electoral rights. For the election to the provisional legislature in the Punjab, however, the Government announced universal adult suffrage, irrespective of sex or religion, and abolished all property, tax and educational qualifications and other disabilities for the purpose of this election. The election was held on this basis and this step was regarded as a forerunner of an analogous development in the whole of Pakistan.

Since that time, the Delimitation of Constituencies (Adult Franchise) Act, 1950, has been passed and the Government has been empowered to appoint delimitation of constituencies committees. Such committees have been appointed in the North-West Frontier Province and Sind and elections on the basis of adult franchise are being held there.

As reported last year, most of the States were granted representation for the first time in the Constituent Assembly of Pakistan and machinery for the nomination of representatives of these States in the Constituent Assembly was provided, but the North-West Frontier Province group of States was still unrepresented. Their right to representation and machinery for the nomination of representatives of these States were provided, and every area in the country without exception is now represented in the Constituent Assembly.

4. Freedom of the Press

Section 29 of the Telegraph Act of 1885 has been so amended in Pakistan in 1950 as to afford legal protection to people against attacks upon their honour and reputation and attacks against decency and morality which come within the scope of Article 12 of the Universal Declaration of Human Rights. The amended Section 29 of the Telegraph Act reads as follows:

"29. *Sending fabricated or obscene messages.* If any person transmits, or causes to be transmitted by telegraph, a message which he knows or has reason to believe to be false or fabricated, or a message which is indecent or obscene, he shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both."

[1] P. 160.

PANAMA

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS

By Resolution No. 1, passed by the Cabinet on 29 April 1950, and published in *Gaceta Oficial* No. 11241, of 14 July 1950, any propaganda, activity, and agitation of a communist nature was declared to be inconsistent with the democratic regime of the Republic. For its legal foundation the resolution refers to articles 1 and 103 of the Constitution of Panama, which declare that the Panamanian nation is constituted under a democratic and republican system and that political parties which tend to destroy the democratic form of government are prohibited.

Decree-law No. 13, signed by the President of the Republic on 26 May 1950 and published in *Gaceta Oficial* No. 11202 of 29 May 1950, is based on this resolution, as well as on Act No. 12 of 9 February 1950, published in *Gaceta Oficial* No. 11139 of 11 March 1950, by which the Congress granted temporary extraordinary powers to the President, including authority to reorganize the public administration. Repeating the affirmation that any propaganda, activity, and agitation of a communist nature is inconsistent with the constitutional and democratic government of Panama, the decree-law declares that persons who have devoted or devote themselves to any propaganda, activity or agitation of a communist nature may not exercise functions or be otherwise employed in the public administration. This decree-law came into force on the date of its promulgation in the *Gaceta Oficial*.

By Decree No. 469, dated 20 February 1950 and published in *Gaceta Oficial* No. 11130, of 28 February 1950, regulations on the operation of amateur radio-stations were issued.

Article 1 of this decree declares that all frequencies belong to the State, which has the exclusive right to allot them and to regulate their use. Article 2 defines amateur radio-stations as those used exclusively for radio investigation or in the technical study of radio communications for purely personal and not for gainful purposes. The authorization of the State is needed for the operation of amateur radio-stations.

The conditions for the grant of authorization are laid down in articles 4–13. Article 16 states that all communications have to be transmitted in clear language or in an accepted code for amateurs. Further provisions as contained in articles 18–22 read as follows:

Art. 18. Radio-communications made by amateur radio-stations shall be made in Spanish; they may be made, however, also in English, French and Portuguese if, before and after each transmission, the station identifies itself in the Spanish language.

Art. 19. Every amateur radio-station shall keep a "custody-book" (*libro de guardia*) in which the following data shall be recorded:

[The following refers to technical matters.]

Art. 20. The Ministry of the Interior and Justice may at any time request and inspect the custody-book, and shall punish those omissions which are proved to be fraudulent.

Art. 21. The Government may make occasional use of the equipment of radio amateurs for the purpose of transmitting and receiving, when special circumstances so require, as in case of public calamities or epidemic diseases, or whenever they could be useful and indispensable because owing to *force majeure* the usual means of communication are not functioning. In such cases, radio amateurs must provide their help.

Art. 22. Radio amateur stations are strictly forbidden to:

(*a*) Transmit or receive any kind of commercial message;

(*b*) Transmit or receive messages in a code or in abbreviations not universally recognized by amateurs;

(*c*) Transmit false news or news of a tendentious nature which may cause a disturbance of public tranquillity;

(*d*) Transmit recorded music;

(*e*) Make use of uncouth or shameful language;

(*f*) Make allusions or transmit news repugnant to the constituted government or inconsistent with good relations with friendly countries.

PERU

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS

LEGISLATION

1. Act No. 11490, of 1 September 1950. This Act is published in *El Peruano* No. 2886, of 8 September 1950. It recognizes as laws of the Republic all decree-laws approved by the Military Junta between 1 November 1948 and 27 July 1950 under numbers 10899–11488.[1] They are therefore subject to interpretation, modification and repeal in accordance with article 131 of the Constitution.

2. Decree-law No. 11332, of 23 April 1950, to amend certain provisions of decree-law No. 11172, of 30 September 1949. Decree-law No. 11332 is published in *El Peruano* No. 2787, of 6 May 1950. The new decree-law introduces for the election of deputies the system of plurinominal electoral districts based on the administrative units of the "departmentos" instead of on provinces as heretofore; implements article 88 of the Constitution which provides for the representation of minority parties through the method of proportional representation, abolishes the provincial electoral boards and confers their powers on "departmental" electoral boards while transferring the revision of the electoral registers from the provincial electoral boards to the central electoral board, and provides for other modifications.

3. Act No. 11512, of 2 November 1950. This Act is published in *El Peruano* No. 2948, of 16 November 1950. It grants an amnesty for those sentenced to a penalty of imprisonment of not more than 2 years.

4. Decree-law No. 11377, of 29 May 1950, concerning the status of the civil service and the civil service list. Extracts from this decree-law are reproduced in the present *Yearbook*.

5. Decree-law No. 11321, of 24 March 1950, concerning contributions to the social insurance fund. This decree-law is published in *El Peruano* No. 2770, of 15 April 1950. It modifies the scales of these contributions in relation to the present level of wages and increases the payments for confinement, maternity, invalidity, old age and death.

JUDICIAL DECISIONS

6. Decision of the Labour Court at Lima, of 19 June 1950, concerning increased pay for work on a Sunday instead of a weekday. A summary of this decision is reproduced in the present *Yearbook*.

7. Decision of the Labour Court at Lima, of 14 December 1949, case No. 2381-49 *de la Oroya*. This decision is published in *El Peruano* No. 2704, of 24 January 1950. The court held that gross negligence on the part of a worker is a grave fault comparable to fraud or breach of confidence. Immediate termination of the contract of work and loss of all rights and privileges derived therefrom results from such fault.

[1] This includes those decree-laws published or referred to in *Yearbook on Human Rights for 1949*, pp. 164–168, as well as those summarized or referred to in the present *Yearbook*. Information through the courtesy of Mr. Carlos Holguin de Lavalle, Permanent Representative of Peru to the United Nations.

LEGISLATION

DECREE-LAW No. 11377 CONCERNING THE STATUS OF THE CIVIL SERVICE AND THE CIVIL SERVICE LIST[1]

dated 29 May 1950

Introductory Note. The decree-law deals with the civil servant's functions and activities in all their legal and administrative aspects. It lays down the conditions of entry into the civil service career and the manner in which public posts are to be filled on the basis of competitions of ability and fitness for

[1] This decree-law is published in *El Peruano* No. 2820, of 16 June 1950. The text of the introductory note is extracted from an official survey of the decree-law in *El Peruano* No. 2808, of 1 June 1950. The chapters dealing with the rights of the personnel, the duties of the personnel and the National Council of the Civil Service are reproduced herein. A regulation for the implementation of this decree-law was approved by Supreme Decree No. 522 of 26 July 1950, and published in *El Perunao* No. 2892, of 15 September 1950.

the office in question; the civil servant's rights and duties; the circumstances in which acquired rights are lost and penalties for those who do not observe the conditions laid down; the establishment of the Civil Service List and of a National Civil Service Council entrusted with the task of seeing that the decree-law and the standing and temporary regulations are strictly observed. One of the rules—No. 66 of Chapter II—lays down that the State shall take steps to improve the qualifications of the permanent staff by means of courses which will contribute towards raising the civil servant's intellectual level and making him an efficient element in the service of the nation. This rule makes it clear that one of the aims of the decree-law governing the status of the civil service and the Civil Service List is to make the public administration a really effective factor in the national revival and to give it the role which is its due.

CHAPTER III
RIGHTS OF THE PERSONNEL

Rule 45. All employees covered by rule 6[1] shall be protected by the regulations in force regarding retirement, superannuation and widows' and orphans' pensions.

Rule 46. Permanent employees shall have the right to security of tenure in their posts or offices in accordance with the rules laid down in the present decree-law.

Rule 47. In the performance of the public service, the rights and duties prescribed by law are equally binding on all employees.

Rule 48. An employee who is called up for compulsory military service may, on release, return to his employment with the same grade as before.

Rule 49. Public employees may form associations only for purposes of culture, sport, welfare or co-operative enterprises.

Such associations are prohibited from using the name or organization of trade unions, adopting trade union methods of action, using coercion or resorting to strikes.

Rule 50. Employees who become unfit for work through accident or illness as a direct or immediate consequence of their service shall, in accordance with the provisions laid down in the regulations of this decree-law, receive a retirement pension equal to their total salary, irrespective of their length of service.

In case of death, the widows' and orphans' pension shall be determined in accordance with the provisions of the legislation in force.

Rule 51. In the event of an employee's death, whatever his rank, his family shall be given a special allowance for funeral expenses equivalent to two salary payments.

Rule 52. Employees who are placed on the retired list for the reasons set forth in rule 38 (*a*) and (*d*)[2] and who have completed less than seven years' service shall receive a sum equivalent to one salary payment per year.

In case of re-employment in the service of the State, the pension received shall be repaid to the Exchequer in instalments, for which purpose the Pay Office shall withhold 20 per cent of the employee's salary until the sum in question has been made good. The total of these sums withheld shall be refunded to the Treasury, a record being inserted in the employee's file, and the previous period of service shall be added to the period of service subsequently completed.

Rule 53. Employees shall have the right to thirty consecutive days of leave each year, during which they shall receive the salary attaching to their posts and the bonuses and allowances to which they are entitled.

Leave may not be accumulated.

Rule 54. Civil servants may be granted special leave for the following purposes only:

(*a*) For duly certified illness; and

(*b*) For private affairs.

Rule 55. Sick leave shall be granted up to sixty days with full pay.

If the illness continues beyond this period, leave shall be extended for a further period not exceeding sixty days, during which the employee shall receive one-half of his salary for the first thirty days and one-third of his salary for the last thirty days.

On the expiry of this period, the employee shall be placed on the retired list with the right to receive the sum granted under rule 52, if he has not completed a sufficient number of years' service to qualify for a pension.

If the illness is tuberculosis, the employee shall be entitled to not more than two years' leave with full pay.

Rule 56. Special leave for personal reasons may not exceed thirty days, and must be deducted from the employee's next leave period.

Rule 57. Special leave for the purpose of attending to private affairs shall be unpaid.

Rule 58. Employees in a state of pregnancy shall be entitled to leave with full pay for fifteen days before and forty-five days after confinement.

Rule 59. During an employee's special or regular leave, his duties shall be performed by another employee of the same department without special remuneration.

[1] This rule lists four groups of employees in the civil service (permanent, temporary, employees in high positions and manual workers).

[2] Physical incapacity and abolition of post respectively.

Rule 60. If at the end of special or regular leave ten days elapse without the employee's justifying his failure to resume his duties, he shall be deemed to have relinquished his post.

Rule 61. Employees who are obliged to participate in military manœuvres shall be regarded as on service, with the right to full pay, throughout the period of the manœuvres.

Rule 62. An employee placed on the retired list for the reason specified in rule 38 (*d*)[1] shall be given priority, without being required to take part in a competitive examination, for the next post in his category falling vacant in his department, subject to a medical examination and to the production of a good-conduct certificate.

Rule 63. Employees who have completed thirty years' service shall receive the bonus granted them under Act No. 10273.

Rule 64. Any employee appointed to perform his duties in a place other than that of his habitual residence shall be entitled to reimbursement by the State of the expenses of his travel by the most suitable route and to a travel allowance for the days of travel required, in accordance with the relevant regulations.

Rule 65. It is the State's duty to encourage, assist and control the operation of the co-operative system among civil servants.

Rule 66. It is the State's duty to take steps to improve the qualifications of the permanent staff.

In each department such courses shall be organized as may be considered necessary for this purpose. They shall in all cases be held outside normal working hours, in accordance with detailed provisions to be laid down by the head of each department.

Rule 67. A civil servant may appeal to the National Civil Service Council if he considers that his rights as recognized by the present statute have been violated.

Rule 68. It is the duty of every civil servant to perform the functions entrusted to him, and in so doing to comply with the administrative rules in force in his department.

Rule 69. Any civil servant intentionally delaying or precipitating action on documents, files, claims, reports or any other task falling within his competence will be deemed guilty of a serious offence.

Rule 70. It is the inescapable duty of every civil servant to have a thorough knowledge of the work connected with the post he occupies. Anyone failing to comply with this provision will be deemed guilty of the offence referred to in rule 83 (*e*)[2] and will render himself liable to disciplinary action commensurate with the offence.

This provision shall be taken into consideration when laying down the bases for the examinations required under rule 25.[3]

CHAPTER IV
DUTIES OF THE PERSONNEL

Rule 71. It is the duty of civil servants to appear punctually for work.

Rule 72. Civil servants are obliged to maintain secrecy on matters of a confidential nature, even after they have ceased to occupy their posts.

Rule 73. Civil servants are absolutely forbidden to engage in political activities during the performance of their duties in whatever department of the State, or to wear badges denoting membership of a party.

Any persons infringing this provision shall be subject to disciplinary action in accordance with the provisions of Chapter V of the present statute.

Rule 74. Civil servants are forbidden to express opinions on matters of State through the press or radio or at public meetings, unless expressly authorized to do so.

Rule 75. Civil servants shall be obliged to carry out the tasks entrusted to them by their superiors, unless there is a valid reason why they cannot do so.

Rule 76. Civil servants may not carry on activities other than their official duties during normal working hours.

Rule 77. Civil servants are forbidden to offer collective gifts or public banquets to their departmental superiors.

The infringement of this provision shall be regarded as a serious offence on the part both of the organizers and of the recipients.

Rule 78. Any civil servant possessing property or income independent of his salary must declare it in the manner determined by the legislation in force.

Rule 79. Employees responsible for the management or raising of public funds, or the custody of funds or revenues belonging to the Exchequer, shall provide security according to the rules prescribed by the present statute and by the laws in force.

Rule 80. Employees may not, either themselves or through third parties, enter into contracts with departments of the State; nor may their spouses or relatives up to the fourth degree of blood relationship or the second degree of relationship by marriage participate directly or indirectly in contracts with their department, even if they have commercial interests therein.

[1] Abolition of post.

[2] Incompetency or inefficiency in the discharge of his functions.

[3] This rule provides that all posts shall be filled by competent employees, who shall be recruited by competitive examination from the grade immediately below.

CHAPTER VI
THE NATIONAL CIVIL SERVICE COUNCIL

Rule 96. There shall be set up a National Civil Service Council, a permanent body consisting of three members—the Minister of Justice and Religion, who shall be its president; one of the State prosecutors of the administration in office, to be designated by the Supreme Court; and a delegate of the civil servants, who must have the rank of officer, to be appointed by the Executive and having served for at least fifteen years.

The Director-General of the Civil Service and Pensions shall act as secretary, with a right to take part in the discussions, but not to vote.

Rule 97. The Council shall be empowered:

(*a*) To draw up its own rules of procedure;

(*b*) To see to the strict observance of this law and of the relevant regulations;

(*c*) To propose to the Executive any amendments required in the legal provisions concerning the civil service;

(*d*) To act as the supreme authority of appeal for disciplinary decisions pronounced by the various public officials;

(*e*) To deal with and resolve claims made individually by employees;

(*f*) To approve the regulations of the various departments; and

(*g*) To perform the other functions laid down in the present Statute.

Rule 98. The Council shall meet at least once a month.

Rule 99. The National Civil Service Council may function only "in plenary session" and shall keep a full record of all its proceedings.

Rule 100. In the event of the absence, illness or inability to attend of one of the members of the Council for more than ten days, his post shall be filled for the time being by the authority concerned. If his absence lasts for more than six months, the post shall fall vacant and shall be filled definitively for the remainder of the period.

Rule 101. Members of the Council shall occupy their posts for three years, and may be confirmed therein for a further such period, except for the representative of the civil servants, whose appointment shall last for one year only.

Rule 102. A delegate of the civil servants who without good cause fails to appear at two successive meetings will be deemed guilty of a disciplinary offence.

Rule 103. The resolutions of the National Civil Service Council shall be taken by a majority of votes and shall not be subject to administrative appeal.

JUDICIAL DECISION

RIGHT TO REST AND LEISURE—WORKING TIME—DAYS OF REST—REMUNERATION THEREFOR—SUNDAY WORK—EXTRA REMUNERATION—CONTRACT OF EMPLOYMENT

JUAN OSNAYO *v.* CENTRAL WARNER BROS. FIRST NATIONAL SOUTH FILMS, INC.[1]

Labour Court, Lima

19 June 1950

The facts. The applicant, a worker in the motion picture industry, agreed to perform regular work on Sundays and holidays and to substitute for the day of rest on such days a mid-week day of rest. He claimed an extra wage differential for undertaking to work on Sundays. His employer objected that the worker could not enjoy the benefit of the Sunday wage, since the Sunday wage, as prescribed by decree No. 10908, of 3 December 1948, was payable only to those who, working forty-eight hours per week or six regular working days, are not required to work on Sundays.

Held: That the applicant's claim must be allowed. The contract of employment of 25 June 1936 provides for an extra remuneration distinct from the ordinary Sunday wage which is an incentive to attendance and regular performance of work. The purpose of the extra remuneration payable to persons who agree to forgo their rest on Sundays and holidays is not to grant a premium for regular attendance at work, but to compensate for giving up, in view of the nature of the work in cinemas, the weekly day of rest on Sundays or holidays, when there are greater opportunities for entertainment. This surrender involves a special sacrifice, even though the weekly rest is enjoyed on another day of the week. The complaint is justified, and an amount representing 46 Sunday wage payments is owing to the claimant. (Report: case No. 371-50.)

[1] Spanish text of the decision in *El Peruano* No. 2950, of 24 November 1950. English translation from the Spanish text by the United Nations Secretariat.

PHILIPPINES

JUDICIAL DECISIONS

FREEDOM OF SPEECH—LIMITATIONS ON—IMPARTIAL ADMINISTRATION OF JUSTICE—CONTEMPT OF COURT

IN RE VICENTE SOTTO

Supreme Court of the Philippines[1]

21 January 1949

The facts. This was a proceeding against the respondent, an attorney of the court, calling on him to show cause why he should not be punished for contempt of court. The alleged contempt consisted of the publication in the *Manila Times* of an attack upon some of the members of the Supreme Court for having sentenced a journalist, Angel Parazo, to a term of imprisonment because he had refused to divulge the source of news published in his paper. The statement by the respondent reads as follows:

"As author of the Press Freedom Law (Republic Act No. 53), interpreted by the Supreme Court in the case of Angel Parazo, reporter of a local daily, who now has to suffer 30 days' imprisonment, for his refusal to divulge the source of a news published in his paper, I regret to say that our high tribunal has not only erroneously interpreted said law, but that it is once more putting in evidence the incompetency or narrow-mindedness of the majority of its members. In the wake of so many blunders and injustices deliberately committed during these last years, I believe that the only remedy to put an end to so much evil is to change the members of the Supreme Court. To this effect, I announce that one of the first measures which I will introduce in the coming congressional sessions will have as its object the complete reorganization of the Supreme Court. As it is now constituted, the Supreme Court of today constitutes a constant peril to liberty and democracy. It needs to be said loudly, very loudly, so that even the deaf may hear: the Supreme Court of today is a far cry from the impregnable bulwark of justice of those memorable times of Cayetano Arellano, Victorino Mapa, Manuel Araullo and other learned jurists who were the honour and glory of the Philippine judiciary."

The respondent asserted in this statement that the court had wilfully perpetrated an injustice by knowingly misinterpreting a law which he had, as a senator, introduced into the Congress of the Philippines and which he had intended to confer on journalists complete immunity from an obligation to divulge the sources of their information. During debate on this bill, an amendment was introduced and passed which read: "unless the court finds that such revelation is demanded by the interest of the State". It was in accordance with the terms of this amendment that the court had committed Parazo for contempt. In his answer to the citation for contempt, the respondent asserted that his criticism of the court constituted a lawful exercise of the freedom of the press.

Held: that the respondent was guilty of contempt of court. His criticism of the court was calculated to undermine public confidence in the impartial administration of justice.

The Court said:

". . . In his answer, the respondent does not deny having published the above-quoted threat and intimidation, as well as false and caluminous charges against this Supreme Court . . . He alleges in his answer that 'in the exercise of the freedom of speech guaranteed by the Constitution, the respondent made his statement in the press with the utmost good faith and with no intention of offending any of the majority of the honourable members of this high tribunal, who, in his opinion, erroneously decided the Parazo case; but he has not attacked or intended to attack the honesty or integrity of anyone . . .'

. . .

"Mere criticism or comment on the correctness or wrongness, soundness or unsoundness of the decision of the court in a pending case made in good faith may be tolerated; because if well founded it may enlighten the court and contribute to the correction of an error if committed; but if it is not well taken and obviously erroneous it should in no way influence the court in reversing or modifying its decision. Had the respondent in the present case limited himself to a statement that our decision is wrong, or that our construction of the intention of the law is not correct, because it is different from what he, as proponent of the original bill which became a law had intended, his criticism might in that case be tolerated, for it could not in any way influence the final disposition of the Parazo case by the court; inasmuch as it is of judicial notice that the bill presented by the respondent was amended by

[1] Text received through the courtesy of Mr. Lucas V. Madamba, Acting Under-Secretary of Foreign Affairs of the Philippines. Summary prepared by the United Nations Secretariat.

both houses of Congress, and the clause 'unless the court finds that such revelation is demanded by the interest of the State' was added or inserted; and that, as the Act was passed by Congress and not by any particular member thereof, the intention of Congress and not that of the respondent must be the one to be determined by this court in applying said Act.

"But in the above-quoted written statement which he caused to be published in the Press, the respondent does not merely criticize or comment on the decision of the Parazo case, which was then, and still is, pending reconsideration by this court upon petition of Angel Parazo. He not only intends to intimidate the members of this court with the presentation of a bill in the next Congress, of which he is one of the members, reorganizing the Supreme Court and reducing the members of justices from eleven to seven, so as to change the members of this court which decided the Parazo case, who according to his statement, are incompetent and narrow-minded, in order to influence the final decision of said case by this court, and thus embarrass or obstruct the administration of justice. But the respondent also attacks the honesty and integrity of this court for the apparent purpose of bringing the justice of this court into disrepute and degrading the administration of justice, for in his above-quoted statement he says:

" 'In the wake of so many blunders and injustices deliberately committed during these last years, I believe that the only remedy to put an end to so much evil is to change the members of the Supreme Court. To this effect, I announce that one of the first measures which I will introduce in the coming congressional sessions will have as its object the complete reorganization of the Supreme Court. As it is now, the Supreme Court of today constitutes a constant peril to liberty and democracy.'

"To hurl the false charge that this Court has been for the last years committing 'deliberately . . . so many blunders and injustices'—that is to say, that it has been deciding in favour of one party knowing that the law and justice is on the part of the adverse party and not on the one in whose favour the decision was rendered, in many cases decided during the last years, would tend necessarily to undermine the confidence of the people in the honesty and integrity of the members of this court, and consequently to lower or degrade the administration of justice by this court. The Supreme Court of the Philippines is, under the Constitution, the last bulwark to which the Filipino people may repair to obtain relief for their grievances or protection of their rights when these are trampled upon, and if the people lose their confidence in the honesty and integrity of the members of this court and believe that they cannot expect justice therefrom, they might be driven to take the law into their own hands, and disorder and perhaps chaos might be the result. As a member of the bar and an officer of the courts, Attorney Vicente Sotto, like any other, is in duty bound to uphold the dignity and authority of this court, to which he owes fidelity according to the oath he has taken as such attorney, and not to promote distrust in the administration of justice. Respect for the courts guarantees the stability of other institutions, which without such guarantee would be resting on a very shaky foundation.

"Respondent's assertion in his answer that 'he made his statement in the Press with the utmost good faith and without intention of offending any of the majority of the honourable members of this high tribunal', if true, may mitigate but not exempt him from liability for contempt of court; but it is belied by his acts and statements during the pendency of this proceeding. The respondent, in his petition of 11 December, alleges that Justice Gregorio Perfecto is the principal promoter of this proceeding for contempt, conveying thereby the idea that this court acted in the case through the instigation of Mr. Justice Perfecto.

"It is true that the constitutional guarantee of freedom of speech and the press must be protected to its fullest extent, but licence or abuse of liberty of the press and of the citizen should not be confused with liberty in its true sense. As important as the maintenance of an un-muzzled press and the free exercise of the rights of the citizen is the maintenance of the independence of the judiciary. As Judge Holmes very appropriately said in *U.S.* v. *Sullens* (1929), 36 Fed. (2nd), 230, 238, 239:

" 'The administration of justice and the freedom of the press, though separate and distinct, are equally sacred, and neither should be violated by the other. The press and the courts have correlative rights and duties and should co-opreate to uphold the principles of the Constitution and laws, from which the former receives its prerogative and the latter its jurisdiction. The right of legitimate publicity must be scrupulously recognized, and care taken at all times to avoid impinging upon it. In a clear case where it is necessary, in order to dispose of judicial business unhampered by publications which reasonably tend to impair the impartiality of verdicts, or otherwise obstruct the administration of justice, this court will not hesitate to exercise its undoubted power to punish for contempt. This court must be permitted to proceed with the disposition of its business in an orderly manner, free from outside interference obstructive of its constitutional functions. This right will be insisted upon as vital to an impartial court, and, as a last resort, as an individual exercises the right of self-defence, it will act to preserve its existence as an unprejudiced tribunal.'

. . .

"In view of all the foregoing, we find the respondent Attorney Vicente Sotto guilty of contempt of this court by virtue of the above-quoted publication, and he is hereby sentenced to pay within the period of fifteen days from the promulgation of this judgment, a fine of one thousand pesos (P1,000.00), with subsidiary imprisonment in case of insolvency."

RIGHTS OF ACCUSED PERSON—RIGHT TO CROSS-EXAMINE WITNESSES FOR PROSECUTION—DENIAL OF RIGHT IN PRELIMINARY PROCEEDINGS—VALIDITY OF PROCEDURE

BUSTOS *v.* LUCERO

Supreme Court of the Philippines[1]

8 March 1949

The facts. The petitioner, Bustos, applied to the Supreme Court for a reconsideration of a prior decision in which the court refused to disturb the conviction of the petitioner by a court of first instance presided over by the respondent, Lucero. The petitioner contended that his conviction was erroneous in law, because in the preliminary criminal proceedings he was not given an opportunity of cross-examining the witnesses for the prosecution. It was argued that section 11 of rule 108 of the rules of Court governing the rights of accused persons after arrest was repugnant to article VIII, section 13, of the Constitution in that, by depriving the petitioner of his right to cross-examine witnesses for the prosecution, it purported to abrogate the substantive rights of accused persons.

Held: That the motion for reconsideration should be dismissed and the conviction confirmed. The right of accused persons to cross-examine witnesses for the prosecution does not apply to preliminary proceedings. The court said:

". . . We do not believe that the curtailment of the right of an accused in a preliminary investigation to cross-examine the witnesses who had given evidence for his arrest is of such importance as to offend against the constitutional inhibition. As we have said in the beginning, preliminary investigation is not an essential part of due process of law. It may be suppressed entirely, and if this may be done, mere restriction of the privilege formerly enjoyed thereunder can not be held to fall within the constitutional prohibition.

"While section 11 of rule 108 denies to the defendant the right to cross-examine witnesses in a preliminary investigation, his right to present his witnesses remains unaffected, and his constitutional right to be informed of the charges against him both at such investigation and at the trial is unchanged. In the latter stage of the proceedings, the only stage where the guaranty of due process comes into play, he still enjoys to the full extent the right to be confronted by and to cross-examine the witnesses against him. The degree of importance of a preliminary investigation to an accused may be gauged by the fact that this formality is frequently waived.

. . .

"The motion is denied."

[1] Report: Supreme Court of the Philippines, G.R. No. L—2068. Text received through the courtesy of Mr. Lucas V. Madamba, Acting Under-Secretary of Foreign Affairs of the Philippines. Summary prepared by the United Nations Secretariat.

INVIOLABILITY OF PRIVATE CORRESPONDENCE—ORDER OF COURT TO PRODUCE CORRESPONDENCE—VALIDITY OF RESTRICTION ON RIGHT TO INVIOLABILITY OF CORRESPONDENCE—CONSTITUTION OF THE PHILIPPINES

MATERIAL DISTRIBUTORS (PHIL.) INC. AND LYONS *v.* SARREAL

Supreme Court of the Philippines[1]

28 June 1949

The facts. In an action between the parties to the present application, the respondent took out a summons for an order calling upon the applicants to produce for his inspection certain documents which had passed between the first and second applicants. A lower court made an interlocutory order in the terms of the respondent's summons. The applicants now applied to the Supreme Court on a motion for the reconsideration of the interlocutory order on the grounds that it impinged the constitutional guarantee of the inviolability of their correspondence. In reply, the respondent argued that this constitutional right was merely a guarantee against unreasonable searches and seizures, and that therefore the inspection of the applicant's documents would not amount to an infringement of their constitutional rights because it was made by a court order which was allowed by the Constitution itself.

[1] Report: Supreme Court of the Philippines, G.R. No. L—1716. Text received through the courtesy of Mr. Lucas V. Madamba, Acting Secretary of Foreign Affairs of the Philippines. Summary prepared by the United Nations Secretariat.

Held: that the application should be dismissed. The court said:

"... Petitioners contend that the orders complained of trampled upon petitioners' right to the inviolability of the correspondence and communication as guaranteed by the following provisions of the Constitution:

" '(3) The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated, and no warrants shall issue but upon probable cause, to be determined by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched, and the persons or things to be seized. (Sec. 1, art. III, Constitution of the Philippines.)

" '(5) The privacy of communication and correspondence shall be inviolable except upon lawful order of the court or when public safety and order require otherwise.' (Sec. 1, art. III, Constitution of the Philippines.)

"The orders in question, issued in virtue of the provisions of rule 21 [of the Rules of Court, section 1 of which deals with orders to be issued on motions for production or inspection of documents, papers, books, etc. (ED.)], pertain to a civil procedure that cannot be identified or confused with the unreasonable searches prohibited by the Constitution. But in the erroneous hypothesis that the production and inspection of books and documents in question is tantamount to a search warrant, the procedure outlined by rule 21 and followed by respondent judge places them outside the realm of the prohibited unreasonable searches. There is no question that, upon the pleadings in the case, Sarreal has an interest in the books and documents in question, that they are material and important to the issues between him and petitioner, that justice will be better served if all the facts pertinent to the controversy are placed before the trial court.

"The constitutional guarantee of privacy of communication and correspondence will not be violated, because the trial court has power and jurisdiction to issue the order for the production and inspection of the books and documents in question in virtue of the constitutional guarantee making an express exception in favour of the disclosure of communication and correspondence upon lawful order of a court of justice.

"After a careful consideration of the legal questions raised by petitioners, this court has arrived at the conclusion that the trial judge, in issuing the order of 16 July 1947, has not exceeded his jurisdiction or acted with grave abuse of discretion."

RIGHT TO PROPERTY—EXPROPRIATION—PURPOSE OF—LIMITATIONS ON—CONSTITUTION OF THE PHILIPPINES

GUIDO *v.* RURAL PROGRESS ADMINISTRATION

Supreme Court of the Philippines[1]

31 October 1949

The facts. The present action was brought by the applicant, Guido, for a writ of prohibition to prevent the Rural Progress Administration from proceeding with the expropriation for private use of land belonging to the applicant. The expropriation proceedings had been instituted under the provisions of the Commonwealth Act No. 539 which authorized the President to "acquire private lands or any interest therein, through purchase or expropriation, and to sub-divide the same into home lots or small farms for re-sale at reasonable prices and under such conditions as he may fix to their *bona fide* tenants or occupants or to private individuals who will work the lands themselves and who are qualified to acquire and own lands in the Philippines". It was argued that, as the lands were commercial, they were excluded from the provisions of the Commonwealth Act, and, alternatively that proceedings under that Act for the expropriation of the applicant's land would not have been authorized by article XIII, section 4, of the Constitution, which provides: "The Congress may authorize, upon payment of just compensation, the expropriation of lands to be sub-divided into small lots and conveyed at cost to individuals."

Held: that the application should be granted. Article XIII, section 4, of the Constitution cannot be interpreted as authorizing the expropriation of the applicant's property in the present circumstances. The court said:

"... There are indeed powerful considerations, aside from the intrinsic meaning of section 4 of article XIII of the Constitution, for interpreting Act No. 539 in a restrictive sense. Carried to extremes, this Act would be subversive of the Philippine political and social structure. It would be in derogation of individual rights and the time-honoured constitutional guarantee that no private property shall be taken for private use without due process of law. The protection against

[1] Report: Supreme Court of the Philippines, G.R. No. L—2089. Text received through the courtesy of Mr. Lucas V. Madamba, Under-Secretary of Foreign Affairs of the Philippines. Summary prepared by the United Nations Secretariat.

deprivation of property without due process of law and against the taking of private property for public use without just compensation occupies the forefront positions (paragraphs 1 and 2) in the Bill of Rights (article III). The taking of private property for private use relieves the owner of his property without due process of law; and the prohibition that "private property should not be taken for public use without just compensation" (section 1 (para. 2), Article III, of the Constitution) forbids by necessary implication the appropriation of private property for private uses (29 C.J.S. 819). It has been truly said that the assertion of the right on the part of the legislature to take the property of one citizen and transfer it to another, even for a full compensation, when the public interest is not promoted thereby, is claiming a despotic power, and one inconsistent with every just principle and fundamental maxim of a free government.

"Hand in hand with the announced principle herein invoked, that 'the promotion of social justice to insure the well-being and economic security of all the people should be the concern of the State', is a declaration, with which the former should be reconciled, that 'the Philippines is a Republican State' created to secure to the Filipino people 'the blessing of independence under a regime of justice, liberty and democracy'. Democracy, as a way of life enshrined in the Constitution, embraces as its necessary components freedom of conscience, freedom of expression, and freedom in the pursuit of happiness. Along with these freedoms are included economic freedom and freedom of enterprise within reasonable bounds and under proper control. In paving the way for the breaking up of existing large estates, trusts in perpetuity, feudalism and their concomitant evils, the Constitution did not propose to destroy or undermine property rights or to advocate equal distribution of wealth, or to authorize the taking of what is in excess of one's personal needs and the giving of it to another. Evincing much concern for the protection of property, the Constitution distinctly recognizes the preferred position which real estate has occupied in law for ages. Property is bound up with every aspect of social life in a democracy as democracy is conceived in the Constitution. The Constitution realizes the indispensable role which property, owned in reasonable quantities and used legitimately, plays in the stimulation to economic effort and the formation and growth of a solid social middle class that is said to be the bulwark of democracy and the backbone of every progressive and happy country.

"The promotion of social justice ordained by the Constitution does not supply paramount basis for untrammelled expropriation of private land by the Rural Progress Administration or any other government instrumentality. Social justice does not champion division of property or equality of economic status; what it and the Constitution do guarantee are equality of opportunity, equality of political rights, equality before the law, equality between values given and received, and equality in the sharing of the social and material goods on the basis of efforts exerted in their production as applied to metropolitan centres, especially Manila in relation to housing problems. It is a command to advise, among other social measures, on ways and means for the elimination of slums, shambles, shacks, and houses that are dilapidated, overcrowded, without ventilation, light and sanitation facilities, and for the construction in their place of decent dwellings for the poor and the destitute. As will presently be shown, condemnation of blighted urban areas bears direct relation to public safety, health, and/or morals, and is legal.

. . .

"In a broad sense, expropriation of large estates, trusts in perpetuity, and land that embraces a whole town, or a large section of a town or city, bears direct relation to the public welfare. The size of the land expropriated, the large number of people benefited, and the extent of social and economic reform secured by the condemnation clothe the expropriation with public interest and public use. The expropriation in such cases tends to abolish economic slavery, feudalistic practices, endless conflicts between landlord and tenants, and other evils inimical to communal prosperity and contentment and public peace and order. Although courts are not in agreement as to the tests to be applied in determining whether the use is public or not, some go so far in the direction of a liberal construction as to hold that public use is synonymous with public benefit, public utility, or public advantage, and to authorize the exercise of the power of eminent domain to promote such public benefit, etc.; especially where the interests involved are of considerable magnitude . . .

"The condemnation of a small property on behalf of ten, twenty or fifty persons and their families does not inure to the benefit of the public to a degree sufficient to give the use of public character. The expropriation proceedings at bar have been instituted for the economic relief of a few families devoid of any consideration of public health, public peace and order, or other public advantage. What is proposed to be done is to take plaintiff's property, which for all we know she acquired by sweat and sacrifice for her and her family's security and sell it at cost to a few lessees who refuse to pay the stipulated rent or leave the premises.

"No fixed line of demarcation between what taking is for public use and what is not can be made; each case has to be judged according to its peculiar circumstances. It suffices to say for the purpose of this decision that the case under consideration is far wanting in those elements which make for public convenience or public use. It is patterned upon an ideology far removed from that consecrated in our system of government and embraced by the majority of the citizens of this country. If upheld, this case would open the gates to more oppressive expropriations. If this expropriation be constitutional, we see no reason why a 10-, 15- or

25-hectare farm might not be expropriated and sub-divided and sold to those who want to own a portion of it. To make the analogy closer, we find no reason why the Rural Progress Administration could not take by condemnation an urban lot containing an area of 1,000 or 2,000 square metres for sub-division into tiny lots for re-sale to its occupants or those who want to build thereon."

RIGHT TO A FAIR TRIAL—RIGHTS OF ACCUSED PERSONS—RIGHT TO ASSISTANCE OF COUNSEL—ACCUSED NOT INFORMED OF HIS RIGHT TO COUNSEL—PLEA OF GUILTY BY ACCUSED—VALIDITY OF PLEA

HOLGADO *v.* THE PEOPLE OF THE PHILIPPINES

Supreme Court of the Philippines[1]

22 March 1950

The facts. At his trial on a charge of illegally detaining a person for eight hours, the appellant was asked by the court whether he had an attorney or whether he was going to plead guilty. He intimated to the court that he would plead guilty. The court found him guilty and sentenced him to ten years and one day of *prisión mayor* to twenty years.

Held: that the conviction must be quashed and a new trial ordered. The trial court was in error in not informing the accused of his right to have the assistance of counsel.

The court said:

"... The proceedings in the trial court are irregular from the beginning. It is expressly provided in our Rules of Court, rule 112, sec. 3, that:

" 'If the defendant appears without attorney, he must be informed by the court that it is his right to have attorney before being arraigned, and must be asked if he desired the aid of attorney. If he desires and is unable to employ attorney, the court must assign attorney *de officio* to defend him. A reasonable time must be allowed for procuring attorney.'

"Under this provision, when a defendant appears without attorney, the court has four important duties to comply with: (1) it must inform the defendant that it is his right to have attorney before being arraigned; (2) after giving him such information the court must ask him if he desires the aid of an attorney; (3) if he desires and is unable to employ attorney, the court must assign attorney *de officio* to defend him; and (4) if the accused desires to procure an attorney of his own the court must grant him a reasonable time therefor.

"Not one of these duties had been complied with by the trial court. The record discloses that said court did not inform the accused of his right to have an attorney; nor did it ask him if he desired the aid of one. The trial court failed to inquire whether or not the accused was to employ an attorney, to grant him reasonable time to procure one or to assign an attorney *de officio*. The question put by the court to the accused was 'Do you have an attorney or are you going to plead guilty?' Not only did such a question fail to inform the accused that it was his right to have an attorney before arraignment, but, what is worse, the question was so framed that it could have been construed by the accused as a suggestion from the court that he plead guilty if he had no attorney. And this is a denial of fair hearing in violation of the due process clause contained in our Constitution.

"One of the great principles of justice guaranteed by our Constitution is that 'no person shall be held to answer for a criminal offence without due process of law', and that all accused 'shall enjoy the right to be heard by himself and counsel'. In criminal cases, there can be no fair hearing unless the accused be given an opportunity to be heard by counsel. The right to be heard would be of little avail if it did not include the right to be heard by counsel. Even the most intelligent or educated man may have no skill in the science of the law, particularly in the rules of procedure, and, without counsel, he may be convicted not because he is guilty, but because he does not know how to establish his innocence. And this can happen more easily to persons who are ignorant or uneducated. It is for this reason that the right to be assisted by counsel is deemed so important that it has become a constitutional right and it is so implemented that under our rules of procedure it is not enough for the court to apprise an accused of his right to have an attorney; it is not enough to ask him whether he desires the aid of an attorney; but it is essential that the court should assign one *de officio* for him if he so desires and he is poor, or grant him a reasonable time to procure an attorney of his own.

...

"The judgment appealed from is reversed, and the case is remanded to the court below for a new arraignment and a new trial after the accused is apprised of his right to have and to be assisted by counsel. It is so ordered."

[1]Report: Supreme Court of the Philippines, G.R. No. L—2809. Text received through the courtesy of Mr. Lucas V. Madamba, Acting Under-Secretary of Foreign Affairs of the Philippines. Summary prepared by the United Nations Secretariat.

POLAND

DEFENCE OF PEACE ACT[1]

of 29 December 1950

Art. 1. Any person who, by word or in writing, through the press, radio or films or any other means, spreads war propaganda, commits a crime against peace and is liable to imprisonment up to fifteen years.

Art. 2. A crime against peace (art. 1) is committed in particular by anyone who:

Incites to and foments war,

Helps to spread propaganda put out by centres engaged in a campaign inciting to war,

Fights or slanders the Peace Defenders' Movement.

Art. 3. As regards punishment for violation of this Act, the court can impose as additional punishment the loss of public, civic and honorary rights, as well as confiscation of property in whole or in part.

Art. 4. The district courts are competent to try cases indicated by this Act.

Art. 5. The execution of this Act is entrusted to the Minister of Justice.

Art. 6. The Act comes into force on the day of its promulgation.

[1] Polish text in *Dziennik Ustaw* (Journal of Laws) No. 58, of 31 December 1950. English text based on the translation in: Poland—Documents and Reports No. 10, *In Defence of Peace* (published by the Polish Research and Information Service), New York 1951, pp. 14–15.

CODE OF CRIMINAL PROCEDURE[1]

of 2 September 1950

BOOK II

PARTIES, COUNSEL FOR THE DEFENCE, AND AGENTS

Chapter V

THE DEFENDANT

Art. 71. 1. The defendant is the person against whom a judicial inquiry has been opened; the accused is the person against whom criminal proceedings have been instituted.

2. Whenever in the present Code the word "accused" is used in its general meaning, the provisions relating to it apply equally to the defendant.

Art. 72. As soon as the judicial inquiry is opened, the defendant may ask to be informed of the nature and cause of the accusation made against him.

Art. 73. The accused is not obliged to reply to questions put to him.

Art. 74. The following particulars shall be collected for each accused person: his identity, age, origin and social status, occupation, family status, financial circumstances and police record.

Art. 75. 1. An accused person who is at liberty is bound to appear each time he is summoned by the court or the person in charge of the inquiry into the case and to give notice of any change of residence.

2. In case of unjustified failure to appear, the accused may be compelled to do so.

Chapter VI

COUNSEL FOR DEFENCE AND AGENTS

Art. 76. 1. The accused is entitled to counsel for defence.

2. The accused may not have more than three counsel.

Art. 77. If the accused is a minor or legally incapacitated, his father, mother or guardian, or the person having permanent custody of him, is legally entitled to choose counsel for him.

Art. 78. Only persons authorized to plead in a court under the legal provisions governing the organization of the Bar may act as counsel in criminal cases.

[1] Polish text in *Dziennik Ustaw* (Journal of Laws) No. 40, of 13 September 1950. Text and information received through the courtesy of Mr. Jan Galewicz, Acting Permanent Representative of Poland to the United Nations, and Dr. Stefan Boratynski, Adviser to the Delegation of Poland to the United Nations. English translation by the United Nations Secretariat.

Art. 79. 1. The accused must have counsel, whatever the court before which he has to appear, if:

(*a*) He is under seventeen years;

(*b*) He is deaf or dumb;

(*c*) There is reasonable doubt as to his powers of judgment.

2. Further, every accused must have counsel for defence before a provincial (*voievodie*) court of first instance.

Art. 80. If the accused fails to choose his own counsel, the president of the court shall appoint a counsel for him:

(*a*) In the cases covered by article 79;

(*b*) At the request of the accused if, owing to poverty, he is unable to pay the cost of counsel.

. . .

BOOK III

EVIDENCE

Chapter 1

WITNESSES

. . .

Art. 94. 1. The following may refuse to testify:

(*a*) The spouse of the accused;

(*b*) Parents or lineal relations of the accused;

(*c*) Collateral relations to the degree of first cousin;

(*d*) The brother or sister of the spouse of the accused;

(*e*) Persons connected with the accused through adoption.

2. The right to refuse to testify continues even after the marriage or adoption ceases to exist.

3. The persons listed above must be informed of their right to refuse to give testimony.

Art. 95. If, after making a statement and before testifying in a hearing of a court of first instance, one of the persons listed above invokes the right not to testify, the previous statement cannot be used in evidence and may not be read or reconstituted.

Art. 96. The witness has the right not to reply to any question relating to circumstances the disclosure of which might involve criminal responsibility for himself or for a person standing to him in any of the relationships listed in article 94.

. . .

BOOK IV

METHODS OF PREVENTING THE ACCUSED FROM EVADING COURT ACTION

Chapter II

PREVENTIVE DETENTION

. . .

Art. 151. 1. Preventive detention of the accused may take place only by order of the court or the public prosecutor.

2. The prosecutor may not order preventive detention of the accused except during the judicial inquiry.

. . .

BOOK XI

SPECIAL PROCEDURES

Chapter V

REPARATION FOR DAMAGES SUFFERED BY THE CONVICTED PERSON OR THE ACCUSED AS A RESULT OF JUDICIAL ERROR

. . .

Art. 510. 1. Anyone who, following a revision of his trial, is either definitely acquitted or condemned to a lighter sentence, may file a claim with the Treasury for compensation for any material loss or moral injury suffered by him through serving all or part of the sentence subsequently annulled.

2. The same provision applies in case of a final cessation of penal action after revision of the case.

. . .

FAMILY CODE[1]

Act of 27 June 1950

SUMMARY

Part I deals with matrimony. Articles 1–13 contain provisions relating to the marriage contract. In principle, marriage must be contracted before the registrar of the district of residence of one of the contracting parties.

Articles 14–28 contain provisions about the rights and duties of spouses. Articles 14–16, 18 and 21 read as follows:

Art. 14. In the married state, husband and wife enjoy the same rights and have the same duties. It is their duty to live together, to be faithful to each other, mutually to help each other and to co-operate for the benefit of the family founded by their marriage.

[1] Polish text of the Act in *Dziennik Ustaw* (Journal of Laws) No. 34, of 22 August 1950. English translation of the Act in *Review of Polish Law* IV, Nos. 3 and 4 (published by the Bureau of Foreign Law Relations, Warsaw, 1950). Summary prepared by the United Nations Secretariat.

Art. 15. The spouses shall by mutual agreement decide on important questions relating to their family. If they fail to agree, either spouse may ask the court to decide the matter.

Art. 16. The wife assumes the surname of her husband. If she wishes to retain her surname, adding to it the surname of her husband, she shall make a declaration to this effect in the marriage register.

Art. 18. It is the duty of both the spouses to satisfy the needs of the family founded by their marriage to the limit of their capacity and in accordance with their earnings and means. Support of the family may be considered as provided wholly or in part by personal care for the education of the children and by work in the joint household.

Art. 21. 1. Property acquired by either of the spouses during the existence of the marriage constitutes the acquired property of both (legal community).

2. Property acquired by succession, legacy or gift, or property serving the personal needs of either spouse or the exercise of his (her) profession does not constitute legal community of property."

Articles 29–34 deal with divorce. A marriage may be dissolved by divorce if there are grave and profound reasons and a permanent rift has arisen between the spouses. The marriage cannot be dissolved, however, if the divorce would be detrimental to the interests of children who are under age. Nor shall a decree dissolving the marriage become valid before the rights and duties of the parents in respect of their minor children have been determined.

Part II deals with the relations between parents and children. It provides that both parents are equally responsible for the maintenance and education of their children "in accordance with their aptitudes and inclinations to the benefit of the community". A child shall bear the name of his father or, when his father is unknown, the name of his mother. If both father and mother are unknown, the family court shall decide on the surname of the child. If paternity is established by judicial decision, the court, at the request of the mother or the child, may give the child the name of his father.

Articles 42–52 contain detailed provisions on the establishment of paternity. The following articles provide that minors are under the authority of their parents, and that both parents have parental authority. If for certain reasons one of the parents cannot exercise this authority, parental authority shall be exercised by the other parent alone. If neither of the parents can exercise parental authority, a guardian shall be appointed for the children. If parents do not properly fulfil their obligations or abuse the parental authority, such authority may be limited or abrogated and a guardianship established by decision of the court.

The remaining articles deal with adoption and liability of maintenance, and Part III contains provisions on guardianship.

PORTUGAL

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS[1]

Certain texts promulgated during 1950 are related to human rights. Three laws contain provisions for the granting of amnesties. Act No. 2:039, of 10 May 1950 (published in *Diário do Governo*, Part I, No. 84, of 10 May 1950) grants an amnesty to persons sentenced for political offences and for disciplinary infractions of the same nature. The Act lists those political offences which are excluded from amnesty. Subject to certain conditions, persons whose offences have been the object of an amnesty may be restored to governmental and military service.

Decree-law No. 38:018, of 30 October 1950 (published in *Diário do Governo*, Part I, No. 219, of 30 October 1950) grants an amnesty to persons sentenced for certain other offences. These offences include those which have been committed against the security of the State and for which a sentence of imprisonment has been pronounced.

[1]Information received through the courtesy of the Portuguese Embassy to the United States, Washington.

By regulation No. 13:361, of 20 November 1950 (published in *Diário do Governo*, Part I, No. 237, of 20 November 1950), the aforementioned decree-law No. 38:018, of 30 October 1950, is made applicable in the Portuguese overseas territories.

Act No. 2:040, of 10 May 1950 (published in *Diário do Governo*, Part I, of 27 May 1950), repeals the Act of 19 December 1834 and the decree of 15 October 1910 concerning banishment and proscription.

Decree No. 37:739, of 20 January 1950 (published in *Diário do Governo*, Part I, No. 15, of 20 January 1950), contains detailed regulations relating to the system of family allowances introduced by decree-law No. 32:192, of 13 August 1942.

Decree No. 37:749, of 2 February 1950 (published in *Diário do Governo*, Part I, No. 23, of 2 February 1950), contains detailed regulations relating to the system of allowances granted to surviving dependants within the national system of social insurance.

SAAR

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS[1]

1. CIVIL AND POLITICAL RIGHTS

Act of 19 July 1950 to supplement and amend the *Strafgesetzbuch*. Extracts from the Act are published in this *Yearbook*.

Act of 20 April 1950 to amend the provisions concerning the position of the accused and of the defence in criminal proceedings. Certain provisions of the Code of Criminal Procedure were amended by the Governing Commission of the Saar Territory in its ordinance of 11 January 1928; the Act of 20 April 1950 restores the 1928 text, which was repealed following the re-incorporation of the Saar in Germany in 1935, and contains further amendments to the Code of Criminal Procedure. The Act is published in this *Yearbook*.

Associations Act of 13 July 1950. The Act is published in this *Yearbook*.

2. SOCIAL AND ECONOMIC RIGHTS

Young Persons Welfare Act of 7 December 1949. The Act is published in this *Yearbook*.

Act of 31 January 1950 concerning the ratification of the Social Security Convention between France and the Saar. The Act authorizes the Minister-President to ratify the convention. The Act is published in the *Bulletin officiel de la Sarre* No. 26, of 3 May 1950, and the Convention in the *Bulletin officiel de la Sarre* No. 55, of 6 September 1950. The general principles are laid down in Part I of the Convention, while Part II contains provisions regarding sickness, maternity, invalidity, old age and death insurance, family allowances, industrial accidents and occupational diseases. Part III contains provisions on administrative co-operation between the respective agencies, together with miscellaneous provisions. The Convention is accompanied by a number of supplementary agreements and administrative arrangements. The supplementary agreements relate to workers in mines and similar establishments, frontier workers, French workers employed in the Saar and the staff of French public services in the Saar.

Act of 4 April 1950 concerning remuneration for legal general holidays in the Saar. The Act is published in this *Yearbook*.

Act of 31 January 1950 concerning the payment of allowances to the families of civil servants who are prisoners of war or missing. The Act is published in the *Bulletin officiel de la Sarre* No. 17, of 8 March 1950.

3. CULTURAL RIGHTS

Order of 3 April 1950 concerning the establishment of a university of the Saar as a body corporate subject to a public law. The order is published in the *Bulletin officiel de la Sarre* No. 37, of 30 June 1950.

The text of the order is accompanied by the Statutes of the University of the Saar, the preamble to which states that the Government of the Saar is "convinced that because of its geographical position, the Saar is under an obligation to make every effort to ensure mutual understanding between the peoples and is desirous of creating an intellectual counterpart to the economic importance of the Saar and of associating the young people of the Saar in the cultural life of Europe".

The statutes deal with the financial structure and organization of the University, the teaching staff, the students and the disciplinary council. The part dealing with students states that the admission of students shall be decided by the Matriculation Board, consisting of the Rector, as Chairman, the dean of the faculty concerned, as vice-president, and three members of the teaching staff of the same faculty. The *baccalauréat* or an equivalent foreign examination is required for matriculation. Students enjoy equal rights, without distinction as to nationality. They will be represented in all organs of the University dealing with social questions. Article 94 provides:

"In principle, the students' freedom of association is recognized; nevertheless, students' associations whose activities concern the University require the authorization of the Governing Body and of the Rector.

"Students' associations should be centres of democratic training and international reconciliation. If they do not perform this function, the Rector may, in agreement with the Governing Body, prohibit them from engaging in any activity within the University."

[1] Note based on texts received through the courtesy of the French delegation to the United Nations.

ACT TO SUPPLEMENT AND AMEND THE *STRAFGESETZBUCH*[1]

dated 19 July 1950

Art. 1. The following provisions shall be inserted in the *Strafgesetzbuch* as articles 80 to 95:

FIRST SECTION

CRIMES AND OFFENCES AGAINST THE SECURITY OF THE STATE

Art. 80. If any person attempts, by force or by threat of force, to annex the Saarland wholly or in part to a foreign State, he shall be liable to the penalty of penal servitude (*réclusion*) for a term of not less than five years.

Art. 81. If any person attempts, by force, by threat of force, or by abusing powers conferred under express statutory provisions, to modify or to destroy the constitutional form of the State or of the Government, he shall be liable to the penalty of penal servitude, or, if there are extenuating circumstances, to imprisonment for a term of not less than one year.

Art. 82. (1) If any person forms a combat force, a party or any other organized group banned under article 8 of the Constitution, he shall be liable to the penalty of penal servitude. Any person holding a command, an office on the executive committee, or a position of leadership in a combat force, party or other organized group banned under article 8 of the Constitution, shall be liable to the same penalty.[2]

(2) If any person forms a political party, association or other organized group, with the intent of inducing the members thereof to commit an act punishable under articles 80 and 81, he shall be liable to the penalty of penal servitude. If the leader of a political party, association or other organization or group at a meeting instigates or incites the commission of acts punishable under articles 80 and 81, or tolerates such incitement or instigation by others, he shall be liable to the same penalty.

(3) If there are extenuating circumstances, a penalty of not less than six months' imprisonment may be imposed.

(4) If any person, at a meeting of a political party, association or other organization, instigates or incites the commission of acts punishable under articles 80 and 81 or, as the chairman of such meeting, tolerates such instigation or incitement by others, he shall be liable to imprisonment for not less than six months.

Art. 83. (1) If any person participates in one of the associations mentioned in article 82, he shall be liable to imprisonment for not less than one month. Similarly, if any person gives his assistance to any such association—in particular financial assistance—he shall be deemed to be a participant.

(2) If any person participates in a society which is unlawful under article 128 of the *Strafgesetzbuch*,[3] he shall be liable to the penalty of penal servitude, regardless of the nature of such participation, if the objects of the society are those mentioned in articles 80 to 82.

Art. 84. In cases where an act punishable under articles 80 to 82 results in serious bodily injury or the death of a person, a penalty of not less than five years' penal servitude shall be imposed.

Art. 85. If any person, at a private or public meeting or in printed works, wilfully insults, brings into contempt or maliciously defames the Saar, its Constitution, national flag, national emblem or State institutions established in virtue of the Constitution, he shall be liable to imprisonment for not less than one month or to a fine of not less than 20,000 nor more than 500,000 francs. In the case of a second or subsequent offence, imprisonment is mandatory.

Art. 86. If any person maliciously removes, destroys or defaces a public symbol of the authority of the Saar, or commits a grossly offensive act with respect to it, he shall be liable to imprisonment or to a fine of not less than 10,000 nor more than 300,000 francs.

SECOND SECTION

CRIMES AND OFFENCES AGAINST THE GOVERNMENT OF THE COUNTRY

Art. 87. If any person attempts to deprive a member of the Government of the country of his constitutional powers, or by force or threat of force or threat of a crime or offence attempts to compel him to exercise or to prevent him from exercising, those constitutional powers generally or in a particular way, he shall be liable to the penalty of penal servitude. If there are extenuating circumstances, sentence of imprisonment shall be imposed.

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[1] French and German texts in *Bulletin officiel de la Sarre—Amtsblatt des Saarlandes* No. 58, of 14 September 1950. English translation from the French text by the United Nations Secretariat. The *Strafgesetzbuch* is the German Penal Code, which is in force in the Saar.

[2] Article 8 of the Constitution provides:

"Political combat forces are forbidden, as are also parties and other organized groups which aim at abolishing or undermining by violence or the abuse of formal legal authority the freedoms and rights guaranteed by the Constitution."

[3] Article 128 of the *Strafgesetzbuch*, makes it a punishable offence to form secret societies, or societies whose members promise obedience to a leader unknown to them or absolute obedience to a known leader.

Art. 88. If any person makes an attempt on the person or on the life of a member of the Government of the country (acts of violence), he shall be liable to the penalty of penal servitude. If any person threatens such act or incites others to commit such acts, he shall be liable to imprisonment.

Art. 89. If any person attempts to kill a member of the Government or incites others, or offers or accepts an offer, to commit the offence, or conspires with others to commit the murder, he shall be liable to the penalty of penal servitude for a term of not less than two years.

Art. 90. (1) If any person, at a public or private meeting, or by the dissemination of printed works, writings or pictorial or other representations, commits a grossly offensive act or makes false allegations against members of the Government likely to undermine the authority of these members of the Government or the confidence of the people in the Government of the country, he shall be liable to imprisonment.

(2) Article 193 of the *Strafgesetzbuch*[1] may not be pleaded in defence.

[1] Article 193 of the *Strafgesetzbuch* provides that persons who seek by the expression of their opinion or by their criticism to defend legitimate interests do not incur criminal liability in so far as those opinions or criticisms do not involve offensive expressions.

Art. 91. In the cases to which articles 85, 86 and 90 refer, criminal proceedings shall not be instituted except with the authorization of the Government.

[The third section deals with subsidiary penalties.]

FOURTH SECTION

HOSTILE ACTS AGAINST FOREIGN STATES

Art. 93. If an act of the nature described in articles 87 to 90 is directed against the person or the office of the representative of a foreign State in the Saar, the person committing the act shall be liable to the penalties stated in the said articles.

Art. 94. (1) If any person maliciously removes, destroys, defaces, or insults a public symbol of the authority or a symbol of the sovereignty of a foreign State, he shall be liable to imprisonment for a term of not less than one month and to a fine of not more than 500,000 francs.

(2) Proceedings shall be instituted only if a complaint is lodged by the Government of the foreign State. Such complaints may be withdrawn.

[The fifth section deals with cases in which penalties may not be commuted and with cases in which penalties may or may not be suspended.]

ACT TO AMEND THE PROVISIONS CONCERNING THE POSITION OF THE ACCUSED AND OF THE DEFENCE IN CRIMINAL PROCEEDINGS[1]

dated 20 April 1950

Art. 1. Every accused person arrested or placed under provisional arrest shall without delay, and not later than the day following the day of his arrest, be brought before the judge who, without prejudice to the rights conferred upon the accused by articles 2 and 3 of this Act, shall without delay, and not later than the day following the date of his appearance before the court, question him regarding the acts with which he is charged.

If any person wilfully or through gross negligence contravences the provisions of the first paragraph, he shall, unless liable to a more severe penalty under the *Strafgesetzbuch*, be liable to imprisonment for not more than six months or to a fine.

Art. 2. At the beginning of the first questioning, the judge or examining public prosecutor (*procureur instructeur*) shall inform the accused that he is not required to make a statement.

At the same time, the accused shall be informed of his right to select counsel for his defence or, in cases where counsel is required to be appointed, to have one appointed by the court.

If the accused is placed in custody, he must, when informed thereof, be notified of his right to appeal and of his right to apply for a hearing to test the validity of his detention.

The fact that the accused has been so notifed shall be entered in the record and confirmed by his signature.

If the accused is arrested or placed under provisional arrest, the judge or examining public prosecutor shall, at his request, see to it that counsel for the defence he has selected, or in cases where counsel is required to be appointed, counsel appointed by the court, is instructed without delay by telephone. If the accused cannot himself appoint defending counsel, the judge or examining public prosecutor shall immediately request

[1] French and German texts in *Bulletin officiel de la Sarre—Amtsblatt des Saarlandes* No. 32, of 3 June 1950. English translation from the French text by the United Nations Secretariat.

the president of the Bar association by telephone to appoint and instruct counsel for the defence.

If the accused applies for a hearing to test the validity of his detention, the judge is required to appoint a time for the hearing and to notify counsel for the defence thereof. The provisions of articles 114*d*, 115*a*–115*d* and 124, paragraph 4, of the Code of Criminal Procedure, as contained in the ordinance of the Governing Commission of the Saar concerning the amendment of the Code of Criminal Procedure of 11 January 1928 (*Bulletin officiel de la Commission du Gouvernement de la Sarre*, pp. 13 *et seq.*), the validity of which is restored by this Act, shall apply by analogy.

If several persons accused in the same criminal case are being held in custody, the court, notwithstanding the date of detention or of the last hearing to test the validity of the detention of each of the accused, shall on each occasion extend the inquiry into the validity of such detention of all the accused.

Art. 3. If the accused exercises his right to select counsel for his defence or if, in cases where counsel is required to be appointed, counsel is appointed by the court at his request, he may not be questioned with regard to a crime or offence by a judge or public prosecutor except in the presence of his counsel unless the latter, having been duly notified, fails to enter an appearance. If the accused waives the right to be assisted by counsel, the fact must be entered in the record and confirmed by his signature.

Counsel for the defence is likewise entitled to attend the examination of witnesses or experts and, at the end of the examination, to put questions to such witnesses or experts. Article 5, first paragraph, second sentence, and second paragraph, is applicable by analogy.

The first and second paragraphs are likewise applicable to interrogations by the police,

(1) If the interrogation takes place after the accused person held in custody has appeared before the judge,

(2) If the interrogation takes place after the first interrogation by the police of an accused person at large.

The provisions of the first to the third paragraphs are not applicable if there is good reason to fear the loss or substantial impairment of the use of any part of the evidence. In such case, the grounds must be entered in the record.

Counsel for the defence must be notified of each hearing in which he is authorized to participate pursuant to article 3, by registered letter or a communication for which acknowledgment is given. A time-limit of not less than twenty-four hours must elapse between the serving of the notification and the hearing.

Any waiver of the right of notification or of the observation of formalities or time-limits shall be placed on record.

Art. 5. If so requested, authorization must be given to counsel for the defence to question the accused at the end of the examination. The questions and the answers shall, on application, be entered in the record.

Questions likely to be detrimental to the purpose of the examination may be ruled out of order. If such questions are repeated, the right to question may be withdrawn. Any such ruling or withdrawal shall be entered in the record.

Art. 6. The office of the public prosectuor shall be notified in advance of any questioning by a judge.

The public prosecutor is entitled to participate in any such interrogation and, at the end of the interrogation, to interrogate the accused, the witnesses and experts. Article 5, first paragraph, second sentence, is applicable by analogy.

Art. 7. As from the time when counsel for the defence has the right to participate in the questioning pursuant to article 3, he shall be authorized to inspect the documents in the case, in particular before each questioning.

Counsel for the defence shall immediately be given formal notice of any order of the judge, unless he waives the right to such communication or to the observation of formalities.

Art. 8. If anything is done in the course of the proceedings which contravenes the provisions of articles 2, 3 and 7, this may not be used to the prejudice of the accused.

Art. 9. Articles 6 and 7 are applicable by analogy to any plaintiff claiming damages in a criminal case and to his counsel. Inappropriate questions may be ruled out.

ASSOCIATIONS ACT[1]

of 13 July 1950

Art. 1. All Saarlanders have the right to form associations. Aliens who wish to found associations are required first to apply to the Minister of the Interior for permission. An association the majority of whose members, after its foundation, are persons not possessing Saar nationality may not continue to function except with the authorization of the Minister of the Interior.

[1] French and German texts in *Bulletin officiel de la Sarre—Amtsblatt des Saarlandes* No. 55, of 6 September 1950. English translation from the French text by the United Nations Secretariat.

The formation of local groups or the foundation of federations is likewise subject to the provisions of this Act.

The affiliation of an association to a federation the registered office of which is not in the Saar is subject to prior approval by the Minister of the Interior in agreement with the competent Ministry. Political parties and trade unions affiliated to an international federation are not affected by this provision.

Art. 2. All associations operating in the Saar must have their registered offices in the Saar.

Art. 3. (1) Only persons who have full legal capacity and who are nationals of the Saar may form an association.

(2) Application for authorization of the constituent meeting must be accompanied by a list of the members and the draft articles of association. This provision is not applicable in the case of the formation of a local group affiliated to an association previously authorized.

(3) The constituent meeting may be held only after a certificate has been issued by the police authority of the district in which the association is to be founded establishing that authorization has been applied for. If the activities of the association to be established are not confined to the district of the local police authority, the certificate shall be issued by the police authority of the district (*Kreis*) in which the registered office of the association is situated.

Art. 4. (1) The executive committee shall be elected and the articles of association established by the constituent meeting.

(2) Only nationals of the Saar having full legal capacity and civil rights may be elected as members of the executive committee. In the case of the organizations to which the Act concerning workers' and employers' associations of 20 June 1949 (*Bulletin officiel*, p. 743) refers, persons domiciled in the Saar and having full legal capacity and enjoyment of their civil rights in one of the territories of the Economic Union of France and the Saar may also be elected as members of the executive committee.

(3) The Minister of the Interior may waive the requirement regarding the possession of Saar nationality.

(4) The articles of association shall guarantee that the election of the executive committee, the administration, and the operation of the association be effected in accordance with democratic principles.

Art. 6. Religious associations are not subject to the provisions of this Act, if their aims are of a religious nature.

Art. 7. (1) The Minister of the Interior may proceed to dissolve an association if the number of members is three or less or if the activities of the association conflict with statutory provisions or democratic principles.

(2) The dissolution order must be made in writing, the grounds therefor and particulars of the remedies available being stated.

(3) An appeal against a dissolution order made by the Minister of the Interior may be lodged, within one month with the Administrative High Court. The time-limit shall run from the date on which notice of the order is served on the interested parties.

(4) The appeal shall not have the effect of staying execution of the order.

(5) Notice of the final dissolution of an association shall be published in the *Bulletin officiel de la Sarre*.

Art. 8. (1) The form of the insignia of an association shall be subject to the approval of the Minister of the Interior.

(2) The wearing of uniforms is prohibited. The Minister of the Interior, in agreement with the competent ministry, may grant exceptions only to associations and federations operating in the public interest.

Art. 9. (1) If an association having exclusively economic, charitable or social aims has previously been authorized, the formation of another association having the same aims is subject to the approval of the Minister of the Interior.

(2) Professional or vocational organizations and the formation of local groups affiliated to an association previously authorized are not affected by this provision.

Art. 10. The formation of political parties is regulated by a special Act.

Art. 11. The associations which existed in the Saar before 8 May 1945 are deemed to have been dissolved as from that date if they have not been allowed to continue to function, or if they have not been approved prior to the date of the entry into force of this Act.

Art. 12. If any person contravenes this Act, he shall be liable to imprisonment for not more than three months and to a fine, or to one of those penalties only.

YOUNG PERSONS WELFARE ACT[1]

of 7 December 1949

REGULATION OF THE WORKING HOURS OF YOUNG PERSONS AND OF CHILDREN WORKING IN EXCEPTIONAL CASES

Art. 1. (1) This Act shall apply to young persons employed under contracts of apprenticeship or employment or engaged in the performance of services placed on the same footing as work under a contract of apprenticeship or employment.

(2) The employment of young persons in domestic work, agriculture, including gardening, and inland navigation shall be the subject of special regulations in view of the special character of the working conditions.

(3) The term "young person" means a person who is over school age but has not yet attained the age of eighteen years.

PART I

HOURS OF WORK OF YOUNG PERSONS

Art. 2. (1) The daily hours of work of young persons may not exceed eight hours, and the weekly hours of work may not exceed forty-eight hours.

(2) The term "daily hours of work" means the period included between the beginning and the end of work, excluding rest periods. The term "weekly hours of work" means the time from Monday to Sunday inclusive.

(3) The time during which a worker normally working in an undertaking works in his own home or workshop or is employed outside the undertaking is also regarded as working time. Where young persons work for more than one employer, the aggregate of the different employments may not exceed the statutory maximum hours of work.

(4) In the case of occupations in which, owing to the nature of the process applied, work has to be carried on continuously by shifts, the weekly hours of work of young persons over sixteen years of age may be fifty-two hours on the average—*viz.*, 104 hours for two weeks.

Art. 3. (1) The Act, with the exception of the provisions of article 14 regarding dangerous work and work harmful to health, shall not apply to young persons employed in family undertakings and related within the second degree of affinity to the employer or to his spouse; the other provisions of the Act are intended solely to serve as guidance, unless the Inspectorate of Labour, where necessary, orders that they shall be enforced in a particular undertaking.

(2) The term "family undertaking" means an undertaking in which only members of the household related within the second degree of affinity to the employer or to his spouse are regularly employed.

Art. 4. (1) Employers shall allow young persons time to attend compulsory courses of vocational training, and shall see to it that their attendance is regular.

(2) A school day at a vocational school during which a young person actually attends the courses shall be regarded as a working day.

(3) In the case of commercial apprentices under the age of sixteen years, a day's attendance at a vocational school shall likewise be regarded as a working day. Commercial apprentices over the age of sixteen years are required where possible to return to the undertaking on the conclusion of instruction.

(4) The apprenticeship pay or wages shall be payable in respect of any such day of school attendance.

Art. 5. (1) If working time is regularly reduced on certain days or if no work is done owing to a work holiday, public festivities or public events, the employer may distribute the working time during which young persons did not work, over the following three weeks. The same shall apply in cases where, in connexion with a legal general holiday, work is not done on working days so as to allow the staff of the undertaking an unbroken holiday.

(2) In the case to which paragraph (1) refers, the hours of work of young persons may not exceed nine hours in any one day.

Art. 6. (1) Where necessary for the training of such young persons, or where an imperative reason for so doing exists in the undertaking, the hours of work established by articles 2 and 5 may be increased in the case of young persons over the age of seventeen years, by one half-hour in the following cases:

1. To carry out cleaning or maintenance work, in so far as such work cannot be carried out during normal working hours without causing interruption or disorganization;

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[1] French and German texts in *Bulletin officiel de la Sarre—Amtsblatt des Saarlandes* No. 8, of 1 February 1950. English translation from the French text by the United Nations Secretariat. The Act was promulgated in pursuance of article 47 of the Constitution of the Saar of 15 December 1947 (see *Yearbook on Human Rights for 1947*, p. 280). The Act entered into force on 1 January 1950. Article 26 of the Act repeals a large number of German Acts, decrees and orders of earlier dates on the welfare of young persons and similar subjects which were formerly in force in the Saar.

2. To carry out essential technical work to ensure the resumption or maintenance of the proper working of the undertaking;

3. To complete the serving of customers, including any necessary tidying up.

(2) The Inspectorate of Labour may make rules to describe what work may be regarded as preparatory or final work.

(3) If a young person works overtime in connexion with preparatory and final work as described in paragraph (1), he shall as a rule be compensated either by starting work later or by finishing earlier, or by extended rest periods, or by an afternoon's leave.

Art. 7. The hours of work of young persons may not in the aggregate, even if several exceptional circumstances coincide, exceed nine and a half hours in any one day or fifty-two hours in any one week, without prejudice to the provisions contained in article 2, paragraph (4).

Art. 8. The prior authorization of the office of the Inspectorate of Labour is required for any increase of hours of work. If, in urgent cases, prior authorization cannot be requested, application should be made as soon as possible afterwards.

Art. 9. (1) After a day's work, young persons must be allowed an unbroken period of rest of not less than twelve hours.

(2) In restaurants and cafes and in the hotel industry, bakeries and pastrycook shops, the unbroken rest period allowed to young persons may, with the authorization of the Inspectorate of Labour, be reduced to eleven hours.

Art. 10. (1) Wherever more than four hours are worked, young persons shall be allowed one or more rest periods of suitable length during the hours of work. In cases involving up to six hours of work, the rest periods shall be twenty minutes, and if more than six hours are worked, thirty minutes. Young persons may not be employed for more than four hours continuously without a rest period. Rest periods other than short rest periods in undertakings working in three shifts shall not count as working time.

(2) Interruptions of work less than fifteen minutes in duration shall not be regarded as rest periods.

(3) During rest periods, young persons may not engage in any employment in the undertaking. Where possible, accommodation shall be provided for the use of young persons during rest periods. Young persons may be allowed to remain on working premises only if work is completely stopped during rest periods in those parts of the undertaking in which the young persons remain, and provided that their rest is not impaired by their remaining on the premises.

(4) The office of the Inspectorate of Labour may, where good grounds for so doing exist, authorize regulations constituting exceptions to the provisions of paragraphs (1) to (3), provided that such action is consistent with the welfare of young persons. Where desirable by reason of the difficulty of the work or its effect on the health of young persons, the office may order rest periods of a duration in excess of the rest periods prescribed in paragraphs (1) and (2) for certain undertakings, parts of undertakings or types of work.

Art. 11. (1) Young persons may not be employed at night between the hours of 8 p.m. and 6 a.m.

(2) In restaurants, cafés and in the hotel industry, young persons under the age of seventeen years may be employed up to 11 p.m. Girls under the age of eighteen years may not be employed in restaurants and cafes to wait on customers except with the authorization of the local police.

(3) In bakeries and pastrycook shops, young persons over the age of sixteen years may be employed at night, if the preparation of bread and pastries during the night is authorized by the Bakeries and Pastrycook Shops (Hours of Work) Act of 29 June 1936.

(4) Young persons may be employed until 11 p.m. in musical entertainments, theatrical performances, other performances and entertainments and in the making of cinematograph films. The prior authorization of the Inspectorate of Labour shall be required for such work.

(5) In undertakings working in shifts, young persons may be employed until 10 p.m. provided that shifts are changed every week. In special cases only, the employment until 11 p.m. of young persons over the age of seventeen years shall be authorized.

(6) In undertakings where workers are exposed to great heat, the Inspectorate of Labour may authorize the employment of young persons during the summer before 6 a.m., but not before 5 a.m.

Art. 12. (1) Young persons may not work on Sundays and legal holidays.

(2) Young persons over the age of sixteen years may work in undertakings working continuously by shifts in so far as work by adult employees of the undertaking is permitted on Sundays and legal holidays. The same shall apply in restaurants and cafes, in the hotel industry, in hospital establishments, musical entertainments, theatrical performances, or other performances or entertainments.

(3) Young persons employed in such circumstances shall be allowed a full day's rest each week. Every third week the rest day must be a Sunday.

(4) Where disproportionate loss, which cannot be otherwise avoided, is likely to arise in the undertaking, the Inspectorate of Labour may authorize exceptions subject to the provisions of paragraph (3).

Art. 13. The provisions of article 2 regarding normal hours of work and of articles 10 to 12 regarding rest periods, night rest, Sundays and legal holidays, are not applicable to temporary work in urgent cases. The employer shall immediately notify the performance of such work to the Inspectorate of Labour.

Art. 14. (1) The Inspectorate of Labour may completely prohibit the employment of young persons in certain undertakings and types of work likely to be harmful to health or morals or prescribe special conditions for such employment.

(2) In the event of the violation of a prohibition or order made under paragraph (1), the Inspectorate of Labour may order the closing of the undertaking until the conditions required by such prohibition or order are restored, if the continuation of the employment would involve serious disadvantages or dangers.

(3) The employment of girls under the age of eighteen years in blast furnaces, steel mills, foundries, rolling mills and forges, in which iron, steel and other metals are worked at high temperature, and in coking plants or building work of any kind, is prohibited.

Art. 15. (1) Employers are required to grant every young person, for each calendar year in which the latter has been continuously employed for not less than one month as an apprentice or employee, a holiday during which he will continue to receive remuneration as an apprentice or employee, as the case may be. It shall not be compulsory to grant a holiday if the young person has already had his holiday for the calendar year from another employer. The same applies if the young person is discharged through his own fault for a reason justifying immediate dismissal or if he breaks the apprenticeship or contract of employment before its termination.

(2) Wherever possible, holidays shall be granted in a continuous period during the vocational school holidays, or when the young person is attending special vocational training courses, or on the occasion of other events organized by trade unions or youth organizations. The holiday must be granted before 31 May of the following year. Two days' holiday shall be granted for each month worked, subject to the proviso that the total holiday allowable may not exceed thirty days or twenty-four working days.

(3) During the holiday, the young person may not engage in paid employment not consistent with the purpose of the holiday.

Art. 16. (1) Every employer who employs young persons is required:

1. To prepare a list of such young persons, with the date of their birth and of their entry into the employment in the undertaking. The holiday to which each young person is entitled under article 15 shall be shown in the list. The list shall be retained for two years after the final entry;

2. To post a copy of this Act in a suitable place in the undertaking;

3. To post in a visible position in the undertaking a notice showing the beginning and end of the normal working day and rest periods;

4. To keep up to date a table showing the redistribution of working hours as provided in article 5 and to indicate thereon the hours of work and their distribution among young persons; employees may consult this table on application;

5. To keep a list of the rest days granted to young persons in compensation for Sunday work, as prescribed in article 12, paragraphs (3) and (4).

(2) The lists referred to in paragraph (1), sub-paragraphs 1, 4 and 5, must, on request, be submitted to the Inspectorate of Labour or forwarded to it for information.

Art. 17. The Minister of Labour and Social Welfare may, for a limited period, authorize the employment of young persons under the age of seventeen years between 5 p.m. and 12 midnight, and of young persons over the age of seventeen years during the night, in so far as such employment is genuinely required in the public interest, in particular when there is danger of the deterioration of raw materials or foodstuffs, or with a view to the vocational training of a new generation.

Art. 18. Detailed provisions regarding the work of young persons in mines and in the glass industry are contained in Annexes 1 and 2 to this Act.

PART II

EMPLOYMENT OF CHILDREN

Art. 19. (1) The employment of children is prohibited except as provided in article 20.

(2) The term "child" means:

(*a*) A child of compulsory school age;

(*b*) A child under compulsory school age.

Art. 20. (1) The Inspectorate of Labour may in exceptional cases authorize the employment of children in musical entertainments, theatrical performances, or other performances, exhibitions or entertainments, when required in the interests of art or science, and in the making of cinematographic films. The employment of children under the age of three years may be authorized only in cases of overriding scientific or artistic need and if special safeguards are provided to protect the health of the child and to ensure his proper care and supervision. The Inspectorate of Labour shall prescribe detailed provisions regarding the time of starting and finishing work, rest periods and, where necessary, regarding Sunday work.

(2) An employer may not employ children as provided in paragraph (1) unless an inspection card has been issued to him before the commencement of employment. This provision does not apply to the occasional employment of children in certain types of work. Work which occurs regularly in a certain order cannot be regarded as occasional work.

(3) In family undertakings, the employment of children is permitted, unless the Minister of Labour and Social Welfare has expressly designated such employment as unsuitable for children.

[Part III contains final provisions dealing with the Inspectorate of Labour, the Young Persons' Employment Board, and appeals against decisions taken under the Act by the Inspectorate of Labour; article 24 contains final provisions and article 25 relates to measures of application to be taken by the Minister of Labour and Social Welfare.]

ACT CONCERNING REMUNERATION FOR LEGAL GENERAL HOLIDAYS IN THE SAAR[1]

of 4 April 1950

Art. 1. The first day of January, Easter Monday, Whit Monday, the first day of May, Christmas Day and the day after Christmas Day are to be regarded as paid legal general holidays when they fall on working days.

Art. 2. Wages paid for the days enumerated in the preceding article shall be exempt from deductions for Social Insurance or for the Family Allowances Fund.

Art. 3. Wage-earning workers who work on the days enumerated in article 1 shall receive a bonus of 100 per cent of their wage.

[1] French and German texts in *Bulletin officiel de la Sarre—Amtsblatt des Saarlandes* No. 51, of 16 August 1950. English translation from the French text by the United Nations Secretariat.

EL SALVADOR

POLITICAL CONSTITUTION OF THE REPUBLIC OF EL SALVADOR[1]

of 7 September 1950

I. THE DEVELOPMENT OF HUMAN RIGHTS IN THE CONSTITUTIONAL LAW OF EL SALVADOR[2]

A comparative study of the fundamental periods in the constitutional history of the Republic of El Salvador leads to the conclusion that there are two main landmarks in the legislative development of the country.

THE POLITICAL CONSTITUTION OF 1886

This constitution, which governed the legal and sociological development of the Republic for some sixty-four years, is the most important legal instrument in the nation's history. It was promulgated on 13 August 1886 and its result was to consolidate the aspirations of the Salvadorean people.

Earlier, eight political constitutions had been promulgated, the first of which appeared on 12 June 1824; through these instruments the Republic joined the march of civilization. But, in all these constitutions—and their number was large for the relatively short period during which they were in force—there were no provisions which were fully adapted to reality. The legislators, in their firm determination to keep the citizens' rights intact at any cost and to uphold the prestige of a nation only beginning its political development, had hastened to imitate models such as the Constitution of the United States of America of 1787 and the French Declaration of the Rights of Man. The principles recognized in these constitutional instruments proved too advanced for a nation still in its infancy.

El Salvador formed an integral part of the Republic of the United States of Central America, the Constitution of which was drawn up and published in an atmosphere of strife and opposition. This constitution was proclaimed on 22 November 1824, and included two titles (X and XI), one devoted to guarantees of individual liberties and giving *in extenso* the principles constituting a sort of code of rights of the individual *vis-à-vis* the public authorities, including, *inter alia*, the right of personal freedom, freedom of thought, the right to have one's personality respected by the authorities, while the second title lists the limitations to which the constituted authorities are subjected in the exercise of their powers in the field of human rights and fundamental freedoms.

As, however, such constitutional doctrine did not meet the political needs of the Salvadorean people, El Salvador had to endure long years of constant strife, and many events and experiences before it discovered the path which was finally to lead to the promulgation of the Constitution of 1886. Thus, this fundamental charter, which sought an appropriate solution in the universal recognition of the rights of man proclaimed during the French Revolution, and which was inspired by the Constitution of the United States of America, led to the laying down of firm constitutional foundations more in harmony with the life of the nation, the introduction of the principles of freedom and equality accepted by the civilized world and the recognition of the political rights of the individual.

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[1] Spanish text in *Constitución de la República de El Salvador*, San Salvador, 1950, published by the Secretariat of Information of the Presidency of the Republic of El Salvador. Text received through the courtesy of Dr. Hector David Castro, Ambassador of El Salvador to the United States, Washington. English translation from the Spanish text by the United Nations Secretariat. The Constitution was promulgated on 7 September 1950, and entered into force on 14 September 1950. It supersedes the Constitutions of 13 August 1886 as amended in 1945 (see the provisions of human rights in the previous constitution in *Yearbook on Human Rights for 1946*, pp. 252–254).

[2] Note prepared by Dr. Alejandro Escalante Dimas, Legal Adviser to the Salvadorean Ministry of Culture. English translation from the Spanish text by the United Nations Secretariat.

In title II, under the heading "Rights and Guarantees", the 1886 Constitution expressly recognizes personal rights as regards life, liberty, property, asylum, religious freedom, residence, emigration, association, assembly, petition and appeal, administration of property, the death penalty, search of the person, inviolability of the home, equality before the law, non-retroactivity of the law, freedom of the press, inviolability of correspondence and of private property, education and enterprise, while it also provides for certain rights in connexion with insurrection and the right to be heard in fair trial according to law. Furthermore, this same title lays down certain restrictions: it recognizes no hereditary offices or privileges; it prohibits the tying up of property and regulates the levying of taxes; it establishes the responsibility of the public official; it declares slavery to be illegal; it recognizes the right of extradition, and prohibits the hiring of persons for work or personal service without just remuneration; it also prohibits agreements under which a person consents to banishment or exile. Confiscation is prohibited, either as a penalty or in any other form; imprisonment for life, flogging and any form of torture are forbidden. Finally, no one may be tried twice for the same offence and a case may not be reopened after it has been disposed of by the courts.

Clearly, this constitution is wholly individualistic in origin and up to the present time has been considered one of the wisest legislative instruments ever enacted in El Salvador. While it was in force, however, many different questions and situations arose which were difficult of solution and which threatened to disturb public order unless decisive action based on the law was taken. As it was impossible in a single constitution, however broad its scope, to foresee all possible contingencies, the legislative authority of that time was compelled to introduce the following articles as an appropriate safety valve: "Article 8. El Salvador recognizes rights and obligations anterior and superior to the positive law derived from the principles of liberty, equality and fraternity and founded on the family, work, property and the public order." "Article 40. The rights and guarantees enumerated in this Constitution shall not be deemed to exclude other rights and guarantees not enumerated therein but arising out of the principle of the sovereignty of the people and of the republican form of government."

THE CONSTITUTION OF 1950

The present Political Constitution of the Republic of El Salvador which came into force on 14 September 1950, besides being the most important document governing the life of the national institutions, is also the instrument best adapted to the collective needs of the people. It was evolved not only as an outgrowth of the sociological and political trends prevailing in the civilized world, but also as a result of the direct influence of the most highly advanced democratic principles embodied in the Universal Declaration of Human Rights as adopted and proclaimed by the United Nations General Assembly on 10 December 1948. To test the truth of this assertion, it is sufficient to read and compare the text of the Declaration with titles X and XI of the said Political Constitution, which deal with personal and social rights.

Strictly speaking, the Constitutions promulgated on 20 January 1939 and 24 February 1944 cannot properly be regarded as such constitutional instruments; no change was made in the citizen's rights and guarantees, which continued to be exactly the same as those laid down in the Constitution of 1886. In fact, the only real reason for their promulgation was to be found in the article on the President's term of office.

The 1950 Constitution, however, introduced considerable changes: its principles were no longer limited solely to personal rights, but were extended to cover social rights. The family, which is considered as the fundamental basis of society, is specially protected by the State, which has promulgated legislation for the improvement of family life through the encouragement of marriage, the assistance of motherhood, the protection of children and the assurance that children will receive a comprehensive physical, mental and moral education.

Work is viewed as a social function, and therefore enjoys the protection of the State, which ensures decent living conditions to the worker and his family. Working conditions are governed by special legislation which harmonizes relations between capital and labour and which is based on general principles aimed at raising the standard of living of all workers without distinction as to sex, race, creed or nationality. Among the most far-reaching reforms of the present Constitution is the right to a minimum salary free from attachment, an eight-hour working day, and a forty-four-hour working week. In other cases, the limitation of working hours is regulated by law, as in the principle of paid rest periods and the duty of the employer to grant holidays to his workers. The rights of the woman worker are regulated and recognized, and minors are forbidden to work. Employers are compelled

to pay compensation, to provide medical and pharmaceutical services for their workers injured in occupational accidents or suffering from an occupational disease. Enterprises and establishments are compelled to provide workers and their families with adequate housing, schools, assistance and any other services necessary for their welfare.

Social security is a compulsory public service.

The articles on apprenticeship are a constitutional innovation, introduced in order to ensure that apprentices receive training in a trade or profession, proper treatment, equitable remuneration and social security benefits and allowances. Agricultural and domestic workers have the same rights to protection as those granted to industrial workers.

Another reform introduced by the Constitution is the recognition of the principle of the workers' right to collective bargaining, the right to form trade unions and, as a corollary, the right to strike. None of these rights granted to workers may be renounced and all are binding on and of benefit to every inhabitant in the territory.

The Constitution states that it is the primary duty of the State to preserve and disseminate culture. Education is an essential function of the State, and it includes the full development of the personality of the pupils so that they may make a constructive contribution to society; it must inculcate respect for the rights and duties of man, combat all manifestations of intolerance and hate, and promote the ideal of unity among the peoples of America. Consequently, it is the right and duty of every inhabitant of the Republic to receive basic education which will enable him to carry out conscientiously and adequately his role as a worker, as the head of a family, or as a citizen. The eradication of illiteracy is a social necessity, and the teaching given in public institutions is secular. No educational establishment may refuse admission to pupils on the grounds of civil, social, racial or political status. The higher education given at the University of El Salvador is conceived solely as a social service.

As regards public health and social welfare, the Constitution states that the health of the inhabitants is a matter of the public weal and that the State and every individual are in duty bound to see that it is preserved and restored. The State grants aid free of charge to the sick through technical services established throughout the territory.

In conclusion, the 1950 Constitution is based on the same social principles as those laid down in the Universal Declaration of Human Rights. A careful study of the sequence of events makes it abundantly clear that the socio-political doctrines of the Declaration have had a decisive influence on the wording as well as the substance of the Salvadorean Constitution. This influence is potent and undeniable.

With regard to the chapters on personal and social rights, there is no practical difference between the first and the second draft which preceded the 1950 Constitution.

In order to become better acquainted with the origins, issues and circumstances attending the drafting of this constitution, it may be well to compare the wording of certain articles cited below as they appeared in the second draft, with the form in which they were finally incorporated into the 1950 Constitution.

TITLE X OF THE DRAFT CONSTITUTION

Personal Rights

The heading of this Title indicates that the concept of natural rights, as held by the theoreticians of more than a century ago in connexion with the individual's innate faculties has been abandoned.

Following the order in the first draft, the first article[1] of this title deals with equality.

> *Art. 151.* All persons are equal before the law. No restrictions based on differences of nationality, race, sex or religion shall be placed on the enjoyment of civil rights.
>
> No hereditary office or privileges shall be recognized.

The first draft's noble principle that all men are required, as worthy, rational and conscious beings, to act in a spirit of brotherhood, is not repeated here, since it is not considered a subject for legislation.

[1] The article numbers differ slightly from those of the final text of the Constitution.

The first draft indicates that no restrictions based on differences of race or colour shall be placed on civil rights. The question of colour is suppressed because it is considered to be included in that of race.

The list given in the first paragraph is merely an indication, and does not exclude other cases. The rule is that no restrictions shall be placed on the enjoyment of civil rights for any reason whatever.

Under the title "The Economic System" the second draft lays down some exceptions to the general rule given here. There is a reciprocal limitation on the ownership of rural real estate by aliens. Small-scale business and industry are reserved for Salvadoreans by birth or native Central Americans.[1] There can be no other exceptions apart from those laid down in the Constitution.

Art. 152. Every person in the Republic is free. No one who enters its territory shall be a slave; nor shall anyone who deals in slaves be a Salvadorean citizen. No person may be placed in servitude or subject to conditions detrimental to the dignity of the person.

The abolition of slavery dates from the dawn of independence. Many authors feel that at the present stage of the law's evolution it is superfluous to declare that slavery is abolished. The principle is retained as a traditional provision of our law, as the Central American peoples were among the first to abolish slavery.

Art. 158. The free exercise of all religions, without any other restriction than that required by morals or public order, is guaranteed. No religious act shall serve as evidence of the civil status of a person.

No political propaganda based on religious considerations or appealing to the religious beliefs of the people may be made in any form by members of the clergy or by laymen. In places of worship, the laws of the State, the Government, or individual public officials may not be criticized on the occasion of acts of worship or religious teaching.

The first paragraph appears in the Constitution of 1886. The second is a development of the second paragraph of article 22 of the first draft. There is nothing new in it, for these prohibitions have been in the penal code for many years. The fact that they are embodied in the Constitution does not mean that contraventions must necessarily be considered as a crime under secondary law. They may be so considered, but it is not obligatory.

Art. 159. Every person may freely express and disseminate his thoughts provided that he does not offend against morality or harm the private life of any person. This right may be exercised without previous examination, censorship or surety; but any person violating the laws in the exercise of this right shall answer for any offence so committed.

In no case may a printing press or its accessories or any other physical facilities for the dissemination of thought be impounded as the instruments of an offence. Public spectacles may be subject to censorship in accordance with the law.

The fourth paragraph of article 23 of the first draft which prohibits any dissemination of obscene or pornographic matter was not adopted, because it was considered as being included in the phrasing of the first paragraph.

The terms "express" and "disseminate" cover those of "express, write, print, publish and disseminate", used in the first draft.

Art. 161. Correspondence of all kinds is inviolable.

Intercepted correspondence shall not be admissible as evidence and may not be used in any proceedings other than those for the payment of debts and bankruptcy.

No reference is made to the books and private papers mentioned in the first draft, because the investigation of crimes would thus be obstructed. The Constitution is thus in accordance with a rule of the Criminal Code on that matter. An exception is made for proceedings for the payment of debts and bankruptcy, in which cases correspondence may be intercepted. The constitutional text is thus in accordance with the Civil Code. It is logical that in these cases a judicial order is required.

Art. 162. The inhabitants of El Salvador have the right to associate and to assemble peacefully, and without arms, for any lawful purpose. The establishment of religious orders and of monastic institutions of any type is prohibited.

[1] See art. 141 and 146, pp. 255 and 256 of this *Yearbook*.

The operations of international or alien political organizations, other than those seeking by democratic means to promote the achievement of Central American union or continental or world-wide co-operation on the basis of fraternity, are likewise prohibited.

The contents of the first paragraph are taken wholly from the Constitution of 1886. The first draft proposes the prohibition of orders without any qualification—*i.e.*, of all orders. The second draft, following the Constitution of 1886, prohibits religious orders only.

The second paragraph is taken by the first draft from article 32 of the present Constitution of Guatemala.

Art. 164. Every person has the right to address written petitions in a respectful manner to the lawfully constituted authorities; and also the right to have such petitions acted upon and to be informed of the results thereof.

The innovation in this principle is merely the requirement that the petition should be in writing.

Art. 165. All the inhabitants of El Salvador have the right to protection in the preservation and defence of their lives, honour, liberty, work, possessions and property.

Indemnification for injury of a moral nature shall be established in accordance with the law.

This principle adds to a similar one in the Constitution of 1886, the preservation and defence of honour, work and property.

The second paragraph is a principle new to our constitutional law. It is included in the secondary legislation of other countries. Its necessity is obvious in various fields: in family relationships, in abuses of the free expression of thought, and in the defence of things of inestimable value to man, such as some of those indicated in the first paragraph of the article. The application and regulation of the principle will be established by law. Because of its importance and the need felt for it, it was given constitutional status so as finally to settle the controversy which had arisen about it.

Art. 168. No power, authority or official may issue an order for detention or imprisonment which is not in accordance with law, and such orders must always be in writing. When an offender is caught *in flagrante delicto* he may be detained by any person in order to be handed over immediately to the competent authorities.

Detention while investigations are proceeding may not continue for more than four days, and the relevant tribunal must notify in person the person detained of the reason for his detention, receive his deposition and order his temporary release or detention within the said time-limit.

Persons who, because of their anti-social, immoral or harmful activities, are dangerous characters or constitute a menace to society or to individuals may for social defence reasons be subjected to rehabilitative or re-educative security measures. Such measures must be strictly in conformity with the law, and shall come under the jurisdiction of the judicial power.

The first two paragraphs are traditional in our legislation. The time-limit for detention while investigations are proceeding has been increased to four days.

The third paragraph is new. The Commission decided to include preventive social defence measures as a scientific means of combating delinquency. The principle was incorporated in the Constitution, since otherwise the corresponding secondary legislation might be branded as unconstitutional.

Art. 169. The judicial power alone has the power to inflict punishment. The Administration may, however, punish any offences committed against the law, regulations or ordinances, by arrest for a period not exceeding fifteen days or by a fine. If the latter is not paid, the time-limit of the arrest may be extended, but shall not exceed thirty days.

Article 32 of the first draft, which had no counterpart in the Constitution of 1886, has been adopted.

Art. 170. Sentence of death may be passed only in cases of rebellion or desertion in time of war, treason and espionage.

Imprisonment for debt, life imprisonment, penalties of infamy, banishment and all forms of torture are forbidden.

The State shall establish penitentiaries to punish and educate offenders, and to develop them in the habit of working and to effect their rehabilitation and to prevent further offences from being committed.

The death penalty is abolished as a punishment for ordinary offences. It may be applied only in the cases indicated in the first paragraph—for treason and espionage in peace or war, and for rebellion or desertion in time of war. Its application, therefore, is very restricted in comparison with the number of cases provided for in the Constitution of 1886 and in the first draft.

The problem of the death penalty gave rise to much discussion in the Commission. Some were in favour of maintaining it even for the ordinary offences provided for by the Constitution of 1886. Others supported the total abolition of the death penalty.

The third paragraph reproduces the third paragraph of article 33 of the first draft, with the exception of the words "to guard offenders" which have been omitted.

Art. 172. A judge may not act as such in courts of different jurisdictions in connexion with the same case.

Art. 173. No power or authority may remove to a superior court any case which is pending, or reopen any proceedings which have been declared closed.

If a review of criminal proceedings establishes an error, the State shall indemnify, in accordance with the law, all victims of erroneous legal decisions which have been duly confirmed as erroneous.

With the exception of the second paragraph of article 173, these articles repeat principles which are traditional in our legislation.

Art. 174. Law shall not be retroactive except in matters of public order, and in criminal matters when the new law is favourable to the offender.

Art. 175. Every person has the right to dispose freely of his property in conformity with the law. Property is transferable in the manner prescribed by law. Everyone has the right to bequeath his property freely.

Art. 176. The freedom to enter into contracts in conformity with the law is guaranteed.

No person having capacity freely to administer his property may be deprived of the right to settle his civil or commercial affairs by agreement or arbitration. The cases in which persons not having capacity freely to administer their own property may do so, and the requirements to be met, shall be determined by the law.

These provisions are taken from the first draft. The Commission added the right to bequeath property freely, which had been established for many years in our secondary legislation. The other principles come from the Constitution of 1886, except the one relating to freedom to enter into contracts, which, although implicit in it, was not explicitly stated in that Constitution. The freedom to enter into contracts cannot be stated absolutely; the general rule is therefore established, and its regulation is left to secondary legislation.

Art. 177. The right of insurrection, which is recognized by this Constitution, shall in no case result in the abrogation of the laws, and its effects shall be limited to the removal from office of officials, where necessary, until such time as they are replaced in the manner provided by law.

The Commission found itself in a dilemma: it had either to specify the cases in which the right of insurrection is legally recognized, or establish a broad provision which made no attempt to enclose life and historic events within the narrow limits of a principle, and only indicate what the effects of such insurrection would be. That is a point on which it is not possible to legislate. Insurrection appears as a *fait accompli* and its causes may be extremely diverse; it is therefore impossible to attempt to list them. On that account, article 54 of the first draft was not adopted; but the Commission agreed that in the cases indicated in that article insurrection was legitimate. The second draft retained the last paragraph of that article, which embodies a similar provision of 1886, but it is more definite because it introduces the expression "which is recognized by this Constitution".

Articles 178–179 deal with the suspension of individual guarantees in special circumstances. By agreement with the Commission studying secondary legislation, no special law will be promulgated on state of siege or suspension of guarantees, but the relevant legislation will be incorporated in the Constitution.

TITLE XI OF THE DRAFT CONSTITUTION

Social Rights

CHAPTER I.—THE FAMILY

This title is divided into several chapters, the first of which relates to the family. This institution, which is the very core of society, deserves special protection. The family, as legally constituted, is the ideal which the legislator is seeking to realize. Yet the law cannot ignore the position of children born out of wedlock, who should not be left in neglect. The principle that children deserve every consideration is not in contradiction with nor detrimental to the legally constituted family.

Art. 180. The family, as the fundamental basis of society, must be specially protected by the State, which shall promulgate the necessary laws and provisions for its improvement, to encourage marriage and to protect and assist mothers and children. Marriage is the legal basis of the family, and rests on the legal equality of husband and wife.

The State shall protect the physical, mental and moral health of minors, and shall guarantee their right to education and assistance. Juvenile delinquency shall be the subject of special legal provisions.

Art. 181. Legitimate, illegitimate and adopted children shall have equal rights to name, education and assistance.

No indication regarding the nature of affiliation shall be given in the civil register nor shall the civil status of the parents be shown on birth certificates.

The method of investigating paternity shall be determined by law.

These articles summarize various provisions of the first draft, and in general terms contain the same principles on the family as the most recent American constitution.

The first draft proposes that adoption should be formally sanctioned in the constitution. Adoption should of course be recognized, but the question seems to be one for secondary legislation. One of the previous articles refers to adopted children and thereby accepts their existence by implication. It urges that civil law should reintroduce this institution, the lack of which is felt every day.

The right of children, whether born in or out of wedlock, to equal social treatment is not stated in so many words, as article 61 of the first draft proposes, because it is felt that it is practically impossible to draft satisfactory legislation on the subject.

Neither is it stated that any declaration in respect of the affiliation of children or the civil status of the parents should be included in baptismal certificates, as article 61 of the first draft proposes.

CHAPTER II.—PUBLIC HEALTH AND SOCIAL WELFARE

Art. 182. The health of the inhabitants of the Republic is a matter of public concern.

The State and individuals must ensure that it is preserved and restored.

The Constitution establishes as one of the primary obligations of the State the protection, preservation and restoration of health, because health is considered as the most precious gift of man; the health of a people is an indispensable condition for its progress, and every Government working towards that end must keep abreast of the advance of science to ensure the full enjoyment of health for its people.

Art. 183. The State shall assist the indigent sick and the population in general, free of charge, when treatment is an effective method for preventing the dissemination of a transmissible disease. In the latter case, it shall be compulsory for everyone to undergo treatment.

Within the limits set forth in this article, the State is relieved of the obligation to provide treatment for sick persons whose economic resources enable them to care for themselves. At the same time, it lays down that any individual suffering from a disease dangerous to others shall be compelled to undergo treatment as a prophylactic measure to avoid dissemination of the disease.

Art. 184. The public health services shall be essentially technical. Health and hospital services shall be set up with specialized personnel.

The public health services nowadays constitute one of the most important branches of medicine, and the establishment of a public health service in our country will satisfy a pressing need.

Art. 185. A Central Board of Public Health shall be established as an autonomous institution and shall regulate the practice of medicine and related professions.

The organization and functions of this board shall be determined by law. It shall have the power to suspend from the practice of the professions under its control all persons who practise their profession with a manifest lack of morality or of ability. In deciding such cases, the moral conviction of the members of the Board shall suffice.

The previous article implies a fundamental reform inasmuch as it is an innovation to establish a supreme authority in respect of all activities connected with the exercise of the professions of medicine, pharmacy, dentistry, nursing, clinical laboratory work, the supply of foodstuffs and any other activity connected with public health.

CHAPTER III.—WORK

The Commission, in addition to the first draft, which by law was used as the basis of its work, took into account a first draft submitted by the Ministry of Labour and another text prepared jointly by a number of workers' associations. The Commission tried to regulate this matter in the way generally accepted by many American constitutions and by the *Inter-American Charter of Social Guarantees* as approved by the ninth International Conference of American States held at Bogotá in 1948.[1] It introduces ideas designed to improve the workers' living conditions, protect human life and establish guiding principles for collaboration between capital and labour based on justice.

Art. 188. Work is a social duty, is protected by the State and is not considered an article of trade.

The State shall use all the resources at its disposal to provide manual or intellectual work for the worker and to assure to him and to his family decent living conditions.

The State shall take appropriate measures to prevent and suppress vagrancy.

This article incorporates the first of the articles appearing in the Ministry of Labour's first draft. The term "worker" includes all types of workers.

In the second draft, wherever the class of workers is not specially defined it is understood to include all workers, including intellectual workers. However, workers in government service who are classified as officials or employees are not covered by this chapter, since they are in the special category established in the title dealing with the application of the Civil Service Act, which regulates their status.

Art. 189. Work shall be regulated by laws in favour of the worker which shall have as their principal aim the harmonization of relations between capital and labour and shall be based on general principles directed towards the improvement of the living conditions of workers especially in the following cases.

Here, the wording adopted is elastic and it leaves the legislative authorities free either to prepare a labour code or to promulgate a series of labour laws. This article lays down the general rule that labour legislation is to be based on principles designed to improve the living conditions of the workers, and the list of provisions which follows is not all-inclusive, but illustrative. Furthermore, it establishes a body of principles on which labour legislation must of necessity be based.

1. A worker employed in the same undertaking or establishment and under similar conditions shall receive equal pay for equal work regardless of sex, race, creed or nationality.

2. Every worker should be entitled to a minimum wage, which shall be fixed periodically. The cost of living, the type of work and the various wage systems must be taken into account in fixing such a wage. This wage must be sufficient to meet the normal material, moral and cultural needs of the worker's family.

[1] See the text in *Yearbook on Human Rights for 1948*, pp. 446–450.

A minimum daily wage must be paid for piece work and work under contract or for a lump sum.

This paragraph introduces the right to a minimum wage not only for the day labourer or peon, but for all other classes of workers as well. In fixing the minimum wage, account is taken, *inter alia*, of the nature of the work.

3. Wages and social allowances prescribed by law may not be attached and cannot be deducted or withheld except to meet maintenance. Workers' tools may not be seized.

The general rule is that wages may not be attached. Allowances in law mean "the act of giving something, doing or abstaining from doing something in accordance with an obligation". Social allowances are those which, by law or by contract, are inherent in labour relationships. The object of this principle is to ensure the minimum income necessary for the subsistence of the worker and his family.

4. Wages must be paid in legal tender. Wages and social allowances have priority in relation to any other sums which may be outstanding against an employer.

The priority mentioned in this paragraph is generally recognized and is a safeguard for the worker.

5. Employers shall give workers a bonus for each year of work. The method for determining the amount shall be established by law.

This is bonus commonly known as the *aguinaldo* (Christmas present), which certain firms in our country, mainly commercial firms, have already begun to pay. It is referred to in article 9 of the Inter-American Charter of Social Guarantees, adopted at Bogotá.

6. A maximum day's work shall not exceed eight hours, and the working week shall not exceed forty-eight hours.

The maximum overtime for each type of work shall be prescribed by law, but shall in no case exceed two hours.

The working hours for night work and for work in dangerous or unhealthy occupations shall be less than for day work and shall be prescribed by law.

The limitation of working hours shall not apply in cases of emergency.

Daily rest periods shall be extended by law for medical reasons when the working arrangements so require. The period of rest between consecutive working days shall also be prescribed by law.

Overtime and night work shall be remunerated at a higher rate.

This paragraph lays down the general rule that the maximum working hours shall be eight a day and forty-eight a week. These prescribed maximum hours do not prevent the establishment of shorter working hours by law or by contract. The rule applies generally to all types of work; the Bogotá Charter ruling, included in the first draft of the Ministry of Labour, which fixes maximum working hours at nine a day and fifty-four a week for workers engaged in agriculture, cattle-raising and forestry work, is not accepted. "Work" means the time during which the worker is at the employer's disposal.

The provisions relating to night work and dangerous or unhealthy occupations are taken *verbatim* from the principles laid down in the Bogotá Charter and included in the first draft of the Ministry of Labour.

There was considerable discussion on this point, as some members of the Commission were in favour of fixing a six-hour day and a thirty-six hour week for such classes of work. However, the elastic criteria of the Bogotá Charter prevailed. The paragraph also establishes that overtime and night work are to be remunerated at a higher rate.

7. Every worker has the right to one paid day of rest per week in the manner required by law.

Workers who do not have a day of rest on the days previously mentioned shall be entitled to extra pay for the work done on those days and to compensatory leave of absence.

The principle of payment for the seventh day, during which the worker rests, is therefore established.

8. Workers shall have the right to paid leave on legal public holidays; the law shall decide the class of work to which this provision shall not apply, but in such cases workers shall have the right to special pay.

This paragraph incorporates a very similar principle of the Bogotá Charter.

9. Every worker who has a minimum amount of service to his credit for a given period shall be entitled to annual holidays with pay in the form laid down by law. Holidays not taken may not be compensated by cash payments, an employee being under the obligation to take the holidays which his employer is obliged to grant to him.

Actually, this principle has at present a very limited application in El Salvador. The Constitution makes it a general provision.

10. Minors less than fourteen years of age, and those who, having reached that age, are still subject to compulsory education as prescribed by law, shall not be employed in any kind of work. However, their employment may be authorized when it is considered indispensable for their own subsistence and that of their family, and provided that it does not prevent them from receiving a minimum of compulsory education.

Minors less than sixteen years of age may not work more than six hours a day or thirty-six hours a week whatever the type of work performed.

Minors less than eighteen years of age, and women, may not be employed in unhealthy or dangerous work. Night work by minors of less than eighteen years of age is also prohibited. The law shall determine the type of work to be considered dangerous or unhealthy.

This paragraph contains generally accepted principles and does not exclude any additional measures which may be promulgated by secondary legislation, such as the prohibition of night work for women when such a step is considered appropriate and practicable.

11. An employer who dismisses a worker without just cause shall be obliged to indemnify him in accordance with the law.

Art. 190. A woman worker shall be entitled to paid leave before and after confinement and to retain her employment.

The obligation of employers to install and maintain crèches and nurseries for the children of workers shall be governed by the laws.

Mothers and children require special protection. The benefits mentioned do not exclude others which secondary legislation may prescribe. The principle establishing paid leave for women before and after childbirth is worded with sufficient latitude to enable the law to prescribe the period of leave which medical science deems necessary.

Art. 197. The conditions in which collective labour contracts and agreements may be entered into shall be regulated by law. The provisions of such contracts and agreements shall be applicable to all the workers in the undertakings which have signed them, even if they are not members of the trade union concerned, and to workers entering the employment of such undertakings during the continuance of the contracts or agreements. The procedure for securing uniformity of working conditions in the various branches of economic activity on the basis of the provisions contained in the majority of collective labour contracts and agreements in effect in each branch of activity shall be established by law.

This article introduces the collective labour agreement and the statutory contract. It defines the scope of collective labour agreements in respect of workers who do not belong to the contracting trade union and those who enter the employment of an undertaking in which a collective labour agreement is already in force.

II. TEXT OF THE CONSTITUTION

TITLE I

THE STATE AND ITS FORM OF GOVERNMENT

Art. 1. El Salvador is a sovereign State. Sovereignty is vested in the people and is limited to what is reasonable, just and useful to society.

Art. 2. The State shall guarantee to the inhabitants of the Republic the enjoyment of liberty, health, culture, economic welfare and social justice.

Art. 3. The Government is republican, democratic and representative.

Art. 9. As a part of the Central American Nation, El Salvador is under an obligation to promote the com-

plete or partial reconstruction of the Republic of Central America. With the approval of the legislature, the Executive may carry through its reconstruction in federal or unitary form without need for authorization or ratification by a Constituent Assembly, provided that republican and democratic principles are respected in the new State and that the essential rights of individuals and associations are fully guaranteed.

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TITLE II

SALVADOREANS AND ALIENS

[Articles 11-16 define Salvadoreans by birth and Salvadoreans by naturalization, and provide for loss of Salvadorean nationality under certain conditions. Article 12 (5) provides for Salvadorean "nationality by naturalization". According to this article aliens of either sex who after two years of residence in El Salvador, marry a Salvadorean become Salvadoreans provided that they opt at the time of marriage for Salvadorean nationality; the same applies to aliens who, being married to Salvadoreans, have resided in El Salvador for two years and apply to the competent authorities for naturalization. Persons who become naturalized must expressly renounce any other nationality. The naturalization of minors is to be regulated by law.]

Art. 17. From the moment of their entry into the territory of the Republic, aliens shall be strictly bound to respect its authorities and to comply with its laws, and shall acquire the right to their protection.

Art. 18. Neither Salvadoreans nor aliens may in any case claim compensation from the Government for damages and injuries caused to their persons or properties by factions. They may make such claims only against the officials or private persons responsible.

Art. 20. The cases and forms in which aliens may be refused permission to enter or to stay in the national territory shall be established by law.

Aliens who directly or indirectly participate in the domestic politics of the country or who promulgate anarchical or undemocratic doctrines shall lose the right to reside in the country.

Art. 21. Aliens shall be governed by a special Act.

TITLE III

CITIZENS AND THE ELECTORATE

Art. 22. All Salvadoreans over eighteen years of age, without distinction as to sex, are citizens.

Art. 23. Save for the exceptions specified in this Constitution, it is a citizen's right and duty to vote.

Art. 24. No minister of religion may belong to a political party or hold office by election of the people.

Art. 25. The rights of citizenship shall be suspended on the following grounds:

1. Formal warrant of imprisonment;
2. Mental derangement;
3. Deprivation of civil rights by order of a court;
4. Refusal, without good cause, to accept office, appointment to which is made by election of the people. In such case, suspension shall continue throughout the term for which the said office should have been held.

Art. 26. The rights of citizenship shall be lost:

1. By persons of notoriously vicious conduct;
2. By persons convicted of an offence;
3. By persons buying or selling votes in elections;
4. By persons signing statements, proclamations, or declarations of support for the purpose of promoting or assisting the re-election or continuance in office of the President of the Republic, or employing direct means of achieving that purpose;
5. By officials, authorities and agents thereof who restrict the freedom of suffrage. In such cases the rights of citizenship shall be recovered by explicit rehabilitation by the competent authority.

Art. 27. The electorate is constituted by all citizens entitled to vote.

Art. 28. Voting shall be direct, equal and secret.

Art. 29. To exercise the right to vote, voters must be duly registered.

Art. 30. The President and Vice-President of the Republic, Deputies of the Constituent and Legislative Assemblies and the members of municipal councils are officials appointed by election of the people.

Art. 32. Even if no notice of the elections has been issued, electoral propaganda shall be allowed but not more than four months before the date established by law for the election of the President and Vice-President of the Republic, two months in the case of deputies, and one month in the case of members of municipal councils.

Art. 33. The necessary bodies for the purpose of receiving, counting and checking votes and performing other functions in connexion with the exercise of the suffrage shall be established by law. A Central Electoral Council shall be the supreme authority in this matter.

The contending political parties shall have the right to supervise the electoral proceedings.

Art. 34. The Central Electoral Council shall consist of three members elected by the Legislative Assembly. One member shall be chosen from each of the panels to be proposed in due time by the Executive and the Supreme Court of Justice. Three alternate members shall be elected in the same manner. The term of office shall be three years.

TITLE IV
THE PUBLIC POWERS

Chapter I
THE LEGISLATURE

Art. 35. The legislative power is vested in a Legislative Assembly.

Art. 40. The qualifications of a deputy shall be as follows: he must be over the age of twenty-five years, a Salvadorean by birth, and of good repute and education; he must not have lost his rights of citizenship during the five years preceding election, and must be a native or resident of the electoral district concerned.

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Chapter III
THE JUDICIAL POWER

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Art. 85. The administration of justice shall always be free of charge.

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TITLE IX
THE ECONOMIC SYSTEM

Art. 135. The economic system must be based essentially on principles of social justice such as to ensure all the inhabitants of the country an existence worthy of human dignity.

Art. 136. Economic freedom is guaranteed in so far as it is not inconsistent with the social interest.

The State shall encourage and protect private enterprise subject to the conditions necessary for increasing the national wealth and securing the benefits thereof to the greatest number of the country's inhabitants.

Art. 137. Private property as a social function is recognized and guaranteed.

Intellectual and artistic property is also recognized for the period and in the manner established by law.

The subsoil belongs to the State, which may grant concessions for its exploitation.

Art. 138. Property may be expropriated on legally proven grounds of public utility or social interest and after payment of fair compensation. When property is expropriated because of need arising as a result of war or public calamity, or with a view to the supply of water or electric power or the construction of houses or roads, compensation need not be paid in advance.

When the sum to be paid as compensation for property expropriated in accordance with the preceding paragraph is such as to justify it, payment may be made in instalments, over a period not exceeding twenty years.

Undertakings established with public funds may be nationalized without compensation.

Confiscation is prohibited, either as a penalty or on any other ground. Authorities contravening this rule shall at all times answer with their persons and property for the damage caused. Confiscated property is not subject to prescription.

Art. 139. The holding of property in perpetuity in any form is prohibited, with the exception of:

1. Trusts established on behalf of the State, municipalities, public bodies, charitable or cultural institutions and persons not having legal capacity;
2. Trusts established for a period not exceeding twenty-five years and under the management of banks or legally authorized credit institutions;
3. Family property.

Art. 140. No corporation or foundation, whether civil or ecclesiastical, whatever its denomination or purpose, shall have legal capacity to maintain possession of or to administer real estate, save only when the property is used immediately and directly in the service and for the purposes of the institution.

Art. 141. Ownership of rural real estate cannot be acquired by aliens in whose countries of origin Salvadoreans do not possess the same rights, except in the case of land for industrial establishments.

The alien and Salvadorean companies referred to in the second paragraph of article 16 of this Constitution shall be subject to this provision.

Art. 142. No monopoly may be established or authorized in favour of individuals. The law may grant privileges for a limited time to inventors, or persons responsible for improvements in an industry. Monopolies may be established in favour of the State or of municipalities when the social interest so requires.

The postal and electrical communications services shall be provided by the State, which may assume responsibility for other public services when the interests of the community so require. The State shall also approve the charges for public services provided by private untertakings and be responsible for supervising such services.

Art. 143. The power to issue currency shall be vested exclusively in the State, which may exercise that power either directly or through a public issuing institution. The monetary, banking and credit systems shall be regulated by law.

The State shall direct monetary policy for the purpose of promoting and maintaining the most favourable conditions for the orderly development of the national economy.

Art. 144. The State may take over the management of undertakings providing essential services for the community in order to maintain the continuity of such

services when the owners or managers of the undertakings refuse to observe the statutory provisions on economic and social organization.

The State may also administer property belonging to the nationals of countries with which El Salvador is at war.

Art. 145. Economic associations which tend to increase the general wealth by means of better utilization of natural and human resources and to promote a fair distribution of the profits derived from their activities shall be encouraged and protected. The State, the municipalities and bodies of recognized public utility, as well as individuals, may participate in such associations.

Art. 146. Small-scale business and industry are the patrimony of Salvadoreans by birth and native Central Americans. A law shall be enacted to protect them.

Art. 147. The State shall encourage the development of small farm ownership. It shall provide the small farmer with technical assistance, credits and other resources necessary for the better utilization of his land.

Art. 148. The construction of dwellings is declared to be a matter of public interest.

The State shall do all in its power to enable as many Salvadorean families as possible to own their homes. It shall encourage the owners of rural estates to provide healthy and adequate housing for their tenants and workers, and to that end shall make the necessary resources available to small landowners.

Art. 149. In any concession granted by the State for the establishment of docks, railways, canals and other material works of public utility, it shall be stipulated as an essential condition that after the expiry of a stated period not exceeding fifty years, such works shall pass by law into the ownership of the State, in good order, and without compensation.

TITLE X

PERSONAL RIGHTS

Art. 150. All persons are equal before the law. No restrictions based on differences of nationality, race, sex, or religion shall be placed on the enjoyment of civil rights.

No hereditary employment or privileges shall be recognized.

Art. 151. Every person in the Republic is free. No one who enters its territory shall be a slave, nor shall anyone who deals in slaves be a Salvadorean citizen. No person may be placed in servitude or subjected to conditions detrimental to the dignity of the person.

Art. 152. No one shall be obliged to do what the law does not command or to refrain from doing anything that the law does not prohibit.

Art. 153. El Salvador shall grant asylum to aliens desiring to reside in its territory, except in the cases provided for by municipal and international law. These exceptions shall not include persons persecuted solely for political reasons.

Nationals may not be extradited on any grounds; aliens may not be extradited for political offences, even if such offences may have led to the commission of offences under the ordinary law.

Art. 154. Every person is at liberty to enter, stay in and leave the territory of the Republic, subject to the restrictions established by law.

No one may be obliged to change his domicile or place of residence except by order of a judicial authority in the special cases and subject to the requirements established by law.

No Salvadorean may be expatriated or forbidden to enter the territory of the Republic or refused a passport for his return or other identity papers.

Art. 155. Save in cases of public disaster or as otherwise provided by law, no person shall be compelled to work or render personal service without just compensation and without his full consent.

Art. 156. The law shall not authorize any act or contract involving the loss or irrevocable sacrifice of human liberty or dignity. It may not authorize agreements in which consent is given to banishment or exile.

Art. 157. The free exercise of all religions, without any other restriction than that required by morals or public order, is guaranteed. No religious act shall serve as evidence of the civil status of a person.

No political propaganda based on religious considerations or appealing to the religious beliefs of the people may be made in any form by members of the clergy or by laymen. In places of worship, the laws of the State, the Government, or individual public officials may not be criticized on the occasion of acts of worship or religious teaching.

Art. 158. Every person may freely express and disseminate his thoughts, provided that he does not offend against morality or harm the private life of any person. This right may be exercised without previous examination, censorship or financial guaranty; any person violating the laws in the exercise of this right shall answer for any offence so committed.

The propagation of anarchical or undemocratic doctrines is prohibited.

In no case may a printing press or its accessories or any other physical facilities for the dissemination of thought be impounded as the instruments of an offence.

Public spectacles may be subject to censorship in accordance with the law.

Art. 159. Correspondence of all kinds is inviolable. Intercepted correspondence shall not be admissible as evidence and may not be used in any proceedings other than those for the payment of debts and bankruptcy.

Art. 160. The inhabitants of El Salvador have the right to associate and to assemble, peacefully and without arms, for any lawful purpose.

The establishment of religious orders and of monastic institutions of any type is prohibited.

The operations of international or alien political organizations, other than those seeking by democratic means to promote the achievement of Central American union or continental or world-wide co-operation on the basis of fraternity, are likewise prohibited.

Art. 161. The legal personality of the Catholic Church is recognized. Other churches may obtain recognition of their legal personality in conformity with the law.

Art. 162. Every person has the right to address written petitions in a respectful manner to the lawfully constituted authorities; and also the right to have such petitions acted upon and to be informed of the results thereof.

Art. 163. All the inhabitants of El Salvador have the right to protection in the preservation and defence of their lives, honour, liberty, work, possessions and property.

Indemnification for injury of a moral nature shall be established in accordance with the law.

Art. 164. No one may be deprived of his life, freedom, property or possessions without having first been heard and found guilty by a court in accordance with the law, nor may he be prosecuted twice for the same offence.

Everyone has the right to apply for a writ of *habeas corpus* before the Supreme Court of Justice, or courts of second instance not situated in the capital, when any authority or individual illegally restricts his freedom.

Art. 165. A person may be examined or subjected to investigation only in order to prevent or inquire into offences or misdemeanours.

The domicile is inviolable. It may only be entered forcibly, in the manner and in the circumstances provided by law, in case of fire or similar occurrences, to investigate offences and take offenders into custody, or for health reasons.

Art. 166. No power, authority or official may issue an order for detention or imprisonment which is not in accordance with law, and such orders must always be in writing. When an offender is caught *in flagrante delicto* he may be detained by any person in order to be handed over immediately to the competent authorities.

Detention while investigations are proceeding may not continue for more than three days, and the relevant tribunal must notify the person detained of the reason for his detention, receive his deposition and order his temporary release or detention within the said time-limit.

Persons who, because of their anti-social, immoral or harmful activities, are dangerous characters or constitute a menace to society or to individuals may for social defence reasons be subjected to rehabilitative or re-educative security measures. Such measures must be strictly in conformity with the law and shall come under the jurisdiction of the judicial power.

Art. 167. The judicial power alone has the power to inflict punishment. The administration may, however, punish any offences committed against the law, regulations or ordinances, by arrest for a period not exceeding fifteen days or by a fine. If the latter is not paid, the time-limit of the arrest may be extended, but shall not exceed thirty days.

Art. 168. Sentence of death may be passed only in cases of rebellion or desertion in time of war, treason and espionage, and for the following crimes—parricide, murder, robbery or arson if resulting in death.

Imprisonment for debt, life imprisonment, penalties of infamy, banishment and all forms of torture are forbidden.

The State shall establish penitentiaries to punish and educate offenders, to develop them in the habit of working, to effect their rehabilitation and to prevent further offences from being committed.

Art. 169. A person may be tried only in accordance with the laws promulgated prior to the case in question, and by tribunals which have previously been lawfully constituted.

Art. 170. A judge may not act as such in courts of different jurisdictions in connexion with the same case.

Art. 171. No power or authority may remove to a superior court any case which is pending, or reopen any proceedings which have been declared closed.

If a review of criminal proceedings establishes an error, the State shall indemnify, in accordance with the law, all victims of legal decisions which have been duly confirmed as erroneous.

Art. 172. Law shall not be retroactive except in matters of public order, and in criminal matters when the new law is favourable to the offender.

Art. 173. Every person has the right to dispose freely of his property in conformity with the law. Property is transferable in the manner prescribed by law. Everyone has the right to bequeath his property freely.

Art. 174. The freedom to enter into contracts in conformity with the law is guaranteed. No person having capacity freely to administer his property may be deprived of the right to settle his civil or commercial affairs by agreement or arbitration. The cases in which persons not having capacity freely to administer their own property may do so and the requirements to be met shall be determined by the law.

Art. 175. The right of insurrection, which is recognized by this Constitution, shall in no case result in the abrogation of the laws, and its effects shall be limited to the removal from office of officials, where necessary, until such time as they are replaced in the manner provided by law.

Art. 176. In case of war, invasion of the national territory, rebellion, sedition, disaster, epidemic or other general calamity or serious disturbance of public order, the guarantees established in articles 154, 158, first paragraph, 159 and 160 of this Constitution may be suspended, except in the case of meetings or associations for cultural or industrial purposes. Such suspensions may affect all or part of the territory of the Republic, and shall be effected by decrees issued by the legislature or the Executive, as the case may be.

The period during which the constitutional guarantees may be suspended shall not exceed thirty days. On the expiry of that period, the suspension may be extended for a further period of thirty days by a new decree, if the circumstances which gave rise to the suspension continue. If no such decree is issued, the suspended guarantees shall be restored automatically.

Art. 177. When the Legislative Assembly is in recess, the suspension of guarantees may be decreed by the Executive in the Council of Ministers. Such a decree shall be accompanied by a summons to the Assembly to meet within the following forty-eight hours to approve or reject the decree.

Art. 178. When the constitutional guarantees have been declared to be suspended, the military courts shall be competent to deal with the offences of treason, espionage, rebellion and sedition, and with other offences against the peace or independence of the State, or against the law of nations.

Cases pending before the ordinary judicial authorities when the suspension of guarantees is decreed shall continue to be dealt with by those authorities.

When the constitutional guarantees are restored, the military courts shall retain jurisdiction over the cases pending before them.

Art. 179. When the circumstances which gave rise to the suspension of constitutional guarantees cease to exist, the Legislative Assembly shall re-establish those guarantees; if the Assembly is in recess, the Executive shall decree their re-establishment.

TITLE XI
SOCIAL RIGHTS

Chapter I
THE FAMILY

Art. 180. The family, as the fundamental basis of society, must be specially protected by the State, which shall promulgate the necessary laws and provisions for its improvement, to encourage marriage and to protect and assist mothers and children. Marriage is the legal basis of the family, and rests on the legal equality of husband and wife.

The State shall protect the physical, mental and moral health of minors, and shall guarantee their right to education and assistance. Juvenile delinquency shall be made the subject of special legal provisions.

Art. 181. Legitimate, illegitimate and adopted children shall have equal rights to education and assistance, and to protection by their father.

No indication regarding the nature of affiliation shall be given in the civil register, nor shall the civil status of the parents be shown on birth certificates.

The method of investigating paternity shall be determined by law.

Chapter II
WORK AND SOCIAL SECURITY

Art. 182. Work is a social duty, is protected by the State and is not considered an article of trade.

The State shall use all the resources at its disposal to provide manual or intellectual work for the worker, and to assure to him and to his family decent living conditions.

The State shall take appropriate measures to prevent and suppress vagrancy.

Art. 183. Work shall be regulated by a labour code which shall have as its principal aim the harmonization of relations between capital and labour, and shall be based on general principles directed towards the improvement of the living conditions of workers, especially in the following cases:

1. A worker employed in the same undertaking or establishment and under similar conditions shall receive equal pay for equal work regardless of sex, race, creed or nationality.

2. Every worker has the right to a minimum wage which shall be fixed periodically. The cost of living, the type of work and the various wage systems must be taken into account in fixing such a wage. Such a wage must be sufficient to meet the normal material, moral and cultural needs of the worker's family.

A minimum daily wage must be paid for piecework and work under contract or for a lump sum.

3. The wages and social allowances prescribed by law may not be attached and cannot be deducted or withheld except to meet maintenance obligations. Taxes and trade union dues may be withheld in order to meet social security obligations.

Workers' tools may not be seized.

4. Wages must be paid in legal tender. Wages and social allowances have priority in relation to any other sums which may be outstanding against an employer.

5. Employers shall give workers a bonus for each year of work. The method for determining the amount in relation to wages shall be established by law.

6. A maximum day's work shall not exceed eight hours, and the working week shall not exceed forty-four hours.

The maximum overtime for each type of work shall be prescribed by law.

The hours of work on night duty and on dangerous or unhealthful tasks shall be less than for day work and shall be prescribed by law.

The limitation of working hours shall not apply in cases of emergency.

Daily rest periods shall be extended by law for medical reasons when the working arrangements so require. The period of rest between consecutive working days shall also be prescribed by law.

Overtime and night work shall be remunerated at a higher rate.

7. Every worker has the right to one paid day of rest per working week in the manner required by law.

Workers who do not have a day of rest on the days previously mentioned shall be entitled to extra pay for the work done on those days and to compensatory leave of absence.

8. Workers shall have the right to paid leave on legal public holidays. The law shall decide the class of work to which this provision shall not apply, but in such cases workers shall have the right to special pay.

9. Every worker who has a minimum amount of service to his credit for a given period shall be entitled to annual holidays with pay in the form laid down by law. Holidays not taken may not be compensated by cash payments, an employee being under an obligation to take the holidays which his employer is obliged to grant to him.

10. Minors less than fourteen years of age and those who, having reached that age, are still subject to compulsory education as prescribed by law, shall not be employed in any kind of work.

Their employment may be authorized when it is considered indispensable for their own subsistence and that of their family, and provided that it does not prevent them from receiving a minimum of compulsory education.

Minors less than sixteen years of age may not work more than six hours daily or thirty-six hours weekly whatever the type of work performed.

Minors less than eighteen years of age and women may not be employed in unhealthful or dangerous work. Night work by minors of less than eighteen years of age is also prohibited. The law shall determine the type of work to be considered unhealthful and dangerous.

11. An employer who dismisses a worker without just cause shall be obliged to indemnify him in accordance with the law.

Art. 184. A woman worker shall be entitled to paid leave before and after confinement and to retain her employment.

The obligation of employers to install and maintain crèches and nurseries for the children of workers shall be governed by the law.

Art. 185. Employers are required to pay compensation and to provide medical, pharmaceutical and such other services as may be established by law to any worker who may sustain an accident at work or suffer from an occupational disease.

Art. 186. The law shall determine which undertakings and establishments are required, in virtue of the special circumstances in which they operate, to provide workers and their families with adequate housing, schools, medical assistance and such other services and care as are necessary for their welfare.

Art. 187. Social security is a compulsory public service. Its scope, extent and form shall be regulated by law.

Insurance payments shall be made up of contributions from employers, workers and the State.

The State and employers shall be exempt from their statutory obligations towards the workers to the extent that such obligations are covered by the social security system.

Art. 188. Apprenticeship contracts shall be governed by law in order to ensure the apprentice receives training in a trade or a profession, proper treatment, fair wages and social security benefits and allowances.

Art. 189. Home workers are entitled to an officially established minimum wage, the payment of compensation for time lost owing to the employer's delay in ordering or receiving work or to the arbitrary or unjustified suspension of such work. Home workers shall be given a legal status similar to that of other workers, the special features of their work being taken into account.

Art. 190. Agricultural labourers and domestic servants shall be entitled to protection in respect of wages, working hours, leisure, holidays, compensation for dismissal and social benefits generally. The extent and nature of the rights aforementioned shall be determined in accordance with the conditions and special features of the work. Persons doing domestic work in industrial, commercial, social and other similar undertakings shall be regarded as manual workers and shall enjoy the rights accorded to such workers.

Art. 191. The conditions in which collective labour contracts and agreements may be entered into shall be regulated by law. The provisions of such contracts and agreements shall be applicable to all the workers in the undertakings which have signed them, even if they are not members of the contracting trade union, and to workers entering the employment of such undertakings during the continuance of the contracts or agreements. The procedure for securing uniformity of working conditions in the various branches of economic activity on the basis of the provisions contained in the majority of collective labour contracts and agreements in each branch of activity shall be established by law.

Art. 192. Employers, office workers in private undertakings and manual workers, without distinction of nationality, sex, race, religion or political opinion, shall be entitled to associate freely in defence of their respective interests, and to form professional associations or trade unions.

Such organizations are entitled to legal personality and to proper protection in the exercise of their functions. Their dissolution or suspension may be ordered only in the cases and in the forms established by law.

The substantive and formal conditions applying to the constitution and functioning of professional and trade union organizations must not be such as to restrict freedom of association.

The members of trade union executive committees must be Salvadorean by birth; and during the time of their election and office they may not be dismissed, transferred or given less satisfactory work without good cause recognized as such by the competent authority.

Art. 193. Workers have the right to strike and employers to impose a lockout. The conditions and exercise of these rights shall be regulated by law.

Art. 194. A special labour jurisdiction is established. Proceedings in labour matters shall be so organized as to permit the speedy settlement of disputes.

The State is under an obligation to promote conciliation and arbitration as means for the peaceful settlement of collective labour disputes.

Art. 195. The conditions to be satisfied by workshops, factories and places of work shall be defined by law.

The State shall maintain a technical inspection service to ensure the faithful observance of the statutory provisions regarding labour, welfare and social insurance and security, to assess their results and to suggest any necessary reforms.

Art. 196. The rights secured to workers may not be renounced, and the laws by which they are recognized are binding on and of benefit to all the inhabitants of the territory.

The enumeration of rights and benefits to which this chapter relates does not exclude others deriving from the principles of social justice.

Chapter III

CULTURE

Art. 197. The preservation, encouragement and dissemination of culture is a primary aim and obligation of the State.

Education is an essential function of the State, which shall organize the educational system and set up the necessary institutions and services.

Art. 198. Education must provide for the full development of the personality of the pupils in order that they may make a constructive contribution to society; it must inculcate a respect for the rights and duties of man, combat all intolerance and hate, and encourage the ideal of unity of the Central American peoples.

There must be organization and continuity in all degrees of education, which shall include the intellectual, moral, civic and physical aspects.

Art. 199. It shall be the right and the duty of all the inhabitants of the Republic to receive a basic education to enable them adequately to fulfil their role as workers, heads of families and citizens. Basic education shall include elementary education which, when provided by the State, shall be free.

Art. 200. The eradication of illiteracy is a social necessity. All inhabitants of the country shall contribute towards it in the manner prescribed by law.

Art. 201. Teaching in public schools shall be secular.

Private educational establishments shall be subject to regulation and inspection by the State.

The State may take exclusive charge of the training of teachers.

Art. 202. Educational establishments may not refuse to admit pupils because of the nature of the union of their parents or guardians, or for any social, racial or political differences.

Art. 203. A person who wishes to become a member of the teaching profession must prove that he is qualified in the manner prescribed by law. In all public and private educational establishments, instruction in history, civics and the Constitution shall be given by professors who are Salvadorean by birth.

Liberty of education is guaranteed.

Art. 204. The artistic, historical and archæological riches of the country shall form part of the Salvadorean cultural treasure, which shall be protected by the State and shall be subject to special laws for its preservation.

Art. 205. The University of El Salvador is autonomous in teaching, administrative and economic matters, and must provide a social service. It shall be governed by statutes included in a law which shall establish the general principles for its organization and functioning.

The State shall assist in assuring and promoting the endowment of the University and shall include in the annual budget estimates allocations for the maintenance of the University.

Chapter IV

PUBLIC HEALTH AND SOCIAL WELFARE

Art. 206. The health of the inhabitants of the Republic is a matter of the public weal. The State and individuals must ensure that it is preserved and restored.

Art. 207. The State shall assist the indigent sick and the population in general free of charge when treatment is an effective method for preventing the dissemination of a transmissible disease. In the latter case it shall be compulsory for everyone to undergo treatment.

Art. 208. The public health services shall be essentially technical.

Health and hospital services shall be set up with specialized personnel.

Art. 209. A Central Board of Public Health shall be responsible for the health of the population. This board shall consist of an equal number of members of medical, dental and pharmaceutical associations and shall have a president and secretary appointed by the Executive Power, who shall not be members of any of the aforementioned professions. Its organization shall be regulated by law.

The practice of professions closely connected with the health of the people shall be controlled by legal bodies consisting of academicians belonging to each profession. These bodies shall have the power to suspend members of the associations under their control from practising their professions when such persons practise their profession with a manifest lack of morality or lack of ability.

The Central Board of Public Health shall deal in the final instance with the resolutions adopted by the bodies referred to in the previous paragraph. The suspension of professional staff may be decided by the competent organs solely on the moral strength of the evidence.

Art. 210. The State shall take charge of indigent persons who by reason of their age or physical or mental incapacity are unable to work.

TITLE XIII

SCOPE, APPLICATION AND REFORM OF THE CONSTITUTION

Art. 221. The principles, rights and obligations established by this Constitution may not be modified by the laws regulating their exercise.

The Constitution shall prevail over all laws and regulations. The public interest shall have primacy over private interests.

Art. 222. Every person may claim the protection o the Supreme Court of Justice in the case of infringement of the rights granted to him by this Constitution.

. . .

PROVISIONAL ELECTORAL LAW[1]

of 21 January 1950

TITLE II

Chapter I

THE SUFFRAGE AND THE ELECTORATE

Art. 2. The suffrage is not only a political right, but also a public function which may not be delegated or renounced and which the State expects all persons to perform who are recognized as electors by this Act; it shall be exercised by direct and secret ballot in the manner described by this Act.

[1] Spanish text in *Ley Transitoria Electoral*, San Salvador, Government Printing Office, 1950. English translation from the Spanish text by the United Nations Secretariat. This law governed the election to the National Constituent Assembly of 1950 (see article 6). See the new provisions concerning the right to vote and to be elected in the Constitution of 7 September 1950, p. 254 of this *Yearbook*.

Art. 3. Only men and women who are Salvadorean by birth or by naturalization are electors.

Art. 4. In addition to the condition stipulated in the preceding article, the following conditions must be fulfilled before the right to vote is exercised:

(*a*) The voter must be over eighteen years of age or, if below that age, have obtained a literary or scientific certificate;

(*b*) The voter must be in full enjoyment of his citizenship rights;

(*c*) The voter must be a layman.

Art. 5. The following are not electors:

(*a*) Citizens who are regular members of the armed forces and on active service in any of the armed forces of the Republic;

(*b*) Persons whose citizenship has been suspended, or who have forfeited their citizenship, under articles 52 and 53 of the Political Constitution of 1886, the said articles having been amended in 1945 and adopted by decree No. 6 of the Council of Revolutionary Government, dated 20 December 1948 (decree published in the *Diario Oficial* No. 280, Vol. 145, of 24 December 1948);

(*c*) Persons who are manifestly lunatic, imbecile or insane, deaf mutes who cannot express themselves in writing, and blind persons.

Chapter II

ELIGIBILITY

Art. 6. A person shall not be eligible to hold office as deputy in the next National Constituent Assembly or as President of the Republic unless he fulfils the following conditions, that is to say:

As deputy:

He must be Salvadorean by birth, of the male sex, native of, or resident in, the department where the election is held.

As President of the Republic:

He must be Salvadorean by birth, of the male sex.

In addition to fulfilling the conditions stipulated in the preceding paragraphs he must possess the following qualifications: he must be not less than twenty-five years of age to be eligible as deputy; and thirty-five years of age to be eligible as President of the Republic; he must be in enjoyment of political and civil rights and not have lost them during the five years preceding the election; he must be a layman and of known integrity and education.

Art. 7. The following are not eligible to hold the offices referred to in the preceding article:

(*a*) Persons in the circumstances described in any of the sub-paragraphs (*a*), (*b*) and (*c*) of article 5 of this Act;

(*b*) Persons indebted to public, fiscal or municipal funds;

(*c*) Persons indebted to charitable institutions;

(*d*) Public works contractors, whether carrying on operations for the State or for municipalities;

(*e*) Persons whose property is being administered by the State, persons undergoing trial by the Court of Probity, or persons who having been so tried have been found guilty by that Court;

(*f*) Deputies who approved and signed Legislative Decree No. 253 of 13 December 1948, published in the *Diario Oficial* No. 273, Vol. 145, of December 1948.[1]

[Title III deals with the Central Electoral Council, as well as with the organs which depend upon this Council: regional electoral councils, electoral boards of the municipalities and electoral boards. The Central Electoral Council is responsible for the preparation, execution, supervision and guarantee of the vote. The law provides for the composition of the Central Electoral Council and councils depending on it, as well as the mode of election of these bodies.]

TITLE VI

Single Chapter

ELECTORAL PROPAGANDA

Art. 41. Electoral propaganda may be undertaken freely from the date of publication in the *Diario Oficial* of the decree appointing the date of the election until and including the day preceding the day on which polling is to begin; such propaganda may be made through periodical publications, reviews, leaflets, posters, etc., or by political speeches or broadcasts from radio stations other than official stations.

Art. 42. Electoral propaganda must observe the bounds of decency and civic dignity; any person who uses insulting or slanderous language or causes public disorder shall be liable under the ordinary laws.

Art. 43. Public meetings or demonstrations may be held out of doors for purposes of electoral propaganda, if the persons concerned obtain written permission from the competent departmental political governor to hold any such meeting or demonstration. Permission shall be granted in conformity with this Act.

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[1] This decree called for election to a National Constituent Assembly, to be held within three days from the publication of the decree, to decide whether the term of office of the President and the Vice-President was to be four or six years. According to the Constitution in force, this term was four years.

The application for permission must be signed by the Central Executive Committee or the local executive committee on behalf of the political party concerned or by the candidate of that party, and shall contain an undertaking by the signatory or signatories to maintain order during the meeting or demonstration, and to respect the statutory provisions relating thereto and any measure that the departmental junta may decide upon in the interests of public order and safety.

The departmental political governor shall not withhold permission for electioneering meetings or demonstrations unless:

(*a*) Other interested parties have previously given notice in writing that a public meeting, demonstration or procession is to be held at the same date, time and place; and

(*b*) The written application does not contain the undertakings to which this article refers.

Art. 44. It is unlawful to take part in public meetings or demonstrations for purposes of electoral propaganda in a state of intoxication; to carry arms or other objects capable of causing injury; to display posters or banners containing subversive, insulting or provocative terms; or to paint or disfigure the walls of houses, bridges, etc., with slogans referring to a candidate. Offenders shall be liable to the penalties prescribed by this Act.

Art. 45. Propaganda for electoral purposes is prohibited in the places of worship of any religion; and elsewhere propaganda making use of ceremonies or meetings of a religious character is likewise prohibited. Offenders shall be liable to the penalties prescribed by law.

TITLE IX

Single Chapter

ELECTORAL SAFEGUARDS

Art. 72. No civilian or military authority or private person may directly or indirectly prevent or interfere with the exercise of the vote or the operation of the polling offices or other electoral authorities, unless such intervention is at the request of an electoral authority.

Art. 73. No person is obliged to disclose the manner in which he voted, even if called upon to do so by an administrative or judicial authority.

Art. 74. The electoral authorities created by this Act may request the assistance of the armed forces to preserve order and to enforce compliance with any decisions they may take within the limits of their competence.

Such requests shall be made in writing to the commanding officers concerned.

Unjustified refusal to furnish any assistance requested, or delay which results in such assistance being ineffective, shall render the authority receiving the request liable to the penalties prescribed by this Act.

Art. 75. The concentration of troops or of individual members of the other armed forces less than 200 metres from the premises in which elections are being held is prohibited. The prohibition does not apply to patrols and armed detachments which are directed by the competent electoral authority to maintain order on the days when and in the places where elections are being held. Such patrols shall be at the exclusive disposal of the electoral authorities concerned.

Art. 76. Except in the case of *flagrante delicto*, electoral authorities may not be detained by any authority during the days on which they are performing their functions.

Art. 77. Any violation of the electoral safeguards by the police force shall establish the personal liability of the officer who ordered the violation or who, being able to prevent it, failed to do so.

Art. 78. Any person who violates the electoral safeguards shall not enjoy any exemption or privilege and shall be subject to the jurisdiction of the electoral authorities or to that of the ordinary courts, as the case may be.

Art. 79. On polling days, the sale and distribution of alcoholic beverages and the wearing of arms of any type by voters shall be prohibited.

Any person who violates this article shall be liable to the penalties laid down by law.

[Title X deals with electoral offences and penalities for such offences.]

SAUDI ARABIA

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS[1]

No new developments in the field of human rights are to be recorded for the year 1950.

[1]Information received through the courtesy of Mr. Asad Al-Faqih, Ambassador, Permanent Representative of Saudi Arabia to the United Nations.

SWEDEN

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS[1]

1. A new Nationality Act was promulgated on 22 June 1950 and came into force on 1 January 1951. Relevant extracts from this Act are reproduced in this *Yearbook*.

2. A regulation of 2 June 1950,[2] which entered into force on 1 July 1950, deals with occupational diseases. Under the new regulation there has been an addition to the list of occupational diseases which are recognized as giving rise to the payment of benefits under the Act of 14 June 1929 concerning insurance against occupational diseases. Diseases such as chronic manganese poisoning, dust lung caused by the inhalation of non-organic matter, and skin disease caused by influence from tropical wood or formalin were added to the list.

3. By a series of regulations of 2 June 1950,[3] a cost-of-living allowance was allocated to recipients of old-age pensions, as well as to recipients of workmen's compensation.

4. The Worker's Protection Amendment Act of 17 March 1950,[4] which entered into force on 1 January 1951, modified the principal Act of 3 January 1949.[5] Article 36 of the principal Act provided that it should not be lawful for any woman to be employed between 10 p.m. and 5 a.m. Under the amending Act this provision may be waived in times of emergency. The principal Act also provided that any woman employed by artisans or in industry should be allowed for nightly rest a continuous period of free time of not less than eleven hours in each period of twenty-four hours. Under the amending Act this provision may be waived by royal decree in respect of certain types of work and at certain places.

[1] Note based on information received though the courtesy of the Royal Ministry for Foreign Affairs, Stockholm.

[2] Published in *Svensk Författningssamling* No. 300.

[3] Published in *Svensk Författningssamling* Nos. 264–268 and Nos. 295–299.

[4] Published in *Svensk Författningssamling* No. 70.

[5] See a summary of the Workers' Protection Act of 1949 in *Yearbook on Human Rights for 1949*, pp. 191–192.

SWEDISH CITIZENSHIP ACT[1]

Act No. 382, of 22 June 1950

Art. 1. The following persons shall be deemed to be Swedish citizens by birth:

1. Any child born in wedlock whose father is a Swedish citizen;
2. Any child born in wedlock in Sweden, of whose parents only the mother is a Swedish citizen, provided that the father is not a citizen of any state or that the child does not acquire the father's citizenship by birth;
3. Any child born out of wedlock whose mother is a Swedish citizen.

Any foundling that has been come upon in Sweden shall be deemed to be a Swedish citizen until the contrary be discovered to be the case.

Art. 2. When a Swedish man marries an alien woman and they have had a child previously to their marriage, such child shall become a Swedish citizen, provided that it be unmarried and has not yet attained the age of eighteen years.

Art. 3. An alien who was born in Sweden and has been uninterruptedly domiciled there may at any time after completing his twenty-first year, but before completing his twenty-third year, acquire Swedish citizenship by notification in writing to the provincial government of the province in which is situated the parish where he or she is registered, stating his or her desire to become a Swedish citizen. An alien who is not a citizen of any State or proves that he would lose his foreign citizenship by acquiring Swedish citizenship may make such notification upon attaining the age of eighteen years.

[1] Swedish text in *Svensk Författningssamling* No. 382, of 30 June 1950. English text based on the translation made at the instance of the Royal Swedish Ministry for Foreign Affairs and received through the courtesy of the same Ministry. The Act came into force on 1 January 1951. See also Professor Sørensen's comments on the new Scandinavian nationality laws on p. 67 of this *Yearbook*, and the text of the agreement between Denmark, Norway and Sweden of 21 December 1950, *ibid.*, p. 434.

Should Sweden be at war, the provisions of the first paragraph of this article shall not apply to any citizen of an enemy State or to any person who has been a citizen of such a State but has lost such citizenship without acquiring the citizenship of another State.

Art. 4. A person who has acquired Swedish citizenship by birth, and has been uninterruptedly domiciled in Sweden up to the age of eighteen years, and has lost his or her Swedish citizenship, may recover such citizenship after having resided in Sweden for two years by making notification in writing to the provincial government of the province in which is situated the parish where he or she is registered. A person who is a citizen of a foreign State shall, however, not recover his Swedish citizenship unless he proves that by so doing he would lose his foreign citizenship.

Art. 5. If an alien man becomes a Swedish citizen in accordance with article 3 or 4, such citizenship is acquired likewise by his unmarried children born in wedlock who are domiciled in Sweden and have not yet attained the age of eighteen years. The foregoing provision does not, however, apply to children who, after the annulment of the marriage, or after divorce, or during judicial separation, are in the custody of the mother.

The provisions of the first paragraph of this article regarding acquisition of citizenship along with the father on the part of children born in wedlock shall equally apply

1. To the relations between children born out of wedlock and the mother, provided that the father is not an alien having the custody of the children;

2. To the relations between children born in wedlock and a mother who is a widow;

3. To the relations between children born in wedlock and a mother whose marriage has been otherwise dissolved, or who is living apart from her husband because of a judicial separation, provided that the children are in the custody of the mother.

Art. 6. The King in Council may upon application confer Swedish citizenship upon (naturalize) an alien who

1. Has attained the age of eighteen years;

2. Has been domiciled in Sweden during the last seven years;

3. Is of good character; and

4. Is able to support himself and his family.

Naturalization may be granted even though the conditions laid down in the first paragraph of this article are not fulfilled if it is found to be of advantage to Sweden that the applicant should be granted Swedish citizenship, or if the applicant has formerly possessed Swedish citizenship, or if the applicant is married to a Swedish citizen, or if, having regard to the applicant's circumstances, there should otherwise be special reasons for his being granted Swedish citizenship.

If the applicant is a Danish, Finnish, Icelandic or Norwegian citizen, the requirement stated in subparagraph 2 may be waived even if no other special reason should exist.

If an applicant who is citizen of a foreign State should not lose such citizenship by reason of his naturalization without the consent of the Government or other authority of the foreign State, it may be made a condition of the acquisition of Swedish citizenship that the applicant shall submit proof within a specified limit of time to the provincial government indicated by the King in Council that such consent has been granted. The provincial government shall decide whether sufficient evidence has been produced.

When an alien is being granted Swedish citizenship in accordance with this article, the King in Council shall decide whether the naturalization shall also apply to the applicant's unmarried children under the age of eighteen years.

Art. 7. Swedish citizenship shall be lost by

1. Any person who acquires foreign citizenship, having applied for such citizenship or expressly consented to receive the same;

2. Any person who acquires foreign citizenship by entering the public service of another State;

3. An unmarried child under the age of eighteen years who becomes a foreign national by reason of the fact that foreign citizenship has been acquired by its parents in the manner indicated above in this article if the parents have joint custody of the child, or by one of the parents, if he or she either has sole custody or has custody together with the other parent and that parent is not a Swedish citizen;

4. An unmarried child under the age of eighteen years who becomes a foreign national by reason of marriage of its parents; yet if such child is domiciled in Sweden, loss of Swedish citizenship shall only follow if the child leaves Sweden before attaining the age of eighteen years and at that time has retained its foreign citizenship.

Art. 9. Upon application, the King in Council may release from Swedish citizenship a person who is or desires to become a foreign national. If the applicant is not already a foreign national it shall be made a condition of release that he or she shall acquire citizenship in another State within a specified limit of time.

Art. 10. Upon agreement with Denmark, Finland, Iceland or Norway, the King in Council may order the application of one or more of the provisions under (*a*)-(*c*) below. The expression "contracting State" in

these provisions refers to any State or States with which Sweden has concluded an agreement as to the application of the provision in question.[1]

(*a*) In applying article 1, paragraph 1, sub-paragraph 2, and article 3, birth in a contracting State shall be deemed equivalent to birth in Sweden. As far as articles 3 and 4 are concerned, domicile up to the age of twelve years in a contracting State shall be deemed equivalent to domicile in Sweden.

(*b*) A citizen of a contracting State who has

1. Acquired citizenship otherwise than through naturalization;

2. Reached the age of twenty-one but not sixty years;

3. Been domiciled in Sweden for the last ten years; and

4. Has not been sentenced to imprisonment during that period, may acquire Swedish citizenship by notification in writing to the provincial government of the province in which is situated the parish where he or she is registered. The provisions of article 5 shall apply to such acquisition of citizenship.

(*c*) Any person who has lost his or her Swedish citizenship and has thereafter continuously been a citizen of a contracting State may recover his or her Swedish citizenship by making application in writing to that effect, after having taken up residence in Sweden, to the provincial government of the province in which is situated the parish where he or she is registered. The provisions of article 5 shall apply to such acquisition of citizenship.

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[1] See p. 265, last sentence of footnote 1.

SWITZERLAND

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS[1]

I. CONFEDERATION

A. Personal Freedoms

Federal Act amending the Swiss Penal Code, dated 5 October 1950. Extracts from this Act are reproduced in this *Yearbook.*

B. Welfare and Social Insurance

Federal Order of 15 September 1950 granting cost-of-living allowances to persons in receipt of pensions from federal staff insurance funds for the years 1950 to 1952. This order was published in the *Recueil officiel* of 1950, 1425.

Federal Order of 25 October 1949 approving the Social Insurance Convention signed on 4 April 1949 between Switzerland and Italy. The Convention was published in the *Recueil officiel* of 1950, 363, and came into force on 1 January 1948.

The Convention applies to the Federal Old-Age and Survivors' Insurance Act of 20 December 1946,[2] as well as to executive regulations and ordinances relating thereto and to a number of Italian decree-laws, legislative decrees and decrees promulgated between 1935 and 1947. Articles 2 to 5 contain special provisions fixing the conditions under which Italian and Swiss nationals who either paid contributions to Swiss or Italian insurance schemes respectively for not less than ten full years or resided for a total of fifteen years in Switzerland or Italy respectively are entitled to the benefits provided for in the above-mentioned legislation to the extent determined by the Convention. Lastly, the Convention contains provisions for its implementation.

Federal order of 29 March 1950 approving the Old-Age and Survivors' Insurance Convention, signed on 9 July 1949 between Switzerland and France.

C. Life and Health Protection

Federal order of 14 March 1950 approving the revised Convention concerning night work of women employed in industry, adopted by the International Labour Conference at its 31st session (1948).

D. Economic Protection

Ordinance of 28 December 1950 on engagements of workers of the administrative services of the Confederation (Regulations for workers). Extracts from this ordinance are reproduced in the present *Yearbook.*

Executive regulations of the federal order establishing a fund for institutions assisting crafts and commerce. These regulations, issued by the Federal Council, apply to the federal decree of 24 September 1948 establishing this fund.

Orders issued by the Federal Council under which minimum wage levels for homework in certain industries are made compulsory and generally applicable (*Recueil officiel* of 1950, 33–36, and 1524, 807).

II. CANTONS

A. Welfare and Social Insurance

The Federal Old-Age and Survivors' Insurance Act of 20 December 1946 provides for a certain collaboration among the cantons. Thus the Act provides for the compulsory establishment of cantonal equalization funds (articles 49, 61), as well as occupational equalization funds and equalization funds of the Confederation. The cantons are also entitled to maintain or set up cantonal old-age and survivors' insurance institutions, in order to supplement the federal old-age and survivors' insurance scheme (article 83). The cantons are required to submit for approval to the federal Council any necessary provisions for the implementation and adaptation of the scheme (article 100). Lastly, they are required to contribute to the funds provided for by the Act (article 105).

Certain cantons promulgated Acts and decrees in 1948 and 1949 in pursuance of the above-mentioned provisions.[3]

In addition, the following cantons passed legislation in this field in 1949 and 1950:

Canton of Appenzell: executive regulation of 5 April 1949;
Canton of Berne: executive regulations of 9 June 1950;
Canton of Fribourg: order of 27 June 1949;
Canton of Vaud: decree of 19 December 1950.

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[1] This note is based on texts and information received through the courtesy of the Federal Political Department of the Swiss Confederation. The Secretariat also expresses its gratitude to the cantonal authorities for their co-operation in the matter of cantonal legislation.

[2] See *Yearbook on Human Rights for 1948*, p. 193.

[3] *Ibid.*, p. 190, and *Yearbook on Human Rights for 1949*, pp. 193–194.

An order of the Canton of Vaud dated 1 November 1949 (approved by the Federal Council on 16 November 1950) amends the regulations of the Old-Age Insurance Court of 21 December 1949. The new order extends the powers of this court, which in future will be the cantonal appeal authority provided for in article 21 of the federal order of 22 June 1949 regulating the payment of family allowances to agricultural workers and to peasants of mountain districts. The old regulations had been issued before the entry into force of the above-mentioned federal order.

The Council of State of the Canton of Neuchâtel issued regulations for the Cantonal Old-Age and Survivors' Insurance Appeals Committee, dated 12 May 1950 (approved by the Federal Council on 8 June 1950). The regulations, which replace those of 13 February 1948, deal with the composition and terms of reference of the Committee. They state, for example, that the Committee is empowered to deal with disputes arising out of the implementation of provisions governing old-age and survivors' insurance, cantonal and communal pensions supplementing old-age insurance, allowances to compensate for loss of wages and earnings, allowances to students called up for military service and family allowances to agricultural workers and to peasants of mountain districts.

Canton of Basle-Rural: Act of 25 May 1950 concerning payment of welfare grants to needy aged persons, widows and orphans. Extracts from this Act are published in the present *Yearbook.*

Canton of Vaud: Decree of 30 November 1949 allocating one million francs to combat unemployment; Decree of 12 December 1949 on the allocation of a supplementary credit to combat unemployment by means of house-building schemes.

The Canton of Vaud also issued regulations, dated 4 July 1950, on compulsory insurance of apprentices against occupational and non-occupational hazards.

B. Protection of Minors and of the Family

The Canton of Vaud issued regulations, dated 4 July 1950, providing for certain exceptions to the rules governing the employment of apprentices at night and on Sundays.

C. Life and Health Protection

Some cantons passed legislation on the vaccination of the population and, in particular, of children of school age (Upper Unterwalden, 15 June 1949, voluntary vaccination; Basle-Rural, 7 October 1949, compulsory vaccination).

The Canton of Vaud issued an order, dated 19 May 1950, regarding hygiene in public and private schools.

D. Freedom of Information—Education

The Council of State of the Canton of Vaud issued on 16 December 1949 an order on cinemas. Extracts from this order are reproduced in the present *Yearbook.*

E. Protection of Minorities

Constitution of the Canton of Berne of 26 April 1893 as revised on 29 October 1950. The revised text with an introductory note is reproduced in the present *Yearbook.*

Federal Legislation

FEDERAL ACT AMENDING THE SWISS PENAL CODE[1]

dated 5 October 1950

Note.[2] This Act amends certain provisions of the Swiss Penal Code, including those concerning espionage, high treason, the supplying of political and military intelligence to a foreign State, party or organization, foreign enterprises and designs against the security of Switzerland, the endangering or disturbing of the constitutional order, and illicit associations. Penalties are also provided for insults to foreign States and international institutions.

Furthermore, new regulations are introduced for defamatory statements, and regarding responsibility for offences committed through the medium of the Press.

This Act rescinds the decree of the Federal Council of 29 October 1948 reinforcing the penal provisions for the protection of the State, which was reproduced in the *Yearbook on Human Rights for 1948.*[3] The introductory note which precedes the text of this decree in the *Yearbook on Human Rights for 1948* contains information useful for the understanding of the history of this penal legislation.

[1] French text in *Feuille fédérale* No. 40, of 5 October 1950, III, 1. Text received through the courtesy of the Federal Political Department of the Swiss Confederation. English translation from the French text by the United Nations Secretariat. This Act was passed by the Council of States and the National Council on 5 October 1950. The time-limit for objections expired on 3 January 1951. The Act was put into force by the Federal Council on 5 January 1951.

[2] Note prepared by the United Nations Secretariat.

[3] P. 191.

The Swiss Penal Code of 21 December 1937 is amended and supplemented in accordance with the following provisions:

Art. 4. The present code is applicable to any person who, in a foreign country, has committed any crime or offence against the State (articles 265, 266, 266a, 267, 268, 270, 271, 275a, 275b), has been guilty of espionage (articles 272 to 274) or has endangered military security (articles 276 and 277).

If the offender has served a sentence, fully or partially, in a foreign country, for this offence, the Swiss judge shall deduct the sentence already served from the sentence imposed.

Art. 27. 1. When an offence has been committed through the medium of the press and consummated by actual publication, the author shall be solely responsible, except as provided hereunder.

2. In the case of a non-periodical publication, and if the author cannot be traced, or if publication occurred without his knowledge or desire, the publisher, or, failing him, the printer, is punishable as principal.

3. If the author of an article printed in any newspaper or periodical cannot be traced or cannot be brought before a court in Switzerland, or if publication occurred without his knowledge or desire, the responsible editor is punishable as principal.

The editor is not obliged to disclose the author's name. In order to discover the latter's name, none of the measures of coercion prescribed by procedural law may be used against the editor, the printer or his staff, or against the managing-director or the publisher of the newspaper or periodical.

4. If the author of a notice inserted in an advertising organ or in the part of a newspaper or periodical reserved for advertisements cannot be traced, the person responsible for the advertisements, or, failing him, the publisher or printer, is punishable as principal.

If the person responsible for the advertisements is sentenced to a fine, the publisher also shall be held responsible for the fine.

5. The author of a true report of the public discussions of any authority shall not be liable to penalty.

6. The provisions of No. 3, paragraph 2, shall not apply in cases of high treason, threats to the independence of the Confederation, diplomatic treason (articles 265 to 267), support of foreign enterprises or designs directed against the security of Switzerland (article 266*a*), espionage (articles 272 to 274), infringements of the constitutional order (article 275), subversive propaganda (article 275*a*), illicit associations (article 275*b*) and infringements of military security (articles 276 and 277).

Art. 55. 1. The judge may expel from Swiss territory, for a period of three to fifteen years, any alien sentenced to rigorous imprisonment or to ordinary imprisonment. Should the offence be repeated, banishment for life may be ordered.

2. The competent authority shall decide whether and on what conditions the expulsion of a prisoner who has been conditionally released should be deferred for a period of probation.

3. If the conduct of the conditionally released prisoner has been good throughout the period of probation, the expulsion that has been deferred shall not be put into effect. If the expulsion was not deferred, it shall begin to run as from the date on which the prisoner who has been conditionally released leaves Switzerland.

4. If the prisoner has not been conditionally released or, having been released, has not maintained good conduct during the period of probation, his expulsion shall take effect as from the date upon which his sentence or what remains of it has been served or remitted.

Art. 173. 1. Any person who, speaking to a third party, accuses or throws suspicion upon another person of dishonourable conduct or of any other fact liable to harm his reputation, and any person who spreads such an accusation or suspicion, shall, on a complaint being lodged, be liable to a term of imprisonment not exceeding six months or to a fine.

2. The accused shall incur no penalty if he proves that the allegations he has uttered or spread are justified by the facts, or that he had serious reason for believing in good faith that they were true.

3. The accused shall not be allowed to offer such proof and he shall be punishable, if the allegations have been uttered or spread without consideration for the public interest or without other adequate motive, the main purpose having been to speak ill of others, especially if the allegations concern private or family life.

4. If the accused admits that his allegations are false and withdraws them, the judge may reduce his sentence or exempt him from any penalty whatever.

5. If the accused does not prove the truth of his allegations, or if they are contrary to the truth or are withdrawn by the accused, the judge shall record the fact in his judgment or in some other written document.

Art. 174. 1. Any person who, speaking to a third party and knowing his allegations to be false, accuses or throws suspicion upon another person of dishonourable conduct or of any other fact liable to harm his reputation, or who spreads such accusations or suspicions, although aware that they are groundless, shall, on a complaint being lodged, be liable to imprisonment or to a fine.

Art. 266a. 1. Any person who, for the purpose of instigating or supporting foreign enterprises or designs directed against the security of Switzerland, enters into relations with a foreign State or with foreign parties or other organizations abroad, or with their agents, or who issues or disseminates false or misleading information, shall be liable to a term of imprisonment not exceeding five years.

2. In serious cases, the judge may pass a sentence of rigorous imprisonment.

Art. 271. 1. Any person who, without authorization, conducts on Swiss territory, on behalf of a foreign State, activities which are the prerogative of the public authorities, who performs such activities on behalf of a foreign party or other organization abroad, or who assists such activities, shall be liable to imprisonment and, in serious cases, to rigorous imprisonment.

2. Any person who, by violence, ruse or threats entices another person to a foreign country in order to hand him over to an authority, a party or any other organization abroad, or in order to place his life or his bodily safety in jeopardy, shall be liable to rigorous imprisonment.

3. Any person who prepares such an abduction shall be liable to a term of rigorous imprisonment or ordinary imprisonment.

Art. 272. 1. Any person who, in the interests of a foreign State, a foreign party or any other organization abroad and to the detriment of Switzerland or its nationals, inhabitants or organs, conducts or organizes a political intelligence service, or engages another person for such service or assists such activities, shall be liable to imprisonment.

2. In serious cases, the judge shall pass a sentence of rigorous imprisonment. The fact of having incited others to acts that are liable to compromise the internal or external security of the Confederation or of having given false information for that purpose shall be regarded as particularly serious.

Art. 274. 1. Any person who obtains military intelligence for the benefit of a foreign State and to the detriment of Switzerland, or who organizes any such service or who engages others in such service or assists such activities, shall be liable to imprisonment or to a fine.

In serious cases the judge may pass a sentence of rigorous imprisonment.

2. The correspondence and the material shall be confiscated.

Art. 275. Any person who commits an act aimed at disturbing or modifying illegally the order based upon the Constitution of the Confederation or of a canton shall be liable to imprisonment for a period not exceeding five years.

Art. 275a. Any person who conducts foreign propaganda aimed at overthrowing by violence the order based on the Constitution of the Confederation or of a canton shall be liable to imprisonment or to a fine.

Art. 275b. Any person who forms an association the purpose or practice of which is to conduct activities punishable under articles 265, 266, 266*a*, 271 to 274, 275 and 275*a*, or who has joined such an association or has taken part in its activities, or who incites to the formation of such an association or complies with its instructions, shall be liable to imprisonment.

Art. 296. Any person who publicly insults a foreign State in the person of its head, its government, one of its diplomatic agents or one of its official delegates to a diplomatic conference held in Switzerland, or one of its official representatives in an international institution or its organization established or meeting in Switzerland, shall be liable to imprisonment or a fine.

Art. 297. Any person who publicly insults an international institution or its organization established or meeting in Switzerland, in the person of one of its official representatives, shall be liable to imprisonment or to a fine.

Art. 302. Proceedings in respect of crimes and offences under this title shall be taken only by decision of the Federal Council.

2. The Federal Council shall not order proceedings to be taken unless a request to that effect is made by the government of the foreign State in cases covered by article 296 and by an organ of the international institution in cases covered by article 297. At a time of active service, the Council may order proceedings to be taken even if no such request is made.

In the cases covered by articles 296 and 297, penal proceedings shall be barred after the lapse of one year.

ORDINANCE ON EMPLOYMENT OF WORKERS IN THE ADMINISTRATIVE SERVICES OF THE CONFEDERATION[1]

(REGULATIONS FOR WORKERS)

of 28 December 1950

CHAPTER I

DEFINITION, FIELD OF APPLICATION AND SCOPE

Art. 1. For the purposes of the present ordinance, any person shall be known as a worker who is expressly recruited as such by a service of the Confederation.

. . .

CHAPTER II

CONDITIONS AND FORMALITIES OF RECRUITMENT

Art. 6. 1. Any Swiss national of either sex with an unblemished record may become a worker. Where absolutely necessary, and in special cases only, aliens may be recruited.

2. Recruitment may be made subject to fixed conditions with regard to age, education and professional skill.

[Article 7 deals with formalities of recruitment.]

CHAPTER III

GENERAL POSITION OF WORKERS

Art. 8. [The first paragraph of this article deals with the termination of employment. In the case of permanent workers, employment may be terminated only at the end of the month following that in the course of which notice has been given; where employment has lasted over a year, it may be terminated at the end of the second month following that in the course of which notice has been given.]

2. Notice of termination of employment may not be given by the employer:

(*a*) On account of compulsory military service under the terms of federal legislation;

(*b*) In the case of pregnant women, during the six weeks preceding and following child-birth.

3. Notice of termination must be given in writing. . . .

Art. 12. The worker's normal working time is forty-eight hours a week. Saturday afternoons are free.

Art. 13. 1. Sundays and public holidays on which no work is done are considered days of rest. When work cannot be interrupted on Sundays and holidays owing to the exigencies of service, the competent authorities shall determine the compensation for days of rest missed. . . .

Art. 14. The services and establishments shall take measures with a view to facilitating further professional training of the workers.

Art. 16. 1. The right of association is guaranteed to the workers within the limits set by the federal Constitution.

2. Workers may not, however, belong to any association which makes provision for or resorts to strikes by persons in the service of the Confederation or which in any other manner pursues aims or employs methods which are illegal or dangerous to the State. The application of this provision shall rest entirely with the Federal Council.

. . .

CHAPTER IV

DUTIES OF THE WORKER

Art. 23. 1. The worker shall serve in person and must devote his entire working capacity to the discharge of his duties.

2. The worker shall conscientiously and reasonably carry out orders in the line of duty issued by his supervisors.

3. The worker shall in all ways act in the interests of the Confederation and refrain from any act injurious to them.

Art. 24. 1. The worker may not strike or incite anyone in the service of the Confederation to strike.

2. Associations and co-operative societies may not deprive a worker of membership or injure his material interests for non-participation in a strike.

3. Any conventions and statutory or other provisions contrary to these prohibitions are null and void.

. . .

[Chapters V, VI and VII deal with civic, disciplinary and penal responsibility respectively.]

CHAPTER VIII

WAGES AND ALLOWANCES

Art. 43. 1. The worker shall be compensated by the hour or by the day. Payment shall be made for

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[1]French text received through the courtesy of the Federal Political Department of the Swiss Confederation. English translation from the French text by the United Nations Secretariat. The present Ordinance came into force on 1 January 1951.

hours or days of work actually accomplished and for absences under conditions stipulated in the present ordinance or in special regulations.

2. Payments in respect of military insurance or the national insurance fund in cases of accident may be charged in full or in part against the worker's wages.

. . .

[The succeeding articles deal with payment by the job and by the piece; the scale and limits of wages; classification; regular and special rises in wages; rental allowance; children's allowance; allowance for marriage and newborn children; and extra wages for overtime, night and Sunday work. They further provide for the reimbursement of costs of travel while on duty, an allowance for fares, bonuses and rewards and, under certain conditions, payment of wages in cases of absence due to illness or accident.]

CHAPTER IX

VACATION AND LEAVE

Art. 70. 1. The worker is entitled, each calendar year, to the following periods of leave: up to the end of the year in which he completes his fourteenth year of service, eleven days; as from the year in the course of which he completes his fifteenth year of service or reaches the age of thirty-five, sixteen and a half days; as from the year in which he reaches the age of fifty and completes his tenth year of service, twenty-two days.

Saturday counts as a half-day holiday. . . .

CHAPTER XIII

CLAIMS ARISING OUT OF ENGAGEMENTS

Art. 79. 1. The worker may appeal to the chief of service against any decision taken by the latter with regard to a non-financial claim connected with employment, including the termination of employment for good cause. The decision of the chief of service may be deferred through the regular channels of appeal until it reaches the Federal Council. . . .

Art. 80. 1. The Federal Tribunal has sole jurisdiction over financial claims arising out of employment, including suits with regard to payments of the federal nisurance fund, whether those claims be made by the Confederation or by the worker. . . .

Cantonal Legislation

CANTON OF BERNE

CONSTITUTION OF THE CANTON OF BERNE OF 26 APRIL 1893

as revised on 29 October 1950[1]

Note.[2] In a popular vote on 29 October 1950, the electors of the Canton of Berne approved the revision of some articles of the canton's Constitution by 69,089 votes to 7,289. In a letter dated 19 November 1950, the Executive Council of the Canton of Berne requested the Confederation's guarantee of the revised constitutional provisions, in accordance with article 6 of the federal Constitution of the Swiss Confederation of 29 May 1874.[3] The federal guarantee of the revised articles of the Constitution of the Canton of Berne was accorded on 4 April 1951. The Federal Council's message to the Federal Assembly concerning the guarantee of revised articles 1, 2, 17, 26, 33 and 34 of the Constitution of the Canton of Berne refers to the purposes of the revision in the following terms:

"This revision of the Constitution applies to the relations of the State of Berne with the portion of the canton situated in the Jura. It is concerned with the position of the population of that part of the canton as a minority. Its purpose is to ensure the preservation and development of the Jura's cultural heritage.

[1] French text in the "Message du Conseil fédéral à l'Assemblée fédérale concernant la garantie des articles 1, 2, 17, 26, 33 et 34 de la constitution du canton de Berne". Text received through the courtesy of the Federal Political Department of the Swiss Confederation. English translation from the French text by the United Nations Secretariat.

[2] This note is based on the contents of the Federal Council's Message cited herein.

[3] Article 6 of the federal Constitution reads as follows: "The cantons are required to demand from the Confederation its guarantee of their Constitutions. This guarantee shall be accorded provided that: (*a*) the Constitutions contain nothing contrary to the provisions of the federal Constitution; (*b*) they ensure the exercise of political rights according to republican forms, representative or democratic; (*c*) they have been accepted by the people and can be revised when an absolute majority of citizens so demand."

"Revised articles 1 and 2 recognize that the population of the Jura represents a separate ethnic group within the framework of the State of Berne. Article 1 has a second paragraph noting the historical and cultural fact that the Canton of Berne is composed of the people of the old canton and those of the Jura. Similarly, the new text of article 2 indicates that the population of Berne is composed of the ethnic groups of the old canton and of the Jura. The principle that the sovereignty of the State resides in the people as a whole is in no way modified. From the point of view of constitutional law, the people of Berne continue to form a single unit where each person, to whichever of the two ethnic groups he belongs, enjoys the same rights and has the same duties.

"Article 17 regulates the question of languages within the canton. The first paragraph of the old text stated that German and French were the national languages, but as official languages they were not on an equal footing, since the old second paragraph said that the German text of laws and other cantonal legislation was the authentic text. The new article 17 places both languages on a basis of equality. Its second paragraph follows the territorial principle, on the basis of which the domains of the German and French languages are clearly defined. The fifth paragraph states that a special regime will be introduced for the bilingual district of Bienne by decree of the Grand Council. Cantonal legislation will therefore be published in German in the German part of the canton and in French in the French part (third paragraph). The decisions, general orders and judgments of higher authorities will be issued in the language used in the district which is competent by reason of location (fourth paragraph).

"Article 26, which enumerates the powers of the Grand Council, now has a new section 20, which provides that the Grand Council shall establish from among its members a commission composed of an equal number of deputies from the old canton and from the Jura. The commission will deal in an advisory capacity with questions of general interest arising out of the relations between the old canton and the Jura. This institution should be able to prevent misunderstandings and friction or at least to intervene before a serious dispute develops. It is because of its importance to the State's general policy that a provision establishing it is included in the Constitution itself.

"Under article 33, paragraphs 1 to 3, the Executive Council is to be composed of nine members elected by the people, the canton being regarded as a single district for purposes of the election. The old paragraph 4 already stipulated that the minority must be allowed an equitable representation in the Executive Council. Since the creation of the Executive Council of nine members in 1846, the Jura has nearly always had two seats in the government. The new paragraph 4 confirms this century-old tradition by providing a minimum guarantee in the Constitution and consequently making it impossible to elect more than seven members from the old canton. The new paragraph 3 of article 34 relates to the procedure to be followed for the application of article 33, paragraph 4 . . ."

Art. 1. The Canton of Berne is a democratic republic and one of the States of the Swiss Confederation.

It is composed of the people of the old canton and those of the Jura.

Art. 2. The sovereignty of the State resides in the whole of the people of the old canton and of the Jura. It is exercised directly by the electors and indirectly by the authorities.

Art. 17. German and French are the national languages. German is the official language in the old canton and in the district of Laufon; French is the official language in the other districts of the Jura.

Laws, decrees, orders and regulations of general interest shall be published in German in the German part of the canton, in French in the French part.

Decisions, general orders and judgments of higher authorities shall be issued in the language used in the district which is competent by reason of location.

The Grand Council shall enact special provisions for the bilingual district of Bienne.

Art. 26. The Grand Council, as the supreme authority in the State, shall have the following powers:

1–19 [*unchanged*]

20. It shall designate a commission composed of an equal number of deputies from the old canton and from the Jura.

This commission shall meet as stipulated in the regulations or at the request of one-half of the total number of deputies from the Jura and, in an advisory capacity, shall deal with questions of general interest arising out of relations between the old canton and the Jura.

Art. 33, paragraph 4. The Jura is entitled to two seats on the Executive Council.

Art. 34, paragraph 3. Candidates who, on the first ballot, obtain an absolute majority of the validly cast votes shall be elected, provided, however, that seven at most are elected from the old canton and two from the Jura. On the second ballot, which shall be an entirely free one, candidates who obtain the greatest number of votes shall be elected, the seats guaranteed to the Jura being reserved.

CANTON OF VAUD

ORDER OF 16 DECEMBER 1949 ON CINEMAS[1]

I. GENERAL PROVISIONS

Art. 2. "Motion picture presentation" . . . shall mean any film showing, in public or in private, with the exception of those organized within families, educational institutions and universities.

. . .

II. SUPERVISION OF CINEMA PERFORMANCES

Art. 7. Except in cases provided for in article 9, children under sixteen years of age, even when accompanied, shall not be admitted to cinema performances.

When such a measure is justified by the character of the films shown, the municipal authorities or the Department of Justice and Police may extend this prohibition to young persons under eighteen years of age. A prominently displayed notice shall inform those concerned of the provisions regarding them.

Any children or young persons who violate the provisions of paragraphs 1 and 2 above, as well as any persons accompanying them, shall be liable to punishment. The same shall apply to the holder of the licence if he is at fault.

Art. 8. Minors wishing to attend a cinema performance shall produce evidence of their identity when so requested by the police or by the cinema management and staff.

Art. 9. Children between seven and sixteen years of age may be admitted to cinema performances given elsewhere than in schools if they are essentially educational or recreational in character. The municipal authorities shall give the necessary authorization, after consulting the school commission when necessary.

The entire programme shall be submitted at least ten days in advance to the municipal authorities, who may demand to see the films if they deem it necessary.

The days and times of such performances shall be fixed by the municipal authorities, who may limit their number.

The above regulations are subject to the stipulations of article 27.

III. CONTROL OF FILMS AND FILM PUBLICITY

1. *General Rules*

Art. 10. Control of films and film publicity shall be exercised by the municipal authorities and by the Department of Justice and Police.

Art. 11. Any cinema performance, in public or in private, which is likely to disturb the public order or offend public morals is forbidden. The following, in particular, shall be deemed to be contrary to public order and morals:

(*a*) Films likely to disturb public peace and security, especially those likely to suggest or incite crimes or other offences;

(*b*) Films offensive to public morals or decency;

(*c*) Unwholesome films;

(*d*) Films constituting an insult to any foreign nation, its sovereign or government.

Art. 12. The prohibition contained in the preceding article shall apply not only to the film as a whole but also to each of its parts (titles, scenes, spoken, sung or written texts, etc.), as well as to every item of publicity for the film, in whatsoever form.

Art. 13. The billing and publication of scenes and texts likely to disturb public order or offend public morals and decency, as well as dishonest advertising, shall be forbidden.

"Dishonest advertising" shall mean any form of advertisement containing false or obviously exaggerated information concerning the origin, character, contents and moral or educational value of a film.

Announcement posters and photographs displayed in violation of these provisions may be defaced by order of the cantonal or communal police. In addition, the offender may be fined.

Art. 14. Private performances and invitation performances may not be advertised in any manner.

2. *Control by Municipal Authorities*

Art. 15. The complete programme (including so-called trailers) of any cinema performance as defined in article 2 shall be submitted to the municipal authorities for approval at least eight days in advance. The films shall be listed in it under their original titles. Any translation of or change in the title must be brought to the notice of the municipal authorities.

[1] French text received through the courtesy of the Federal Political Department of the Swiss Confederation. English translation from the French text by the United Nations Secretariat. The Order came into force on 1 January 1950.

Before being displayed, all posters or photographs to be used in advertising shall be submitted to the municipal authorities for approval. Revivals of films shall be exempt from this rule.

Art. 16. The municipal authorities may require films to be shown to them in a private session, before they are publicly announced.

They may at any time, either prior to or during the performances, prohibit entertainments which contravene article 11.

They shall also be entitled to prescribe any measures advisable with a view to safeguarding the public order, the respect of morals and the protection of children. They may in particular order the omission of scenes, spoken or written texts, and printed or illustrated publicity covered by the terms of article 11.

Art. 17. Decisions of the municipal authorities involving total or partial prohibition shall be communicated immediately to the Department of Justice and Police.

Approval given by the municipal authorities under the terms of the two preceding articles shall not be binding on the Department of Justice and Police.

3. *Control by the Department of Justice and Police*

Art. 18. In the control of films and film publicity, the Department of Justice and Police shall be assisted by the Cantonal Commission on Film Control, composed of:

(*a*) A chairman and a vice-chairman, who shall be officials of the Department of Justice and Police;

(*b*) Seven members, including at least one woman;

(*c*) Two to six alternates, including one woman.

Whenever the Department of Justice and Police shall deem it necessary, it may add one or several experts to the Commission.

The Department's secretariat shall provide the secretarial services for the Commission.

Art. 19. The members of the Commission shall be appointed by the Council of State for a period of four years. Each of them may be reappointed for another term.

The members of the Commission and the experts shall receive the remuneration provided for in the Order of the Council of State establishing the daily compensation and travel allowances of members of commissions.

Art. 20. The managers of permanent cinemas and the organizers of cinema performances shall be required to notify the Department of Justice and Police, at least ten days in advance, of any film which may call for a restrictive measure. They shall produce the complete scenario of the film with its original title, even if the film is to be shown under a different title. Any translation of or change in the title shall be brought to the notice of the Department of Justice and Police.

Art. 21. On their own initiative or at the request of the municipal authorities, the managers of permanent cinemas, the organizers of cinema performances and the film-renting agencies concerned, the Department of Justice and Police shall submit to the Commission, or, if it chooses, to a delegation of the Commission, for its advice, any film which may call for a restrictive measure under the terms of article 11.

Art. 22. The films submitted to the Commission or to its delegation shall be shown at a private session held on the day and at the time appointed by the Department of Justice and Police at the expense of the applicant . . .

The discussions of the Commission or its delegation shall be valid when five of its members are present. Experts shall have consultative status only.

The Commission shall communicate immediately its opinion to the Department of Justice and Police stating the grounds for its decision.

The members of the Commission shall be bound to secrecy in their duties.

Art. 23. The Department of Justice and Police may, even as a preventive measure, prescribe any measures it shall deem advisible with a view to safeguarding the public order, the respect of morals and the protection of children. It shall communicate its decisions to the municipal authorities concerned and to the managers of permanent cinemas.

It shall likewise communicate to them the decisions it takes on films examined by the Cantonal Commission on Film Control or by its delegation.

Art. 24. The Council of State and the Department of Justice and Police may consult the Cantonal Commission on all questions concerning the policing and supervision of performances, the control of films and film publicity, and the development of the art of the cinema.

IV. FILMS FOR CHILDREN

Art. 26. The Department of Justice and Police shall draw up a list of films suitable to be seen by children between seven and sixteen years of age. It shall fix the minimum age of admission for each film. It may establish any other conditions it considers advisable.

It shall be assisted in that work by a Commission on Films for Children, composed of three members, at least two of whom shall be chosen from among the members of the Cantonal Commission on Film Control. The secretariat of the Department of Justice and Police shall provide the secretariat services for this Commission.

Articles 19, 21 and 22 shall also apply to this Commission.

Art. 27. Only such films as have been approved by the Department of Justice and Police on the advice of the Commission on Films for Children shall be authorized for showing by the municipal authorities under the terms of article 9. The municipal authorities shall, however, have the right to be more severe in their judgment of these films.

V. CINEMA LICENCES

A. Permanent Cinemas

1. *General Rules*

Art. 28. No one may operate a permanent cinema as defined in article 3 without holding a licence issued by the Department of Justice and Police . . .

. . .

2. *Conditions for granting a Licence*

Art. 35. The following may not obtain a licence to operate a permanent cinema:

(*a*) Minors and incapacitated persons;

(*b*) Persons deprived of their civil rights;

(*c*) Persons convicted of offences against public morals or other serious offences;

(*d*) Persons given to misconduct or who do not enjoy a good reputation, and those who do not offer the necessary guarantees for the management of a cinema;

(*e*) Persons who, through their own fault, are still required to surrender property as a result of bankruptcy or unsuccessful proceedings;

(*f*) Persons who previously failed to pay for a cantonal or communal licence and those who, through their own fault, failed to pay their taxes;

(*g*) Persons who use the services of an associate who is ineligible for a licence under the terms of sub-paragraphs (*a*) to (*f*) above or those of employees similarly ineligible under the terms of sub-paragraphs (*b*) to (*d*) above;

(*h*) A wife living together with her husband who is ineligible for a licence under the terms of the present article;

(*i*) Married women without separate property who have not been duly authorized by their husbands or by the judge.

6. *Withdrawal of the Licence*

Art. 41. On its own initiative or at the request of the prefect or the municipal authorities, the Department of Justice and Police shall withdraw the licence when:

1. The licence-holder comes under one of the categories listed in article 35;

2. The licence-holder, his staff or his associates have repeatedly violated legal prescriptions or regulations, particularly those relating to cinemas, or decisions of competent authorities; . . .

4. The premises do not meet public health and safety requirements.

A licence may not be withdrawn without a prior hearing of the person concerned.

7. *Deprivation of the Right to hold a Licence*

Art. 42. In case of serious offences, the Department of Justice and Police may, in addition, order any person to be deprived of the right to hold a licence for a definite or an indefinite period.

Deliberate violation of provisions governing the control of films shall, in particular, be considered a serious offence.

Deprivation of the right to hold a licence may not be ordered without a prior hearing of the person concerned.

8. *Closing of a Permanent Cinema*

Art. 43. The Council of State may order the immediate, temporary or definitive closing of a permanent cinema, when:

1. The latter is operated without a licence;

2. Serious disturbances or acts contrary to public morals have taken place in the establishment or its outbuildings.

In urgent cases, the Department of Justice and Police and the municipal authorities may take the same action, as a temporary measure, until the Council of State is able to give a ruling on the matter.

The closing of a permanent cinema may not be ordered without a prior hearing of the persons concerned.

[The succeeding articles deal with rules of procedure and rules applying to non-permanent cinemas.]

VI. APPEAL

Art. 55. An appeal against a decision taken by the municipal authorities and the Department of Justice and Police in application of the present order may be lodged with the Council of State within ten days following the notification of such decision.

Appeals may be made by persons directly affected by any such decision . . .

[The succeeding articles deal with penal, transitional and final provisions.]

CANTON OF BASLE-RURAL

ACT CONCERNING PAYMENT OF WELFARE GRANTS TO NEEDY AGED PERSONS, WIDOWS AND ORPHANS[1]

of 25 May 1950

Art. 1. The Canton shall, within the limits of funds available under article 2,[2] pay grants to aged persons, widows and orphans, depending on their need.

These grants are intended to remove or alleviate hardship in the period of transition to old age and survivors insurance.

They are not to be regarded as relief to the poor, and may neither be taxed nor drawn upon for the payment of tax arrears. They may not be transferred or used as security for a loan.

Art. 4. The following persons are entitled to welfare grants: needy aged persons, widows and orphans of Swiss nationality residing in the canton; also needy aliens and stateless persons who have been settled in Switzerland for at least ten years and have their domicile in the canton.

Any person who lacks the means to support himself, as well as those persons for whose support he is responsible, shall be regarded as needy.

The legislation of the Confederation remains supreme.

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[1] German text received through the courtesy of the Federal Political Department of the Swiss Confederation. English translation from the German text by the United Nations Secretariat.

[2] Article 2 lists the sources from which these funds are to be derived.

SYRIA

CONSTITUTION OF SYRIA[1]

of 5 September 1950

PREAMBLE

We, the representatives of the Syrian Arab people, meeting in a Constituent Assembly, by the will of God and the free wish of the people, declare that we have ordained this Constitution in order to achieve the following sacred aims:

To establish justice on firm foundations by strengthening the judicial power and strengthening its independence under a free democratic regime, so that the right of every individual shall be guaranteed without fear or discrimination;

To safeguard fundamental public freedoms for all citizens and to ensure the enjoyment of those freedoms under law and order, public freedoms being the most noble expressions of individuality, dignity and humanity;

To promote the spirit of brotherhood and social consciousness among citizens, so that every individual may feel that he is an integral part of the structure of the country and that the country is in need of him;

To strengthen the sense of duty towards the defence of the country, the Republic and the Constitution, for whose maintenance every citizen should contribute his life, effort, wealth and knowledge;

To liberate citizens from the miseries of poverty, disease, ignorance and fear by establishing a sound economic and social system which achieves social justice, protects worker and peasant, offers security to the weak and the fearful and enables every citizen to have free access to the benefits of the country;

To guarantee equality in public duties and the rights proclaimed by the Constitution and confirmed by laws, especially taxation on a progressive basis, so that there may be equality in sacrifice and ability to contribute;

To develop, educate and protect the individual in order that every citizen may feel that he is responsible for the safety of the country and for its present and future; that the country is the immortal and eternal truth; that all Syrians are its guardians until they hand it over to their sons in dignity and high-mindedness. This aim shall be achieved by giving the people a sound and patriotic culture, by providing widespread education and creating facilities for this purpose and by promoting the spirit of sacrifice for the good of the community.

And, whereas the majority of the people are believers in the Islamic religion, the Government declares its attachment to Islam and its ideals.

We also declare that our people are determined to cement the ties of friendship and co-operation with the peoples of the Moslem and the Arab world, and to build their modern State on those sound ethical bases advocated by Islam and the other theistic religions and to combat atheism and moral decadence.

And, furthermore, we declare that our people is a part of the whole Arab nation, bound to it with its past, present and future, and is looking forward to the day when our Arab nation shall be united in one State. Our people shall therefore assiduously strive to fulfil this sacred desire in freedom and independence.

We finally declare that this preamble is an indivisible part of this Constitution, made to remind all citizens of the principles upon which their basic law is founded.

We, the representatives of the Syrian Arab people, pray to Almighty God to preserve our nation and people; to guard us against all calamities, to guide our steps so that our ideals may become living realities, thus enabling us to restore the magnificence and glory which our great ancestors have built, and to inaugurate for our sons the path to dignity and splendour.

CHAPTER I

THE REPUBLIC OF SYRIA

Art. 1. (1) Syria is a fully sovereign Arab Republic with a democratic parliamentary regime.

(2) It constitutes an indivisible political unit. No part of its territory may be alienated or ceded.

(3) The people of Syria is a part of the Arab nation.

Art. 2. (1) Sovereignty is vested in the people. No individual or group may claim it.

(2) Sovereignty is based on the principle of the rule of the people, by the people, for the people.

[1] Arabic text in *Official Journal of Syria* No. 46, of 14 September 1950. Text received through the courtesy of Mr. Faiz El-Khouri, Minister of Syria, Washington. English text based on the translation by Dr. George J. Tomeh, Second Secretary of the Syrian Legation in Washington.

(3) The people shall exercise sovereignty within the forms defined by the Constitution and the limits assigned by it.

Art. 3. (1) The religion of the President of the Republic is Islam.

(2) Islamic law shall be the main source of legislation.

(3) Freedom of belief shall be guaranteed. The State shall respect all theistic religions, and shall protect the free exercise of all forms of worship consistent with public order.

(4) Jurisdiction of religious communities in matters of personal status shall be respected and observed.

Art. 4. Arabic is the official language.

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CHAPTER II

FUNDAMENTAL PRINCIPLES

Art. 7. All citizens shall be equal before the law in obligations, rights, dignity and social status.

Art. 8. The State shall guarantee freedom, security and equal opportunities for all citizens.

Art. 9. Everyone shall have the right to petition the courts within the limits of law. Trials shall be held in public unless the law provides otherwise.

Art. 10. Personal freedom shall be guaranteed.

(1) Everyone shall be presumed innocent until proved guilty by a verdict according to law.

(2) No one may be investigated or kept in custody except in accordance with an order or a warrant emanating from judicial authorities, or except in the case of detection *in flagrante delicto* of committing an offence, or except for the purpose of bringing him before the judicial authorities on a charge of having committed a crime or a penal offence.

(3) No one shall be subjected to torture or degrading treatment. The penalty for contraventions of this provision shall be prescribed by law.

(4) Administrative authorities shall not have the right to arrest any person as a security measure except in accordance with a law passed in conjunction with the declaration of a state of emergency or martial law or war.

(5) Every person who is arrested or detained in custody shall be informed in writing within twenty-four hours of the grounds for such detention or arrest, and the legal text in accordance with which he was arrested; furthermore, he shall be brought before the judicial authorities within forty-eight hours of his arrest.

(6) Every person who is detained has the right, either personally or through a lawyer or a relative, by application to the appropriate judge, to question the legality of his arrest. The judge shall consider the application without delay, and may summon the officer who ordered the arrest and question him about the case. If he finds that the detention is unlawful, the detainee shall be released immediately.

(7) The right of defence shall be guaranteed throughout all the stages of investigation and legal proceedings before all courts and in conformity with the law.

(8) There shall not be established extraordinary criminal courts; a special procedure for trial in a state of emergency shall be prescribed.

(9) Nobody shall be tried by military courts except persons subject to military law. Exceptions to this rule shall be determined by law.

(10) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence under the law in effect when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the offence was committed.

(11) Every person against whom a final sentence was passed and executed shall have the right to demand indemnity for harm inflicted upon him should it be proved that the sentence was erroneous.

Art. 11. The prison is a place of punishment, but it is also a means to reform the criminal and to educate him properly. The law shall guarantee the implementation of this principle.

Art. 12. Dwellings shall be inviolable; no one may enter or search them except in the case of detection in the act of committing an offence, or by permission of their owners or in accordance with a judicial warrant.

Art. 13. Postal, telegraphic and telephonic communications shall be inviolable and may not be confiscated, delayed or censored, except as provided by law.

Art. 14. (1) The State shall guarantee freedom of opinion, and all Syrians shall be entitled to express their views freely in writing, speeches, graphically, or by any other means of expression.

(2) No person shall be prosecuted on account of his opinions, except when he has transgressed the limits of the law.

Art. 15. (1) Freedom of the press and of printing shall be guaranteed within the limits of the law.

(2) Newspapers shall not be suspended, nor shall their licences be revoked, except in accordance with the law.

(3) In a state of emergency or of martial law, a limited censorship on matters related to public safety

or national defence may be imposed on newspapers, publications, books and broadcasts.

(4) The procedure for supervising the financial resources of the press shall be determined by law.

Art. 16. Syrians shall have the right to freedom of assembly and of peaceful demonstration without arms subject to the conditions laid down by law.

Art. 17. (1) Syrians shall have the right to form and belong to societies provided their objectives are not forbidden by law.

(2) The law shall determine the procedure for informing administrative authorities of the formation of societies and the supervision of their financial resources.

Art. 18. (1) Syrians shall have the right to form political parties provided their objectives are legitimate, their methods are peaceful and their regulations are democratic.

(2) The law shall determine the procedure for informing administrative authorities about the formation of such parties and the supervision of their financial resources.

Art. 19. (1) Syrians shall not be deported from their national territory.

(2) Every Syrian shall have the right to reside and move within the territory of Syria, unless forbidden to do so as a result of a judicial order or in execution of laws related to health and public safety.

Art. 20. (1) Refugees shall not be extradited because of their political beliefs or because of their defence of freedom.

(2) The extradition of ordinary criminals shall be determined by laws and international agreements.

Art. 21. Property is public and private.

(1) The State, legal persons and individuals have the right of ownership, subject to the limitations provided by the law.

(2) The law shall determine the conditions and limits of ownership by aliens.

(3) Private property shall be guaranteed. The law shall determine the means whereby the possession and disposal of property shall fulfil its social function.

(4) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

(5) Nobody shall be permitted to use private property in such a way as to conflict with public interests.

(6) Expropriation on grounds of public utility shall be allowed and shall be effected in accordance with a law giving the right to a fair compensation.

(7) Mines, minerals—solid, liquid, radiant, and similar substances—subterranean wealth, mineral waters, waterfalls, public forests and roads and all other sources of natural wealth are the property of the State.

(8) The law shall determine the conditions under which permits may be granted to explore for minerals and similar substances.

(9) The right to exploit minerals and similar substances shall be granted by law, provided considerations concerning the defence of the country and the safeguarding of its independence are given priority.

Art. 22. (1) In order to secure the most productive utilization of the land of the country, and in order to establish just social relationships among citizens, special legislation shall be enacted, based on the following principles:

(*a*) The obligation to utilize the land; and if the land is neglected for a period of time to be fixed by law, the right of user shall be forfeited;

(*b*) The maximum area of land that may be owned exploited and disposed of, according to districts, shall be determined by a law, provided that it shall not have a retroactive effect;

(*c*) The improvement of production;

(*d*) The encouragement of small and medium properties;

(*e*) The State shall distribute among landless peasants, at a small cost to be paid by instalments, sufficient land to secure their livelihood.

(2) The State shall encourage the establishment of co-operative societies and supervise them.

(3) The State shall endeavor to build model villages and provide sanitary housing for peasants.

(4) A law to protect the peasant and to raise his standard of living shall be promulgated.

Art. 23. (1) General confiscation of property is forbidden.

(2) Special confiscation may not be imposed except in accordance with a judicial order.

(3) Special confiscation by law shall be permitted in cases of necessity in time of war or public catastrophes.

Art. 24. Subject to payment of fair compensation, the State may nationalize any institution or project on the grounds of public utility.

Art. 25. Taxes shall be levied on a just and progressive basis and in such a way as to ensure equality and social justice.

Art. 26. (1) Work is the right of all citizens and a duty dictated by law. It is the most important of the basic factors in social life. The State shall secure work for its citizens and guarantee it by directing and developing national economy.

(2) The State shall protect employment and enact for that purpose special legislation based on the following principles:

(*a*) To give the workers wages proportional to the volume and quality of their work;

(*b*) To limit working hours per week, and to grant workers weekly holidays and annual leave with pay;

(*c*) To establish special compensation for workers with large families and in cases of discharge, sickness, disability and accidents caused by work;

(*d*) To determine special conditions for the employment of women and adolescents;

(*e*) To ensure the compliance of factories with the rules of hygiene and sanitation.

(3) The State shall secure for workers sanitary housing through means to be defined by the law.

(4) The organization of trade unions shall be free subject to the conditions laid down by law.

A trade union shall be considered as possessing juridical personality.

Art. 27. (1) Everyone has the right to be insured for himself and his family by the State against sickness, disability, orphanhood, old age and such unemployment as is beyond his control.

In order to realize this objective, social security shall be established in which the State, institutions and individuals shall co-operate to secure the necessary funds.

(2) The State shall protect the health of citizens, build for them hospitals, convalescent and maternity homes and shall facilitate means of treatment and care for pregnant women, nursing mothers and babies.

Art. 28. (1) Every citizen has the right to education and instruction.

Primary education shall be compulsory, free and uniform in the State schools.

Private primary schools shall be required to apply the educational programmes adopted by the State; they may teach such additional material as may be defined by law.

Secondary and vocational education shall be free in the State schools.

The law shall determine the obligatory subjects to be taught by private secondary schools in conformity with the educational programme adopted by the State.

Religious instruction for each religion in accordance with its faith shall be compulsory in primary and secondary stages.

The State shall give priority in the budget for appropriations to spread primary, vocational and rural education and make it available to all. This shall be pursued in order to realize equality among Syrians, to establish national awakening on sound foundations and to facilitate the utilization of the land.

The State shall make higher education accessible, and its institutions shall enjoy financial and administrative independence.

(2) Education shall be directed at creating a generation strong physically and mentally, believing in God, morality and virtue, proud of the Arab legacy, equipped with knowledge, conscious of its duties and rights, working for the public interest and full of the spirit of solidarity and brotherhood that should prevail among all citizens.

Any teaching that conflicts with the aims stated in the previous paragraph shall be forbidden.

(3) Education shall be directed at the full development of the human personality and fundamental freedoms.

(4) The State may supervise all institutions of learning in the country. The procedure for such supervision shall be determined by law.

(5) The State alone shall have the right to grant school certificates and to establish equivalent standards.

(6) The State shall adopt Scout and youth movements and shall endeavour to strengthen, to protect and to promote them.

(7) In order to realize the aims of education and instruction and to bring into operation a stable educational policy, there shall be established a Council of Education; the law shall determine the number of its members, their qualifications and the procedure for appointing them.

The task of this Council shall be to propose plans and programmes so that education in all its stages and forms may achieve its objectives.

The Council of Education shall submit its reports to the Government.

(8) The State shall protect and promote the arts and sciences, and encourage scientific research.

(9) The State shall protect all historical sites, monuments and all objects that have an artistic, historical or cultural value.

Art. 29. Compulsory work shall not be imposed on anyone, except in accordance with a law and in the following situations:

(1) To render cultural, constructional and health services;

(2) To combat public catastrophies;

(3) In a state of war and emergency.

Art. 30. (1) The defence of the country and of the Constitution is a sacred duty binding on all citizens.

(2) Military service is compulsory, and shall be regulated by a special law.

(3) The army is the guardian of the country entrusted with the sole task of defending its frontiers and ensuring its safety.

(4) There shall be established a Council of National Defence.

A law shall determine its powers and the number of its members.

Art. 31. (1) The conditions for the acquisition of Syrian nationality shall be determined by law; special facilities shall be accorded to Syrian emigrants, their descendants and citizens of the Arab countries.

(2) The legal status of aliens shall be defined by a law in accordance with international customs and international agreements.

Art. 32. (1) The family is the fundamental unit of society and is entitled to the protection of the State.

(2) The State shall protect and encourage marriage, and shall remove material and social obstacles that hinder it.

Art. 33. (1) Every Syrian has the right of access to public service, subject to the conditions laid down by the law.

(2) Appointment to public office, either temporary or permanent, in the State, the departments attached to it, and its municipalities shall be effected by public competition. The law shall determine the exceptions to this rule.

Art. 34. Islamic *wakfs* belong exclusively to Moslems; they constitute one of the public institutions of the State and enjoy financial and administrative independence. Their status shall be regulated by law.

CHAPTER III

THE LEGISLATIVE POWER

Art. 35. The legislative power shall be exercised by the Chamber of Deputies. Elections for this chamber shall be public, secret, direct, uniform and in conformity with the provisions of the electoral law.

Art. 38. Electors are Syrian men and women who have completed the eighteenth year of their age, who are listed in the civil census register and who have all other qualifications specified in the electoral law.

Art. 39. Any Syrian (*Souri*)[1] may stand for election as a deputy if he qualifies as an elector; if he is educated, has completed his thirtieth year of age and has fulfilled all other conditions specified by the electoral law.

Art. 40. The electoral law shall include provisions to guarantee the following:

(1) The validity of elections;

(2) The right of candidates to take part in the supervision of the electoral procedure;

(3) The punishment of those who interfere with the will of electors.

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CHAPTER V

THE JUDICIAL POWER

Art. 104. The judiciary is an independent authority.

Art. 105. (1) Judges are independent. The only authority above them in the exercise of their power is law.

(2) The honour of the judges and their moral conscience and integrity constitute a guarantee for the rights of the people and their freedoms.

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CHAPTER VII

FINANCES

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Art. 143. (1) Taxes shall be levied only for purposes of common utility.

(2) Taxes shall be fixed in currency. The law shall not impose a tax in kind except under extraordinary circumstances.

Art. 144. (1) No taxes may be levied, modified or abolished except by virtue of a law.

(2) No person may be exempted from the whole or part of a tax except in cases determined by law.

(3) No person may be required to pay a tax except in accordance with the method described by law.

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CHAPTER VIII

ECONOMIC AFFAIRS

Art. 151. The State shall supervise and organize the national economy in order to secure a high standard of living for the people by utilizing the land, promoting industry and trade and providing work for all citizens.

Art. 152. (1) There shall be established in the State a permanent Economic Council entrusted with the task of proposing economic plans and programmes to develop the potentialities of the country in the various economic fields.

(2) The Council shall submit its reports and the results of its work to the Government and to the Chamber of Deputies.

[1] Syrian men.

(3) The number of the members of the Economic Council and the procedure for selecting them shall be determined by a law in such a way as to ensure the realization of its task.

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CHAPTER X

TRANSITORY PROVISIONS

Art. 156. This Constitution shall not be amended within two years of its execution.

Art. 158. (1) The Government shall take necessary steps for the settlement of the Bedouins.

(2) A special law shall be issued taking into consideration the tribal traditions among nomadic tribes and specifying the tribes that shall come within its provisions until such time as their settlement is achieved.

(3) A special programme shall be insituted to secure the settlement of Bedouins gradually. This programme, together with the appropriations necessary for its implementation, shall be ascertained by law.

(4) The electoral law shall include special provisions concerning the conduct of elections among Bedouins, and shall take into consideration their civil registration and the voting procedure.

Art. 159. (1) Primary education shall be made available in all parts of the State within ten years at most of the execution of this Constitution.

(2) A detailed programme, to be executed by degrees, shall be initiated for that purpose. This programme, with the necessary appropriations for its implementation, shall be ascertained by law.

(3) All governments that may come to power within the period specified above shall be bound to implement the programme initiated for the achievement of this objective.

Art. 160. (1) Illiteracy must be eradicated in the country within ten years at the most of the coming into force of the provisions of this Constitution.

(2) A detailed programme shall be instituted for this purpose. This programme, with the necessary appropriations for its implementation, shall be ascertained by law.

(3) All governments that may come to power within the period specified above shall be bound to execute the programme for the achievement of this objective.

Art. 163. Existing legislation which may be inconsistent with this Constitution shall remain temporarily effective until amended in conformity with the provisions of this constitution.

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CODE OF CRIMINAL PROCEDURE[1]

issued by Legislative Decree No. 112 of 13 March 1950

Introductory Note. The *Official Journal* of the Republic of Syria No. 22, of 13 April 1950, published the memorandum with which the Minister of Justice submitted the Bill of the Code of Criminal Procedure to the Syrian Parliament. In this document, it is stated that "subsequent to the promulgation of the Civil Code, the Commercial Code and the Penal Code, the Minister of Justice appointed a committee for the preparation of a code of criminal procedure, since the codification of the provisions relating to criminal procedure which were scattered over many texts, and the clarification of controversial legal problems, appeared necessary". About the background of the legislation which was in force before the present code was enacted, the Minister explained that "it was nothing but the Ottoman Code of Criminal Procedure introduced on 5 Rejeb 1296 (26 June 1879) and derived from the French code in force at that time. It was translated from French into Turkish and thence into Arabic, and many errors were introduced during the passage through those two languages, some provisions acquiring a meaning different from that of the French original. The Ottoman Government made many changes in it, and successive governments in Syria amended many of its clauses.

"Nevertheless, the code remained inadequate and unsuited to the needs of the day. Moreover, many provisions of the Ottoman Magistrates of the Peace Act and the statutes relating to judicial procedure in Syria were amended, so that it became difficult for courts to know the law in force or to reconcile conflicting valid provisions.

[1] Arabic text in *Official Journal* No. 22, of 13 April 1950. English translation from the Arabic text by the United Nations Secretariat. Note prepared by the United Nations Secretariat on the basis of the memorandum published by the Minister of Justice in the same *Official Journal*.

"An attempt was therefore made to collect the present valid texts into a single code, reconciling conflicts between them and amending them where necessary. The Committee based its study of valid texts on the Lebanon Code of Criminal Procedure and on two new drafts, the Egyptian and the French. Since the judicial organization and practice of Lebanon, our sister country, are nearer to our own than those of any other State, the Committee adopted the Lebanon code as the model for its draft, introducing such elements of the Egyptian and the French drafts as it saw fit and adjusting the arrangement in conformity with that of the statutes recently enacted in Syria."

Concerning reforms which have been introduced by the new Code, the memorandum states that "in regard to interrogation, new safeguards were introduced for the interests of the accused. The code adopts the rule that the accused's legal representative may be present at this examination, and the principle that all stages of the investigation, except the examination of witnesses, must take place in the presence of the accused. The powers and duties of the examining magistrate are closely defined and explained, particularly in regard to the hearing of witnesses, the searching of houses and persons, and the impounding, retention and disposal of objects and correspondence.

"An attempt has also been made to ensure that procedure shall be swift but without prejudice to the right of defence, and to lay down the formal and legal conditions of recourse to higher courts by way of objection, appeal and cassation."

Another part, finally, is concerned with places of detention and prisons, powers of courts to inspect these, and protection of personal liberty from unlawful imprisonment. "The public prosecutor, the examining magistrate and the magistrate of the peace are bound to set at liberty persons detained illegally in places other than those appointed by the Government for the purpose. The rules for civil rehabilitation are so drafted as to conform to the present judicial system."

Relevant provisions of the Code are printed hereafter.

PART I

Section 1

Division 2

PROCEDURE AT EXAMINATION

1. *Complaints*

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Art. 69. 1. The examining magistrate before whom the accused appears shall establish the identity of the accused and shall inform him of the allegations against him and shall call upon him to reply thereto, and shall warn him that he need not reply unless his legal representative is present; and such warning shall be entered in the record of the examination; and if the accused declines to appoint a legal representative or does not bring a legal representative within twenty-four hours, the examination shall proceed in the absence of a legal representative.

2. If a person accused of a crime is unable to appoint a legal representative and requests the examining magistrate to appoint a legal representative for him, the president of the Bar, if any, of the district shall be deputed to appoint such legal representative, and otherwise the magistrate shall proceed to appoint the legal representative if there is one in his district.

3. In case of urgency, where it is apprehended that evidence may be lost, the accused may be interrogated before his legal representative is summoned to attend.

Art. 70. 1. The accused and the person responsible for the property and the private prosecutor and their deputies shall be entitled to be present at all proceedings of the examination except the hearing of witnesses.

2. The persons referred to in paragraph 1 hereof shall not, if they fail to attend after being duly summoned, be entitled to be informed of the proceedings which have taken place in their absence.

3. The examining magistrate may, in case of urgency, and if he considers that to do so is necessary in order to ascertain the truth, order examination in the absence of the persons aforesaid, and such order shall not be subject to appeal; but he shall on the conclusion of the examination thus ordered inform interested parties thereof.

Art. 71. 1. No party shall be assisted before the examining magistrate by more than one legal representative.

2. A legal representative may not speak during the examination except by leave of the examiner.

3. If the examiner refuses leave to speak, such refusal shall be entered in the record and the legal representative may submit a note thereon in his remarks.

Art. 72. 1. The examining magistrate may prohibit for a period not exceeding ten days, which may be renewed once, communication with an accused person in custody.

2. The said prohibition shall not apply to the legal representative of the accused, who may communicate with him at any time in the absence of a guard.

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3. *Search: Impounded Objects*

Art. 89. 1. It is prohibited to enter and search a house unless the person whose house it is proposed to

enter and search is suspected of committing or aiding or abetting an offence, or of possessing property connected with an offence, or of concealing an accused person.

2. The entry of the magistrate into a house otherwise than in accordance with the conditions aforesaid shall be an abuse of authority and shall give ground for a complaint against a public officer.

Art. 91. 1. The search shall be conducted in the presence of the accused, if he is in custody.

2. If a person accused of a crime declines or is unable to attend, or is in custody outside the area in which the search is to take place, the proceedings shall be conducted in the presence of his representative.

3. If the accused has no representative or cannot be brought to the place at the time, the examining magistrate shall appoint a representative to attend the proceedings on behalf of the accused.

Art. 92. 1. If the accused is not in custody and is at the place of the search, he shall be summoned to attend the proceedings and need not be notified thereof beforehand.

2. If the accused is not at such place, the proceedings shall be conducted according to the provisions of the preceding article.

Art. 93. 1. If the search is to take place in the house of a person other than the accused, that person shall be summoned to attend the proceedings.

2. If such person is absent or cannot attend, the search shall take place before two members of his family present in the place of the search, or, in their absence, in the presence of two witnesses summoned by the examining magistrate.

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PART IV

MATTERS RELATING TO PUBLIC SERVICES AND SECURITY

Section 2

PROTECTION OF PERSONAL FREEDOM FROM UNLAWFUL IMPRISONMENT

Art. 424. Any person becoming aware of the detention of another in a place not appointed by the Government for imprisonment or detention shall so inform the public prosecutor or his assistant, or the examining magistrate, or the magistrate of the peace.

Art. 425. 1. Any of the officers mentioned in the preceding article shall, immediately on receiving such information, proceed to the place of detention and release any unlawfully detained person.

2. If it appears to the officer that there is a lawful reason for the detention, he shall forthwith send the detained person to the competent public prosecutor or magistrate of the peace.

3. The officer shall make a report on the incident.

4. Any officer neglecting to do as aforesaid shall be an accessory to the offence of restriction of personal freedom and shall be prosecuted accordingly.

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THAILAND

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS[1]

1. LEGISLATION

Act of 15 November 1950 concerning the procedure of the Constitutional Court.

Chapter I contains general provisions concerning especially the composition and procedure of the Constitutional Court; Chapter II lays down rules for the examination of the termination of membership in the Senate and the House of Representatives. In Chapter III the Act deals mainly with the examination of legal provisions which in the opinion of a court are contrary to or inconsistent with the Constitution. If, in applying a legal provision in any case, a court comes to the conclusion that it is contrary to or inconsistent with the Constitution, it shall stay the proceedings, in accordance with article 179 of the Constitution and submit the matter, through the Under-Secretary of State for Justice or the Under-Secretary of State for Defence, as the case may be, to the Constitutional Court for its decision. The court is bound by the decision of the Constitutional Court.

National Economic Board Act of 26 December 1949.[2]

The task of the National Economic Board established by this Act is to consider and make recommendations on economic problems. The members of the Board, whose number shall not exceed twenty, are appointed by the King; the President of the Council of Ministers is the chairman of the Board. The work of the Board is divided into five categories: agriculture, finance, commerce, industry and communications. The Board shall "submit opinions and make recommendations to the Government to further the progress of the national economy and shall advise on the most suitable means for the promotion of the national economy by reliance on technical knowledge, research work and past experience. The Board is empowered to collect statistics for the proper performance of its functions." The last chapter of the Act contains rules of procedure for the work of the Board.

Act of 25 December 1950 concerning immigration.

2. JUDICIAL DECISIONS

No judicial decisions constituting important developments in the field of human rights were rendered during the year 1950.

[1] This note is based on texts and information transmitted through the courtesy of the Secretary General of the Council of Ministers, Bangkok.

[2] This Act was published in *Government Gazette* No. 10, of 10 February 1950. The services provided for by this Act were established by Royal Decree of 13 February 1950 (published in *Government Gazette* No. 11, of 15 February 1950).

TURKEY

ELECTION OF NATIONAL DEPUTIES ACT[1]

Act No. 5545 of 16 February 1950

PART ONE
PRINCIPLES

Art. 1. National deputies shall be elected directly by majority vote, universal suffrage and secret ballot. The vote shall be free and personal. The votes shall be counted and sorted publicly.

Art. 2. In the election of national deputies, each province shall constitute a constituency.

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PART TWO
THE RIGHT TO VOTE

Section 1
COMPETENCE TO VOTE

Art. 7. Every citizen who has completed his twenty-second year shall be entitled to vote in the election of national deputies.

Art. 8. The following persons shall not be entitled to vote:

1. Persons under a legal disability;
2. Persons claiming citizenship of a foreign State;
3. Persons disqualified from public service.

Art. 9. The following persons may not exercise their right to vote:

1. Public security officials and chiefs, commissioners, deputy commissioners and police officers;
2. Officers, regular officers and regular non-commissioned officers;
3. Military employees and judges of courts martial;
4. Military students;
5. Soldiers under arms.

Section 2
ELECTORAL ROLLS

1. *Principles*

Art. 10. Every electoral district shall have a permanent electoral roll.

Art. 11. Every citizen competent to vote shall be entered on the electoral roll of his place of residence or of the place in which he has sojourned for at least three months.

Regular employees of the State, provinces, special administrations or municipalities, or State economic organizations and undertakings (but not persons employed temporarily or intermittently), and persons living with them, shall, regardless of length of sojourn, be entered on the electoral roll of the place in which they are on duty.

Citizens in foreign countries shall, at their request, be entered on the roll of the electoral district that they designate, or in that of their last place of residence.

[The following articles provide that registration is a condition for voting, that each vote may be entered on only one electoral roll, and that a voter may vote in only one electoral district. Further articles are devoted to the preparation of electoral rolls and the voters' cards which each voter shall be given as proof of his identity.]

PART THREE
THE RIGHT TO BE ELECTED

Section 1
COMPETENCE TO BE ELECTED

Art. 33. Every citizen who has attained the age of thirty years may be elected a national deputy.

Art. 34. The following persons may not be elected national deputies:

1. Those under a legal disability;
2. Those unable to read and write Turkish;
3. Those claiming foreign citizenship;
4. Those in the official employ of a foreign country;
5. Those who have been sentenced to penal servitude for a fixed term or for life, to imprisonment for a term exceeding five years, or to exile;

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[1] Turkish text: *Milletvekilleri Seçimi Kanunu*, Ankara, 1950. English translation from the Turkish text by the United Nations Secretariat. The Act was published in *Resmî Gazete* (Official Gazette) No. 1438, of 21 February 1950. It supersedes all previous electoral laws, more particularly the Election of National Deputies Act No. 4918, of 5 June 1946, as amended by Act No. 5258, of 9 July 1948. (Excerpts from the previous Act were published in *Yearbook on Human Rights for 1948*, p. 391.)

6. Those convicted of theft, counterfeiting, fraud, breach of trust or fraudulent bankruptcy;
7. Those disqualified from public service.

Section 2

CANDIDACY

Art. 35. Every citizen qualified to be elected may be a candidate for the office of national deputy . . .

[The next articles contain details on the nomination of candidates by political parties or by fifty voters by means of a written petition bearing the candidate's notarized signature. These articles also deal with incompatibilities between nomination to a candidacy for the office of national deputy and other public offices.]

Section 3

ELECTION PROPAGANDA

Art. 40. Election propaganda shall be unrestricted, within the provisions of this Act.

Art. 41. It shall be prohibited to make campaign speeches during election periods before gatherings on the public streets, places of worship, public buildings and establishments in which public business is conducted, and in public squares other than those designated by the municipality.

The municipalities shall fix the places in which campaign speeches may be made before gatherings, and notify the electoral boards thereof. These shall be selected preferably among places customarily used for assemblies, in such a manner as not to hinder business and market activities, and, if the municipality is supplied with electricity, among places so equipped.

Upon application by political parties for authorization to make campaign speeches before gatherings, the electoral board shall determine by lot the place, order, date and hour for the gathering and notify the persons concerned.

One day weekly shall be set aside in the above manner for independent candidates.

Art. 42. No campaign propaganda shall be carried out between sunset and sunrise in the public places mentioned in the foregoing articles.

Art. 43. Closed meetings for the purpose of delivering campaign speeches may be attended only by national deputies, not more than five card-holding representatives of parties, and the voters and candidates of the respective constituency and their proxies.

Art. 44. Persons arranging a closed meeting shall set up a committee of three persons before the meeting and notify the nearest police chief and officials.

It shall be the function of such committee at the meeting to preserve order; prevent any illegal action; and prohibit any statement, speech or action that is contrary to public order and morals or that incites to crime.

It shall be the responsibility of the committee members to prevent the occurrences referred to in the foregoing paragraph, and if they are unable to do so, to call the police. The police shall take the action necessary to enable the members of the committee to perform their duties. The holding of meetings not arranged by a committee shall be prohibited. The committee may permit persons attending the meetings to speak, and may limit the length of speeches.

Art. 45. The radio broadcasts of each political party may not exceed ten minutes daily.

The foregoing provision shall not apply to political parties which have not nominated candidates for at least five constituencies.

A political party that has nominated candidates in more than twenty constituencies may avail itself twice daily of the broadcasting time indicated in the first paragraph.

Art. 46. The headquarters of political parties desiring to broadcast shall so notify the Directorate-General of the Press, Broadcasting and Tourism in writing not later than the morning of the twenty-first day before election day.

Art. 47. Election propaganda may be broadcast from the morning of the tenth day to the morning of the third day before election day.

Art. 48. The Directorate-General of Press, Radio and Tourism shall fix the order and time of broadcasts of political parties applying for radio time by drawing lots in the presence of representatives of each of the parties. Lots shall be drawn not less than fifteen days before the vote.

If a political party desires to protest the drawing of lots, it may apply to the chairman of the provincial electoral board within twenty-four hours.

The chairman of the provincial electoral board shall make a definitive ruling on such protest.

Art. 49. The use of loud-speakers for campaign purposes shall be unrestricted, subject to the provisions of article 42, provided that it does not cause public disturbance or inconvenience.

The chairman of the provincial electoral board may, on the recommendation of the president of the municipality in the case of cities and towns, and of the village head in the case of villages, issue an order prohibiting the method of publicity mentioned in the foregoing paragraph.

Art. 50. It shall be prohibited to hang or affix campaign posters during the last three days preceding election day.

Art. 51. It shall be prohibited to reproduce the Turkish flag, religious writings, Arabic letters or pictures of any kind on campaign posters.

Art. 52. During the election period only, printed matter such as campaign posters and handbills shall be exempt from all taxes and duties.

Art. 53. Campaign posters may be affixed during the election period only in the places designated by the municipal authorities in cities and towns and by the council of elders in villages.

Equal space in such places shall be allotted to every political party and independent candidate, and the places designated shall be separated from one another by a thick painted line or by stripes.

Such spaces shall be allotted in the order of application to the municipal authorities or, in villages, to the council of elders. Application must be made not later than the evening of the eighth day before election day. In the case of applications made simultaneously, the order shall be determined by drawing lots.

If a political party or candidate does not use the space allotted, such party or candidate shall be liable for payment of the expenses incurred by the municipality or village in setting aside the space in question.

Art. 54. It shall be prohibited to hang, affix or exhibit posters in places other than those mentioned in the foregoing article. In case of infraction the electoral board shall order the posters to be destroyed.

Art. 55. The distribution of printed matter such as handbills for campaign purposes during the election period shall be subject to the provisions of article 51.

Persons distributing such material must be qualified to vote.

Persons in official employ or service may not distribute such material.

Art. 56. As from the second day before election day it shall be prohibited to distribute or post any kind of printed matter such as posters, manifestoes, circulars, open letters, etc.

PART IV

[Part IV deals with election procedure, the preparation of elections, the fixing of the political areas and the appurtenances for voting. Other articles provide for the polling procedure, the counting of the votes, objections to election procedure, the recording of the election returns and penal provisions for electoral offences.]

SICKNESS AND MATERNITY INSURANCE ACT [1]

Act No. 5502 of 4 January 1950

BASIC PRINCIPLES

Art. 3. The beneficiary shall be entitled to the following sickness benefits:

I. In cases of illness other than those governed by the Industrial Accidents, Occupational Diseases and Maternity Insurance Act (No. 4772):

(*A*) Medical assistance;

(*B*) Orthopaedic treatment and the provision, fitting and replacement of prosthetic devices other than oral;

(*C*) Daily cash benefit during temporary incapacity for work.

II. Maternity benefit for an insured woman or the uninsured wife of an insured man:

(*A*) Antenatal examination;

(*B*) Medical assistance at confinement;

(*C*) Cash allowance for nursing assistance;

(*D*) Payment of compensation to the insured woman for the period of absence from employment before and after confinement.

Art. 4. The Workers' Insurance Institute shall collect a premium in accordance with the provisions of this Act to defray the cost of all assistance and payments required under sickness and maternity insurance and all administrative expenses.

Art. 5. The calculation of premiums to be collected and payments to be granted in accordance with this Act shall be based on the total monthly wages of the insured person. Any additional sums to be paid to the insured person by way of emolument, such as bonuses, premiums and cost-of-living allowances, shall be included in the total monthly wages.

Art. 6. The daily wage on which the calculation of payments to be granted under this Act is based shall be one twenty-sixth part of the wage received by the insured during a full calendar month, one month before the beginning of the illness or three months before confinement.

If during the month on which the calculation of the daily wage is based the insured person worked in more

[1] Turkish text in *Resmî Gazete* (Official Gazette) No. 7402, of 10 January 1950. English translation from the Turkish text by the United Nations Secretariat. The Act came into operation on 1 March 1950. The complete text of the Act is to be found in: *Legislative and Administrative Series: Child, Youth and Family Welfare* (published by the United Nations), 1950, Turkey 1.

than one place of employment covered by this Act, the monthly wage shall be the total wage received in such places of employment.

If an insured person for any reason did not work during part of the month on which the calculation of the daily wage is based, the calculation of his payments shall be based on the figure for the daily wage obtained by dividing his total wage during that month by the number of days worked.

If the insured did not work at all during the calendar month one month before the beginning of an illness or three months before confinement, the calculation of his monthly wage shall be based on the last preceding month during which he worked.

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PART I

MEDICAL ASSISTANCE

Art. 8. The insured shall be entitled in case of sickness to the following medical assistance:

(*A*) Attendance by a medical practitioner and the necessary diagnosis and treatment;

(*B*) Admittance to and care in a medical institution;

(*C*) Provision of the necessary medicaments and, for the duration of the treatment, of the necessary therapeutic appliances;

(*D*) When a patient must be sent elsewhere for examination and treatment, the payment of travelling expenses (the costs of the patient's sojourn before entering an institution for treatment, provided that it is restricted to necessary sojourn, shall also be paid subject to the rules laid down by the Ministry of Finance and Labour).

Art. 9. The medical assistance provided under this Act in case of sickness shall continue until the recovery of the insured person.

The period of such assistance shall not exceed ninety days from the date on which the insured was placed under treatment by the institution. For insured persons who have paid sickness insurance premiums for at least 160 days during the year preceding the date on which the sickness was reported the period of assistance shall be 180 days.

If the institution finds in accordance with a medical report that the disability may be removed or materially reduced if treatment is continued, the aforesaid periods may be extended by ninety days.

PART II

PAYMENTS

Art. 15. An insured person temporarily incapacitated from work by sickness, shall, if he has worked and paid premiums at least 160 days during the year preceding the date on which his temporary incapacity for work began, be paid compensation for each day of incapacity except Sundays, as from the fourth day of such temporary incapacity for work.

If the temporary incapacity for work exceeds fifteen days, compensation shall also be paid for the first three days of temporary incapacity.

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ACT CONCERNING LABOUR COURTS[1]

Act No. 5521 of 30 January 1950

Art. 1. Labour courts shall be established, where necessary, for the purpose of settling disputes arising out of labour contracts between persons who are workmen within the meaning of the Labour Act (except persons engaged in operations excepted by paragraphs C, D or E of article 2 of that Act as amended) and employers or employers' agents, and out of any kind of claim made in virtue of the Labour Act.

The said courts shall hear:

(*A*) Actions instituted by or against trade unions under paragraph E of article 4 of Act No. 5018;

(*B*) Appeals and actions arising out of disputes between the Labour Insurance Society and insured persons or persons entitled in their stead.

In a place where no labour court has been established, such matters shall be heard according to the principles and rules of this Act, but without representative members, by the court having jurisdiction in that place.

The foregoing paragraph shall also apply if a labour court sits but is prevented by some cause of fact or law from performing its functions.

Art. 2. A labour court shall be constituted by a judge having jurisdiction in such business as president, and by a representative of the employers and a representative of the workmen appointed respectively by the Ministries of Justice and Labour from twelve candidates elected by the local or, if there be none, by the nearest chamber of commerce and industry, and from a like number elected by secret ballot by the delegates of the local workers elected according to the Labour Act.

[1] Turkish text in *Resmî Gazete* (Official Gazette) No. 7424, of 4 February 1950. English translation from the Turkish text by the United Nations Secretariat. The Act came into operation on 1 February 1950.

The Ministries of Justice and Labour shall determine the form and manner in which the elections shall be conducted.

If a regular member is absent, the president shall call upon the alternate of that member to sit on the court.

Representatives shall hold office for two years.

Art. 4. A member of a labour court must:

(*a*) Be a Turkish national;

(*b*) Be thirty or more years of age;

(*c*) Be able to speak, read and write Turkish;

(*d*) Not have been deprived of civic or political rights;

(*e*) Not have been finally convicted of an offence punishable by severe imprisonment or compromising his good name and reputation or sentenced to imprisonment for a term exceeding three months;

(*f*) Have been for a continuous period of at least one year an employer or employer's agent, or have worked as a workman, in the particular place.

Art. 5. Every action instituted in a labour court may be heard by the court of the place which, under the Turkish Civil Code, would have been regarded on the date when the action was instituted as the place of residence of the defendant, or by the court having jurisdiction over the place of employment of the workman. Any agreement to the contrary shall be void.

Art. 6. A motion to unseat a member of the court representing the workmen or the employers may be made in writing or orally. If it is made orally, the substance of the motion shall be entered in the record and signed by the mover.

A motion to unseat a member shall be ruled upon by the court with that member's alternate sitting; or, if the alternates also are challenged, then by the judge sitting alone.

No appeal or motion to set aside shall be admissible against an order upholding a motion to unseat, but an appeal shall lie against an order overruling such a motion.

An appeal shall be heard and finally decided by the higher criminal court of the area in which the labour court is situated.

If the whole court is unseated, or the judge and one member are unseated, the disposal of the case shall follow the Code of Judicial Procedure according to the rank of the judge.

Art. 11. No service, due or charge shall be made in respect of a matter before a labour court.

Art. 12. A regular or alternate member of a labour court representing either the employers or the workmen who loses any of his qualifications for that office or who, being summoned to perform his functions, remains absent without excuse for a continuous period of two months, shall be dismissed from his office by order of the higher criminal court of the area in which the labour court is situated.

For this purpose the labour court shall notify the law officer of the higher criminal court in writing and shall serve a copy of the notice on the member affected thereby.

A member thus ordered to be dismissed from office may appeal within three days. The Law Officer of the Republic shall forward the notice or, if there be none, the member's appeal to the higher criminal court, which shall decide the matter within one week, and such decision shall be final.

Art. 13. A member of a labour court representing either the employers or the workmen who fails to fulfil his functions may, after the conclusion of the proceedings mentioned in article 12 hereof, be sentenced by the higher criminal court to pay a fine of 5 to 50 pounds Turkish, which penalty shall be a disciplinary penalty.

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UNION OF SOUTH AFRICA

LEGISLATION

ACT TO PROVIDE FOR THE ESTABLISHMENT OF GROUP AREAS, FOR THE CONTROL OF THE ACQUISITION OF IMMOVABLE PROPERTY AND THE OCCUPATION OF LAND AND PREMISES, AND FOR MATTERS INCIDENTAL THERETO[1]

(Assented to 24 June 1950)

2. (1) For the purposes of this Act, there shall be the following groups:[2]

(*a*) A white group, in which shall be included any person who in appearance, obviously is, or who is generally accepted as a white person, other than a person who although in appearance obviously a white person, is generally accepted as a coloured person, or who is in terms of sub-paragraph (ii) of paragraphs (*b*) and (*c*) or of the said sub-paragraphs read with paragraph (*d*) of this sub-section and paragraph (*a*) of sub-section (2), a member of any other group;

(*b*) A native group, in which shall be included—

(i) any person who in fact is, or is generally accepted as a member of an aboriginal race or tribe of Africa, other than a person who is, in terms of sub-paragraph (ii) of paragraph (*c*), a member of the coloured group; and

(ii) any woman, to whichever race, tribe or class she may belong, between whom and a person who is, in terms of sub-paragraph (i), a member of a native group, there exists a marriage[3] or who cohabits with such a person;

(*c*) A coloured group, in which shall be included—

(i) any person who is not a member of the white group or of the native group; and

(ii) any woman, to whichever race, tribe or class she may belong, between whom and a person who is, in terms of sub-paragraph (i), a member of the coloured group, there exists a marriage, or who cohabits with such a person; and

(*d*) Any group of persons which is under sub-section (2) declared to be a group.

(2) The Governor-General may by proclamation in the *Gazette*—

(*a*) Define any ethnical, linguistic, cultural or other group of persons who are members either of the native group or of the coloured group; and

(*b*) Declare the group so defined to be a group for the purposes of this Act or of such provisions thereof as may be specified in the proclamation, and either generally or in respect of one or more group areas, or in respect of the controlled area[4] or of any portion thereof so specified, or both in respect of one or more group areas and of the controlled area or any such portion thereof.

(3) A proclamation under paragraph (*a*) of sub-section (2) may provide that only persons who have in accordance with regulation been registered on application, or who have been registered under any other law, as members of the group referred to in the proclamation, shall be members thereof.

(4) A member of the native group or of the coloured group who is or becomes a member of any group defined under paragraph (*a*) of sub-section (2) shall, to the extent required to give effect to any proclamation under paragraph (*b*) of the said sub-section, be deemed not to be a member of the native group or of the coloured group, as the case may be.

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[1] Act No. 41, 1950. English text in *Statutes of the Union of South Africa* 1950, pp. 406–469.

[2] According to section 1, "group" means either the white group, the coloured group or the native group referred to in section *two*, and includes, to the extent required to give effect to any relevant proclamation under sub-section (2) of the said section, any group of persons who have under the said section been declared to be a group.

[3] According to section 1, "marriage" includes a union, recognized as a marriage (whether or not of a monogamous nature) in native law or custom or under the tenets of the religion of either of the parties to the union.

[4] According to section 1, "controlled area" means any area which is not a group area or a scheduled native area, location, native village, coloured persons' settlement, mission station or communal reserve referred to in paragraph (*c*) of sub-section (3) of section *three*, and includes, except for the purposes of section *ten*, any specified area referred to in section *eleven*: Provided that any group area which is not in terms of a proclamation under paragraph (*a*) of sub-section (1) of section *three* a group area for occupation, shall form part of the controlled area for the purposes of the provisions of this Act relating to the occupation of land or premises in the controlled area, and that any group area which is not in terms of a proclamation under paragraph (*b*) of the said sub-section a group area for ownership, shall form part of the controlled area for the purposes of the provisions of this Act relating to the acquisition of immovable property in the controlled area.

3. (1) The Governor-General may, whenever it is deemed expedient, by proclamation in the *Gazette*—

(*a*) Declare that as from a date specified in the proclamation, which shall be a date not less than one year after the date of the publication thereof, the area defined in the proclamation shall be an area for occupation by members of the group specified therein; or

(*b*) Declare that, as from a date specified in the proclamation, the area defined in the proclamation shall be an area for ownership by members of the group specified therein.

(2) Proclamations under paragraphs (*a*) and (*b*) of sub-section (1) may be issued also in respect of the same area.

(3) No proclamation shall be issued under this section—

(*a*) Except with the prior approval in each case by resolution of both Houses of Parliament: Provided that any such proclamation may be issued without such approval—

(i) if it is issued before the expiration of a period of five years from the date of promulgation of this Act, in respect of a group area for a group other than the native group or a group defined under sub-section (2) of section *two* consisting of members of the native group, in the province of the Cape of Good Hope or of Natal; or

(ii) if it is issued in respect of an area in the province of the Transvaal for the coloured group or a group defined under sub-section (2) of section *two*, consisting of members of the coloured group, the whole or the greater part of which consists of an area assigned or set apart, as at the commencement of this Act, under paragraph (*d*) of section *two* of Law No. 3 of 1885 of the Transvaal or section *ten* of the Municipal Amending Ordinance, 1905 (Ordinance No. 17 of 1905) of the Transvaal, or of land described in sub-section (10) of section *one hundred and thirty-one* A of the Precious and Base Metals Act, 1908 (Act No. 35 of 1908) of the Transvaal;

(*b*) Unless in each case the Minister[1] has considered a report by the board and has consulted the Administrator of the province concerned, and in the case of an area situated wholly or partly on land which, in terms of any law relating to mining, is proclaimed land or deemed to be proclaimed land or upon which prospecting, digging or mining operations are being carried on, also the Minister of Mines, and in the case of an area situated wholly or partly within a controlled area as defined in section *one* of the Natural Resources Development Act, 1947 (Act No. 51 of 1947), also the Natural Resources Development Council established by section *two* of the said Act;

(*c*) By which there would be included in any group area the whole or any part of—

(i) Any land situated in an area which is a scheduled native area or a released area in terms of the Native Trust and Land Act, 1936 (Act No. 18 of 1936);

(ii) Any location, native village or native hostel referred to in section *two* of the Natives (Urban Areas) Consolidation Act, 1945 (Act No. 25 of 1945), or any area approved for the residence of natives under paragraph (*b*) of sub-section (2) of section *nine* of the said Act;

(iii) A coloured persons' settlement as defined in section *one* of the Coloured Persons' Settlement Act, 1946 (Act No. 7 of 1946);

(iv) Any mission station or communal reserve to which the provisions of the Mission Stations and Communal Reserves Act, 1909 (Act No. 29 of 1909) of the Cape of Good Hope, or of the said Act read with section *sixteen* of the Coloured Mission Stations and Reserves Act, 1949 (Act No. 12 of 1949), apply; or

(v) Any area which is a national park in terms of the National Parks Act, 1926 (Act No. 56 of 1926), or any land which forms part of such a park.

4. (1) As from the date specified in the relevant proclamation under paragraph (*a*) of sub-section (1) of section *three*, and notwithstanding anything contained in any special or other statutory provision relating to the occupation of land or premises, no disqualified person[2] shall occupy and no person shall allow any disqualified person to occupy any land or premises in any group area to which the proclamation relates, except under the authority of a permit.

(2) The provisions of sub-section (1) shall not render it unlawful for any disqualified person to occupy land or premises in any group area—

(*a*) As a *bona fide* servant or employee of the State, or a statutory body or as a domestic servant of any person lawfully occupying the land or premises;

[1] According to section 1, "Minister" means the Minister of the Interior.

[The following text of this definition refers to cases in which a reference to the Minister shall be a reference to the Minister of Native Affairs.]

[2] According to section 1, "disqualified person", in relation to immovable property, land or premises in any group area, means a person who is not a member of the group specified in the relevant proclamation under section *three*, and in relation to any immovable property, land or premises in the controlled area, means a person who is not a member of the same group as the owner of such property, land or premises, or if the owner is a statutory body other than a municipality in the province of the Cape of Good Hope, of the same group as the majority of the members of such body or in the case of any such municipality, of the same group as the majority of the members of the council thereof, or if the owner is a company, of the same group as any person by whom or on whose behalf or in whose interest a controlling interest is held or deemed to be held in such company.

(*b*) As a *bona fide* visitor for a total of not more than ninety days in any calendar year of any person lawfully residing on the land or premises or as a *bona fide* guest in an hotel;

(*c*) As a *bona fide* patient in a hospital, asylum, or similar institution controlled by the State or a statutory body or in any such institution in existence at the commencement of the Act, which is aided by the State, or as an inmate of a prison, work colony, inebriate home or similar institution so controlled; or

(*d*) As the *bona fide* employee (other than a domestic servant) of any person or as the husband, wife, minor child or dependant of any person (including a domestic servant or employee) who is lawfully occupying such land or premises: Provided that the provisions of this paragraph shall apply in respect of any group area or any part of any group area only if the Governor-General has by proclamation in the *Gazette*, declared them to apply in respect of that group area, or that part thereof, and only to the extent and subject to the conditions (if any) which may be specified in the proclamation.

(3) Any provision in the title deed of any immovable property situate in any group area referred to in sub-section (1) prohibiting or restricting the occupation or use of such property by persons who are members of the group for which that area has been established shall lapse as from the date referred to in the said sub-section, and no such provision shall thereafter be inserted in the title deed of any immovable property in such group area.

5. (1) If any group area is in terms of a proclamation under paragraph (*b*) of sub-section (1) of section *three* a group area for ownership—

(*a*) No disqualified person and no disqualified company[1] shall, on or after the relevant date specified in the proclamation, acquire any immovable property situate within that area, whether or not in pursuance of any agreement or testamentary disposition entered into or made before that date, except under the authority of a permit: Provided that the provisions of this paragraph shall not render unlawful any acquisition of immovable property by a statutory body;

(*b*) No disqualified company which is on the said date the holder of any immovable property situate within that area, shall hold that property after the expiration of a period of ten years from the said date, except under the authority of a permit;

(*c*) No company which on or after the said date becomes or again becomes a disqualified company, shall hold any immovable property situate within that area which it has on or after the said date acquired otherwise than in pursuance of a permit, except under the authority of a permit;

(*d*) Any provision in the title deed of any immovable property situate in that area prohibiting or restricting the acquisition of such property by persons who are members of the group for which that area has been established, shall lapse as from the said date, and no such provision shall thereafter be inserted in the title deed of any immovable property situate in that area.

(2) Sub-section (1) shall apply notwithstanding anything contained in any special or other statutory provision relating to the acquisition or holding of immovable property, but the provisions of paragraph (*b*) of sub-section (1) shall not render it unlawful for any company engaged in mining operations or in operations carried on in a factory as defined in the Factories, Machinery and Building Work Act, 1941 (Act No. 22 of 1941), in which machinery acquired at a price of not less than five thousand pounds has been installed, to hold any immovable property used by such company in connexion with such operations.

(3) A testamentary disposition or intestate succession by which any person would acquire or hold any immovable property in contravention of sub-section (1) shall, unless the beneficiary is authorized to acquire or hold such property under permit, be deemed to be a testamentary disposition of or succession in respect of the net proceeds of such property, and it shall be the duty of the executor of the estate of the deceased to realize the property within a period of one year from the date of his death, or such further period as the Minister may allow.

6. (1) The Minister may by notice in the *Gazette*, establish for any group area (other than an area for the white group), a governing body to be constituted in accordance with regulation.

(2) Such governing body may consist wholly or mainly of members of the group for which the group area has been established, and shall have such powers and functions as may be prescribed by regulation, and

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[1] According to section 1, "disqualified company", in relation to immovable property, land or premises means a company wherein a controlling interest is held or deemed to be held by or on behalf or in the interest of a person who is a disqualified person in relation to such property, land or premises.

"Controlling interest", in relation to any company, means—

(*a*) A majority of its shares; or
(*b*) Shares representing more than half its share capital; or
(*c*) Shares of a value in excess of half the aggregate value of all its shares; or
(*d*) Shares entitling the holders thereof to more than half its profits or assets; or
(*e*) Shares entitling the holders thereof to a majority or preponderance of votes; or
(*f*) Any claim arising from a loan, for an amount in excess of half its share capital, or debentures for such an amount; or
(*g*) The power to exercise, directly or indirectly, by holding any interest, whether or not of the nature referred to in paragraphs (*a*) to and including (*f*), in any other company, or otherwise, any control whatsoever over the activities or assets of the company.

shall exercise its powers and functions, where the group area concerned is wholly or partly within the area of jurisdiction of a local authority, subject to such supervision (if any) by that local authority as may be prescribed by regulation, and where the group area concerned is partly within the area of jurisdiction of one local authority, and partly within the area of jurisdiction of any other local authority or wholly outside the area of jurisdiction of any local authority, subject to such supervision (if any) by a local authority designated by the Minister, as may be so prescribed.

(3) The establishment of a governing body under this section shall not divest any local authority, in respect of the group area concerned, of any powers or functions not vested in such governing body.

(4) The Minister shall not exercise his powers under this section without the concurrence of the Administrator of the province who shall consult any local authority concerned.

7. (1) The Minister may, if he is of opinion that any area referred to in paragraph (*d*) of article *two* of Law No. 3 of 1885 of the Transvaal, or in section *ten* of the Municipal Amending Ordinance, 1905 (Ordinance No. 17 of 1905) of the Transvaal or any group area (other than an area for the white group) which is situate within the area of jurisdiction of an urban local authority, is not properly administered by that local authority, request the Administrator of the province concerned to cause an inquiry to be held (at which the said local authority shall be afforded an opportunity of being heard) and thereafter the said Administrator may, by notice in writing, call upon such local authority, forthwith to carry out any work defined in the said notice which the said local authority has power to carry out and which in the opinion of the Administrator, is necessary for the proper administration of that area and may reasonably be required to be carried out by the said local authority, and if such local authority fails to comply with that notice, the Administrator may himself cause that work to be carried out and may for that purpose authorize any person to perform any act which the said local authority could lawfully perform.

(2) The Administrator may recover from the local authority concerned any expenditure incurred by him under this section—

(*a*) By action in a competent court against the local authority in default; or

(*b*) By levying a special rate upon all rateable property within the area of jurisdiction of the local authority in default; or

(*c*) By deduction from any subsidy, grant or other moneys payable out of the Consolidated Revenue Fund or by the Administrator to the local authority in default,

or by all three or any two of such methods of recovery, and the Administrator's certificate shall be proof of the amount due by the local authority under this section, subject to an appeal to the Minister, whose decision shall be final.

8. (1) No person shall, except under the authority of a permit enter into any agreement, whether on his own behalf or on behalf or in the interest of any other person, in terms whereof any disqualified person or any disqualified company acquires or purports to acquire or would acquire any immovable property situate in the controlled area.

(2) Sub-section (1) shall not apply in respect of the acquisition of immovable property in a released area as defined in the Native Trust and Land Act, 1936 (Act No. 18 of 1936), by a native as so defined, or in respect of any acquisition of immovable property which is governed by the said Act or the Natives (Urban Areas) Consolidation Act, 1945 (Act No. 25 of 1945).

(3) For the purposes of sub-section (1) a sheriff, deputy-sheriff, messenger of the court, trustee, executor, liquidator, curator or administrator dealing with immovable property in his capacity as such, or any other person dealing with immovable property in a representative capacity, shall be deemed to be acting on behalf or in the interest of the person in whose name the property is registered.

9. (1) If at the commencement of this Act a company of any group holds immovable property in the controlled area and thereafter becomes a company of another group, it shall not hold that property, except under the authority of a permit.

(2) If after the commencement of this Act a company of any group acquires immovable property in the controlled area, and thereafter becomes a company of another group, it shall not hold that property, except under the authority of a permit.

(3) For the purposes of this section a company shall be a company of a group, if a controlling interest in that company is held or deemed to be held by or on behalf or in the interest of a member of that group.

10. (1) No disqualified person shall occupy and no person shall allow any disqualified person to occupy any land or premises in the controlled area, except under the authority of a permit.

(2) The provisions of sub-section (1) shall not render it unlawful for any disqualified person to occupy any land or premises—

(*a*) In pursuance of any right conferred by or under any statute;

(*b*) Under any agreement lawfully entered into or under any testamentary disposition made on or before

the 24th day of April 1950, or in the case of land or premises which have by virtue of any proclamation under section *thirty-three*, ceased to be subject to the operation of a proclamation under section *eleven*, under any agreement lawfully entered into or under any testamentary disposition made while the land or premises were subject to the operation of such last-mentioned proclamation, or under any renewal of any such agreement to which any party thereto is in terms thereof entitled;

(*c*) By virtue of any prescriptive title acquired at or before the commencement of this Act;

(*d*) Under any arrangement entered into under the Housing Act, 1920 (Act No. 35 of 1920) or under any regulations made under the Housing (Emergency Powers) Act, 1945 (Act No. 45 of 1945), if he is a member of the same group as the class of persons for which the dwelling or other building in question is intended;

(*e*) As a *bona fide* servant or employee of the State, or a statutory body or as a domestic servant of any person lawfully occupying the land or premises;

(*f*) As the *bona fide* visitor for a total of not more than ninety days in any calendar year of any person lawfully residing on the land or premises or as a *bona fide* guest in an hotel;

(*g*) As a *bona fide* patient in a hospital, asylum, or similar institution controlled by the State or a statutory body or in any such institution in existence at the commencement of this Act, which is aided by the State, or as an inmate of a prison, work colony, inebriate home, or similar institution so controlled;

(*h*) As the *bona fide* employee (other than a domestic servant) of any person, or as the husband, wife, minor child or dependant of any person (including a domestic servant or employee), who is lawfully occupying such land or premises: Provided that the Governor-General may by proclamation in the *Gazette* declare that the provisions of this paragraph shall apply in any portion of the controlled area defined in the proclamation, only to the extent and subject to the conditions (if any) which may be specified in the proclamation; or

(*i*) Under any arrangement for the accommodation of any native labourer as defined in the Native Labour Regulation Act, 1911 (Act No. 15 of 1911), after his recruitment and before his arrival at the place where he is to work, or after his departure, on the expiry of his term of employment, from the said place, and before his arrival at the place of his recruitment, by an employer or labour agent, as so defined, lawfully occupying such land or premises.

(3) The Governor-General may by proclamation in the *Gazette* exclude any area defined in the proclamation, for the period specified therein, from the provisions of sub-section (1).

(4) A testamentary disposition by which any person would acquire a right to occupy any land or premises in contravention of sub-section (1) shall be deemed to be a testamentary disposition of the net proceeds of the realization of such right and unless the beneficiary is authorized to occupy such land or premises under permit it shall be the duty of the executor of the estate of the deceased to realize such right within a period of six months from the date of the death of the testator.

11. (1) The Governor-General may by proclamation in the *Gazette* declare that the provisions of sections *twelve* and *thirteen* shall, as from a date specified in the proclamation (in the said sections referred to as the specified date) apply in any portion of the controlled area so specified (in the said sections referred to as a specified area).

(2) As from such date, the said provisions shall, notwithstanding anything contained in any special or other statutory provision relating to the occupation of land or premises, apply in any such portion of the controlled area, and the provisions of section *ten* shall, subject to the provisions of sub-section (2) of section *twelve* while the first-mentioned provisions so apply, be suspended in respect of that portion of the controlled area.

(3) Upon the application of the provisions of this Act under sub-section (1) of section *thirty-seven* in respect of any area in the province of Natal which consists of or includes the municipal area of Durban, it shall be deemed that a proclamation under this section has been issued, declaring that the provisions of sections *twelve* and *thirteen* shall apply in the said municipal area, as from the date from which the provisions of this Act are applied in respect of such first-mentioned area.

(4) Upon the establishment of any group area, the relevant proclamation issued or deemed to have been issued under this section shall cease to have any effect in respect of so much of any such portion of the controlled area as may be comprised by or included in that group area.

12. (1) As from the specified date, no person who is a member of any group shall occupy and no person shall allow any such person to occupy any land or premises in a specified area which was not lawfully occupied and is not under section *thirteen* deemed to have been occupied at the said date by a person who is a member of the same group, except under the authority of a permit.

(2) The provisions of paragraphs (*e*), (*f*), (*g*), (*h*) and (*i*) of sub-section (2) of section *ten* shall *mutatis mutandis* apply in respect of the occupation of land or premises in a specified area.

[Section 13 contains provisions concerning buildings erected or completed after a specified date, and buildings, land or premises unoccupied at that date, and also makes provision for the issuance of certain proclamations by the Governor-General.]

14. (1) The Minister may, subject to the provisions of sub-section (2), in his discretion, on written application made therefor—

(*a*) Direct that a permit be issued, subject to such conditions as he may determine (including, in the case of a permit authorizing the acquisition of immovable property, a condition providing that the holder of the permit shall not dispose of the property concerned to any person other than a person belonging to the same group as the person from whom such holder acquires the property), to be signed by an officer thereto appointed by him, authorizing—

(i) The acquisition or holding of immovable property in a group area or in the controlled area; or

(ii) The occupation of or the granting of permission to occupy any land or premises in a group area, in the controlled area or in a specified area referred to in section *twelve*; and

(*b*) Direct that the conditions of a permit be amended or that it shall be available for a portion only of the land or premises in respect of which it has been issued.

(2) The Minister shall not direct that any permit be issued under sub-section (1)—

(*a*) Authorizing the acquisition or holding of immovable property or the occupation of land or premises in a group area unless he is of opinion that the refusal of the permit would cause undue hardship or that the issue of the permit would be in the interest of the group for which the group area has been established; or

(*b*) Authorizing any person to acquire, hold or occupy any land or premises contrary to any provision in the title deed which prohibits or restricts the acquisition, holding or occupation of the land or premises by persons belonging to any group or class.

(3) In directing that a permit be issued or that the conditions thereof be amended under sub-section (1) and in making a determination under section *thirteen*, the Minister may take into consideration the relative needs of any group concerned, in regard to housing, the amenities of life and educational and recreational facilities, trading and industrial undertakings, the situation of the immovable property, land or premises in relation to other property, land or premises owned or occupied by members of any group, and any other matters which in his opinion are relevant to the question whether or not any such permit should be issued or an amendment of the conditions thereof should be made or how any such determination should be made.

(4) A permit authorizing the holding of immovable property or the occupation of land or premises, may be issued for an indefinite or a specified period or until withdrawn at the discretion of the Minister.

[The following sub-sections determine to which persons and in respect of what kind of property permits may be issued; deal with fees for the issuance of a permit; and provide for the lapse and revocation of a permit.]

15. (1) Whenever a private company holds any immovable property, any share in or debenture of that company held by or pledged to a person who or a company which is a disqualified person or a disqualified company in relation to that property (other than a banking institution as defined in the Banking Act, 1942 (Act No. 38 of 1942)), or by or to any person on behalf or in the interest of such a person or company, may, after not less than three months' notice in writing to the person or company concerned, be declared by the Minister to be forfeited to the State.

(2) It shall be the duty of the secretary and every director of any company referred to in sub-section (1), which holds any immovable property, to notify the register of companies whenever any person who or company which is a disqualified person or disqualified company in relation to that property or any other person on behalf or in the interest of such a person or company holds any share in or debenture of such first-mentioned company.

[Sub-section 3 deals with cases in which the foregoing provisions do not apply and with procedural matters.]

(5) For the purposes of this section no person shall, by reason of the establishment of a group area, be a disqualified person in relation to immovable property in that area, unless that area is in terms of a proclamation under paragraph (*b*) of sub-section (1) of section *three*, a group area for ownership.

[Section 16 prohibits the acquisition of immovable property in a controlled area without permit by a company a third of whose shares or other securities are issued to bearer.]

[Section 17 authorizes the Minister to make findings as to controlling interests in companies on the basis of information furnished by the company or, in case of failure, on the basis of other information. The finding of the Minister is subject to review.]

18. Any condition or provision in any document whatsoever, empowering or purporting to empower any disqualified person or any disqualified company to exercise any influence upon the transfer of immovable property, shall be null and void: Provided that where at the time such condition or provision was made, the person or company concerned was not a disqualified person or a disqualified company, as the case may be, in relation to the property in question, it shall be revived if such person or company ceases to be a disqualified person or a disqualified company in relation to that property.

19. No person shall acquire or hold on behalf or in the interest of any other person any immovable property which such other person may not lawfully acquire or hold in terms of this Act.

20. (1) If any immovable property—

(*a*) Is acquired or held in contravention of any provision of this Act or is dealt with or used contrary to

any condition of a permit under the authority of which it has been acquired or is held; or

(*b*) Has at the commencement of this Act been acquired or is at the said commencement held in contravention of any provision of any law repealed by this Act or in pursuance of any agreement which is null and void in terms of any such provision, or is registered in favour of any person who is in terms of any such provision debarred from holding it, or is dealt with or used contrary to any condition of a permit or any term of a certificate issued under any such provision, under the authority of which it was acquired or held

the Minister may, after not less than three months' notice in writing to the person concerned and to the holder of any registered mortgage bond over the property, cause the property to be sold either out of hand upon the terms and conditions agreed to by the person concerned and approved by the Minister after consultation with the mortgagee or if the property has not been so sold, within such period, not being less than one month, as the Minister may allow, then by public auction upon such terms and conditions as the Minister may determine.

[The following sub-sections deal with the disbursement of the costs of such sale and with other procedural matters.]

21. (1) A Surveyor-General may at the request of any person and upon payment by such person to the Surveyor-General of such fee as may be prescribed by regulation, issue to that person a certificate, in such form as may be so prescribed, stating that any land described therein, within his area of jurisdiction, is situated within the controlled area or within any specified area referred to in section *eleven*, any defined area referred to in sub-section (3) of section *thirteen* or any group area which is so described.

(2) A certificate issued under sub-section (1) shall in all courts of law and public offices in the Union be *prima facie* evidence of the facts stated therein.

22. (1) The officer in charge of any deeds registry shall not register any transfer of immovable property situated in the controlled area or in any group area, unless the requirements prescribed under paragraph (*d*) of sub-section (1) of section *thirty-six* have been complied with and the transferee has submitted to him such further proof as he may require that the transferee may lawfully acquire and hold such immovable property in terms of this Act.

(2) If any immovable property is registered in the name of any person who may not lawfully acquire or hold such property in terms of this Act, the registration shall, subject to any penalty which may be incurred under this Act and to the provisions of section *twenty*, not be invalid by reason of the provisions of this Act.

23. (1) If any officer entrusted by or under any law with the issue of any licence to carry on any business, trade or occupation, to whom an application for the issue or renewal of any such licence has been made, has reason to believe that the proposed holder of the licence or the person or persons who will be in actual control of the business, trade or occupation to be licensed, may not lawfully carry on the business, trade or occupation on the premises whereon it is to be carried on, he shall not issue or renew the licence unless the applicant proves that such holder and the said person or persons may lawfully carry on the business, trade or occupation on the said premises.

(2) Any such licence issued to or renewed in the name of a person who may not lawfully carry on the business, trade or occupation to which the licence relates, on the premises whereon it is to be carried on, shall be invalid, and if at any time any person who may not lawfully carry on such business, trade or occupation on the said premises, is in actual control of such business, trade or occupation, the licence shall lapse.

(3) Any person whatever may, within two months after the issue or renewal of any such licence, and any applicant for such a licence or the renewal thereof whose application has been refused under sub-section (1), may, within two months after refusal note an appeal against the issue, renewal or refusal, as the case may be, to the magistrate of the district wherein the premises referred to in sub-section (1) are situate.

(4) The magistrate may on dealing with such appeal—

(*a*) Hear evidence in regard to the matter before him;

(*b*) Declare to be invalid or cancel any licence issued by such officer or order such officer to accept, for the purposes of the application for the issue or renewal of a licence, that the proof required by sub-section (1) has been given; and

(*c*) Make *mutatis mutandis* such order as to the costs of the appeal as he could have made if the appeal had been a civil trial in his court.

(5) Such costs shall be taxable, *mutatis mutandis* in the same manner as costs incurred in connexion with such a trial.

(6) The decision of the magistrate on any such appeal shall be subject to an appeal to the provincial division of the Supreme Court having jurisdiction as if it were a civil judgment of a magistrate's court.

24. (1) There is hereby established a board to be known as the Land Tenure Advisory Board, which shall consist of not more than seven members appointed by the Minister.

[The following sub-sections and section 25 deal with qualifications for membership in the board, its meetings and the quorum required.]

26. No proclamation under sub-section (2) of section *two*, sub-section (1) of section *three*, paragraph (*d*) of sub-section (2) of section *four*, paragraph (*b*) of sub-section (2) or sub-section (3) of section *ten*, sub-section (1) of section *eleven* or sub-section (3) of section *thirteen*, shall be issued, withdrawn or amended, and the Minister shall not make any determination under section *thirteen*, or issue or revoke any permit under section *fourteen*, or amend any of its conditions, unless the Minister has considered a report made by the board under section *twenty-seven* in regard thereto.

27. (1) The board shall inquire into and by means of a written report advise the Minister in regard to—

(*a*) The desirability or otherwise of issuing, amending or withdrawing any proclamation referred to in section *twenty-six*;

(*b*) Any determination to be made under section *thirteen*;

(*c*) The issue of or the amendment of the conditions of any permit under section *fourteen*; and

(*d*) Any matter relating to the administration of this Act which the Minister may refer to it.

[The following sub-sections deal with the publication by the board of notices concerning the matter which is being investigated.]

(5) The board shall not advise the Minister in regard to the issue of any proclamation under sub-section (1) of section *three*, without taking into consideration whether or not suitable accommodation will be available outside the area concerned, for persons whose occupation of land or premises in that area would be rendered unlawful by such proclamation.

[The following sections deal with the powers of the Board and with the power of individual members and committees of the board to conduct investigations and with the power of the Minister to assign officers to the Board. Sections 31 and 32 deal with the power of the Minister to appoint inspectors for the purpose of ascertaining facts in connexion with the application of this Act and determine the powers of the inspectors and their duty not to disclose financial or business information gathered in the exercise of their powers.]

33. Whenever the Governor-General or the Minister, as the case may be, is by this Act authorized to issue any proclamation or notice, he may in like manner, whenever it is deemed expedient, withdraw or amend such proclamation or notice including a proclamation deemed to have been issued under section *eleven*.

[Section 34 provides for penalites.]

35. (1) A person who in appearance obviously is a white person shall for the purposes of this Act be presumed to be a member of the white group until the contrary is proved.

(2) A person who in fact is or is generally accepted as a member of an aboriginal race or tribe of Africa shall for the purposes of this Act be presumed to be a member of the native group until the contrary is proved.

(3) A person who is not in appearance obviously a white person and who is not in fact or is not generally accepted as a member of an aboriginal race or tribe of Africa shall for the purposes of this Act be presumed to be a member of the coloured group until the contrary is proved.

(4) Whenever in any proceedings under this Act, whether civil or criminal, it is alleged by or on behalf of the Minister or any officer in charge of a deeds registry or in any indictment or charge that any company is a company wherein a controlling interest is held by or on behalf or in the interest of a member of any group, that company shall be presumed to be such a company, until the contrary is proved.

[Sections 36–38 deal with the power of the Governor to make regulations, with the coming into operation of this Act and repeals and savings.]

ACT TO DECLARE THE COMMUNIST PARTY OF SOUTH AFRICA TO BE AN UNLAWFUL ORGANIZATION; TO MAKE PROVISION FOR DECLARING OTHER ORGANIZATIONS PROMOTING COMMUNISTIC ACTIVITIES TO BE UNLAWFUL AND FOR PROHIBITING CERTAIN PERIODICAL OR OTHER PUBLICATIONS; TO PROHIBIT CERTAIN COMMUNISTIC ACTIVITIES; AND TO MAKE PROVISION FOR OTHER INCIDENTAL MATTERS[1]

(Assented to 26 June 1950)

1. (1) In this Act, unless the context otherwise indicates—

(i) "Authorized officer" means a person designated as such under sub-section (1) of section seven, and includes any person acting under his written authority;

(ii) "Communism" means the doctrine of Marxian socialism as expounded by Lenin or Trotsky, the Third Communist International (the Comintern) or

[1] Act No. 44, 1950. English text in *Statutes of the Union of South Africa 1950*, pp. 549–573. Text received through the courtesy of Dr. L. H. Wessels, Law Adviser, Department of Justice, Pretoria.

the Communist Information Bureau (the Cominform) or any related form of that doctrine expounded or advocated in the Union for the promotion of the fundamental principles of that doctrine and includes, in particular, any doctrine or scheme—

(*a*) Which aims at the establishment of a despotic system of government based on the dictatorship of the proletariat under which one political organization only is recognized and all other political organizations are suppressed or eliminated; or

(*b*) Which aims at bringing about any political, industrial, social or economic change within the Union by the promotion of disturbance or disorder, by unlawful acts or omissions or by the threat of such acts or omissions or by means which include the promotion of disturbance or disorder, or such acts or omissions or threat; or

(*c*) Which aims at bringing about any political, industrial, social or economic change within the Union in accordance with the directions or under the guidance of or in co-operation with any foreign government or any foreign or international institution whose purpose or one of whose purposes (professed or otherwise) is to promote the establishment within the Union of any political, industrial, social or economic system identical with or similar to any system in operation in any country which has adopted a system of government such as is described in paragraph (*a*); or

(*d*) Which aims at the encouragement of feelings of hostility between the European and non-European races of the Union the consequences of which are calculated to further the achievement of any object referred to in paragraph (*a*) or (*b*);

(iii) "Communist" means a person who professes to be a communist or who, after having been given a reasonable opportunity of making such representations as he may consider necessary, is deemed by the Governor-General or, in the case of an inhabitant of the territory of South West Africa, by the Administrator of the said territory, to be a communist on the ground that he is advocating, advising, defending or encouraging or has at any time after the date of commencement of this Act advocated, advised, defended or encouraged the achievement of any of the objects of communism or any act or omission which is calculated to further the achievement of any such object;

(iv) "Document" includes any book, pamphlet, record, list, placard, poster, drawing, photograph or picture;

(v) "Gathering" means any gathering, concourse, or procession in, through or along any place, of any number of persons having a common purpose, whether such purpose be lawful or unlawful;

(vi) "Liquidator" means a person designated as such under paragraph (*b*) of sub-section (1) of section three, and includes any person acting under his written authority;

(vii) "Minister" means the Minister of Justice;

(viii) "Office-bearer" in relation to any organization, means a member of the governing or executive body of—

(*a*) The organization; or

(*b*) Any branch, section or committee of the organization; or

(*c*) Any local, regional or subsidiary body forming part of the organization;

(ix) "Officer", in relation to any organization, means any person working for the organization or for any branch, section or committee, or for any local, regional or subsidiary body forming part of the organization;

(x) "Organization" means any association of persons, incorporated or unincorporated, and whether or not it has been established or registered in accordance with any statute;

(xi) "Periodical publication" means any publication appearing at intervals;

(xii) "Publication" means any newspaper, magazine, pamphlet, book, hand-bill or poster;

(xiii) "Public body" means any institution or body contemplated in paragraph (vi) of section *eighty-five* of the South Africa Act, 1909, and includes any institution or body established by law;

(xiv) "Public office" means any office or post in the service of the State (including the Railway Administration, a provincial administration or the administration of the territory of South West Africa) or a public body, and includes any office or post in the Defence Forces of the Union;

(xv) "The Communist Party of South Africa" means the organization known by that name on the fifth day of May 1950, notwithstanding any change in the name of that organization after the said date;

(xvi) "Union" includes the territory of South West Africa; and

(xvii) "Unlawful organization" means an organization which is an unlawful organization in terms of sub-section (1) of section *two* or a proclamation under sub-section (2) of the said section, and includes any branch, section or committee of any such organization and any local, regional or subsidiary body forming part of any such organization.

(2) A strike or lock-out (as defined in section *one* of the Industrial Conciliation Act, 1937 (Act No. 36 of 1937)) which follows upon a labour dispute for the settlement of which the proceedings prescribed by the said Act have been taken, and which is not in contravention of the provisions of the said Act, or the promotion of or participation in such a strike or lock-out, shall not for the purposes of paragraph (*b*) of the definition of "communism" be regarded as an unlawful act or omission or as the promotion of disturbance or disorder.

2. (1) The Communist Party of South Africa, including every branch, section or committee thereof and every local, regional or subsidiary body forming part thereof, is hereby declared to be an unlawful organization.

(2) If the Governor-General is satisfied—

(*a*) That any other organization professes or has on or after the fifth day of May 1950, and before the commencement of this Act, professed by its name or otherwise to be an organization for propagating the principles or promoting the spread of communism; or

(*b*) That the purpose or one of the purposes of any organization is to propagate the principles or promote the spread of communism or to further the achievement of any of the objects of communism; or

(*c*) That any organization engages in activities which are calculated to further the achievement of any of the objects referred to in paragraph (*a*), (*b*), (*c*) or (*d*) of the definition of "communism" in section *one;* or

(*d*) That any organization is controlled, directly or indirectly, by an organization referred to in sub-section (1) or paragraph (*a*), (*b*) or (*c*) of this sub-section,

he may, without notice to the organization concerned, by proclamation in the *Gazette* declare that organization to be an unlawful organization, and the Governor-General may in like manner withdraw any such proclamation.

(3) The provisions of paragraphs (*b*), (*c*) and (*d*) of sub-section (2) shall not apply in relation to an employers' organization or trade union registered under the Industrial Conciliation Act, 1937 (Act No. 36 of 1937), or to any employers' organization or trade union whose registration under the said Act has been cancelled in terms of section *fifteen* of the said Act, until such organization or trade union or any office-bearer, officer or member thereof, has had a reasonable opportunity of exhausting, in respect of such cancellation, the remedies provided in sub-section (4) of section *fifteen* or section *sixteen* or *seventy-seven* of the said Act.

3. (1) As from the date upon which an organization becomes an unlawful organization in terms of sub-section (1) of section *two* or a proclamation under sub-section (2) of the said section

(*a*) No person shall—

(i) become, continue to be or perform any act as an office-bearer, officer or member of the unlawful organization; or

(ii) carry or display anything whatsoever indicating that he is or was an office-bearer, officer or member of or in any way associated with the unlawful organization; or

(iii) contribute or solicit anything as a subscription or otherwise, to be used directly or indirectly for the benefit of the unlawful organization; or

(iv) in any way take part in any activity of the unlawful organization, or carry on in the direct or indirect interest of the unlawful organization, any activity in which it was or could have engaged at the said date;

(*b*) All property (including all rights and documents) held by the unlawful organization or held by any person for the benefit of the unlawful organization, shall vest in a person to be designated by the Minister as the liquidator of the assets of the unlawful organization; and

(*c*) The unlawful organization shall, if it is registered in any office, cease to be registered, and the officer in charge of the register shall remove its name therefrom.

(2) No proceedings shall after the expiration of a period of fourteen days from the date of a proclamation under sub-section (2) of section *two* be instituted in any court for an order declaring that proclamation invalid, and no court shall after the expiration of a period of twelve months from the date of any such proclamation have jurisdiction to pronounce upon the validity thereof.

(3) The liquidator shall be appointed on such conditions, and may be paid out of the assets of the unlawful organization such remuneration for his services as the Minister may determine.

(4) Notwithstanding anything to the contrary contained in any instrument, rule or agreement governing the relations between the unlawful organization and its office-bearers, officers or members, any such office-bearer, officer or member may by resignation terminate his relationship with the unlawful organization as from the date of the resignation.

4. (1) The liquidator shall forthwith take possession of all the property vested in him under paragraph (*b*) of sub-section (1) of section *three* and satisfy himself as to the adequacy of the assets to pay the debts of the unlawful organization.

(2) If the assets are adequate to pay the debts, he shall after the expiration of a period of at least six months from the date upon which the organization became an unlawful organization take all steps (including the institution of legal proceedings) necessary to liquidate them and to pay out of the proceeds the debts which have been proved to his satisfaction.

(3) Any balance remaining after the debts have been paid shall be distributed to one or more charitable or scientific organizations designated by the Minister.

(4) If the assets are not adequate to pay the debts of the unlawful organization the liquidator shall liquidate and distribute the assets as if he were a trustee or a liquidator, as the case may be, administering and distributing the assets of an insolvent estate or company.

(5) For the purpose of such liquidation and distribution, the date upon which the organization became an unlawful organization in terms of sub-section (1) of section *two* or a proclamation under sub-section (2) of the said section shall be regarded as the date of sequestration or winding-up as the case may be.

(6) Any matter relating to such liquidation and distribution upon which a creditor would have been entitled to vote, if the estate of the unlawful organization had been sequestrated or wound up, shall be determined by a majority of votes reckoned according to the number and value of claims proved to the satisfaction of the liquidator.

(7) The account of a liquidator liquidating and distributing assets under sub-section (4) shall be advertised by him and confirmed by the Master in like manner and with like effect as an account framed by a trustee or liquidator, as the case may be, in an insolvent estate is advertised and confirmed.

(8) Any property of the unlawful organization which is not liquidated under sub-section (1) or (4), shall be disposed of as the Minister may direct.

(9) The Minister may at any time by notice in the *Gazette* and subject to such modifications as he may deem fit, apply in relation to the distribution of the assets or the payment of the debts of the unlawful organization under this section, such provisions of the Companies Act, 1926 (Act No. 46 of 1926), or the Insolvency Act, 1936 (Act No. 24 of 1936), as are not inconsistent with this Act, as may be necessary in a particular case for the proper distribution of the assets or the payment of the debts of the unlawful organization, and may in like manner amend or withdraw any such notice.

(10) If directed by the Minister to do so, the liquidator shall compile a list of persons who are or have been office-bearers, officers, members or active supporters of the organization which has been declared an unlawful organization: Provided that the name of a person shall not be included in any such list or in any category mentioned in such list, unless he has been afforded a reasonable opportunity of showing that his name should not be included therein.

(11) The liquidator shall have authority to receive and retain any communication addressed to the unlawful organization or to any office-bearer or offfcer thereof as such, and the Postmaster-General shall, if requested to do so by the liquidator, cause all postal articles so addressed, to be delivered to the liquidator.

(12) The provisions of sub-sections (3) and (4) of section *seven* shall *mutatis mutandis* apply in respect of any investigation by the liquidator, which he may consider necessary in connexion with the performance of his functions under sub-section (1), (4) or (10): Provided that in its application under this subsection, paragraph (*d*) of sub-section (3) of the said section shall be read as referring also to any document which, in the opinion of the liquidator, may afford evidence in regard to any right in or the whereabouts of any property or the existence or amount of any debt.

5. (1) The Minister may by notice in writing require any person whose name appears on any list in the custody of the officer referred to in section *eight* or who has been convicted of an offence under section *eleven* or is a communist—

(*a*) To comply, while he is an office-bearer, officer or member of any organization specified in the notice, or a member of any public body so specified, or while he holds any public office so specified, with such conditions as may be prescribed therein;

(*b*) To resign as an office-bearer, officer or member of an organization specified in the notice, within a period so specified, not again to become an office-bearer, officer or member of that organization and not to take part in its activities;

(*c*) Not to become an office-bearer, officer or member and not to take any part in the activities of any organization specified in the notice or of any kind of organization so specified;

(*d*) Not to become a member of either House of Parliament or a provincial council or the Legislative Assembly of the territory of South West Africa or any public body specified in the notice or to hold any public office so specified or, if he is such a member or holds such an office, to resign within a period so specified, as such member or from such office and not again to become such a member or hold such office: Provided that the Minister shall not require any person, other than a person who professes or has on or after the fifth day of May 1950, and before the commencement of this Act, professed to be a communist, to resign as a member of either House of Parliament or a provincial council or the Legislative Assembly of the said territory except after consideration of a report, in the case of a Senator, of a committee of the Senate and, in the case of a member of the House of Assembly or a provincial council or the Legislative Assembly of the said territory, of a committee of the House of Assembly.

(2) The Minister may at any time in like manner withdraw or vary any notice under sub-section (1).

(3) The Minister shall not exercise the powers conferred upon him by paragraph (a) or (b) of sub-section (1) in relation to a person who is an office-bearer, officer or member of an employers' organization or trade union registered under the Industrial Conciliation Act, 1937 (Act No. 36 of 1937), nor require any person in terms of paragraph (*c*) of the said sub-section not to become an office-bearer, officer or member and not to take part in the activities of such an employers' organization or trade union, except after consultation with the Minister of Labour.

(4) Notwithstanding anything contained in any instrument, rule or agreement governing the relations between any organization and any office-bearer, officer

or member thereof who has under sub-section (1) been required to resign, such office-bearer, officer or member may by resignation terminate his relationship with such organization as from the date of the resignation.

(5) Nothing in this section contained shall derogate from the provisions of sub-section (3) of section *sixty-eight* or section *one hundred and one* of the South Africa Act, 1909.

6. If the Governor-General is satisfied that any periodical or other publication—

(*a*) Professes, by its name or otherwise, to be a publication for propagating the principles or promoting the spread of communism; or

(*b*) Is published or disseminated by or under the direction or guidance of an organization which has been declared an unlawful organization by or under section *two*, or was published or disseminated by or under the direction or guidance of any such organization immediately prior to the date upon which it became an unlawful organization; or

(*c*) Serves mainly as a means for expressing views propagated by any such organization, or did so serve immediately prior to the said date; or

(*d*) Serves mainly as a means for expressing views or conveying information, the publication of which is calculated to further the achievement of any of the objects of communism,

he may, without notice to any person concerned, by proclamation in the *Gazette* prohibit the printing, publication or dissemination of such periodical publication or the dissemination of such other publication; and the Governor-General may in like manner withdraw any such proclamation.

7. (1) If the Minister has reason to suspect—

(*a*) That the purposes, activities or control of any organization are such that it ought to be declared an unlawful organization under sub-section (2) of section *two*; or

(*b*) That the circumstances connected with any periodical or other publication are such that the printing, publication or dissemination thereof ought to be prohibited under section *six*,

he may in writing under his hand designate any person as an authorized officer to investigate the purposes or activities of the organization or the manner in which it is controlled, or the circumstances connected with that periodical or other publication, as the case may be.

(2) If directed by the Minister to do so in any case referred to in paragraph (*a*) of sub-section (1), an authorized officer shall compile a list of persons who are or have been office-bearers, officers, members or active supporters of the organization concerned: Provided that the name of a person shall not be included in any such list or in any category mentioned in such list unless he has been afforded a reasonable opportunity of showing that his name should not be included therein.

(3) An authorized officer may, for the purposes of exercising his functions under sub-section (1) or (2)—

(*a*) Without previous notice at any time enter upon any premises whatsoever and make such investigation and inquiry as he deems necessary;

(*b*) Require from any person the production then and there or at a time and place fixed by the authorized officer, of any document or of any copy of any periodical or other publication which is on the premises;

(*c*) At any time and at any place require from any person who has the possession or custody or control of any document or any copy of any periodical or other publication, the production thereof then and there or at a time and place fixed by the authorized officer;

(*d*) Seize any document or copy referred to in paragraph (*b*) or (*c*), which in his opinion may afford evidence in regard to any matter referred to in sub-section (2) of section *two* or section *six* or in regard to the persons who are or have been office-bearers, officers, members or active supporters of the organization concerned;

(*e*) Examine and make extracts from and copies of any such document, and require from any person an explanation of any entries therein, or of any matter published in any such periodical or other publication;

(*f*) Question, either alone or in the presence of any other person, as he thinks fit, with respect to any matter referred to in sub-section (2) of section *two* or section *six* or in order to ascertain which persons are or have been office-bearers, officers, members or active supporters of the organization concerned, any person whom he finds on any premises entered in terms of this section, or whom he has reasonable grounds for believing to be or to have been an office-bearer, officer, member or active supporter of the organization concerned or to be in possession of any information required by him;

(*g*) Require any person referred to in paragraph (*b*), (*c*), (*e*) or (*f*) to appear before him at any time and place fixed by him and then and there question that person.

(4) Every occupier of any premises entered under sub-section (3) shall at all times furnish such facilities as are required by an authorized officer for the purpose of exercising his powers under the said sub-section.

(5) Any person who is questioned under paragraph (*f*) or (*g*) of sub-section (3) shall be entitled to all the privileges to which a person giving evidence before a provincial division of the Supreme Court is entitled.

8. (1) Every list compiled under sub-section (10) of section *four* shall, and every list compiled under sub-section (2) of section *seven* shall if the organization concerned is under sub-section (2) of section *two* declared to be an unlawful organization, be kept in the custody of an officer designated from time to time by the

Minister, until the relevant proclamation under sub-section (2) of section *two* has been withdrawn.

(2) If any person whose name appears on any such list proves that his name should not appear on it or is incorrectly included in any category mentioned in the list, or if any office-bearer, officer, member or active supporter of any organization which has been declared an unlawful organization proves that he neither knew nor could reasonably have been expected to know that the purpose or any of the purposes of the organization were of such a nature or that it was engaging in such activities as might render it liable to be declared an unlawful organization in terms of sub-section (2) of section *two*, the said officer shall remove his name or correct the list accordingly.

9. Whenever in the opinion of the Minister there is reason to believe that the achievement of any of the objects of communism would be furthered—

(*a*) By the assembly of a particular gathering in any place; or

(*b*) If a particular person were to attend any gathering in any place,

the Minister may, in the manner provided in sub-section (1) of section *one* of the Riotous Assemblies and Criminal Law Amendment Act, 1914 (Act No. 27 of 1914), prohibit the assembly of that gathering in any place within the Union, or he may by notice under his hand addressed and delivered or tendered to that particular person, prohibit him from attending any gathering in any place within an area and during a period specified in such notice.

10. (1) Whenever the Minister is satisfied that any person is in any area advocating, advising, defending or encouraging the achievement of any of the objects of communism or any act or omission which is calculated to further the achievement of any such object, or is likely in any area to advocate, advise, defend or encourage the achievement of any such object or any such act or omission, he may by notice under his hand, addressed and delivered or tendered to such person prohibit him, after a period stated in such notice being not less than seven days from the date of such delivery or tender, and during a period likewise stated therein, from being within any area defined in such notice: Provided that the Minister may at any time withdraw or modify any such notice or grant such person permission in writing to visit temporarily any place where he is not permitted to be in terms of such notice.

(2) Whenever any person who has received a notice in terms of sub-section (1) is necessarily put to any expense in order to comply with such notice, the Minister may in his discretion cause such expense, or any part thereof, to be defrayed out of moneys appropriated by Parliament for the purpose and may further in his discretion, cause to be paid out of such moneys to such person a reasonable subsistence allowance during any period whilst such notice applies to him.

(3) Subject to the proviso to sub-section (1), any person who contravenes or fails to comply with any notice delivered or tendered to him in terms of sub-section (1) may at any time after the expiration of the period of not less than seven days stated in such notice in addition to any penalty that may be imposed upon him, be removed by any member of the police force duly authorized thereto in writing by any commissioned police officer from any area wherein he is prohibited to be in terms of such notice.

11. Any person who—

(*a*) Performs any act which is calculated to further the achievement of any of the objects of communism;

(*b*) Advocates, advises, defends or encourages the achievement of any such object or any act or omission which is calculated to further the achievement of any such object;

(*c*) Contravenes any provision of paragraph (*a*) of sub-section (1) of section *three*;

(*d*) Prints, publishes or disseminates any periodical publication or disseminates any other publication in contravention of a proclamation under section *six*;

(*e*) Knowingly allows any premises or any other property whatsoever to be used for the purposes of or in connexion with any offence under paragraph (*a*), (*b*), (*c*) or (*d*);

(*f*) Fails to comply with any requirement of a notice under section *five*;

(*g*) After a prohibition referred to in section *nine* and in contravention thereof, convenes a gathering in any place, or presides at or addresses a gathering the assembly whereof in any place has been prohibited under section *nine*;

(*h*) In contravention of a notice delivered or tendered to him in terms of section *nine* attends any gathering;

(*i*) Subject to the proviso to sub-section (1) of section *ten*, contravenes or fails to comply with any notice delivered or tendered to him in terms of sub-section (1) of section *ten*;

(*j*) Refuses or fails to answer to the best of his knowledge any question which an authorized officer or a liquidator has put to him in the exercise of his functions under this Act;

(*k*) Refuses or fails to comply to the best of his power with any requirement made by an authorized officer or liquidator under this Act;

(*l*) Hinders an authorized officer or a liquidator in the performance of his functions under this Act, or without the consent of the liquidator of an unlawful organization, destroys, alters or removes any property or document held by that organization or held by any person for the benefit of that organization; or

(*m*) Contravenes the provisions of sub-section (4) of section *seven*,

shall be guilty of an offence, and liable—

(i) In the case of an offence referred to in paragraph (*a*), (*b*), (*c*) or (*d*), to imprisonment for a period not exceeding ten years;

(ii) In the case of an offence referred to in paragraph (*e*), (*f*), (*g*), (*h*) or (*i*), to imprisonment for a period not exceeding three years; and

(iii) In the case of an offence referred to in paragraph (*j*), (*k*), (*l*), or (*m*), to a fine not exceeding two hundred pounds or to imprisonment for a period not exceeding one year, or to both such fine and imprisonment.

12. (1) If in any prosecution under this Act, or in any civil proceedings arising from the application of the provisions of this Act, in which it is alleged that any person is or was a member or active supporter of any organization, it is proved that he attended any meeting of that organization, or has publicly advocated, advised, defended or encouraged the promotion of its purposes, or has distributed any periodical or other publication or document issued by, on behalf or at the instance of that organization, he shall be presumed, until the contrary is proved, to be or to have been a member or active supporter, as the case may be, of that organization.

(2) A person shall in any prosecution for an offence under paragraph (*g*) of section *eleven* be deemed to have convened a gathering in any place if he—

(*a*) Has caused written notice to be published, distributed or despatched, inviting the public, or any members of the public, to assemble at a specified time and place;

(*b*) Has himself, or through another person, orally invited the public or any members of the public so to assemble; or

(*c*) Has taken any active part in making arrangements for the publication, distribution or despatch of such a notice, or in organizing or making preparations for such an assembly.

(3) No person shall be convicted of an offence under paragraph (*g*) of section *eleven* if he satisfies the court that he had no knowledge of the prohibition of the gathering concerned.

13. (1) The court convicting any person of an offence under paragraph (*e*) of section *eleven*, may declare the property in respect of which the offence was committed, or the rights of the convicted person to such property, to be forfeited to the State: Provided that such declaration shall not affect any rights which any person other than the convicted person may have to such property, if it is proved that he did not know that it was being or would be used in contravention of the said paragraph.

(2) Sub-sections (4) and (5) of section *three hundred and sixty-six* of the Criminal Procedure and Evidence Act, 1917 (Act No. 31 of 1917), shall *mutatis mutandis* apply in respect of any such forfeiture.

14. Any person who is not a South African citizen and who is deemed by the Governor-General, or in the case of an inhabitant of the Territory of South-West Africa, by the Administrator of the said territory, to be an undesirable inhabitant of the Union or of the said territory, as the case may be, because he is a communist or has been convicted of any offence under paragraph (*a*), (*b*), (*c*), (*d*), (*e*), (*g*), (*h*), or (*i*) of section *eleven*, may be removed from the Union or from the said territory, and pending removal, may be detained in custody in the manner provided for the detention, pending removal from the Union or from the said territory, of persons who are prohibited immigrants within the meaning of the relevant law relating to the regulation of immigration; and thereafter such person shall, for the purposes of such law, be deemed to be a prohibited immigrant.

15. Whenever any action has been taken under section *two*, *five*, *six*, *nine*, *ten* or *fourteen*, the Minister shall report the circumstances to both Houses of Parliament within fourteen days if Parliament be then in session or, if Parliament be not then in session, within fourteen days after the commencement of its next ensuing session.

16. Sections *two*, *three*, *four* and *five* of the Riotous Assemblies and Criminal Law Amendment Act, 1914 (Act No. 27 of 1914) and sections *two*, *three*, *four* and *five* of the Riotous Assemblies and Criminal Law Amendment Ordinance, 1930 (Ordinance No. 9 of 1930) of the Territory of South West Africa shall *mutatis mutandis* apply in relation to any gathering which has under section *nine* of this Act been prohibited respectively in the Union or the said Territory.

17. The powers conferred by this Act upon the Governor-General or the Administrator of the territory of South West Africa, and the powers conferred upon the Minister by sub-section (1) of section *ten* of this Act, except the power to withdraw any proclamation or notice issued under this Act, shall not be exercised in relation to any person, organization or publication unless the Minister or, in the case of the powers conferred upon the Administrator of the said territory, the said Administrator has considered a factual report in relation to that person, organization or publication made by a committee consisting of three persons appointed by the Minister of whom one shall be a magistrate of a rank not lower than the rank of senior magistrate.

18. This Act shall apply also in the Territory of South West Africa.

19. This Act shall be called the Suppression of Com munism Act 1950.

JUDICIAL DECISION

EQUALITY BEFORE THE LAW—NON-DISCRIMINATION ON GROUND OF RACIAL ORIGIN—REGULATION RESERVING A PORTION OF TRAINS FOR EXCLUSIVE USE OF EUROPEANS—NO PORTION RESERVED FOR EXCLUSIVE USE OF NON-EUROPEANS—PENALTIES IMPOSED ON NON-EUROPEANS FOR USING ACCOMMODATION RESERVED FOR EUROPEANS—NO PENALTY IN CONVERSE CASE—VALIDITY OF REGULATION—LAW OF THE UNION OF SOUTH AFRICA

REX *v.* ABDURAHMAN

Supreme Court, Appellate Division[1]

22 May 1950

The facts. Acting under paragraph (C) of regulation 20 of the General Railway Regulations (as amended) framed under section 4 of Act 22 of 1916, the Railway Administration reserved a portion of trains for the exclusive use of Europeans without restricting members of that race to the use of that portion: non-Europeans were not allowed to use the reserved portion and had to share the remainder of the train with members of the race in whose favour the reservation was made. Members of the European race were not subject to criminal sanctions for occupying the portion of the train other than that reserved for their exclusive use: non-Europeans were subject to criminal sanctions for occupying the portion of the train reserved for the exclusive use of Europeans. The appellant Abdurahman had been charged with, and convicted of, inciting a number of non-Europeans to enter railway coaches reserved for the exclusive use of Europeans.

Held: that the appeal should be allowed and the conviction set aside. The regulation had been applied in a manner which had resulted in a partial and unequal treatment to a substantial degree as between Europeans and non-Europeans and, as such treatment was not authorized by Act 22 of 1916, the action taken under the regulation was void.

Centlivres, judge of appeal, delivering the unanimous decision of the court, said:

. . .

"Paragraph (*c*) of the regulation authorizes the reservation of portion of a train for the exclusive use of a particular race without restricting members of that race to the use of that portion: members of that race are free to use the whole train (including the reserved portion), whereas members of another race cannot use the reserved portion and have to share the remainder of the train with members of the race in whose favour the reservation is made. Moreover, the members of the race in whose favour no reservation is made are subjected to criminal sanctions, while the members of the other race are not. To apply paragraph (*c*) in respect of all trains and as an invariable practice, as has been done in the present case by making a reservation in favour of Europeans only, results in partial and unequal treatment as between different races, for, as I have pointed out, Europeans are given the right to use every portion of the train; the non-Europeans cannot use the reserved portion, and it is only the latter who can be punished criminally. It seems to me to be obvious that such treatment is partial and unequal to a substantial degree.

"The court *a quo* said:—

" 'Upon regulation 20 (*c*) as worded the absence of restriction is entirely impartial in its applications: thus on a train predominantly comprising coaches bearing notices indicating in express terms that the exclusive use thereof has been reserved for non-Europeans, non-European passengers would not be restricted to these coaches.'

"I confess that I do not understand the use by the court *a quo* of the words 'in its application'. For, as I have pointed out, the actual application in the present case of paragraph (*c*) of the regulations results in partiality and inequality. It is, no doubt, possible to apply paragraph (*c*) impartially. For instance, a train may bear notices indicating that certain coaches are reserved for the exclusive use of Europeans, and the next train may bear notices indicating that certain coaches are reserved for the exclusive use of non-Europans, and so on alternately in rotation. But this has not been done in the present case; what has been done is that, as an invariable practice, *all* trains bear notices that certain coaches are reserved for the exclusive use of Europeans and in *no* case are any coaches reserved for the exclusive use of non-Europeans. Consequently, the manner in which the regulation has been applied results in a partial and unequal treatment of one section of the community as compared with the treatment meted out to another section.

"The Crown relied on the case of *Rex* v. *Carelse* (1943, C.P.D. 242), where Davis, J., said at p. 253:

[1] Report: 1950 (3) *South African Law Reports* 136 (A.D.). Summary prepared by the United Nations Secretariat.

" 'In my opinion, to entitle a court to interfere with a regulation or by-law involving a discrimination between white and coloured on the ground of unreasonableness, it must be one as to which it is shown that the discrimination is coupled with an inequality of treatment which is in all the circumstances manifestly unjust or oppressive.'

"Bearing in mind that it is the duty of the courts to hold the scales evenly between the different classes of the community and to declare invalid any practice which, in the absence of the authority of an Act of Parliament, results in partial and unequal treatment to a substantial degree between different sections of the community, I am of opinion that the *dictum* of Davis, J., puts the test too high, but in any event that *dictum* must be viewed in relation to the facts in *Rex* v. *Carelse*. In that case regulations made under section 10 of Act 21 of 1935 and approved by resolution of both Houses of Parliament in terms of that section set aside defined portions of a seashore for the exclusive use of Europeans and non-Europeans respectively. There was nothing *ex facie* the regulations to suggest that they were unreasonable, and the onus was on the appellant to show on a balance of probabilities that the regulations were unreasonable. For this purpose, evidence was obviously necessary to show that the bathing facilities provided for Europeans and non-Europeans were unequal in the sense of such facilities not being reasonably equal: absolute equality can, of course, rarely, if ever, be attained. This onus was as a fact discharged by the appellant, and in effect the court held, in declaring the regulations in question *ultra vires*, that the evidence showed that the inequality of treatment was 'in all the circumstances manifestly unjust or oppressive'. If I understand the judgment of Davis, J., in *Carelse's* case correctly, what the learned judge intended to convey was that mere technical inequality of treatment was not *per se* sufficient to render a regulation unreasonable in its specialized sense; the inequality must be substantial. In the present case the action taken under paragraph (*c*) of regulation 20 results, for the reasons which I have given, in a substantial inequality of treatment between members of different races.

"I agree with the court *a quo* that, in using the words 'exclusive use', section 4 (6) [of Act. 22 of 1916] may be regarded as expressly authorizing the principle of discrimination, but it does not follow from this that in addition thereto the section authorizes partiality and inequality in treatment as between members of different races. It is one thing to authorize discrimination and quite another thing to authorize discrimination coupled with partiality and inequality in treatment. I find it impossible to assume that the legislature in enacting section 4 (6) intended that one section of the community could be treated unfairly as compared with another section. The State has provided a railway service for all its citizens irrespective of race, and it is unlikely that the legislature intended that users of the railways should, according to their race, have partial or unequal treatment meted out to them.

"The conclusion at which I arrive is that the regulations have been improperly applied by the Administration in the circumstances of this case."

. . .

UNION OF SOVIET SOCIALIST REPUBLICS

REPORT OF THE STATE PLANNING COMMISSION OF THE USSR AND THE CENTRAL STATISTICAL DIRECTORATE OF THE USSR ON THE RESULTS OF THE FULFILMENT OF THE FOURTH (FIRST POST-WAR) FIVE-YEAR PLAN OF THE USSR FOR 1946–1950[1]

EXCERPTS

FULFILMENT OF THE FIVE-YEAR PLAN WITH REGARD TO THE MATERIAL AND CULTURAL ADVANCEMENT OF THE PEOPLE

There was and is no unemployment in the Soviet Union. After the end of the Great Patriotic War, full employment was secured for all the persons demobilized from the Soviet Army and Navy, in accordance with their qualifications and line of work. By the end of 1950, there were 39,200,000 manual and office workers in the national industry of the USSR—an increase of 7,700,000 over 1940.

The standard of living of the USSR population has risen, as shown by the increase in the nominal and real wages of manual and office workers and in the income derived by peasants both from common collective farm enterprise and from subsidiary and private farming. The total income of manual and office workers, and peasants in 1950, in comparable prices, exceeded their 1940 income by 62 per cent.

State expenditure on cultural and social services for workers show a marked increase. The State has provided allowances and social insurance payments to manual and office workers, pensions under the social security system, free transportation and transportation at reduced rates to sanatoria, rest homes and children's institutions, allowances to mothers of large families and unmarried mothers, free medical treatment, free education and additional training of skilled workers at State expense, scholarships, and many other payments and grants. Furthermore, all manual and office workers were given paid annual leave of at least two weeks, while in a number of occupations longer leave was granted. In 1950, the population received payments and grants from the State to a total of more than 120 thousand million roubles, or three times the sum disbursed in 1940.

The improvement in the people's standard of living in the post-war period has been accompanied by further achievements in the fields of culture, science and art.

The number of students in primary, seven-year and secondary schools, technical schools and other secondary educational institutions increased by 8 million during the five-year period and in 1950 was 37 million. Of that number, 1,298,000 students were attending technical schools and other specialized secondary schools in 1950, as against 975,000 in 1940. Higher educational institutions were attended by 1,247,000 students in 1950, as against 812,000 in 1940.

In the five-year period, 652,000 specialists with higher education and 1,278,000 with secondary education took their place in the national economy. As compared with 1940, the number of specialists employed in the national economy has grown by 84 per cent.

In the course of the past five years, major discoveries and inventions in the various branches of science and technology were made in our country. More than 6,500 persons were awarded the title of Stalin Prize Laureate for outstanding work, inventions and achievements in the fields of science, technology, literature and art during the Five-Year Plan period. Scientific research institutions in 1950 were one and a half times more numerous than before the war, while the number of scientific workers in these institutions was nearly doubled.

The network of cultural and educational institutions has been restored and expanded beyond its pre-war size. In 1950, there were 15 per cent more clubs and public libraries in town and country than in 1940. Eighty-four per cent more copies of books were printed than in 1940. By the end of 1950, the number of cinema installations was one and a half times as great as in 1940.

Since the war, further improvements have been made in the medical, hospital and prophylactic services provided to the population. The number of hospital beds

[1] Text received through the courtesy of the Permanent Delegation of the USSR to the United Nations. English translation from the Russian text by the United Nations Secretariat.—Extracts from the "Plan for the material and cultural advancement of the people", a part of the Law on the Five-Year Plan, of 18 March 1946, are published in the *Yearbook on Human Rights for 1949*, pp. 220–221.

in cities and rural areas in 1950 was 25 per cent higher than in 1940. Sanatoria demolished during the war have been rebuilt. The number of physicians in the country has increased by 75 per cent over the 1940 figure.

Important progress has been made in the development of Soviet trade. The volume of State and co-operative retail trade has far surpassed the 1940 pre-war level. In 1950, the sales of State and co-operative stores showed the following increases over 1940 figures (not including sales of goods in exchange for local produce): meat and meat products, 38 per cent; fish products, 51 per cent; animal fats, 59 per cent; vegetable and other oils, 67 per cent; sugar, 33 per cent; confectionery products, 34 per cent; footwear, 39 per cent; cotton, woollen, silk and linen fabrics, 47 per cent; hosiery, 39 per cent. Sales of cultural and household consumer goods to the population have increased. In 1950, 3.3 times as many timepieces were sold as in 1940, before the war; 6 times as many radio sets; 1.5 times as many household electricial appliances; 2.9 times as many bicycles; nearly 3 times as many sewing machines; 16 times as many motorcycles. Sales of building materials in rural areas increased by several times.

The volume of collective farm trade in 1950 was much larger than in 1940. After ration cards were abolished and the currency reform was put through, the prices in collective farm markets went down.

Housing construction under the post-war Five-Year Plan reached large proportions. State enterprises and institutions and local Soviets, as well as the populations of cities and industrial settlements, with the aid of State credit, built and restored dwellings to a total of more than 100 million square metres of living space. In addition, 2,700,000 dwellings have been restored and constructed in rural areas.[1]

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[1]The execution of the budget for 1948 and 1949 was the subject of a report made by Mr. A. G. Zverev, Minister of Finance of the USSR. According to this report, the 1949 national income of the USSR, in comparable prices, surpassed the 1948 figure by 17 per cent and the 1940 figure by 36 per cent. This created the necessary conditions for expansion of production and a higher standard of living. On 1 March 1950, the State made the third consecutive and largest reduction on retail prices of consumer goods in two years; the resultant saving to the population should be not less than 110,000 million roubles a year.

Owing to lower prices of consumer goods, higher wages and various State allowances and grants, the real *per capita* income of manual and office workers in 1949 was 24 per cent higher than in 1940, while that of peasants was more than 30 per cent higher. In the cities, housing to the amount of over 72 million square metres of living-space has been built or restored, and 2,300,000 dwellings have been erected in rural areas.

In his report on the State budget for 1951 Finance Minister A. G. Zverev declared that "State expenditure on social and cultural activities increases from year to year; in 1951 it will amount to 120,800 million roubles, or 26.8 per cent of the State budget. Of that sum, 59,000 million roubles is allocated for education, 21,900 million roubles for health and physical culture, 22,300 million roubles for social security, and 4,100 million roubles for allowances to mothers of large families and unmarried mothers. The social insurance budget for 1951 is 21,100 million roubles. 5,300 million roubles—plus 2,700 million roubles contributed by economic organizations and not included in the State budget—will be assigned for scientific development".

Mr. I. I. Fadeev, Minister of Finance of the Russian Soviet Federated Socialist Republic reported on the State budget for 1951 and the execution of the State budget for 1950 of that Union Republic that eleven per cent more houses were built in 1950 than in 1949. The value of goods purchased in State and co-operative stores was 30 per cent greater than in 1949, at comparable prices. 20,600,000 students attended primary, seven-year and secondary schools, while 687,000 were enrolled in 502 higher education institutions.

According to the same report, expenditure on social and cultural activities forms the largest single item in the RSFSR budget for 1951, amounting to 70.8 per cent. The sum of 21,958 million roubles is allocated for education, 11,568 million of which is earmarked for school maintenance. The number of seven-year and secondary schools is to be increased in 1951, and 378 million roubles are allocated to provide increased accommodation in boarding schools for children from rural areas.

3,152 million roubles are being allocated to train cadres for economic and cultural activity; 160,700 young specialists will graduate from universities and technical schools in the course of 1951. 3,711 million roubles are allocated for the maintenance of children's homes and playgrounds. 990 million roubles—64,100,000 roubles more than in 1950—are allocated for the maintenance of cultural and educational institutions; new libraries, clubs and cinema theatres are to be opened. More beds are to be provided in city and country hospitals and more health centres are to be opened in rural areas. 11,701 million roubles are allocated for public health.

Over and above the allocation in the RSFSR budget, a part of the 120,800 million roubles allocated for social and cultural activities in the USSR State budget is to be expended on the RSFSR.

REGULATIONS FOR ELECTIONS TO THE SUPREME SOVIET OF THE USSR[1]

approved by the Presidium of the Supreme Soviet of the USSR
9 January 1950

EXTRACTS

CHAPTER I

ELECTORAL SYSTEM

Art. 1. In accordance with article 134 of the Constitution of the USSR, members of the Supreme Soviet of the USSR are chosen by the electors on the basis of universal, direct and equal suffrage by secret ballot.

Art. 2. In accordance with article 135 of the Constitution of the USSR, elections of deputies are universal: all citizens of the USSR who have reached the age of eighteen, irrespective of race, nationality, sex, religion, educational or residential qualifications, social origin, property status or past activities, shall have the right to vote in the election of deputies to the Supreme Soviet of the USSR, with the exception of insane persons and persons who have been convicted by a court of law and whose sentences include deprivation of electoral rights.

Art. 3. Every citizen of the USSR who has reached the age of twenty-three, irrespective of race, nationality, sex, religion, educational or residential qualifications, social origin, property status or past activities, may be elected a deputy of the Supreme Soviet of the USSR.

Art. 4. In accordance with article 136 of the Constitution of the USSR, elections of deputies are equal: each citizen has one vote; all citizens participate in elections to the Supreme Soviet of the USSR on an equal footing.

Art. 5. In accordance with article 137 of the Constitution of the USSR, women have the right to elect and be elected to the Supreme Soviet of the USSR on equal terms with men.

Art. 6. In accordance with article 138 of the Constitution of the USSR, citizens serving in the ranks of the armed forces of the USSR have the right to elect and be elected to the Supreme Soviet of the USSR on equal terms with all other citizens.

Art. 7. In accordance with article 139 of the Constitution of the USSR, elections of deputies are direct: the Supreme Soviet of the USSR is elected by the citizens by direct vote.

Art. 8. In accordance with article 140 of the Constitution of the USSR, voting at elections of deputies to the Supreme Soviet of the USSR is secret.

Art. 9. Persons residing in the territory of the USSR who are not citizens of the USSR but citizens or subjects of foreign States are not entitled to take part in elections or be elected to the Supreme Soviet of the USSR.

Art. 10. In accordance with article 141 of the Constitution of the USSR, candidates for election to the Supreme Soviet of the USSR are nominated according to electoral districts.

Art. 11. The expenses connected with the holding of elections to the Supreme Soviet of the USSR shall be borne by the State.

CHAPTER VI

PROCEDURE FOR NOMINATION OF CANDIDATES FOR ELECTION AS DEPUTIES OF THE SUPREME SOVIET OF THE USSR

Art. 57. In accordance with article 141 of the Constitution of the USSR candidates are nominated according to electoral districts. The right to nominate candidates for election as deputies to the Supreme Soviet of the USSR is secured to public organizations and societies of the working people: Communist Party organizations, trade unions, co-operatives, youth organizations and cultural societies.

Art. 58. The right to nominate candidates for election as deputies to the Supreme Soviet of the USSR is exercised by the central organs of the public organizations and associations of the working people, by their republican, regional, area, circuit and district organs, and by general meetings of manual and clerical workers in undertakings and institutions, general meetings of military personnel in military units, general meetings of peasants in collective farms, villages and divisions, and general meetings of manual and other workers on State farms.

CHAPTER VII

VOTING PROCEDURE

Art. 76. Special rooms shall be reserved or separate cubicles provided in the polling stations to enable electors to mark ballot papers. It is forbidden for any person whomsoever (including the members of the

[1] Russian text received through the courtesy of the Permanent Delegation of the USSR to the United Nations. English translation from the Russian text by the United Nations Secretariat. See also the text of chapter XI of the Constitution of the USSR, "The Electoral System", in the *Yearbook on Human Rights for 1948*, p. 398. The text of the regulations should be read together with the text of this chapter of the Constitution.

electoral commission) other than a voter to be present in such a room or cubicle when ballot papers are being marked by electors.

Art. 77. Every voter shall vote in person and shall appear at the polling station for that purpose. An elector casts his vote by depositing a ballot paper in the ballot box.

Art. 80. An elector who owing to illiteracy or any physical disability cannot himself mark a ballot paper may invite any other elector to enter the room where ballot papers are being marked for the purpose of marking his ballot paper.

CHAPTER VIII

DETERMINATION OF ELECTION RESULTS

Art. 109. Any person who by duress, deceit, threats or bribery obstructs a citizen of the USSR in the free exercise of his right to elect or be elected to the Supreme Soviet of the USSR shall be liable to deprivation of liberty for a period not exceeding two years.

Art. 110. Any official of the Soviet or member of the electoral commission who forges a ballot paper or knowingly miscounts votes shall be liable to deprivation of liberty for a period not exceeding three years.

DECREE OF THE PRESIDIUM OF THE SUPREME SOVIET OF THE USSR ON THE APPLICATION OF THE DEATH PENALTY TO TRAITORS TO THE HOMELAND, SPIES AND SABOTEURS[1]

of 12 January 1950

In view of the receipt of statements from national Republics, trade unions and peasant organizations, as well as from cultural leaders, on the need to introduce changes in the decree abolishing the death penalty so that this decree should not apply to traitors to the homeland, spies and saboteurs, the Presidium of the Supreme Soviet of the USSR resolves:

1. As an exception to the Decree of the Presidium of the Supreme Soviet of the USSR of 26 May 1947, on abolition of the death penalty, to allow the application of the death penalty as the highest measure of punishment for traitors to the homeland, spies and saboteurs.

2. The present decree is to go into force from the date of its publication.

[1] Russian text in *Vedomosti Verkhovnogo Soveta SSSR* No. 3 (618), of 20 January 1950. English translation in *Soviet Monitor* (issued by Tass Agency), London, 13 January 1950. Reference is made to the decree of the Presidium of the Supreme Soviet of the USSR regarding the abolition of the death penalty, of 26 May 1947, reproduced in *Yearbook on Human Rights for 1947*, p. 310.

Union Republics

RUSSIAN SOVIET FEDERATED SOCIALIST REPUBLIC

REGULATIONS FOR ELECTIONS TO THE SUPREME SOVIET OF THE RSFSR[1]

approved by the Presidium of the Supreme Soviet of the RSFSR

11 December 1950

CHAPTER I

ELECTORAL SYSTEM

Art. 1. In accordance with article 138 of the Constitution of the RSFSR, members of the Supreme Soviet of the RSFSR are chosen by the electors on the basis of universal, direct and equal suffrage by secret ballot.

Art. 2. In accordance with article 139 of the Constitution of the RSFSR, elections of deputies are universal:

[1] Russian text received through the courtesy of the Permanent Delegation of the USSR to the United Nations. English translation from the Russian text by the United Nations Secretariat. This and the following texts render account of electoral rights in the largest and most populous of the Union Republics. See the constitutional provisions concerning the electoral system of the Union Republics in *Yearbook on Human Rights for 1947*, pp. 315, 318, 321 and 324, and *Yearbook on Human Rights for 1948*, pp. 206, 209, 212, 215, 218, 220, 224, 226, 230 and 232. See also *Yearbook on Human Rights for 1949*, pp. 225–226.

all citizens of the RSFSR who have reached the age of 18, irrespective of race, nationality, sex, religion, educational or residential qualifications, social origin, property status or past activities have the right to vote in the election of deputies to the Supreme Soviet of the RSFSR, with the exception of insane persons and persons who have been convicted by a court of law and whose sentences include deprivation of electoral rights.

Art. 3. Every citizen of the RSFSR who has reached the age of twenty-one irrespective of race, nationality, sex, religion, educational or residential qualifications, social origin, property status or past activities, may be elected a deputy of the Supreme Soviet of the RSFSR.

Art. 4. In accordance with article 140 of the Constitution of the RSFSR, elections of deputies are equal: each citizen has one vote; all citizens participate in elections to the Supreme Soviet of the RSFSR on an equal footing.

Art. 5. In accordance with article 141 of the Constitution of the RSFSR, women have the right to elect and be elected to the Supreme Soviet of the RSFSR on equal terms with men.

Art. 6. In accordance with article 142 of the Constitution of the RSFSR, citizens serving in the ranks of the armed forces of the USSR have the right to elect and be elected to the Supreme Soviet of the RSFSR on equal terms with all other citizens.

Art. 7. In accordance with article 143 of the Constitution of the RSFSR, elections of deputies are direct: the Supreme Soviet of the RSFSR is elected by the citizens by direct vote.

Art. 8. In accordance with article 144 of the Constitution of the RSFSR, voting at elections of deputies to the Supreme Soviet of the RSFSR is secret.

Art. 9. In accordance with article 18 of the Constitution of the RSFSR, citizens of all the other Union Republics have the right in the territory of the RSFSR to elect and be elected to the Supreme Soviet of the RSFSR equally with citizens of the RSFSR.

Art. 10. Persons residing in the territory of the RSFSR who are not citizens of the USSR, but citizens or subjects of foreign States, are not entitled to take part in elections or be elected to the Supreme Soviet of the RSFSR.

Art. 11. In accordance with article 146 of the Constitution of the RSFSR, candidates for election to the Supreme Soviet of the RSFSR are nominated according to electoral districts.

Art. 12. The expenses connected with the holding of elections to the Supreme Soviet of the RSFSR are borne by the State.

CHAPTER VI

PROCEDURE FOR THE NOMINATION OF CANDIDATES FOR ELECTION AS DEPUTIES OF THE SUPREME SOVIET OF THE RSFSR

Art. 49. In accordance with article 146 of the Constitution of the RSFSR, the right to nominate candidates for election as deputies to the Supreme Soviet of the RSFSR is secured to public organizations and societies of the working people: Communist Party organizations, trade unions, co-operatives, youth organizations and cultural societies.

Art. 50. The right to nominate candidates for election as deputies to the Supreme Soviet of the RSFSR is exercised by the central organs of the public organizations and associations of the working people, by their republican, regional, area and district organs, and by general meetings of manual and clerical workers in undertakings and institutions, general meetings of military personnel in military units, general meetings of peasants in collective farms and villages, general meetings of manual and other workers on State farms.

CHAPTER VII

VOTING PROCEDURE

Art. 67. Special rooms shall be reserved or separate cubicles provided in the polling stations to enable electors to mark ballot papers. It is forbidden for any person whomsoever (including the members of the electoral commission) other than a voter to be present in such a room or cubicle when ballot papers are being marked by electors.

Art. 68. Every voter shall vote in person and shall appear at the polling station for that purpose. An elector casts his vote by depositing a ballot paper in the ballot box.

Art. 71. An elector who, owing to illiteracy or any physical disability, cannot himself mark ballot papers may invite any other elector to enter the place where ballot papers are being marked for the pupose of marking his ballot papers.

CHAPTER VIII

DETERMINATION OF ELECTION RESULTS

Art. 100. Any person who, by duress, deceit, threats or bribery, obstructs a citizen of the RSFSR in the free exercise of his right to elect or be elected to the Supreme Soviet of the RSFSR shall be liable to deprivation of liberty for a period not exceeding two years.

Art. 101. Any official of the Soviet or member of the electoral commission who forges a ballot paper or knowingly miscounts votes shall be liable to deprivation of liberty for a period not exceeding three years.

REGULATIONS FOR ELECTIONS TO THE SOVIETS OF WORKING PEOPLE'S DEPUTIES OF TERRITORIES, REGIONS, AREAS, DISTRICTS, CITIES, VILLAGES AND SETTLEMENTS IN THE RSFSR[1]

approved by the Presidium of the Supreme Soviet of the RSFSR

2 October 1950

CHAPTER I

ELECTORAL SYSTEM

Art. 1. In accordance with article 138 of the Constitution of the RSFSR, members of the Soviets of Working People's Deputies of territories, regions, autonomous regions, national areas, districts, cities, villages and settlements are chosen by the electors on the basis of universal, equal and direct suffrage by secret ballot.

Art. 2. In accordance with article 139 of the Constitution of the RSFSR, elections of deputies are universal: all citizens of the RSFSR who have reached the age of eighteen, irrespective of race, nationality, sex, religion, educational or residential qualifications, social origin, property status or past activities have the right to vote in the election of deputies and to be elected to the Soviets of Working People's Deputies, with the exception of insane persons and persons who have been convicted by a court of law and whose sentences include deprivation of electoral rights.

Art. 3. In accordance with article 140 of the Constitution of the RSFSR, elections of deputies are equal: each citizen has one vote; all citizens participate in elections on an equal footing.

Art. 4. In accordance with article 141 of the Constitution of the RSFSR, women have the right to elect and be elected on equal terms with men.

Art. 5. In accordance with article 142 of the Constitution of the RSFSR, citizens serving in the ranks of the armed forces of the USSR have the right to elect and be elected on equal terms with all other citizens.

Art. 6. In accordance with article 143 of the Constitution of the RSFSR, elections of deputies are direct: the Soviets of Working People's Deputies of territories, regions, autonomous regions, national areas, districts, cities, villages and settlements are elected by the citizens by direct vote.

Art. 7. In accordance with article 144 of the Constitution of the RSFSR, voting at elections of deputies to the Soviets of Working People's Deputies of the RSFSR is secret.

Art. 8. In accordance with article 18 of the Constitution of the RSFRSR, citizens of all the other Union Republics have the right in the territory of the RSFSR to elect and be elected to the Soviets of Working People's Deputies of the RSFSR equally with citizens of the RSFSR.

Art. 9. Persons living in the territory of the RSFSR who are not citizens of the USSR, but citizens or subjects of foreign States, are not entitled to take part in elections or be elected to the Soviets of Working People's Deputies of the RSFSR.

Art. 10. In accordance with article 145 of the Constitution of the RSFSR, elections to the Soviets of Working People's Deputies of the RSFSR are held by electoral districts.

One deputy is elected to the respective Soviet of Working People's Deputies from each electoral district.

Art. 11. The procedure for the holding of elections to the Soviets of Working People's Deputies in autonomous republics is set forth in the Regulations for elections to the Soviets of Working People's Deputies of each such republic.

Art. 12. The expenses connected with the holding of elections to the Soviets of Working People's Deputies of the RSFSR are borne by the State.

CHAPTER IX

PROCEDURE FOR THE NOMINATION OF CANDIDATES

Art. 77. In accordance with article 146 of the Constitution of the RSFSR, candidates for elections are nominated according to electoral districts.

The right to nominate candidates for election to the Soviets of Working People's Deputies of territories, regions, autonomous regions, national areas, districts, cities, villages and settlements is secured to public organizations and societies of the working people: Communist Party organizations, trade unions, cooperatives, youth organizations and cultural societies.

Art. 78. The right to nominate candidates is exercised by the central organs of the public organizations and associations of the working people, by

[1] Russian text received through the courtesy of the Permanent Delegation of the USSR to the United Nations. English translation from the Russian text by the United Nations Secretariat. See also p. 312, footnote 1, and *Yearbook on Human Rights for 1949*, pp. 226–227.

their republican, regional, area and district organs, and by general meetings of manual and clerical workers in undertakings and institutions, general meetings of military personnel in military units, general meetings of peasants in collective farms and villages, and general meetings of manual and other workers on State farms.

CHAPTER XI

VOTING PROCEDURE

Art. 96. Special rooms shall be reserved or separate cubicles provided in the polling stations to enable electors to mark ballot papers. It is forbidden for any person whomsoever (including the members of the electoral commission) other than a voter to be present in such a room or cubicle when ballot papers are being marked by electors.

Art. 97. Every voter shall vote in person and shall appear at the polling station for that purpose. An elector casts his vote by depositing a ballot paper in the ballot box.

Art. 100. An elector who, owing to illiteracy or any physical disability, cannot himself mark a ballot paper may invite any other elector to enter the place where ballot papers are being marked for the purpose of marking his ballot paper.

CHAPTER XIII

RESPONSIBILITY FOR INFRINGEMENT OF CITIZENS' ELECTORAL RIGHTS

Art. 129. Any person who, by duress, deceit, threats or bribery, obstructs a citizen of the RSFSR in the free exercise of his right to elect or be elected to the Soviets of Working People's Deputies of the RSFSR, shall be liable to deprivation of liberty for a period not exceeding two years.

Art. 130. Any official of the Soviet or member of the electoral commission who forges a ballot paper or knowingly miscounts votes shall be liable to deprivation of liberty for a period not exceeding three years.

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

LEGAL AID IN THE UNITED KINGDOM[1]

Preliminary

Article 7 of the Universal Declaration of Human Rights, adopted by the General Assembly of the United Nations in its third session, declares that "all are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination".

Article 8 declares "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."

Article 10 provides that everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

This paper contains an outline of the steps which have been taken in the United Kingdom to secure that no person, whether resident in the United Kingdom or not, who may be involved in proceedings before the courts of the country is debarred by lack of means from receiving skilled legal assistance in the presentation of his case.

The assistance of a qualified lawyer is required by members of the public mainly in three respects—viz, first in connexion with criminal proceedings in which the person may be involved; secondly, in connexion with the institution or defence of civil proceedings affecting him; and thirdly in matters not involving litigation, where expert advice on legal matters may be of vital importance. In this paper it is proposed accordingly to consider the facilities which have been made available to the public under each of these three heads.

1. The Position prior to 1949

(a) *Legal Aid before Courts of Criminal Jurisdiction*

From time immemorial, there has existed a practice under which a prisoner charged with a serious criminal offence has been entitled to the service in his defence of any member of the Bar who may be in court at the time, upon the prisoner paying the sum of one guinea for his services. Any member of the Bar so selected by a prisoner is under an obligation to present his case to the court.

In 1903, there was enacted the Poor Prisoners' Defence Act, which made provision for more substantial legal aid to be made available for prisoners tried on indictment (*i.e.*, when committed for trial accused of serious offences). It empowered the court to certify that a prisoner ought to have legal aid, and thereupon he was entitled to have a solicitor and counsel assigned to him. Such a certificate could be granted by the court only where it appeared that, having regard to the nature of the defence set up by the poor prisoner, as disclosed in the evidence given or statements made by him before the committing justices, it was desirable in the interests of justice that he should have legal aid. Where a certificate was given, the expenses of the defence, including those of the witnesses called, were paid out of public money. 1907 saw the passage into law of the Criminal Appeal Act, which enabled an accused to have a solicitor and counsel assigned to him to undertake the conduct of his appeal before the Court of Criminal Appeal. An appeal certificate under the Act is granted by a judge of the Court of Criminal Appeal.

In 1925, a government committee was appointed to inquire into the facilities for giving legal aid to the poor. As a result of its deliberations, the Poor Prisoners' Defence Act, 1930, was enacted. Under it, free legal representation can be provided in magistrates' courts upon the magistrates' granting either a legal aid certificate which relates to proceedings before courts of summary jurisdiction or a defence certificate, which is granted to persons committed for trial for indictable offences.

Under section 2 of the 1930 Act, if it appears to a court of summary jurisdiction that the means of any person charged before them with an offence are insufficient to enable him to obtain legal aid and that by reason of the gravity of the charge or of exceptional circumstances it is desirable in the interests of justice that he should have free legal aid in the preparation and conduct of his defence, the justices may grant a legal aid certificate, and thereupon the prisoner is entitled to such aid and to have the services of a solicitor. Where the defendant is charged with murder, counsel also may be assigned to the defendant if the justices think fit. A list of solicitors and counsel willing to undertake the defence of poor prisoners under the Act

[1] This article was prepared by Mr. T. G. Lund, C.B.E., Secretary of the Law Society.

is kept by the clerk of every court of criminal jurisdiction. When a legal aid certificate is granted, the justices assign to the prisoner a solicitor from this list, who thereupon represents him in the same way as if he were a normal paying client.

Section 1 of the same Act empowers the justices to grant a defence certificate if it appears to them, having regard to all the circumstances of the case (including the nature of such defence, if any, as may have been set up), that it is desirable in the interests of justice that the accused should have legal aid in the preparation and conduct of his defence at the trial. Under a defence certificate, an accused is entitled to have a solicitor and counsel assigned to him. Moreover, where the charge is one of murder or the case appears to present exceptional difficulty, the justices may certify that in their opinion the interests of justice require that the prisoner shall have the assistance of two counsel.

The expenses of legal aid provided under the Act are very low, and are throughout defrayed out of local funds.

(b) *Legal Aid before Courts of Civil Jurisdiction*

(i) *Inferior Courts*

Apart from the unofficial facilities provided in the main through the voluntary efforts of members of the legal profession and help made available through the medium of charitable organizations, before 1949 there was no provision for legal aid for the poor in respect of proceedings in the county court or other inferior courts or tribunals.

(ii) *The High Court and Court of Appeal*

For rather more than 150 years there existed in what is now the Supreme Court a system whereby poor persons could sue or defend *in forma pauperis*. Originally, the applicant had to swear that "he was not worth more than £5", but this sum was at a later date increased to £25. The first recognized scheme for the assistance of poor persons in litigation in the Supreme Court was introduced by the rules of that court which came into operation in 1915. Those rules provided that a poor persons' certificate might be granted to a poor person who satisfied the court that he had a reasonable cause of action or defence and that his means (excluding wearing apparel, household goods, tools of trade and the subject matter of the action) did not exceed £50, or in special circumstances £100.

Where a certificate was granted, the court also assigned to the poor person a solicitor and a barrister chosen from among those members of both branches of the profession who had expressed their willingness to act gratuitously in such cases. The effect of the certificate was to relieve the poor person of the payment of court fees and of any costs to the other party to the litigation, and it prohibited both solicitor and barrister acting in the matter from accepting any fee, profit or reward. It also prohibited the recovery of any costs from the other party to the proceedings and the payment of any costs to him if he was successful. Following the reports of two government committees later set up to consider the position of poor persons involved in litigation in the Supreme Court, the rules of court were amended in 1925, whereby the administration of the poor persons procedure was transferred from the courts to the Law Society, the professional organization representing solicitors of the Supreme Court in England and Wales. The rules defined a poor person as being one who had neither capital exceeding £50, nor income exceeding £104 a year, but provided that in special circumstances these figures might be doubled. Under the new rules, the Law Society arranged for the appointment of a number of local Poor Persons Committees throughout the country (the members of which had first to be approved by the Lord Chancellor), whose task it was to receive and consider applications for poor persons' certificates. They had to decide finally whether or not the applicant was within the means limits mentioned above, and, if so, whether or not he had a *prima facie* case for bringing, defending or being a party to the proposed proceedings. If the committee decided that the applicant should have legal aid, it granted a poor persons' certificate, and no appeal lay from the refusal of the committee to grant such a certificate. The Committees also assigned to each poor person a solicitor and counsel from those whose names appeared on the lists provided by the Law Society; and, once assigned, the relationship of solicitor and client existed between the solicitor nominated and the poor person. No poor person, however, could discharge his legal representative without the leave of the court nor could a solicitor or barrister discontinue his assistance unless he satisfied the court or the Poor Persons Committee that he had reasonable grounds for doing so. The poor person had to pay all out-of-pocket expenses such as witness fees, process servers' fees, etc., but no office expenses. Normally, the poor person was required by the Poor Persons Committee to pay an initial deposit of between £5 and £8 to cover the expected disbursements in his case. Solicitors and barristers were prohibited from receiving any remuneration for their services, and the poor person who was successful in his proceedings could recover only the amount that he himself had paid towards his out-of-pocket expenses.

Exceptional circumstances during the 1939–1945 war, when solicitors and their staffs were more than halved by the demands of the services for men, led to the establishment by the Law Society, with the approval of the Lord Chancellor, of a Services Divorce Department, which started its work on 1 January 1942. The conducting solicitors of the Divorce Department represented any service man or woman not above the rank of sergeant in the Army or equivalent ranks in the other services, and their spouses, unless the person concerned had such private assets as made it unreasonable that he should be admitted as a poor person.

Provision was made out of public funds to cover the administrative costs of the poor persons procedure, and from 1926 a Government grant was made annually to the Law Society, for this purpose, while, in addition, after the last war a further annual grant from public monies was made to the society to reimburse it the expenses of establishing and maintaining the Services Divorce Department. It may be recorded that between 1942 and 1950 the department conducted 45,478 service divorce causes and, in addition, 19,181 civilian matrimonial causes which it undertook when the rules of court enabled it to do so at the conclusion of hostilities.

(iii) *The House of Lords*

Facilities for legal aid before the Judicial Committee of the House of Lords existed only in the *in forma pauperis* procedure.

(c) *Legal Advice*

No fully organized legal advice service has ever been available for the general public, but members of the public who have required legal assistance in matters not involving litigation and have been unable to pay for it in the ordinary way have traditionally never found themselves unable to obtain it. It has been the practice of members of the legal profession through the years to give gratuitous legal advice where that advice was needed; and though the provision of this service went unrecognized, there can be no solicitor's office which had not and still does not habitually carry clients from whom no payment is ever asked, in view of their financial circumstances. Advice on many matters is given also by stipendiary magistrates, magistrates' clerks and county court registrars to poor persons throughout the country, and in a number of big cities there are recognized poor man's lawyer centres provided by the voluntary efforts of the profession or by charitable organizations, or sometimes by the main political parties. These poor man's lawyer centres are staffed almost entirely by lawyers on a part-time and voluntary basis, the legal advisers giving their services on one or more evenings a week without remuneration. At some of the legal advice centres, but at only a few, letters or simple documents may be drafted for the poor person who seeks assistance. In addition, the provincial law societies have arranged for volunteer lawyers to see members of the public where necessary by arrangement with Citizens' Advice Bureaux (which were set up during the war under the auspices of the National Council of Social Service); and, in addition, members of the public can obtain information, particularly as regards their rights and duties as landlords and tenants, from local authorities and from their trade unions, while many big industrial concerns provided facilities for their members to obtain advice on legal subjects.

No account of the pre-1949 facilities for legal advice would be complete without a reference, however brief, to the schemes for free legal advice for members of the forces introduced in July 1942 for the Army and made available for members of the Royal Air Force and in 1943 for members of the Royal Navy and the Royal Marines. The schemes dealt only with the applicants' civil legal problems, including divorce, and did not deal with criminal matters or anything affecting naval or military discipline. Within those limits, they were designed to provide legal advice and to assist service men and women in the preparation of their actions which were to be heard in the courts of the United Kingdom.

2. The Legal Aid and Advice Act, 1949

The Legal Aid and Advice Act of 1949 modifies but slightly the system of legal aid in criminal cases provided by the Poor Prisoners' Defence Act, 1930, but it makes very extensive reforms as regards the availability of legal aid in civil proceedings, and introduces for the first time a comprehensive national scheme of legal advice.

There are five basic principles which underlie the Act and the various regulations and the scheme which have been made under the Act. The first principle is that no person ought to be deprived of legal advice or, if necessary, legal representation before any court by reason only of lack of means. Secondly, those who cannot afford to pay anything should receive legal aid free in civil proceedings, and those who can afford to contribute something towards their own costs and expenses ought to contribute what they can reasonably afford. Thirdly, the legal services to be provided should be given by the legal profession, who should receive fair and reasonable remuneration for their services. Fourthly, the administration of the scheme should not be by a department of State or a local authority, but should be by the Law Society, which should be responsible to the Lord Chancellor as the head of the legal profession; and fifthly, in so far as it is not found from other sources, the cost of the whole scheme should be borne by the State and should not fall on local funds.

(a) *Legal Aid before Courts of Criminal Jurisdiction*

The Act preserves the existing machinery under the Poor Prisoners' Defence Act, 1936, and the Criminal Appeal Act, 1907, subject to certain modifications, of which the most important are:

(1) In future, applications for legal aid, defence or appeal certificates may be made to the clerk of the court by post and not necessarily in person, and

(2) The court, when deciding whether or not to grant a certificate, must determine whether or not the means of the applicant are sufficient to enable him to obtain legal aid without a certificate and whether it appears to be in the interests of justice that the applicant should be given free legal aid.

The Act expressly provides that any doubt on either of these two questions is to be resolved in favour of the applicant. Finally, the Act transfers the burden of financing legal aid in criminal cases from local funds to the national exchequer.

(b) *Legal Aid before Courts of Civil Jurisdiction*

(I) *Nature and Scope of Legal Aid*

Part I of the Legal Aid and Advice Act, 1949, provides that legal aid is to be given by a solicitor—and, where necessary, a barrister also—to those of moderate means in connexion with nearly all classes of proceedings before the ordinary courts of law in the United Kingdom. No legal aid is to be provided initially in respect of certain proceedings, the most important of which are those for defamation and for breach of promise of marriage, but provision is made to enable such proceedings to be brought within the scope of the Act by regulations to be made by the Lord Chancellor.

(ii) *The Courts in which Legal Aid is available*

Under the Act, legal aid is available in any proceedings (except those mentioned above, which are listed in Part II of the First Schedule to the Act) brought before the House of Lords or the Judicial Committee of the Privy Council, the Court of Appeal, the High Court, the county court or before certain other inferior courts and tribunals in which the legal profession normally has a right of audience.

(iii) *Eligibility for Legal Aid*

Those who are eligible to receive legal aid under the Act have to fulfil two requirements. First, they must satisfy a committee of lawyers, called a local committee, that they have reasonable grounds for taking, defending or being a party to the proposed proceedings and that in the particular circumstances of the case it is reasonable that legal aid should be granted to them. Secondly, they must satisfy the National Assistance Board (which is a government department normally charged with the duty of providing financial assistance to those in impecunious circumstances) that they are within the means limits laid down by the Act. It is to be noted that under the former poor persons procedure the duty lay upon a committee of lawyers to decide not only whether there was a *prima facie* case for bringing, defending or being a party to proceedings, but also whether the applicant came within the financial provisions of the rules. Under the new Act, however, it is no part of the duties of the local committee to inquire into the means of the applicant. In determining the means of an applicant for legal aid, the National Assistance Board makes such inquiries as may be necessary, and in accordance with the provisions of the Legal Aid (Assessment of Resources) Regulations, 1950, made by the Lord Chancellor under powers contained in the Act, it certifies what are the applicant's disposable income and disposable capital respectively, and the maximum contribution, if any, which the applicant for legal aid can be required to make towards his own costs. No appeal lies from a decision of the National Assistance Board in this connexion.

The local committee has primarily to determine, on the evidence submitted to it by the applicant, whether or not he has reasonable grounds for bringing or defending proceedings, but it also has two important additional functions. First, even if it is satisfied that there are such reasonable grounds, it may refuse to grant legal aid if it appears to it to be unreasonable that the applicant should be granted it in the particular circumstances of the case; for example, if there appears to be no likelihood of the applicant's obtaining any benefit from his judgment should he be successful in his action, because of the poverty of the defendant. Secondly, in the light of the certificate from the National Assistance Board, the local committee has to determine, from its knowledge of the probable cost of the legal proceedings in contemplation, what actual contribution towards his costs should be made by the assisted person and whether he ought to be required at once to contribute the maximum as assessed by the National Assistance Board, or some smaller sum which might be sufficient to cover the cost of the proceedings. The Committe may decide to allow the contribution to be paid by instalments, and when it does so, normally the contribution is required to be made by weekly or monthly instalments spread over a year.

(iv) *Contributions towards Costs*

Under the Legal Aid (Assessment of Resources) Regulations, 1950, rules for computing the capital and income of an applicant for legal aid are laid down. The Act provides that legal aid is to be available to any person whose disposable income does not exceed £420 a year. The phrase "disposable income" has been used in the Act to mean the applicant's net income which is available, after inevitable prior charges upon that income have been met. In other words, the disposable income is what remains to the applicant after deductions have been made from his gross income in respect, for example, of the maintenance of dependants, interest on loans, rent, and income tax. Under sections 3 and 4 of the Act, an assisted person is liable to be required to contribute out of income a sum not exceeding one-half of the amount, if any, by which his disposable income for one year as assessed by the National Assistance Board exceeds £156. There is no fixed upper limit as regards capital, but applicants with more than £500 "disposable capital" will normally be refused legal aid. Under the rules, "disposable capital" does not include the value of the applicant's household furniture and effects, articles of clothing, personal tools and equipment of his trade, the value of his dwelling house in which he resides and various other small items. Moreover, specific deductions from his gross capital may be made in respect of debts which he may owe, contingent liabilities likely to become payable within twelve

months after his application for legal aid, and a sum of £75 where the applicant has a wife, dependent child or other dependent relative living with him. The National Assistance Board is given yet a further discretion under the rules, so that where there are special circumstances the amount to be deducted from the applicant's capital resources may be adjusted as is appropriate to meet these circumstances. An applicant for legal aid, in addition to his contribution out of his disposable income, may be required to contribute the whole of his disposable capital in excess of £75.

(v) *Effect of Legal Aid*

Where an application for legal aid is successful, the local committee which granted the application will issue a "civil aid certificate" to the applicant. This certificate will specify the nature of the proceedings to which it relates, any special conditions attaching to the issue thereof, the amounts of the assisted person's disposable income, disposable capital and maximum contribution, and the amount and method of payment of the actual contribution. Whatever may be the costs of the proceedings to which the certificate relates and of any appeal from the decision of the court, the assisted person cannot be required to pay towards his own costs more than the maximum amount certified by the National Assistance Board as being payable by him. Moreover, the Act provides that where an assisted person is unsuccessful, the court shall consider the means of all the parties and their conduct in connexion with the dispute, and shall not order the assisted person to pay more towards the costs of his successful opponent than would be a reasonable sum for him to pay having regard to all the circumstances. In any inquiry into the means of the assisted person for this purpose, the Act expressly provides that his dwelling house and household furniture and the tools and implements of his trade are to be left out of account and are to be protected from seizure in execution to enforce any order for costs that may have been made by the court against him.

If an applicant for legal aid is unsuccessful, he will be informed of the grounds of the local committee's refusal. An appeal lies from any decision of that committee, except against the refusal of a certificate on the grounds that the applicant is outside the scope of the scheme according to the determination of the National Assistance Board, or any decision regarding the amount of any contribution or the method by which it is to be paid. An appeal lies to another committee of lawyers called an area committee, to which reference is made later in this paper.

Provision is made by the regulations to cover cases where there is great urgency, and in that event what is called an "emergency certificate" can be granted by any one of a number of persons, provided that the applicant is able to satisfy such person that he has reasonable grounds for bringing, defending or being a party to the proceedings and that he is likely to satisfy the National Assistance Board that he is within the means limits laid down by the Act. An emergency certificate can be obtained in less than twenty-four hours, but it is issued on the understanding that application will be made for a civil aid certificate for the same proceedings. If a civil aid certificate is subsequently granted, it dates back to the date of the emergency certificate. If it is subsequently refused, the emergency certificate is automatically revoked, and the holder thereof is deemed never to have been an assisted person under the Act. While an emergency certificate is in force, the holder has all the advantages of being an assisted person.

(vi) *Relationship between the Assisted Person and his Lawyers*

The whole plan of assisted litigation is designed to secure, so far as possible, that the relationship between client, solicitor and counsel shall be the same as that relationship where a client is not an assisted person under the Act. Nevertheless, it has been thought necessary for the protection of public monies, substantial sums of which are involved, to provide that certain controls are exercised over the expenditure to be incurred in proceedings undertaken on behalf of an assisted person. For example, express authority of the area committee must be obtained before an interlocutory appeal is lodged, before a counter-claim or cross-action is set up or set off, before a further party is added to the proceedings, or before more than one barrister is instructed. Furthermore, if the solicitor of an assisted person desires to call as a witness someone with specialized or expert knowledge, he must first obtain the authority of the area committee, which will determine the amount of the fee to be paid to the witness and will fix the maximum number of expert witnesses who may be called to give evidence for the assisted person in the proceedings. Regulations empower solicitors and barristers employed by an assisted person to give up a case if in their opinion he has required the proceedings to be conducted unreasonably so as to incur an unjustifiable expense, or has required unreasonably that the proceedings be continued. Where a solicitor does give up a case in such circumstances, he must report to the area committee the reasons which caused him to do so.

(vii) *The Panels of Lawyers*

The legal services made available to the public under the Legal Aid and Advice Act are provided by practising solicitors and barristers who have indicated their willingness to support the scheme by placing their names upon one or more of the panels relating to the different classes of litigation. There is no limit to the number of panels upon which any solicitor or barrister may place his name. An assisted person may select any solicitor to act for him, provided that his name is on the panel appropriate to the class of action to be brought. Solicitors and counsel may resign from the panels at any time, provided only that they bring to

a conclusion any proceedings in which they are then concerned for an assisted person.

(viii) *The Law Society's Divorce Department*

There is one exception to the rule that an assisted person may select his own solicitor to act for him, and that is where the maximum contribution of an assisted person is assessed to be not more than £10 and the case is a matrimonial one. In that event the case is assigned to a solicitor employed whole-time at a salary by the Law Society in its Divorce Department, which is the successor of the Services Divorce Department set up during the war and referred to earlier in this paper. The solicitors in the department undertake these matrimonial causes only under the scheme.

(ix) *The Remuneration of the Legal Profession*

Lawyers acting for assisted persons are prohibited from accepting either from the client or from any other source—except the Law Society—any sum in respect of their professional fees or disbursements. An assisted person's lawyers are paid, out of the Legal Aid Fund maintained by the Law Society, their disbursements in full and 85 per cent of their normal professional fees in High Court proceedings or 100 per cent of those fees in county court proceedings, the amount being fixed by a taxing master or other official of the court employed for the purpose of taxing bills of costs.

(x) *Administration*

Perhaps the most novel feature of the Legal Aid and Advice Act, 1949, is that it entrusts to the Law Society, the body representative of the solicitors' branch of the legal profession, the responsibility for the efficient administration of the whole scheme as regards legal aid in the civil courts and legal advice and assistance.

The Law Society exercises its functions under the general guidance of the Lord Chancellor, who is responsible to Parliament. It is required to report to him as soon as possible after the end of each financial year on the exercise and the finance of its functions under the Act. While the broad principles governing the provision of legal aid and advice are contained in the Act, and the detailed rules of procedure are laid down by regulations made by the Lord Chancellor, the administrative machinery is prescribed by the Law Society in an instrument called the Legal Aid Scheme made under the Act. Under that scheme, England and Wales are divided into twelve areas, in each of which there is an area committee, appointed by the Law Society, consisting of twelve solicitors and four barristers; and they deal with the general administration of the Legal Aid Scheme within their own area. The area committees appoint local committees consisting of solicitors and, where possible, barristers in their areas at each of a large number of cities and towns, and every application for legal aid must be made to one of these local committees. Persons, whether British nationals or not, and whether resident in the United Kingdom or not, who may be involved in litigation before the courts of the country, may apply for a civil aid certificate. Those resident within England and Wales may apply to any local committee. Those resident outside the country must apply to the local committee in London.

The duties of the local committees are sufficiently mentioned above. Among the more important functions of area committees are those of considering appeals from decisions of local committees, of exercising the controls over expenditure specified above, and of preparing and maintaining the panels of solicitors and barristers willing to act.

The committees are responsible to the Council of the Law Society, which normally acts through a standing committee upon which are a representative of the Lord Chancellor and representatives of the Bar. The Council is in close and continual consultation with all area committees, and where guidance is found to be necessary in the light of experience or in the interests of uniformity they issue advice to such committees, to local committees and to the lawyers on the panels. The Law Society maintains a Legal Aid Fund, and once a year delivers to the Lord Chancellor financial estimates of the probable expenses for the ensuing year.

The Council of the Law Society employs a whole-time staff of over seven hundred persons in connexion with the administration of legal aid, including seventy-seven solicitors, of whom thirty are employed in the Divorce Department.

(xi) *The Lord Chancellor's Advisory Committee*

Section 13 of the Act requires the Lord Chancellor to constitute an advisory committee to advise him on such questions relating to the Act as he may refer to them from time to time. The members of this committee are appointed having regard to their knowledge of the work of the courts and of social conditions, and are specifically required to report to the Lord Chancellor on the annual report delivered to him by the Law Society. Their report, together with that of the Law Society, is laid by the Lord Chancellor before Parliament each year.

(xii) *Finance*

Section 9 of the Act provides that one of the functions of the Law Society is to establish and administer the Legal Aid Fund, and all receipts and expenses of the Law Society attributable to proceedings in the civil courts or to legal advice and assistance have to be paid into and out of the Legal Aid Fund. The general funds of the Law Society are indemnified out of the Legal Aid Fund against any liability in respect of expenses which the Society may incur in connexion with legal aid or advice.

There is paid out of the Legal Aid Fund every expense incurred by the Law Society, including adminis-

trative expenses and the legal costs and disbursements due to lawyers who have acted for assisted persons. There are paid into the Legal Aid Fund all contributions received from assisted persons, and damages and costs recovered on their behalf, and such sums as Parliament may vote annually to meet any deficit that there may be on the account.

(xiii) *Temporary Postponement of Certain Provisions of the Act*

Although the Act provides for a comprehensive scheme of legal aid and advice, provision is made for parts of such scheme to be brought into effect at different times by orders made by the Lord Chancellor. In the summer of 1950, the Government announced that, having regard to the economic position of the country, it had decided that for the time being only that part of the Act which related to the provisions of legal aid in the High Court and Court of Appeal, including actions which might be remitted by the High Court to the county court, should be brought into force. An order was accordingly made bringing into operation on 2 October 1950 legal aid in those courts only. At the present time, therefore, legal aid is still confined, as under the former Poor Persons Rules, to certain courts only, and it has yet to be fully implemented as regards proceedings in the county court, in the courts of summary jurisdiction and other inferior courts.

(c) *Legal Advice*

A legal advice service will be set up, when the appropriate provisions of the Act are brought into effect, to enable any person within England and Wales to obtain legal advice and to enable such advice to be given to members of the armed forces of the Crown serving outside Great Britain. Legal advice will consist of oral advice on legal questions and will include help in the preparation of applications for legal aid. It will not, however, extend to advice on law other than English law. The advice will be given by solicitors employed for the purpose by the Law Society at a large number of legal advice centres to be established throughout the country. In the case of the armed forces of the Crown, legal advice will be made available for them in any country where any substantial number of troops may be stationed. No specific means test is to be applied to those seeking legal advice, but the legal adviser may decline to advise if in his view the person seeking advice can reasonably afford to obtain it in the ordinary way. A nominal fee is to be payable for the credit of the legal aid fund by every person receiving legal advice, but the adviser may waive this fee if in his opinion the payment of even so small a sum would involve hardship on the applicant. The expenses of the legal advice service, in so far as they are not met by the fees received, will be paid out of the legal aid fund.

Finally, the Act provides for a special form of legal advice or assistance to be given where something more than merely oral advice is required; where, for example, steps have to be taken to assert or dispute a claim, but no question of taking or defending legal proceedings before a court has yet arisen. Where a legal adviser takes the view that this form of legal assistance is required, he may, if his inquirer wishes, refer him to a solicitor in general practice on the appropriate legal aid panel who will be empowered to incur expenditure up to a limited amount in pursuing or resisting the claim or in conducting negotiations on his client's behalf. The procedure, however, will not be available (unless regulations are made to the contrary) to any person who, if he were involved in litigation and applied for a civil aid certificate, would be required to make a contribution towards his own costs, and, further, the procedure will not be available in matters concerning any of the classes of case expressly excluded from legal aid under the Act. The legal assistance, therefore, will be only in a limited class of case and be provided for those of very slender means.

3. Legal Aid outside England and Wales

Although this paper has been devoted primarily to an account of the legal aid and advice facilities in England and Wales, reference must be made to the fact that a very similar and comprehensive scheme of legal aid has been brought into force in Scotland. The differences between the two schemes are due almost entirely to the differences in the law and the legal practice and usage in the two countries. The main principles, however, are the same, and the legal profession in Scotland, acting through a central committee of the Law Society of Scotland, is responsible for the general administration of legal aid in Scotland. As in England, so in Scotland, applications for certificates are considered by a large number of local committees conveniently placed from the public's point of view.

In the territories for whose international relations His Majesty's Government is responsible, wherever there are qualified and practising lawyers, free legal aid is provided for all persons charged with capital or serious offences who are unable to afford such aid for themselves. Financial exigencies and the competing claims for priority of other social services, however, prevent the extension of this service at the present stage of development of most of these territories on the elaborate scale recently achieved in the United Kingdom. In any case, in many of these territories there are insufficient lawyers to implement such a scheme; indeed, there are a few territories in which there are no qualified and practising lawyers at all.

The native courts which exist in many territories for the purpose of administering local native law and custom are presided over by persons who are not themselves lawyers, and counsel are not permitted to appear for either side. Furthermore, when—as in the case of the Muslim courts—the law administered is mainly religious, the admission of counsel would be opposed to religious beliefs.

UNITED STATES OF AMERICA

HUMAN RIGHTS IN THE UNITED STATES IN 1950[1]

A DIGEST OF TREATIES, FEDERAL AND STATE LEGISLATION, ORDERS, JUDICIAL DECISIONS, AND OTHER REGULATORY ACTS, WITH SELECTED TEXTS

CONTENTS

INTRODUCTORY NOTE

In the United States, with its federal form of government, the obligation to protect human rights is a shared responsibility. The Federal Government protects the human rights assured to United States citizens by the Federal Constitution by means of international agreements, laws enacted by the Federal Congress, executive orders, regulations, and decisions of the Federal courts. Similarly, the State and territorial governments protect the rights and freedoms assured individuals within their jurisdiction by State Constitutions and territorial Acts by means of laws enacted by State and territorial legislatures, executive orders, etc., and decisions of State and territorial courts. In addition, the rights and freedoms of individuals are protected in the United States at the local level through local ordinances and regulations and decisions of local magistrates.

The developments described in the present report are representative of governmental activities in safeguarding the basic rights and freedoms of the American people. They record only one chapter in the continuing expression of individual rights in the United States.

The great quantity of relevant material makes it possible to digest only certain of the developments in 1950. A true picture of the wide extent to which basic human rights and freedoms are fostered in the United States would include, in addition to the data contained in the present report, the many 1950 acts appropriating funds to pay for new or continuing human-rights activities.

I. INTERNATIONAL AGREEMENTS

The Treaty of Friendship, Commerce and Navigation between the United States and Ireland, which was signed on 21 January and came into force with the exchange of ratifications on 14 September 1950, defines, as an essential part of the legal framework within which general economic relationships may develop, the fundamental rights and privileges which nationals and enterprises of each country shall enjoy in the other.

Thus, article I guarantees the nationals of either party within the territory of the other party such basic rights as the right to travel freely; to reside at places of their choice; to enjoy liberty of conscience; and to gather and transmit material for dissemination to the public abroad, including the right to communicate by any means open to general public use with persons both inside and outside the territories of either party. By Article II, nationals of either party in the

[1] This note was prepared by the United States Government.

territory of the other are to be free from unlawful molestations of every kind; and, if accused of crime and taken into custody, they are granted the right to be informed of the accusations, to be brought to trial as promptly as is consistent with the proper preparation of the defence, and to enjoy all means reasonably necessary to their defence. Article IV grants the same treatment to nationals of both parties in the application of laws on specified subjects relating to workmen's compensation and social security. Under article VI, the courts of justice and administrative tribunals and agencies in each country are open in all degrees of jurisdiction to the nationals of the other, on the basis of national treatment for the purpose of pursuing and defending their rights. Article VIII forbids unlawful entry or molestation of the dwellings, offices, warehouses, factories, and other premises of the nationals and companies of one party located within the territory of the other. Article XX of the treaty specifically states that the treaty does not accord any right to engage in political activity.[1]

II. FEDERAL, STATE, AND TERRITORIAL ACTS

A. Civil and Political Rights

1. *Government by the Will of the People*

Guam Bill of Rights

The Congress of the United States approved, on 1 August 1950, an organic act for the Non-Self-Governing Territory of Guam, which declares Guam to be an incorporated territory of the United States and provides a civil government for the island. Section 5 of the Organic Act is a bill of rights for the people of Guam, guaranteeing them freedom of religion; the right to be secure, in their persons, houses, papers, and effects, from unreasonable searches and seizures; due process of law; speedy and public trial; *habeas corpus;* freedom from bills of attainder, *ex post facto* laws, and laws impairing the obligation of contracts; freedom of the voter with respect to any qualification as to property, income, political opinion, or any other matter apart from citizenship, civil capacity, and residence; freedom from discrimination because of race, language, or religion; equal protection of the law; freedom from any religious test as a qualification to any office or public trust under the Government of Guam; freedom from conviction for treason against the United States unless on the testimony of two witnesses to the same overt act, or on confession in open court; and protection of children through prohibition of the employment of any child under fourteen years of age in any occupation injurious to health or morals or hazardous to life or limb.

The Organic Act for Guam provides specifically, in section 5, that no person who advocates or belongs to any party or organization which advocates the overthrow by force or violence of the Government of Guam or of the United States shall be qualified to hold any public office of trust or profit under the Government of Guam.[2]

Providing for the Constitutional Government of Puerto Rico

The Congress of the United States has progressively recognized the right of the people of Puerto Rico to govern themselves, and under the terms of various congressional enactments an increasingly large measure of self-government has been achieved by the islanders. On 3 July 1950, the Congress approved a law under which the legislature of Puerto Rico is authorized to call a constitutional convention to draft a constitution which, upon adoption by the people of Puerto Rico and approval by the Congress of the United States, will become effective. By this act, the Government of the United States gives full recognition to the principle of government by consent, and to the right of a people to live under a constitution of its own choosing.[3]

Providing for Internal Security

The United States Congress adopted a measure on 23 September 1950 to protect the United States against certain subversive activities, by requiring, *inter alia*, Communist organizations to register and divulge information about their officers, their finances, and in some cases their membership. The Act expressly provides that "Nothing in this Act shall be construed . . . in any way to limit or infringe upon freedom of the press or of speech as guaranteed by the Constitution of the United States, and no regulation shall be promulgated hereunder having that effect."

This measure defines a "Communist organization" as an organization substantially directed, dominated, or controlled by the foreign government or foreign organizations controlling the world Communist movement. The term "world Communist movement" is defined as a movement to establish totalitarian dictatorship wherein the rights of individuals are subordinated to the State, fundamental rights and liberties denied, and control over the people maintained by fear, terrorism and brutality.[4]

Voting

The following States enacted legislation relating to voting: California, Colorado, Georgia, Maryland, Michigan, New Jersey, New York, Rhode Island, South Carolina, Virginia and Washington. Most of the laws facilitated absentee voting by the disabled,

[1] Excerpts in Part III of this *Yearbook*, p. 443.

[2] 64 Stat. 384. See the text of the Guam Bill of Rights on p. 397 of this *Yearbook*.

[3] 64 Stat. 319.

[4] 64 Stat. 987.

the shutins, veterans in hospitals, and persons prevented from casting ballots on the prescribed day because of their religious beliefs. Georgia provided for absentee voting in the municipal elections of the City of Augusta. Maryland lengthened the hours during which polls are kept open in Worcester County. Virginia authorized persons in line at the polls at closing time to be allowed to vote. South Carolina enacted a general election law, section 14–N of which makes it a misdemeanour punishable by fine and/or imprisonment to assault or intimidate, to discharge from employment, or to eject from any rented house, land, or other property any citizen because of his political opinions or his exercise of political rights (such as voting). South Carolina in a general election held in September 1950 approved a constitutional amendment to eliminate the payment of a poll tax as a requirement for voting. When this constitutional amendment becomes effective through 1951 legislative action, the total number of States requiring a poll tax as a prerequisite for voting is reduced to six.[1]

2. *Fair Trial*

Jurisdiction of American Laws extended to Pacific Islands

On 15 June 1950, the Eighty-first Congress extended the jurisdiction of United States laws relating to civil acts or offences to cover such acts or offences when consummated or taking place on the following Pacific Islands under the jurisdiction of the United States: Midway Island, Wake Island, Johnston Island, Sand Island, Kingman Reef, Kure Island, Baker Island, Howland Island, Jarvis Island, Canton Island and Enderbury Island (the latter two islands being under the joint jurisdiction of the United States and Great Britain), or in the waters adjacent thereto. Those acts or offences, under this legislation, henceforth will be adjudicated, determined, or adjudged and punished according to the laws of the United States, including the provisions for trial by jury and other guarantees of fair treatment.[2]

Jury Selection

The Supreme Court of the United States reversed a judgment of the Court of Criminal Appeals of the State of Texas in the case of *Cassel v. Texas* on the ground that procedure for selecting a grand jury had not been in conformity with the Fourteenth Amendment of the Federal Constitution of the United States. This Amendment provides that "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws." In this case the petitioner, a Negro, sought review to determine his right to a fair and impartial grand jury, alleging that "the equal protection of the laws" had been denied him because only white men had been selected to serve on the grand jury that indicted him. The trial court, after full hearing, denied the motion, and the Court of Criminal Appeals of Texas affirmed the petitioner's conviction. The United States Supreme Court decided that the grand jury commissioners had proved their exclusion of Negro jurors was intentional when they stated that they chose for service only those persons whom they knew, and that they knew no eligible Negroes even though the area was one in which Negroes made up a large proportion of the population.[3] The Supreme Court based its decision upon its earlier decision in *Hill v. Texas*, where it was held that the Fourteenth Amendment to the Constitution barred the State from discriminating because of race in the selection of grand jurors, and that as a result a conviction based on an indictment found by a grand jury from which Negroes were kept because of discrimination could not stand.[4]

No Person compelled to be Witness against Himself

The Fifth Amendment to the Constitution of the United States provides that no person shall be compelled in any criminal case to be a witness against himself. In *Blau v. United States*, the Supreme Court of the United States held that a witness before a United States district court grand jury could not be compelled to testify concerning the Communist Party and her employment by it, in a situation where she reasonably could fear that an admission of employment by the Communist Party or intimate knowledge of its workings might result in criminal charges being brought against her.[5]

Right to Bail

In *Bridges v. United States*, the United States Court of Appeals for the Ninth Circuit held that where a meritorious question exists bail becomes a matter of right.[6] The plaintiff had been convicted by a United States district court of false swearing and of conspiracy to defraud the United States in falsely swearing in naturalization proceedings that he had never belonged to the Communist Party. His existing bail had been increased, and he was released pending his appeal. The Government argued that his bail should be revoked, because the subsequent Korean crisis rendered him, as a "proven Communist", a menace to public security. The court held that there was insufficient ground for revoking his bail.[6]

The United States Court of Appeals for the Second Circuit held, in the case of *Williamson et al. v. United*

[1] For example: Cal. 1950, ch. 20, p. 457; Colo. 1950, ch. 3, p. 30; Ga. 1950, Act. 703, p. 2588; N.Y. 1950, ch. 4, p. 28; Mich. 1950, Act. 11, p. 10; N.J. 1950, ch. 145, p. 298; N.Y. 1950, ch. 150, p. 671; R.I. 1950, ch. 2637, p. 1509; S.C. 1950, ch. 858, p. 2059; Va. 1950, ch. 283, p. 462; Wash. 1950, ch. 8, p. 14.

[2] 64 Stat. 217.

[3] 339 U.S. 282 (1950).

[4] 316 U.S. 400, 404 (1942).

[5] 340 U.S. 159 (1950).

[6] 184 F. 2*d* 881 (1950).

States, that post-conviction writings and speeches of Communist Party leaders critical of United States policy toward Korea and supporting Soviet Russia's position did not justify denial of bail after their conviction and pending *certiorari* on a substantial question to the Supreme Court of the United States. The Second Circuit said: ". . . the right of every American to equal treatment before the law is wrapped up in the same constitutional bundle with those of these Communists. If in anger or disgust with these defendants [Communist Party leaders] we throw out the bundle, we also cast aside protection for the liberties of more worthy critics who may be in opposition to the government of some future day."[1]

Under the Internal Security Act of 1950, the Attorney-General is given discretionary power to detain deportable aliens without bail. In *Warbol v. Shrode et al.*, the Federal District Court, District of Minnesota, Fourth Division, held that even though the defendant had been a member of the Communist Party from 1935 through 1938 and still adhered to some Communist principles, the Attorney-General had abused his discretion in declining bail to a defendant who had been arrested on a deportation warrant in 1947, released on bond, and re-arrested in 1950. In this case, the Court said that it was difficult to reconcile one's sense of American justice, even to such an alien, with an incarceration over a period of many months.[2]

The United States District Court, District of Maryland, Civil Division, held in *United States, ex rel. Mavrekefalus v. Murff*, and *United States ex rel. Bafalukos v. Murff*, that aliens who were held in custody without bail pending decision in deportation proceedings under the Immigration Act of 1917, as amended by the Internal Security Act of 1950, and who were either members of an organization officially declared to be hostile to the interests and internal security of the Government or organizers for such an organization, could be so held without bail pending deportation proceedings. The court held that a decision of the Attorney-General in such a case is subject to judicial review only when it is devoid of any reasonable foundation.[3]

3. *Freedom from Unreasonable Search and Seizure*

The Fourth Amendment to the Constitution reads: "The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." In *United States v. Rabinowitz*, the United States Supreme Court said that what is a "reasonable search" is not to be determined by a fixed formula, but by the facts and circumstances of each case.[4] The court held that a general search, without a warrant, of the office of a person suspected of selling forged and altered postage stamps, following his arrest under a warrant for the arrest, was a lawful incident to such arrest. In reaching this conclusion, the court overruled *Trupiano et al. v. United States*, to the extent that that case required a search warrant solely upon the basis of the practicability of procuring it rather than upon the reasonableness of search following lawful arrest.[5]

Two other cases decided by the United States Supreme Court in 1950 dealt with the power of the Federal Trade Commission to require corporations to file reports showing how they had complied with a decree of the Court of Appeals enforcing the Commission's cease-and-desist order, in addition to the reports required by the decree itself.[6] The Court of Appeals found the Commission to be without statutory authority to require additional reports as to compliance. The Supreme Court said that it was unnecessary to examine whether a corporation is entitled to the protection of the Fourth Amendment's proscription of unreasonable searches and seizures and the Fifth Amendment's due-process-of-law clause. The Court declared that the principle had already been established that corporations "can claim no equality with individuals in the enjoyment of a right to privacy".[7] The Supreme Court stated that while governmental investigation into corporate matters may be of such sweeping nature and so unrelated to the matter properly under inquiry as to exceed the investigatory power, in these two cases the inquiry came within the authority of the agency, the demand was not too indefinite, and the information sought was reasonably relevant.

The United States Court of Appeals for the First Circuit held in the case of *Best v. United States* that "the protection of the Fourth Amendment extends to United States citizens in foreign countries under occupation by our armed forces".[8]

The United States Court of Appeals, Second Circuit held, in *United States v. Coplon*, that agents of the Federal Bureau of Investigation were without authority to arrest an espionage suspect without a warrant under the circumstances of that case.[9] The court emphasized that the limited power to make arrests without warrant granted to agents of the Federal Bureau of Investigation requires a warrant where there is time to obtain one.

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[1] 184 F. 2*d* 280, 284 (1950).

[2] 98 F. Supp. 229 (1950).

[3] 94 F. Supp. 643 (1950).

[4] 339 U.S. 56 (1950).

[5] 334 U.S. 699 (1948).

[6] *United States* v. *Morton Salt Co.*, 338 U.S. 632; *United States* v. *International Salt Co.*, 338 U.S. 632 (1950).

[7] Citing *United States* v. *White*, 322 U.S. 694 (1944).

[8] 184 F. 2*d* 131, 138 (1950).

[9] 185 F. 2*d* 629 (1950).

4. *Freedom of Speech and Expression*

The New York Court of Appeals, in *People* v. *Feiner*, held "that the constitutional guarantee of freedom of speech is not an absolute right to be indiscriminately exercised under all circumstances and conditions".[1] In this case, a Syracuse University student had been restrained from continuing a street-corner speech because of imminent danger of a breach of the peace. The court held that the right of free speech does not include the right to block traffic on the public sidewalks and streets, and, with intent to provoke a breach of the peace and with knowledge of the consequences to inflame a mixed audience of sympathizers and opponents so that, in the judgment of police officers present, a clear and present danger of disorder and violence is threatened.

In *Gillars v. United States*, the United States Court of Appeals for the District of Columbia held that the constitutional guarantee of free speech does not bar prosecution for treason of an American citizen who had participated in a German propaganda programme designed to convince Americans that the invasion of Europe by Allied forces during World War II would be a fiasco.[2] The First Amendment, the court said, does not protect one from accountability for words as such, although it protects the free expression of thought and belief as a part of the liberty of the individual as a human personality. Words, it held, which when reasonably viewed constitute acts in furtherance of a programme of an enemy to which the speaker adheres and to which he gives aid with intent to betray his country "are not rid of their criminal character merely because they are words . . . It depends," the court said, "upon their use."

In what was regarded as a test of the power of film censorship exercised by State and local governments, the United States Circuit Court of Appeals for the Fifth Circuit, in the case of *Rd-Dr Corporation et al. v. Smith*, held that films are "entertainment" and not entitled to "free press" protection of the Constitution.[3] The court thus upheld the action taken by the United States District Court for the Northern District of Georgia declaring that an ordinance passed by the City of Atlanta for the censorship of motion pictures was not unconstitutional even though it set no standard other than the censor's opinion.[4]

In the case of *United States v. Dennis et al.*, the United States Court of Appeals, Second Circuit, unanimously affirmed the convictions of eleven American Communist leaders who had been convicted under the Smith Act of 1940 for conspiring to organize the Communist Party of the United States as a group to teach and advocate the overthrow of the Government of the United States by force and violence.[5] The court said that a conspiracy to overthrow the Government having been discovered, the only question that remained to be answered was how long the Government must wait before finding that a clear and present danger existed. The court decided that it was unnecessary to "wait till the actual eve of hostilities".

The question whether the requiring of so-called "non-Communist" affidavits violated freedom of speech came before the United States Supreme Court in the cases of *American Communications Association C.I.O. et al. v. Douds, Regional Director of the National Labor Relations Board* and *United Steelworkers of America v. National Labor Relations Board*.[6] The court said that although the First Amendment to the Constitution provided that Congress should make no law abridging freedom of speech, press or assembly, it had long been established that these freedoms were dependent upon the power of constitutional government to survive, and that if constitutional government were to survive, it must have the power to protect itself against unlawful conduct and, in some circumstances, to protect itself against incitement to commit unlawful acts. The court held that the provision in section 9 (*h*) of the National Labour Relations Act denying the benefits of certain provisions of the Act to any labour organization the officers of which had not filed with the National Labor Relations Board the so-called "non-communist" affidavits did not violate the First Amendment.

5. *Freedom of Religion*

The United States Court of Appeals for the Ninth Circuit held in *Richter v. United States* that the Constitutional guarantee of freedom of religion did not preclude the conviction of a conscientious objector for refusing to register under the Selective Service Act of 1948. The Constitution of the United States, the Court pointed out, "grants no immunity from military service because of religious convictions or activities". Immunity, the court said, "arises solely through Congressional grace in pursuance of a traditional American policy of deference to conscientious objectors".[7]

Three years ago, in *State of Illinois ex. rel. McCollum v. Board of Education of School District No. 71, Champagne County, Illinois, et al.*, the United States Supreme Court held that the utilization of tax-established and tax-supported public-school systems to aid religious groups to spread their faith through released-time religious instruction on public-school property "falls squarely

[1] 91 N.E. 2*d* 316 (1950).

[2] 182 F. 2*d* 962 (1950).

[3] 183 F. 2*d* 562 (1950).

[4] *Rd-Dr Corporation et al.* v. *Smith et al.*, 89 F. Supp. 596 (1950).

[5] 183 F. 2*d* 201 (1950).

[6] 339 U.S. 382 (1950).

[7] 181 F. 2nd 591, 593 (1950).

under the ban of the First Amendment" (made applicable to the States by the Fourteenth Amendment).[1] In *Zorach et al. v. Clauson et al.*, the New York Supreme Court held that the New York programme of released-time for religious training during school hours, but outside the school building and off school property, involving no approval of religious teachers or courses of instruction and no use of public monies did not violate the principle of Church–State separation.[2] Several States, however, have laws permitting the reading of Bible verses without comment during school hours to public-school pupils. In *Doremus et al. v. Board of Education of Borough of Hawthorne et al.*, the Supreme Court of New Jersey held that required daily reading from the Old Testament and the permitted recitation of the Lord's Prayer, under a New Jersey statute, were not "designed to inculcate any particular dogma, creed, belief or mode of worship", but were intended to quiet the pupils, prepare them for their daily studies, teach them "principles of piety, justice, and sacred regard for truth, love of country, humanity, and a universal benevolence". The court held that such reading and recitation, without comment, were not in violation of the Constitution.[3]

6. *Right to Own Property*

The Constitution of the United States provides in Article VI that treaties made under the authority of the United States shall be "the supreme law of the land; and the judges in every State shall be bound thereby". The California Alien Land Law, adopted in 1920, forbade ownership of real property in that State by aliens ineligible to citizenship. In *Fujii v. State of California*, the California District Court of Appeals, Second District, held, in 1950, that the Alien Land Law of California conflicted with the provisions of the Charter of the United Nations calling for the promotion of "universal respect for and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion", and that "the Alien Land Law must therefore yield to the treaty as the superior authority".[4] On appeal to the Supreme Court of California, the latter court held, on 17 April 1952, in *Fujii v. State of California*, "that the Charter provisions [Preamble, and Articles 1, 55 and 56] relied on by plaintiff were not intended to supersede existing domestic legislation, and we cannot hold that they operate to invalidate the Alien Land Law". The legislation was, however, held by the court, in a four-to-three decision, to be unconstitutional and invalid on the ground that it conflicted with the equal protection clause of the Fourteenth Amendment to the Constitution of the United States. While differing as to the effect of the Fourteenth Amendment on the invalidity of the California law, both the majority and the minority opinion rejected the ground upon which the California District Court of Appeals had held the law invalid—*i.e.*, that the law violated the provisions of the Charter of the United Nations, pledging the Member countries to promote the observance of human rights and fundamental freedoms, without distinction as to race. The majority and minority opinions in the Supreme Court of California agreed that the Charter provisions relied upon by the plaintiff were not intended to supersede existing domestic legislation and that, therefore, they did not operate to invalidate the Alien Land Law.[5]

In two cases decided on 3 May 1948, the United States Supreme Court held that restrictive covenants not to sell real property to members of the coloured race are not invalid so long as their purposes are achieved by voluntary adherence of these parties to the agreement, but that it was contrary to the Fourteenth Amendment and contrary to public policy to aid in the enforcement of them by judicial proceedings.[6] As a result of that decision, the United States Court of Appeals for the District of Columbia in *Roberts et al. v. Curtis et al.*, on 5 October 1950, dismissed an action for damages for the breach of a restrictive covenant not to sell certain property to members of the coloured race, on the ground that the granting of assistance by way of judicial action to enforce such a covenant had been specifically withheld by the Supreme Court in the 1948 decision.[7]

7. *Access to Public Services*

An additional step in furthering the policy of equality of treatment and opportunity for Negroes in the armed services of the United States was taken by the 1950 revisions of Army Circular 124, dated 27 April 1946, entitled "Utilization of Negro Manpower in the Post-War Army".

The revision, Special Regulation No. 600–629–1, announced 16 January 1950, declares that the Department of the Army will utilize all manpower without regard to race, colour, religion or national origin, in order to obtain maximum efficiency; places responsibility upon commanders of all echelons for ensuring that all personnel under their command are thoroughly oriented in the necessity for the unreserved acceptance of that policy; and places responsibility for the execution of the policy upon those commanders or organizations of installations containing Negro personnel.

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[1] 333 U.S. 203 (1948).

[2] 99 N.Y. Supp. 2*d* 339 (1950).

[3] 75 Atl. 2*d* 880 (1950).

[4] 217 P. 2*d* 481, 488 (1950); 218 P. 2*d* 595 (1950) (petition for re-hearing denied).

[5] 38 A.C. No. 24, pp. 817–868.

[6] *Shelley et ux.* v. *Kraemer et ux.*, 334 U.S. 1 (1948); *Hurd et ux. v. Hodges et al.*, 334 U.S. 24 (1948).

[7] 93 F. Supp. 604 (1950).

The directive further provides for equality of treatment of enlisted personnel in respect to processing, Army School training, eligibility for Military Occupational Specialities, and promotions. It provides in addition for the procurement of officers for the Regular Army and for the Officers' Reserve Corps without regard to race or colour, and for equal opportunities for advancement, professional improvement, extended active duty, active-duty training, promotion and retention. Under the January 1950 directive, Reserve Officers' Training Corps students at summer training camps will remain together and be trained together without regard to race or colour.[1]

The New York State Court of Appeals, in the case of *Thompson et al.* v. *Wallin et al.*, and others decided at the same time, held that it was permissible under the Constitution to bar members of subversive organizations from employment in the public schools of the State of New York, as provided by a New York State statute known as the Feinberg Law, which was enacted in 1949.[2] The court found that no restriction in that statute exceeded the legislature's constitutional power, because "When . . . the legislature finds acts by public employees which threaten the integrity and competency of a government service, such as the public school system, legislation adequate to maintain the usefulness of the service is necessary to forestall such danger . . ." The Court said that a "clear and present danger" existed on the basis of the legislature's finding of an infiltration of members of subversive groups into employment in the public schools, making possible the circulation of subversive propaganda among the children. In this case, the court specifically said that constitutional guarantees of free speech and assembly "are not absolute" and do not deprive the State of its primary right to self-preservation.

In the case of *Hirschmann* v. *County of Los Angeles*, the California State Supreme Court, in a decision on 2 June 1950, held that neither freedom of speech, press and assembly, nor the privilege against self-incrimination, was violated by a dismissal of a public school teacher for refusal to execute a non-Communist oath as required by the County Board of Supervisors. "The county . . . need not wait", the California court said, "until after an employee has committed some overt act before making inquiry as to his fitness to occupy the position which he holds. . . . The people . . . are entitled . . . to be assured of the loyalty of their employees, and to have any information which will help them determine that fundamental question. The refusal to give such information is a clear violation of the position of trust which they occupy, and may properly be considered an act of insubordination which justifies removal."[3]

[1] Press release Dept. of Defense, 64-50, 16 January 1950.

[2] 95 N.E. 2*d* 806 (1950).

[3] 18 U.S. Law WK., No. 50 (27 June 1950), pp. 2583-2584.

8. *Asylum from Persecution*

Displaced Persons

Under legislation approved by the United States Congress on 16 June 1950, amending the Displaced Persons Act of 1948, the programme of admitting "eligible displaced persons" to the United States is continued until 30 June 1952. The 1950 act broadened the definition of eligible persons by including persons who had fled from their countries and were residing in Germany, Austria, or Italy as of 1 January 1949 instead of 22 December 1945, as in the 1948 act. The 1950 act also increased the total of those who could be admitted under the programme to 341,000.

The new law provided that selection for admission among otherwise eligible persons shall be made without discrimination because of race, religion, or national origin. It excluded, however, any person who is or has been a member of the Communist Party or who follows or has followed, adhered to or has adhered to, advocates or has advocated any political or economic system or philosophy directed towards the overthrow of representative government. It preserves the family group by permitting the spouse and unmarried dependants of an eligible displaced person also to be admitted, if otherwise qualified.[4] Under United States law an alien legally admitted to the United States has the same rights and freedoms as citizens with the exception of the right to vote, and may become eligible for naturalization after a stated number of years of residence.

Adjustment of Immigration Status

In at least two instances in 1950, the Immigration and Naturalization Service of the Department of Justice authorized the continued residence in the United States of persons who had grounds to fear political or religious persecution if they returned to their country of origin. On 7 November 1950, the Service ruled that a Chinese student in the United States was entitled to an adjustment of his immigration status under the Displaced Persons Act because he had a justifiable basis for fearing political persecution if he returned to China, inasmuch as he had expressed his opposition to Communism.[5] Similarly, a ruling made on 30 November 1950, permitted a Catholic priest who had come to the United States from Yugoslavia, where he had engaged in anti-Communist activities, to remain in this country under the provisions of the Displaced Persons Act.[6]

9. *Family Rights*

A law approved by the United States Congress on 19 August 1950 makes eligible the alien spouses and unmarried minor children of United States citizens

[4] 64 Stat. 219.

[5] Dept. of Justice File A—6730648.

[6] Dept. of Justice File A—6903246.

serving in or having an honourable discharge from the armed forces of the United States during World War II to enter the United States with non-quota immigration visas, if otherwise admissible under the country's immigration laws. The legislation provides that in the case of such alien spouses the marriage must have occurred before six months after the enactment of the measure.[1]

B. Economic, Social and Cultural Rights

1. *Social Security*

The United States Congress adopted amendments to the Social Security Act which extend social security coverage on a compulsory basis to about seven and one-half million additional persons, and voluntary coverage is also made available for about two million employees of State and local governments and non-profit organizations. The new classes covered include the following: self-employed persons whose annual net income from self-employment is at least $400; certain agricultural workers, such as processing workers and "regularly employed" agricultural workers; domestic workers; employees of non-profit organizations; employees of State and local governments; Federal civilian employees not under a retirement system; employees and self-employed persons in the Virgin Islands and, if requested, in Puerto Rico; and Americans employed outside the United States if employed in United States enterprises. The 1950 amendments extend the definition of "employee" to include full-time life-insurance salesmen; agent-drivers or commission drivers engaged in distributing meat or bakery products, vegetables or fruit products, beverages (other than milk), or laundry or dry-cleaning services; full-time travelling or city salesmen taking orders from retailers, hotels, wholesalers, jobbers, and contractors; and industrial workers earning at least $50 in a calendar quarter if subject to regulation under State law, and if they work in accordance with specifications prescribed by the employer.

Under the new law, which became effective on 1 January 1951, current benefits are increased by about 77.5 per cent, the increase ranging from about 50 per cent for the highest benefit groups to about 100 per cent for low-benefit groups. The new law also increases the maximum salary or wages on which payroll taxes are payable from $3,000 to $3,600 per year. Tax rates increase for the years beginning with 1960, and climb to 3.25 per cent. A person is considered "fully insured" under the new statute if he has one quarter of coverage for each of two quarters elapsing between 1950 and the age of sixty-five or death, no matter whether earned before or after 1950. This liberalization enables many people now sixty-five years of age or over to draw retirement benefits immediately, and enables newly covered groups to qualify much more quickly.

The 1950 Social Security Amendments also liberalize the public-assistance programmes (old-age assistance, aid to dependent children and aid to the blind) by initiating a new assistance category for aid to the permanently and totally disabled for which the States could receive Federal grants-in-aid and providing additional Federal financial participation in the aid to dependent children programme. In addition, the receipt by the States of Federal funds for assistance in the form of medical care was facilitated. Substantial increases are authorized for maternal and child health, crippled children and child welfare services. It is estimated that the new law will cost the Federal Government an additional $180 million annually.[2]

2. *Unemployment Compensation*

Four of the nine States making changes in their unemployment insurance laws increased the weekly benefit amounts. Of these, Georgia raised the minimum weekly benefit from $4 to $5, and the maximum from $18 to $20, and at the same time increased the minimum qualifying wage for the base period from $100 to $176; New Jersey increased the minimum from $9 to $10, and the maximum from $22 to $26, and at the same time lowered the qualifying wage for the base period from $270 to $250 as a minimum, and from $660 as a maximum; Maine increased the minimum weekly benefit amount from $6 to $7, but retained the maximum of $25; and Kentucky raised the minimum from $7 to $8, and the maximum from $20 to $24. Uniform duration of benefits was also increased in both Georgia and Kentucky, while in Maine and New Jersey the increase in weekly benefits resulted in increased potential annual benefits.

Other changes in unemployment insurance included a re-vamping by Georgia of its disqualification provisions; an added disqualification by Louisiana pertaining to false statements in order to obtain increased benefits; and in New Jersey increases in the disqualification periods for discharge, misconduct and voluntarily leaving.

With regard to temporary disability changes, New Jersey increased both the maximum and minimum weekly benefits, and lowered the qualifying wage; Rhode Island changed from a uniform calendar-year basis to an individual base period, thereby relating the workers' benefits more closely to their earnings; and New York made new provisions regarding the deposit and investment of assessments and contributions paid into the special fund for disability.[3]

The major changes in workmen's compensation

[1] 64 Stat. 464; 8 U.S.C. Section 239.

[2] 64 Stat. 477.

[3] For example: Ga. 1950, Oct. 529, p. 38: N.J. 1950, ch. 172, p. 370 and ch. 173, p. 393; Maine 1950, H. 2127-X; Ky. 1950, ch. 206, p. 733; La. 1950, Act 498, p. 900; R.I. 1950, ch. 2540, p. 1038; N.Y. 1950, ch. 727, p. 1851.

included the following: Kentucky, Massachusetts, Mississippi and New Jersey increased maximum weekly disability or death benefits. In Kentucky the maximum weekly disability was increased from $20 to $23, and total death benefits were raised from $8,000 to $8,500. Kentucky also increased the total benefits for medical, surgical and hospital treatment, payable in addition to any other compensation for an injury, from $800 to $2,500. The maximum weekly benefits were raised in Massachusetts from $15 to $20, and from $20 to $25 for a widow or widower with one dependent child. Massachusetts increased the maximum total death benefit from $7,600 to $10,000. In Mississippi, the increase made in the minimum weekly payment raised the benefit from $7 to $10, except in cases of partial dependence. Mississippi provided also that medical aid would include the furnishing of artificial limbs. In New Jersey, the maximum weekly benefits in certain cases were increased from $25 to $30.

Provisions relating to benefits for hernia were liberalized in Mississippi, New Jersey and Virginia. New York increased benefits for rehabilitation purposes, while Massachusetts established a commission to provide medical, surgical, vocational and other rehabilitation services. Michigan set up a legislative committee to study the State workmen's compensation laws, and the life of a committee to study workmen's compensation insurance rates in South Carolina was extended.[1]

Puerto Rico enacted legislation (1) requiring an employer to hold a position open for a worker injured in an industrial accident, and to re-employ him upon his recovery, subject to certain conditions; (2) stipulating that employers operating quarries and land transportation insure their employees regardless of the number employed; (3) providing that during the period of disability a public employee might receive weekly compensation not in excess of the regular salary for his position; and (4) amending the Minimum Wage Law to make it apply to all workers, except professionals, executives and administrators.[2]

3. *Housing, Recreation and Public Accommodation*

The Federal Housing Act of 1949, which set forth the goal of a decent home and suitable living environment for every American family, laid the groundwork for attaining that goal by providing aid in the housing of low-income families.[3] The Housing Act of 1950, which was approved by the Congress on 20 April 1950, carries the goal forward by stimulating additional housing for lower- and middle-income families, and by encouraging housing of more adequate size and quality for families with children.

Specifically, the 1950 Housing Act authorizes a new mortgage-insurance programme for low-cost homes in suburban and outlying areas; extends to 1 July 1955, and sustantially increases authorization to insure lenders against losses on home building authorization and repair loans; revises the home-mortgage insurance programme to provide larger and lower-cost homes, with no discrimination in the selection of tenants because of children in the applicant's family; liberalizes the programme of mortgage insurance for projects of housing co-operatives; increases the home-loan guarantee for veterans; provides for direct loans to veterans who are unable to obtain loans under the terms of the Act from private sources; and authorizes loans for student and faculty housing. The Housing Act of 1950 also facilitates the disposal of war and veterans' housing under the jurisdiction of the Housing and Home Finance Agency, and transfers farm-labour camps from the jurisdiction of the Secretary of Agriculture to that of the Public Housing Administration. These camps henceforth are to be used for the purpose of housing families and persons of low income, principally farm workers and their families, at rents no higher than such tenants can afford to pay.[4]

A second law, approved by the United States Congress on 2 May 1950, permits the military services to employ architects to draft plans for rental housing for military and civilian personnel in areas adjacent to military installations. Upon the basis of the plan and specifications thus drawn up, prospective sponsors of projects will be able to bid competitively for the privilege of supplying the housing without the necessity of preparing their own plans and specifications. It is thus intended to encourage and expedite the building of military housing by private enterprises.[5]

The Federal Congress also approved a law, 18 July 1950, empowering the Governments of Puerto Rico, Alaska, Hawaii and the Virgin Islands to authorize public bodies or agencies to undertake slum-clearance and urban re-development activities and to participate in the benefits made available by the Federal Government under the Housing Act of 1949 in connexion with providing dwelling accommodation for families of low income.[6] A number of States broadened the powers and duties of their re-development agencies. Connecticut increased its authorized bond issue for moderate-cost housing from $30 million to $60 million.[7]

[1] For example: Ky. 1950, ch. 187, p. 703 and ch. 198, p. 726; Mass. 1950, ch. 257 and ch. 767; Miss. 1950, ch. 412, p. 491; N.J. 1950, ch. 175, p. 290; Va. 1950, ch. 122, p. 157; N.Y. 1950, ch. 769, p. 2091; Mich. 1950, S.Res. 17-X; S.C. 1950, Oct. 1053, p. 2549 (S. 703 and H. 2204).

[2] P.R. 1950, Acts 48, 100, 163, 131, pp. 126, 256, 444, 336.

[3] See the summary of the Federal Housing Act of 1949 in *Yearbook on Human Rights for 1949*, p. 236.

[4] 64 Stat. 48.

[5] 64 Stat. 97.

[6] 64 Stat. 987.

[7] For example: La. 1950, act. 401, p. 660; Miss. 1950, ch. 513, p. 876; N.H. 1950, S. 3-X; N.J. 1950, ch. 326, p. 1087; R.I. 1950, ch. 2619, p. 1479 and ch. 2574, p. 1121; P.R. 1950, Act 125, p. 326; N.Y. 1950, ch. 25, p. 26, ch. 222, p. 740, ch. 305, p. 985; Ky. 1950, ch. 119, p. 497; V.I. 1950, Leg. Assem. Bill No. 13; S.D. 1950, ch. 12, p. 13, ch. 13, p. 14; Conn. H. 2–XXXXX.

More than half of the legislatures meeting in 1950 enacted housing legislation designed to bring nearer the Government's goal of a decent home for every American citizen. South Dakota became the forty-third State to enact legislation accepting participation in the Federally aided low-rent housing programme. Other States—notably Louisiana, Mississippi, New Hampshire, New Jersey and Rhode Island, and the Territory of Puerto Rico—amended their tenant eligibility requirements to bring them into conformity with the Federal Housing Act of 1949. Under that Act, deductions are permitted for each minor in computing the income of a family wishing to qualify for admission or continued occupancy in a lowrent housing project. Four of these States—Louisiana, New Hampshire, New Jersey and Rhode Island—also amended their laws to conform to eligibility requirements of the Federal law relating to the payment of prevailing salary or wage rates in connexion with the construction of low-rent housing.

Three States—Louisiana, Mississippi and Rhode Island—extended the applicability of their housing authorities to additional cities and towns, while New York created new housing authorities in three cities. The Legislative Assembly of the Virgin Islands enacted a comprehensive law creating a Virgin Island Housing and Redevelopment Authority to undertake not only low-rent housing projects, but slum-clearance and urban-redevelopment projects as well. The new statute in South Dakota likewise authorizes slum-clearance and urban re-development either by clarifying previous legislation or by authorizing the creation of new agencies to undertake such work.

Laws adopted in a number of States in 1950 continued the trend to eliminate discrimination in housing and in places of amusement. New York, for example, amended its Civil Rights Law to prevent discrimination or segregation because of race, creed, colour, national origin, or ancestry in any housing accommodation the construction or maintenance of which was assisted or supported to any extent, including tax exemption, by the State.[1] In New Jersey, eight laws were adopted incorporating anti-discrimination provisions in a like number of statutes relating to housing built with public funds or publicly assisted.[2] They provided that, in connexion with each law which they supplemented, no person should be subjected to discrimination because of race, creed, colour, national origin, or ancestry. Massachusetts changed the name of the "State Fair Employment Practice Commission" to "Commission against Discrimination" and broadened the powers of the Commission to include the administration of provisions relating to discrimination in public housing developments as well as to violations of prohibitions against discrimination in public places and in advertisements. The Massachusetts law prohibited segregation or other discrimination in public places because of religion, race, or colour. Under this law, all persons have the right to full and equal accommodation: advantages, facilities, and privileges of places of public accommodation, resorts, and places of amusement.[3]

The Legislative Assembly of the Virgin Islands provided for equal rights in places of accommodation, amusement, and resort without reference to race, creed, colour, national origin, or ancestry.[4] Texas, which passed a law requiring separate park facilities for its white and Negro populations, also established a special committee to investigate the State park system with a view to recommending the necessary steps for providing substantially equal park facilities for the two races.[5]

In *Henderson* v. *United States*, the Supreme Court of the United States held that a railroad's rules and practices reserving a table exclusively for Negro passengers and other tables for white passengers, with curtains between them, violated section 3 (1) of the Inter-State Commerce Act of 1887, which makes it unlawful for any inter-State railroad "to subject any particular person . . . to undue or unreasonable prejudice or disadvantage in any respect whatsoever". The court held that the "right to be free from unreasonable discrimination belongs, under Section 3 (1), to each particular person".[6]

In the case of *Rice* v. *Arnold, Superintendent of the Miami Springs Country Club*,[7] the Supreme Court of the United States, on 16 October 1950, remanded for reconsideration, in the light of its decisions of 5 June 1950, in *Sweatt* v. *Painter et al.* and *McLaurin* v. *Oklahoma State Regents*,[8] a previous judgment of the Florida Supreme Court to the effect that the allocation of the only municipal golf course in the city of Miami to Negroes for use only one day a week and to whites for their exclusive use the other six days did not unconstitutionally discriminate against Negroes.

4. *Child Welfare*

Day Nurseries

The District of Columbia, in which the city of Washington is located, is administered by the Federal Congress. On 30 June 1950, the Congress approved an act to continue a system of nurseries and nursery schools which provide day care for school-age and under-school-age children in the District of Columbia. Under this measure, the Board of Public Welfare for

[1] N.Y. 1950, ch. 287, p. 961.

[2] N.J. 1950, ch. 105–112, pp. 198–203.

[3] Mass. 1950, ch. 479.

[4] V.I. 1950, Legislative Assembly Bill No. 1.

[5] Texas 1950, ch. 17, p. 78, and S.C.R. No. 18, p. 133.

[6] 339 U.S. 816, 824 (1950).

[7] 340 U.S. 848 (1950).

[8] 339 U.S. 629, 637 (1950).

the District of Columbia is authorized to waive all payment for attendance in such nurseries or nursery schools in cases where parents are unable to pay for such care for their children. The extending legislation authorized the continuance of the programme to 30 June 1953, and provides that not more than $100,000 might be made available for the purpose.[1]

Prohibition of Child Labour

Legislation regulating the age below which no child may be permitted to work and the conditions under which young people may be employed was adopted in both the United States Congress and a number of State legislatures.

The Federal Fair Labor Standards Amendments of 1949,[2] which became effective 25 January 1950 substantially expanded the child-labour coverage of the Fair Labor Standards Act of 1938. With the passage of the amendments, it became necessary to amend the regulations covering the employment of fourteen- and fifteen-year-old minors to adapt them to the increased coverage and to clarify the application of the sixteen-year minimum to the newly covered inter-State-commerce fields.

On 18 January 1950 Child Labor Regulation No. 3 was revised to bar minors under sixteen years of age from employment in connexion with the transportation of persons or property by rail, highway, air, water, pipeline or other means; warehousing and storage; communications and public utilities; and construction, including demolition and repair. Minors from fourteen to fifteen years of age are permitted in office or sales work in these fields only if such work does not involve any duties on trains, motor vehicles, aircraft, vessels, or other media of transportation, or at the actual site of construction operations, and provided further that it is performed only outside school hours, for no more than three hours a day, eighteen hours a week when school is in session, and for not more than eight hours a day, forty hours a week when school is not in session. All work must be performed between 7 a.m. and 7 p.m.[3]

On 27 November 1950, the Wage and Hour Division of the United States Department of Labor established eighteen as the minimum age for the employment of minors in connexion with mining, other than coal mining, effective, on 6 January 1951, with the following exceptions: work in offices, warehouses, laboratories, repair or maintenance shops not located underground, surveys, road repair and maintenance, general clean-up of mine property, and handsorting at picking tables.[4]

Another order of the Wage and Hour Division of the Department of Labor, dated 23 January 1950, provides that student learners (meaning thereby students who are receiving instruction in an accredited school, college, or university and who are employed on a part-time basis pursuant to a *bona fide* training programme under the supervision of a State board of vocational education, or other recognized educational body) shall be paid not less than 75 per cent of the minimum wage established in section 6 of the Fair Labor Standards Amendments of 1949.[5]

Rhode Island prohibited minors from sixteen to seventeen years of age from working in mercantile and office establishments between 11 p.m. and 6 a.m. Formerly, this prohibition applied only to manufacturing and mechanical establishments. Maryland, in completely revising its child-labour law, considerably strengthened former child-labour standards in that State. The new law raises the basic age for employment from the former fourteen-year minimum to a sixteen-year minimum and set eighteen instead of sixteen as the minimum age for the issuance of general employment certificates. The new law also prohibits minors under eighteen from working in a number of hazardous occupations and replaces the former forty-eight-hour work week in certain specific occupations with a forty-hour maximum. It limits the hours of work of minors under eighteen who attend school and work outside school hours in the following ways: for minors of sixteen and seventeen, a nine-hour day and forty-nine-hour week is established; if such minors attend day school, they are prohibited from working between 10 p.m. and 6 a.m. For minors under sixteen, working from 7 p.m. to 7 a.m. in any gainful occupation is prohibited, rather than only in specified occupation as formerly. In addition, the new forty-hour work week was made applicable to minors under sixteen who have any gainful occupation. Virginia made its school law consistent with its child-labour law of 1948 by permitting, under certain conditions, children of fourteen years or over who cannot benefit from further education to be exempted from school attendance.

Several of the States adopted laws permitting minors to be employed in certain occupations at an earlier age. Kentucky lowered the age requirements from eighteen to sixteen for work in public bowling alleys. Louisiana broadened a former provision under which minors of sixteen to seventeen were permitted to work ten hours a day and sixty hours a week in the processing of sugar-cane or sorghum to include also the processing of strawberries and made the provision applicable to minors of fourteen and fifteen as well as those of sixteen and seventeen. In Massachusetts, the authority of the Commissioner of Labor and Industries to suspend the application of any provision regulating the employment of minors and women was extended until 1 July

[1] 64 Stat. 307.

[2] A summary of the Federal Fair Labor Standards Amendments of 1949 was published in *Yearbook on Human Rights for 1949*, p. 236.

[3] 15 F.R. 396.

[4] *Ibid.*, 8680.

[5] *Ibid.*, 395–396.

1951, in the event of an emergency or a condition of hardship in any industry or establishment.[1]

5. *Education*

The United States Congress passed a broader act for financial assistance to school districts in areas affected by Federal activities, approved 30 September 1950.[2] The act authorizes financial assistance to school districts for school maintenance and operation (1) where the local tax income has been reduced as a result of the acquisition of real property by the United States; (2) where education is provided for children residing on Federal property; (3) where education is provided for children whose parents are employed on Federal property, and (4) where there has been a sudden and substantial increase in school enrolment as the result of Federal activity. In the School Construction Act, approved 23 September 1950, provision is made for the United States to bear in part the cost of constructing school facilities in the school districts specified above where Federal activities have caused a substantial increase in enrolment necessitating additional school construction.[3]

The School Construction Act also authorizes grants to States to assist them to inventory existing school facilities; to survey the need for the construction of new facilities; to study the adequacy of State and local resources available to meet school facilities requirements, and to develop State plans for school construction.

Efforts were made by the legislature of several southern States to improve educational services for Negro students. Kentucky, for example, provided for the admission of Negro students to courses of instruction given hitherto exclusively for white people, by enacting a law which states that unless an "equal, complete and accredited" course is given at the Kentucky State College for Negroes, instruction above the high-school level available in any institution of higher learning, public or private, or instruction for adults conducted or sponsored by or under the auspices of public or private corporations, groups, or bodies, is not to be denied Negroes, if the governing authorities of the said institutions, corporations, groups, or bodies so elect.[4]

Mississippi likewise passed laws intended to improve the educational opportunities of its Negro citizens. The State made funds available in the amount of $50,000 for the instruction of qualified Negro students in graduate and professional schools outside the State, where such instruction is not available at the regularly supported Mississippi institutions of higher learning.[5] Mississippi again provided for the granting of State aid for the construction of school buildings for the colored race, and implemented this act by appropriating two million dollars for that purpose.[6] It also authorized the establishment of a county school district in any county where no four-year high school was located, for the exclusive use of the white or coloured race as the need might exist.[7]

In *Sweatt* v. *Painter et al.* the Supreme Court of the United States held that a qualified Negro was required to be admitted to the University of Texas Law School in a situation where legal education offered the petitioner in another school was not substantially equal to that furnished by the University of Texas Law School.[8]

The Delaware Chancery Court of New Castle, in *Parker et al.* v. *University of Delaware et al.*, followed decisions of the United States Supreme Court in holding that Negroes were entitled to be admitted to the arts and science undergraduate school of the University of Delaware in a situation where facilities offered them at the Delaware State College did not equal those provided at the University of Delaware. Otherwise, the court said, the equal protection of laws provided in the Fourteenth Amendment to the United States Constitution would be violated.[9]

In *McLaurin* v. *Oklahoma State Regents for Higher Education et al.*, the Supreme Court of the United States rules that the State of Oklahoma violated the equal-protection provision of the Fourteenth Amendment to the Constitution of the United States in segregating a Negro student from white students even though the State-imposed separation consisted only of the assignment of the former to a seat in the classroom in a row specified for coloured students, to a special table in the library, and to a special table in the school cafeteria.[10]

The Court of Appeals of Maryland had ruled earlier, in *McCready* v. *Byrd et al.*, that a qualified Negro applicant was denied the equal protection of the laws and was entitled to apply for admission to the University of Maryland Nursing School even though offered a "superior" course in another nursing school at a total cost not exceeding that of attending the Maryland University School.[11] The Court of Appeals relied upon decisions of the Supreme Court of the United States, in a number of previous cases, that it

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[1] For example: La. 1950, Act 466, p. 861 and Act 12, p. 16; N.Y. 1950, ch. 616, p. 1444; Ky. 1950, ch. 105, p. 469; Mass., 1950, ch. 168; R.I. 1950, ch. 2623, p. 1490; N.Y. 1950, ch. 8, p. 205; Va. 1950, ch. 91, p. 102.

[2] 64 Stat. 1100.

[3] 64 Stat. 967.

[4] Ky. 1950, ch. 155, p. 615.

[5] Miss. 1950, ch. 31, p. 39.

[6] Miss. 1950, ch. 386, p. 451 and ch. 157, p. 139.

[7] *Ibid.*, ch. 301, p. 330.

[8] 339 U.S. 629 (1950).

[9] 75 Atl. 2*d* 225 (1950).

[10] 339 U.S. 637 (1950).

[11] 73 Atl. 2*d*. 8 (1950).

was the duty of a State in providing legal training to furnish it to the residents of the State "upon the basis of an equality of right".[1]

6. *Health*

On 15 August 1950, the United States Congress provided for the establishment of two National Research Institutes: one on Arthritis, Rheumatism, and Metabolic Diseases and the other on Neurological Diseases and Blindness. These new National Institutes would be in addition to those already established in previous years (National Microbiological Institute, National Cancer Institute, National Heart Institute, National Institute of Dental Research, and the National Institute of Mental Health), and are designed to assist and foster researches, investigations, experiments and demonstrations relating to the cause, prevention and methods of diagnosis and treatment of arthritis, rheumatism, multiple sclerosis, cerebral palsy, epilepsy, poliomyelitis, blindness, leprosy and other related diseases. They mark additional steps forward to improve the health of the people through the evolution of the most effective methods of prevention, diagnosis, and treatment of these diseases and the dissemination of the knowledge thus acquired.[2]

7. *Employment*

Laws to prohibit discrimination in employment based on race, creed, colour, national origin, or ancestry were passed by several States. New York, for example, supplemented its law on the subject by prohibiting the issuance of a licence to operate an employment agency if the name of the agency, either directly or indirectly, "expresses or connotes" any such discrimination.[3] Another New York law specified that New York governmental contracts for the manufacture, sale, or distribution of materials, equipment, or supplies must contain provisions prohibiting racial or religious discrimination in the hiring of employees by the contractor.[4]

Two States banned discrimination in employment because of age. Massachusetts amended its Fair Employment Act so as to incorporate that prohibition, and defined "age" as meaning any age between forty-five and sixty-five.[5] The State of Rhode Island created by resolution a legislative committee to investigate the practices of hiring and discharging employees because they have reached the age of forty years or over. The committee was directed to include in the report drafts of remedial legislation to prevent refusal to employ, or dismissal of, persons between the ages of forty-five and sixty-five.[6]

Puerto Rico adopted legislation outlawing discrimination in employment because of political affiliation.[7]

8. *Minimum Wage*

In 1950, fifteen wage orders became effective in Puerto Rico and seven States: Connecticut, Massachusetts, Rhode Island, Washington, Oregon, New Hampshire and Ohio. The minimum wage rates established range from 50 cents an hour for the restaurant occupation in New Hampshire to 70 cents an hour for the personal service occupation in Massachusetts. An amendment to the Massachusetts law enacted in 1949 became effective 1 January 1950, establishing a statutory minimum wage of 65 cents an hour applicable to both men and women workers.

9. *Right to Strike*

Ten years ago, the Supreme Court of the United States held in *Thornhill* v. *Alabama* that the use of picketing for the purpose of "dissemination of information concerning the facts of a labour dispute must be regarded as within that area of free discussion that is guaranteed by the Constitution".[8] But in 1941 the Supreme Court, while reaffirming the decision in the Thornhill case, held that a State is at liberty under the Fourteenth Amendment to the United States Constitution to prevent violence by labour unions in industrial disputes through the use of injunctions,[9] and in an instance where peaceful picketing violated a State statute forbidding agreements in restraint of trade (picketing to induce appellee not to sell ice to non-union peddlers), the Supreme Court held that enjoining such picketing does not violate the provisions of the Fourteenth Amendment as to freedom of speech.[10]

Three decisions on picketing were handed down on 8 May 1950 by the Supreme Court of the United States. In *Building Service Local No. 262 et al.* v. *Gassam*; *International Brotherhood of Teamsters et al.* v. *Hanke et al. doing business as Atlas Auto Rebuild*; and *Hughes et al.* v. *Superior Court of California for Contra Costa County*, the Supreme Court held that peaceful picketing may be enjoined by a State Court if its objective is to coerce an employer to compel his employees to join a union; or the owners of a business conducted by the owner himself to assent to a demand to become a union shop;

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[1] *Missouri ex rel. Gaines* v. *Canada, Registrar of the Univ. of Missouri*, 305 U.S. 337 (1938) and *Sipuel* v. *Board of Regents of the Univ. of Oklahoma*, 332 U.S. 631 (1948).

[2] 64 Stat. 443.

[3] N.Y. 1950, ch. 336, p. 1064.

[4] *Ibid.*, ch. 424, p. 1165.

[5] Mass. 1950, ch. 697.

[6] R.I. 1950, resolution 791.

[7] P.R. 1950, ch. 382, p. 876.

[8] 310 U.S. 88, 102, 913 (1940). *Milk Wagon Drivers' Union of Chicago, Local* 753, *et al.* v. *Meadowmoor Dairies, Inc.*, 312 U.S. 287 (1941).

[9] *Giboney et al.* v. *Empire Storage Co. & Ice Co.*, 336 U.S. 490 (1949).

[10] 339 U.S. 532, 470, 460 (1950).

or a store in a Negro neighbourhood to hire Negro employees in proportion to its Negro customers.[1] In each of these cases it was held that the right of free speech under the Fourteenth Amendment was not violated.

In *Construction and General Labor Union, Local No. 638 et al.* v. *Stephenson*, the Texas Supreme Court held that picketing to compel a house-moving contractor to employ union instead of non-union workers was enjoinable since the immediate purpose of the picketing was to compel the employer to discriminate against non-union men in hiring employees in violation of Texas' right-to-work statute.[2] In *Fawick Airflex Co.* v. *United Electrical, Radio and Machine Workers of America, Local No. 735, C.I.O. et al.*, the Ohio Court of Appeals held that the right of free speech did not protect persons who picketed a judge's home and who wrote scurrilous, insulting and threatening letters to him in order to express disapproval of his decisions in pending matters, as such actions presented clear and present dangers to orderly administration of justice, and were punishable as contempt.[3]

In the case of *Zeeman* v. *Amalgamated Retail and Department Store Employees' Union, Local No. 55*, the California Supreme Court held that while picketing at the residence of an employer might involve embarrassment, it might be lawfully done, as this was incidental to the right of a union to inform the public generally, and each segment of the public, of its side of a labour controversy.[4]

10. *Just and Favourable Conditions of Work*

Migratory Labour

For years, the conditions surrounding migratory workers have caused concern in many countries. By Executive Order 10129, dated 3 June 1950, the President established a special commission to inquire into the social, economic, health and educational conditions among migratory workers, both alien and domestic, in the United States; the problems created by the migration of workers for temporary employment in the United States; the responsibilities now assumed by Federal, State, county and municipal authorities with respect to alleviating the conditions among such workers, alien and domestic; the availability of local and migratory workers from domestic sources to meet agricultural labour needs, and (if an adequate number is not available) the extent to which temporary employment of foreign workers may be required; and the extent of illegal migration of foreign workers into the United States, the problems created thereby, and in what respect current law enforcement measures and the authority and means possessed by Federal, State and local governments may be strengthened to eliminate such illegal migration.[5]

On 15 December 1950, the life of this commission was extended to 1 March 1951, by order of the President.[6]

Women Workers. Some States limit the hours during which women workers may be gainfully employed at night. Two States adjusted the prohibited period.

Louisiana exempted women employed in an executive capacity from its laws regulating their hours of work. New York enacted legislation permitting women over twenty-one years of age to be employed in mercantile establishments until 12 o'clock midnight rather than to 10 p.m. as formerly. This provision, however, was effective only until 1 April 1951.[7]

11. *Rehabilitation of Offenders*

Six States enacted laws concerning offenders. Georgia provided for pre-sentence psychiatric examination of convicted persons in criminal cases. Louisiana authorized the appointment of a physician for the Orleans parish prison. New Jersey established a commission to study the problem of the apprehension, confinement, care and treatment of the chronic misdemeanant alcoholic and drug addict, with special attention to prevention. South Carolina made it an offence for anyone to furnish any prisoner with alcoholic beverages or narcotic drugs. Virginia provided for the examination of sex criminals to determine if mentally ill or mentally deficient, but not insane.[8]

12. *Cultural Rights*

On 10 May 1950, the United States Congress established the National Science Foundation and charged it with the responsibility, among other things, of developing and encouraging the pursuit of a national policy for the promotion of basic research and education in the sciences, by initiating and supporting basic scientific research in the mathematical, physical, medical, biological, engineering and other sciences, by fostering the interchange of scientific information among scientists in the United States and foreign countries, and by awarding scholarships and graduate fellowships in the mathematical, physical, medical biological, engineering, and other sciences.[9]

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[1] 225 S.W. 2*d* 958 (1950).

[2] 90 N.E. 2*d* 610 (1950).

[3] Decision, 6 March 1950, 18 U.S. Law Wk., No. 38 (4 April 1950), p. 2444.

[4] Decision, 31 January 1950, 18 U.S. Law Wk., No. 32 (21 February 1950), p. 2375.

[5] 15 FR. 3499.

[6] *Ibid.*, 9029.

[7] La. 1950, Act 466, p. 861; Act 12, p. 16; N.Y. 1950, ch. 616, p. 1444.

[8] For example: Ga. 1950, Act. 840, p. 427; La. 1950, Act 379, p. 623; Miss. 1950, ch. 523, p. 888; N.J. 1950, S.R. No. 13; S.C. 1950, Act. 1023, p. 2463; Va. 1950, ch. 463, p. 897.

[9] 64 Stat. 149.

III. TABULATION OF FEDERAL, STATE AND TERRITORIAL LEGISLATION

SIGNIFICANT ACTIVITY IN THE UNITED STATES OF AMERICA IN 1950 RELATING TO HUMAN RIGHTS [1]

(× indicates that legislation was adopted on the particular subject)

The Federal Government, States and Territories of the USA	Territorial self-government	Election procedures	Arrest and trial procedures	Freedom of speech	Freedom of religion	Freedom from discrimination	Freedom of communications	Public service and merit system	Education	Child welfare	Aid to handicapped	Care, rehabilitation of offenders	Housing	Health	Vacation and recreation facilities	Hours of work Labour standards	Unemployment benefits	Disability benefits Workmen's compensation	Social security, retirement and old-age benefits
U.S. Congress	×	×	×	×	×	×			×	×			×	×	×	×			×
California		×																	
Colorado		×																	
Connecticut								×		×						×			
Georgia		×					×	×		×	×	×		×	×	×	×	×	×
Idaho										×		×							×
Kentucky						×			×	×	×		×			×	×	×	×
Louisiana									×	×	×		×	×	×	×	×	×	×
Maryland		×								×	×					×	×		×
Michigan		×																×	
Mississippi			×			×			×	×	×	×	×	×	×		×	×	×
New Jersey		×			×	×		×	×	×		×	×	×	×		×	×	×
New York		×				×			×	×		×	×			×	×	×	×
Puerto Rico				×					×				×		×	×		×	×
Rhode Island		×							×	×			×			×	×	×	×
South Carolina		×		×					×	×	×	×			×	×			×
South Dakota										×			×						
Texas						×	×			×	×								
Virgin Islands						×			×				×			×			×
Virginia		×	×			×	×		×		×	×		×		×		×	×
Washington		×			×														
Wyoming									×							×			×

[1] Because of variations in reporting systems, this chart indicates only characteristic activity and does not constitute an authoritative listing of all topics dealt with in the various legislatures. The 1950 session laws of Alabama, Arizona, Illinois, Maine, Massachusetts, Missouri, and New Hampshire were not published in time to be included in this chart. Legislatures did not meet in 1950 in the other 24 states and territories. Legislation appropriating funds for activities authorized in this or previous years is omitted.

URUGUAY

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS[1]

The texts, promulgated in 1950, which are described below have a bearing on human rights:

1. *Economic and Social Rights*

1. An Act of 8 July 1950, published in *Diario Oficial* of 25 July 1950, regulates the right to apply to the courts without fee. The basis of this provision is article 227 of the Constitution, according to which free access to courts, without fee, shall be granted to those who have not the means to pay for court costs. The new Act defines the exercise of this right more clearly, since this principle had given rise to certain abuses.

2. By an Act of 13 September 1950, published in *Diario Oficial* of 21 September 1950, the salaries of civil servants of Uruguay were increased. The Uruguayan Parliament thus implemented article 44 of the Constitution, according to which the State shall improve the standards of living of the working population.

3. By two Acts of 19 September 1950, published in *Diario Oficial* of 14 October 1950, the contributions to be made to, and benefits to be paid out from pension funds for workers were increased, as well as new procedures laid down, thus modifying previous provisions. The amount of the increase is determined; new provisions are declared applicable to pensions; enterprises which are responsible for the payments due are compelled to register; and the duties and powers of the Government in this field are defined. The funds thus collected are to be used for the financing of a large-scale building project for the benefit of the lower classes; the execution of this programme is entrusted to the administering authorities.

Several Acts of 5 October 1950 deal with workmen's compensation and related matters.

One of these Acts promulgated on 5 October 1950 and published in *Diario Oficial* of 14 October 1950, supplements previous Acts by laying down a system to be applied in the organization and handling of a rural and domestic workers' pension fund, as well as an old-age pension fund.

Another Act of 5 October 1950, also published in *Diario Oficial* of 14 October 1950, provides for the limitations of working hours in industries classified as unhygienic and unhealthy, as well as for a procedure for classifying industries in this group. Further provisions define the term "occupational disease", and make provision for permanent medical supervision and special protection of pregnant women working in such industries. This Act, which implements articles 43, 52 and 53 of the Constitution,[2] is a particularly important step in the development of the industrial legislation of Uruguay, as it expresses the culmination of various measures that had been discussed over an extended period by the Uruguayan Parliament.

A third Act of 5 October 1950, published in *Diario Oficial* of 31 October 1950, establishes a central council for the administration of funds of workmen's compensation (including family members) specifying various kinds of benefits. The cases to which the new provisions are applicable, the persons who shall benefit by these provisions, and the procedure for the application of the Act are dealt with. This Act introduces some fundamental changes in the former system, which was based on the Act of 12 November 1943.

7. By an Act of 9 October 1950, published in *Diario Oficial* of 30 October 1950, various provisions of a previous Act of 28 February 1941 were modified by introducing liberal provisions on workmen's compensation in case of occupational accidents. The previous system established a "fixed maximum" which has been abandoned by the present Act.

2. *Cultural Rights*

1. An Act of 18 April 1950, published in *Diario Oficial*, implements article 62 of the Constitution[3] and establishes some free high-school courses in certain towns in the interior of Uruguay.

2. An Act of 26 May 1950, published in *Diario Oficial* of 27 June 1950, grants a subsidy to the *Movimiento de la Juventud Agraria* (Young Farmers' League) for cultural purposes.

[1] This note is based on texts and information received through the courtesy of Dr. Anibal Luis Barbagelata, Professor of Constitutional Law, Montevideo.

[2] See *Yearbook on Human Rights for 1946*, pp. 418–419.

[3] *Ibid.*, p. 420.

JUDICIAL DECISIONS

RIGHT OF PROPERTY—EQUALITY BEFORE THE LAW—CONSTITUTIONAL RIGHT OF WORKERS TO EQUITABLE REMUNERATION—ESTABLISHMENT OF MINIMUM WAGES—LAW OF URUGUAY

P. AND S. *v.* STATE OF URUGUAY

Supreme Court of Justice[1]

23 June 1950

The facts. The appellants brought an action against the State for compensation for damage and prejudice suffered as a result of Act No. 10,722, of 13 April 1946,[2] which provided for an increase in the wages of manual and office workers in the metallurgical industry. The appellants alleged that the said Act infringed their rights (articles 31 and 35 of the Constitution).[3] The State denied the rights invoked by the appellants and the existence of any legal justification for compensation.

In the court of first instance, the appellants alleged that the said Act was unconstitutional and asked that it should be declared inapplicable. In the opinion of the appellants, the Act in question has the following defects: it violates principles of constitutional law; it ignores the guarantees connected with the administration and practice of the courts, the right of property and the protection of that right, and the principle of equality before the law; and it infringes article 53 of the Constitution.[4]

After hearing the Government Attorney, the lower court held that the charge of unconstitutionality was well founded, but only in so far as regards Act No. 10,722, which is, by virtue of its substance, a jurisdictional matter within the competence of the judicial authority. Parliament violated the constitutional principle of the separation of powers by assuming functions and a competence which were outside its proper functions.

In his brief, the Government Attorney rejected the other grounds adduced by the appellants in respect of the unconstitutionality of the aforesaid Act.

Held: that the appeal should be dismissed. The Court said:

"The view held by the Government Attorney in his brief—namely, that Act No. 10,722 does not violate the principles of constitutional law, or the rights or property and equality before the law—is well founded. The arguments advanced in this brief are convincing. By fixing a minimum salary for a group of 15,000 workers, the aforesaid Act does not violate the right of property, or the principles of equality and of constitutional law, as article 53 of the Constitution expressly states that the law shall have the power to establish 'equitable remuneration' for manual and office workers. If it is the constitutional function of the law to establish an equitable wage for workers, then it cannot be argued that the law, in carrying out this very function, is ignoring the aforesaid principles and rights. The law is the instrument provided by the Constitution to determine the equitable remuneration of wage-earning and salaried employees in relation to work performed or services rendered. There can therefore be no abuse of legislative authority when the legislative chambers use the law to fix the amount of remuneration payable and the manner in which it is to be paid.

"Act No. 10,722 increases the wages earned by manual and office workers in the metallurgical industry, and the appellants have not shown that the prescribed increase amounts in any way to a confiscation of property or that it is so excessive as to engender a state of economic insecurity likely to endanger the stability of the industry. This increase in wages was ordered as an offset to a steep rise in the cost of living, and was

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[1] Spanish text of the decision received through the courtesy of Dr. Anibal Luis Barbagelata, Professor of Constitutional Law, Montevideo. English summary prepared by the United Nations Secretariat. The complete text of the decision was published in the review *Derecho Laboral*, Vol. V, No. 31, of October 1950, pp. 27 *et seq.*, Montevideo.

[2] Act No. 10,722 provided in article 1 that all wage-earning and salaried employees in the metallurgical industry should be granted a wage increase of 70 cents per day as from 2 May 1946, this increase to remain in effect until such time as the decisions of the new Metallurgical Industry Wage Board are made known. The increase shall apply to the most recently earned salary or daily wage.

[3] The articles of the Constitution cited read as follows:

"*Art. 31.* The right of property shall be inviolable, but subject to the provisions of any laws which may be promulgated for the common good. No one may be deprived of his right of property except in case of public necessity or utility established by law, and provided that he receive equitable and prior compensation from the national treasury. When the expropriation of any property is ordered on the grounds of public necessity or utility, the owners shall be indemnified for the damages suffered as a result of any delay, regardless of whether or not the expropriation proceedings are carried out.

"*Art. 35.* Every person may engage in work, agriculture, industry, trade, a profession or any other lawful activity, subject to any statutory limitations which may be established in the public interest."

[4] See the penultimate paragraph of this summary.

intended to improve the physical and moral conditions of a large segment of the working population, and to enable the workers to satisfy their requirements in food, shelter, health and transport. When the legislature, in accordance with article 53 of the Constitution, proceeds to fix wage rates, the dictates of equity and social justice are the only limitations on its action. Its powers in this field are not absolute in law; rather are they broadly discretionary. Such is the positive Uruguayan constitutional law on this question, and that law overrides theoretical conceptions as to the principle of the general applicability of the law.

"The Constitution empowered the legislature to establish 'equitable remuneration' for manual and office workers, and, in order to ensure the successful achievement of this aim, it gave the wage boards the competence necessary to establish minimum wages for workers, salaried employees and labourers in trade, industry, commercial and private offices, and public services not operated by the State (article 5 of Act No. 10,449).

"Wages considered to be just remuneration are established directly by the law and through the wage boards, but the authority conferrred on the boards does not prevent the legislature from exercising its competence when it deems it advisable in order to ensure better protection of the workers' interests in the matter of equitable remuneration. The legislature has not relinquished its constitutional prerogatives by setting up wage boards.

"It is alleged that the aforesaid Act imposed an award in a dispute about wage increases between employers and workers in the metallurgical industry. The word 'award' is not the proper term, as it implies the exercise of a judicial function. A provision of the Constitution (article 53) empowers the legislative authority to fix equitable wages without in any way restricting the exercise of that prerogative, so when the legislative authority decrees what wages are to be paid to a given group of workers, it is merely complying with the said provision of the Constitution.

"The legislative authority is alleged to have jurisdiction in the matter of equitable wages; it is therefore difficult to see wherein lies the alleged violation of the principle of the separation of powers, a principle which is implicitly recognized by the Constitution.

EQUALITY BEFORE THE LAW—DUE PROCESS OF LAW—RIGHT OF PROPERTY—SEPARATION OF POWERS—CONSTITUTIONAL RIGHT OF WORKERS TO EQUITABLE REMUNERATION—ESTABLISHMENT OF MINIMUM WAGES—RETROACTIVE EFFECT OF LEGISLATION—LAW OF URUGUAY

E.A.S.A. *v.* ATTORNEY-GENERAL OF URUGUAY

Supreme Court of Justice[1]

September 1950

The facts. Under Act No. 10644, the Attorney-General brought an action against E.A.S.A. for compliance with the award of the wage board and, as a condition precedent, requested an order of the court for payment of the amount due, which totalled $72,000, in addition to the amount due for obligations and, in the event of payment not being made within three days, asked for an attachment of property as provided for in article 211 of the Code of Civil Procedure.[2] The respondent alleged that Acts Nos. 10644 and 10449[3] were unconstitutional on the following grounds: Act No. 10644, which establishes the procedure for the payment of the wages fixed by a wage board's award, gives no opportunity for defence against this penalty. No one may be condemned without due process (article 12 of the Constitution).[4] The aforesaid Act does not give the respondent an opportunity to defend his rights and thereby contravenes articles 8, 10 and 64 of the Constitution[5]

[1] Spanish text of the decision received through the courtesy of Dr. Anibal Luis Barbagelata, Professor of Constitutional Law, Montevideo. English summary prepared by the United Nations Secretariat. The complete text of the decision is published in the review *Derecho Laboral*, Vol. V, No. 30, of September 1950, pp. 349 *et seq.*, Montevideo.

[2] Article 211 of the Code of Civil Procedure provides for summary executory proceedings.

[3] See below.

[4] Article 12 of the Constitution provides that "No person shall be punished or confined unless he has been tried and sentenced in accordance with the law".

[5] The articles cited read as follows:

Art. 8: "All persons are equal before the law and no other distinctions are recognized among them save those of talent or virtue."

Art. 10: "Private actions of persons which do not in any way affect the public order or prejudice a third party shall be outside the jurisdiction of the magistracy. No inhabitant of the Republic shall be obliged to do what the law does not require, or prevented from doing what the law does not prohibit."

Art 64: "The enumeration of the rights, duties and guarantees set forth in this Constitution shall not exclude others which are inherent in man or are not derived from the republican form of government."

in addition to the article already cited. The administrative remedies provided by Act No. 10449 of wage boards do not constitute due process; due process should take place before officers of the judicial authority, and not before administrative officers, and even less before administrative officers of a political character who are not guided by legal considerations; nor does the judicial remedy in article 35 of the same Act, which refers to the penalties imposed by the executive power in its decisions, constitute due process.

The allegation that article 19 of Act No. 10449[1] was unconstitutional was based on the interpretation given to that article by the wage boards and the executive power. The legislature, by empowering the aforesaid boards to put into force retroactively the order established by an award, delegated functions which it was not empowered to carry out under the Constitution; in accordance with article 7 of the Civil Code,[2] an existing legal system might only be amended by the law and only the legislative power might lay down the law.

The delegation of functions to the boards, as mentioned in article 19, was contrary to the fundamental principle of public policy that legislation might not be retroactive, and the position was made even more difficult as the legislature did not fix any time-limit for the exercise of the function attributed to the boards.

Even if the legislative power were entitled to delegate these functions, they would still be limited by express provisions of the Constitution. The retroactive application which the legislature might order could infringe acquired rights. By permitting the retroactive application of wage rates, article 19, as interpreted by the executive power, infringed the principle of the freedom of industry consecrated in article 35 of the Constitution.

Held: that the plea of unconstitutionality made by the respondent was unfounded. The court said:

"Act No. 10644 refers solely to judicial proceedings for the actual payment of the sums fixed by the wage board's award; none of the guarantees provided in the Constitution are thereby infringed. Act No. 10449, which set up the wage boards, gives the employer adequate guarantees for the defence of his rights either before or after the wage-fixing award has been given. The actual composition of the board, which includes employers' representatives, and the employers' legal right to petition the executive power for relief after the award has been given, undoubtedly constitute guarantees of due process.

"Although a wage board award and decisions of the executive power may not be contested in a law court, this does not imply that Act No. 10449 has set aside the right of self-protection. Due process of law does not necessarily mean legal proceedings; there is no provision in the Constitution which prevents a State from allowing a tribunal, be it a court of law or a wage board, to hand down a final decision in legal questions. Judicial proceedings are not inevitably the pre-requisite for due process.

"Article 19, paragraph 2, of Act No. 10449 is called unconstitutional in that it empowers the wage boards to establish that: "Minimum wage scales shall come into effect at the date fixed by the wage board." The power thus granted to these boards is alleged to violate the Constitution, on the grounds that only a juridical act—that is, the law—may take effect retroactively, but that the legislature cannot authorize the boards to make their awards retroactive without making thereby a delegation of powers. According to this theory, no retroactivity is admissible in the case of an award, and only a juridical act can authorize its retroactive application.

"The Constitution has not prohibited the legislature from promulgating legislation with retroactive effect; the principle of the non-retroactivity of the law is not a constitutional guarantee, and there is nothing to prevent the promulgation of retroactive legislation, provided that other rights established by the Constitution are not thereby affected. The mere retroactivity of a legislative enactment does not make it unconstitutional. Our legislature has frequently made legislation effective retroactively, particularly in connexion with labour and wages.

"When the legislature empowered the wage board to fix the date on which the new wage rates were to apply, it did not delegate special powers, such as the promulgation of legislation with retroactive effect. It did not renounce that prerogative, or entrust it to another body; it merely gave the wage board the right to fix the date at which the new rates were to come into operation.

"It is argued that the power given to the wage board to fix the date at which a wage becomes operative infringes acquired rights and therefore pre-supposes expropriation without the corresponding compensation.

"The Constitution does not recognize as an 'acquired right' the obligation to pay wages at any given rate. On the contrary, wages which derive from working or industrial relationships must represent 'equitable remuneration'; there is no acquired right in respect of an inequitable wage. Remuneration must be equitable, and there are not time-limits to the principle which requires remuneration or compensation to be equitable, provided no arbitrary act is committed. Under article 53 of the Constitution, the State is required, above all, to ensure the dignity and physical well-being of the worker.

[1] Article 19 of Act No. 10449 provides: "Minimum wage rates shall enter into force on the date fixed by the wage board and shall be published in the *Official Gazette* and in other journals or periodicals as the executive power may decide. In the absence of a decision to the contrary by the board, the rate shall enter into force thirty days after it has been published."

[2] Article 7, referred to above prescribes: "The laws shall not take effect retroactively."

"Article 31 of the Constitution declares that 'the right of property is inviolable, but shall be subject to the provisions of any laws which may be promulgated for the common good'. Article 7 of the Constitution repeats this concept. This right is, therefore, relative under the Constitution and subject to the limitations required in the interests of the public welfare. The power mentioned in article 19, paragraph 2, is not one which, when exercised with caution, either affects or compromises any constitutional right as in the present case, in which it cannot be adduced that the amounts to be paid imply confiscation. It would be wrong to adduce that earned wages are expropriated from the debtor when such wages have not been paid in accordance with the principles of justice flowing from article 53 of the Constitution; it would be more proper to maintain that the debtor has been enriched at the expense of the creditor. Any person paying an unfair wage does not thereby establish a right which is constitutionally entitled to legal protection.

"The aforesaid power conferred on the wage board does not constitute an infringement of the principle of freedom of industry laid down in article 35 of the Constitution, nor does it ignore the principle of the promotion of industry referred to in article 74, paragraph 3, of the Constitution.

"The right of every person to devote himself to work, agriculture, industry, trade, a profession or any other form of lawful occupation (as stated in the aforesaid article 35) is subject to the statutory limitations which may be established in the public interest. The right to establish an industry should be exercised in accordance with the law. This freedom has always been subject to the restrictions and limitations required in the interests of public order.

"No proof has been submitted to show that the power conferred on the wage boards interferes with the development of the respondent industry in such a way as to infringe the right laid down in article 35. The claim made to that effect is merely an argument which is frequently advanced when legislation is promulgated on the regulation of labour in its various forms; nevertheless, such legislation, although opposed when first promulgated, has received general support.

"The present appeal is the first which invokes the unconstitutionality of this prerogative. Legislative antecedents in other countries could be added to those cited above. This fact again proves that the retroactive application of the law in this field neither infringes the rights of the industrialist nor retards the development and progress of industry."

VIET NAM

NOTE ON THE CONSTITUTIONAL SITUATION[1]

An Act of 2 February 1950[2] ratified the joint Franco-Vietnamese declaration of 5 June 1948, signed by the High Commissioner of France in Indochina and the President of the Provisional Central Government of Viet Nam, as well as the exchange of letters of 8 March 1949 between the President of the French Republic, President of the French Union, and the Emperor of Viet Nam.

Ordinance No. 1 of the Government of Viet Nam, dated 1 July 1949, determines the organization and the functioning of the public institutions of Viet Nam.

In accordance with a Franco-Vietnamese implementation convention, signed on 30 December 1949, agencies dealing with the Press, information and radio, labour and social legislation, hygiene and public health were transferred to the authorities of Viet Nam. Prior to that convention, local technical agencies dealing with education, public health, social affairs and labour inspection had been transferred to the authorities of Viet Nam.

[1] This note is based on a survey of the "transfer of powers to the Associated States of Viet Nam, Laos and Cambodia", issued in May 1950 by the Press and Information Service of the French Embassy, New York. See also "Actes définissant les rapports des Etats associés du Viet-Nam, du Cambodge et du Laos avec la France" in *Notes et Etudes documentaires*, Paris, Présidence du Conseil, No. 1295, of 14 March 1951.

[2] See p. 35, footnote 2, of this *Yearbook*.

YUGOSLAVIA

ACT CONCERNING SOCIAL SECURITY[1]

of 8 February 1950

Note. Social insurance in the Federated People's Republic of Yugoslavia is based on the principle of the compulsory social protection of its citizens in connexion with their work.

The basic difference between the new social insurance in the Federated People's Republic of Yugoslavia as established by the Act of 1950 and the social insurance which existed under the Act of 1946, is that the new Act abandons the principle, on which the old Act was based, of a special social insurance fund maintained by contributions paid partly by the beneficiaries and partly by the State. Moreover, the new Act provides for compulsory social insurance for the citizens of the Federated People's Republic of Yugoslavia in connexion with their work in case of illness, accident, disability, old age and death. The funds for this insurance are drawn from the general revenues of the State, not only where the State is the employer, but also for the categories of State employees given below under (*b*).

The nature of social insurance in the Federated People's Republic of Yugoslavia gives rise to certain basic principles:

(*a*) Social insurance is provided by the State; *i.e.*, the State is the direct manager and administrator of social insurance;

(*b*) Social insurance is uniform—*i.e.*, all beneficiaries enjoy the same rights and are subject to the same conditions. It is also universally applicable—*i.e.*, the law provides for a series of different categories outside the regularly employed; for example, members of trade and industrial unions; fishermen who are members of fishermen's unions; students during compulsory practical training (*i.e.*, during the interruption of work for the purpose of further training), and others. Lastly, the law authorizes the Government to expand social insurance, wholly or partly, to include members of the liberal professions (writers, artists, journalists, lawyers and others), as well as other categories of citizens outside the regularly employed who are engaged in socially useful work;

(*c*) Social insurance provides full coverage—*i.e.*, it covers all cases in which a working person's ability to work, and hence to earn a living, has been reduced or destroyed (illness, disability, old age and death);

(*d*) Social insurance is provided free of charge to manual and office workers—*i.e.*, the State provides the funds for social insurance out of its general revenues; in other words, the general national income. This principle represents the fundamental difference between the old social insurance system as laid down by the Act of 1946 and that established by the Act of 1950.

The social insurance system as inaugurated by the new Act abolishes, as a special feature, the principle of entrusting special agencies with its implementation, since social insurance is an aspect of general social protection and its organization therefore stems directly from the State itself.

Under the provisions of the new Act, governmental agencies called social insurance agencies have to apply the provisions of social insurance. Purely procedural matters connected with the implementation of social insurance are handled by the various enterprises and institutions themselves; this method facilitates the indemnization procedure for the various types of social insurance by bringing the insured into direct contact with the competent agencies. The actual disbursement of funds to the insured is no longer within the scope of activity of the agencies authorized to apply social insurance measures, but has been entrusted to the National Bank of the FPRY; this bank is obliged to remit to the insured, within the limits of the budgetary allotments provided for this purpose, the payments in cash approved by the social insurance agencies.

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[1] Serbian text in *Sluzbeni List* No. 10 of 8 February 1950. Note and text received through the courtesy of Dr. Jože Vilfan, Deputy Minister for Foreign Affairs, Belgrade. English translation from the Serbian texts by the United Nations Secretariat.

CHAPTER I
BASIC PROVISIONS

Art. 1. The State shall guarantee by social insurance certain rights to manual and clerical workers and their families in case of sickness, loss of capacity for work, old age and death, together with other rights set forth in this Act.

Art. 3. The State shall provide the funds for social insurance.

No deduction of any kind for social insurance may be made from the pay of a manual or clerical worker.

Art. 4. The right guaranteed by this Act shall be the right to:

Health protection;

Cash benefit during temporary incapacity for work due to sickness;

Cash benefit during absence from work due to pregnancy and confinement;

Children's allowance;

Cash benefit in case of reduction of capacity for work (disability);

Re-employment, and training for another occupation (re-training), in case of reduction of capacity for work;

Disability, old age and family pension;

Funeral grant.

Entitlement to and amount of a benefit shall, in general, depend upon length of employment and rate of pay.

Art. 5. Manual and clerical workers living in the territory of the Federated People's Republic of Yugoslavia shall be insured from the day on which they enter employment.

The following persons also shall be insured and enjoy the same rights as employed persons:

(1) Members of representative and executive organs receiving remuneration for their work, and persons appointed to permanent posts with regular remuneration in specified social organizations;

(2) Members of manual production co-operatives, members of fishermen's co-operatives whose only or main occupation is fishing.

The following persons shall be insured against sickness and accident:

(1) Students and trainees in vocational schools and classes, during their compulsory training and compulsory practical work;

(2) Persons in organized temporary employment on public works with or without pay, under a contract or otherwise;

(3) Persons serving a sentence of corrective labour or of deprivation of liberty with or without compulsory labour.

Pupils and trainees leaving their employment temporarily for training, and members of their families, shall be insured against sickness.

The Government of the FPRY may extend social insurance wholly or partly to members of the liberal professions, to cultural workers (writers, journalists, artists, lawyers, etc.) and to other persons not in employment but engaged in a socially useful occupation; and may determine the conditions under which such persons may become entitled to social insurance.

Art. 7. Aliens resident in the Federated People's Republic of Yugoslavia and employed as manual or clerical workers in State, co-operative or social undertakings or institutions shall be insured and have the same rights under social insurance as citizens of the FPRY.

Art. 9. Rights under social insurance shall not be affected by lapse of time.

Art. 11. Trade unions shall participate in the administration and control of social insurance.

CHAPTER II
SOCIAL INSURANCE RIGHTS

(1) *Health Protection*

Art. 12. An insured person shall be guaranteed the right to health protection in case of a disease and of absence for treatment or convalescence (ill health).

Health protection shall include: medical care and treatment in a health establishment or at the patient's home; medicaments and other therapeutic substances, therapeutic appliances and sanitary supplies; treatment in a hospital or health resort (*e.g.*, a spa or climatic resort); convalescence in a sanatorium; maternity and dental care, dentures, prosthetic appliances, and orthopaedic and other aids.

Art. 13. An insured person shall be entitled to health protection, irrespective of the length of time he has been in employment (period of employment) throughout the whole period necessary for his recovery.

An insured person who becomes ill within one month after the termination of his employment as determined by law shall be entitled to health protection.

Persons receiving pensions and disability benefit are also entitled to health protection.

Art. 14. The following members of the families of manual and clerical workers receiving personal or disability benefit shall also be entitled to health protection:

(*a*) Spouse, children and grandchildren, if maintained by the insured person;

(*b*) Parents, brothers and sisters and grandparents if unable to work, without means of their own, and maintained by the insured person.

In this Act, the word "children", subject to any definition contained in any other statutory provision, means children born in or out of wedlock, adopted children, stepchildren, and also orphan children maintained by the insured person, irrespective of their relationship to him.

A child, grandchild, brother or sister shall be entitled to health protection until he has attained the age of seventeen, or, if receiving education, until the conclusion of the usual period of compulsory education but not after he has attained the age of twenty-four.

Any of the members of an insured person's family mentioned in the preceding paragraph shall, if wholly incapacitated for work, be entitled to health protection after attaining the age prescribed therein for the whole duration of the said incapacity.

(2) *Cash Benefit during Temporary Incapacity for Work owing to Disease or Illness*

Art. 16. An insured person temporarily incapacitated for work owing to disease or ill health shall be entitled to a cash indemnity instead of his regular pay during the period of the disease or ill health.

An insured person shall also be entitled to the aforesaid indemnity if quarantined on account of infectious disease or if prevented by acute illness from caring for or assisting an immediate relative.

Art. 17. An insured person who, immediately before becoming incapable of work, has been continuously in employment for at least six months or for separate periods totalling not less than eighteen months during the preceding two years, shall receive during his treatment or ill health an indemnity equal to his regular pay. . . .

An insured person who has not completed the terms specified in the last paragraph shall receive during treatment or ill health a lesser indemnity equal to 50 per cent of his regular pay if he has completed three months at work and to 75 per cent if he has completed more than three but less than six months at work.

An insured person who has held the honourable post of shock worker for the three months immediately preceding the commencement of his treatment or ill health shall receive an increment amounting to 10 per cent, and for six months or longer to 20 per cent, of the indemnity prescribed in the preceding paragraphs.

Art. 18. The following persons are entitled to the cash indemnity prescribed in article 16, regardless of their time at work—viz.:

(1) Insured persons temporarily incapacitated for work as a result of an industrial accident;

(2) Insured industrial trainees.

Art. 21. In case of disease or ill health, an insured person shall be entitled to benefit for the time he is incapacitated for work, but not ordinarily for a period exceeding one year.

(3) *Cash benefit during Absence from Work owing to Pregnancy and Confinement*

Art. 22. An insured woman shall be entitled to cash benefit during her absence from work owing to pregnancy and confinement. The period of such absence shall be three months (ninety days).

(4) *Children's Allowance*

Art. 25. An insured person shall be guaranteed the following rights in respect of his children: layette grant for each newborn child, a nursing allowance for the mother, allowance for large families and a regular supplementary children's allowance.

Art. 26. An insured person shall be entitled to a layette grant for each child born in wedlock, and an insured woman shall be so entitled for a child even if born out of wedlock.

Art. 27. An insured woman shall be entitled during her absence owing to pregnancy and confinement and for three months thereafter to a cash nursing allowance.

Art. 30. An insured person shall be entitled to a regular supplementary cash allowance for each child and grandchild maintained by him.

An insured person shall be so entitled even if the child or grandchild is below the age prescribed by article 14 of this Act.

(5) *Cash Benefit in Case of Reduction of Capacity for Work (Disability Benefit)*

Art. 32. An insured person whose capacity for work is reduced permanently or for a period of more than one year as a result of an industrial accident, or of an accident not occurring at work, or disease shall be entitled to disability benefit.

"Reduction of capacity for work" means reduction of capacity for work in general or in practising a given occupation (occupational incapacity).

(6) *Right to Re-employment and Training for another Occupation (Re-training)*

Art. 39. A person receiving disability benefit shall be entitled to apply for employment in another occupation for which he is fit.

(7) *Disability Pension*

Art. 45. A disability pension shall be paid to an insured person who, as a result of an industrial accident, an accident not occurring at work, or disease is wholly incapacitated for work permanently or for a period of more than one year.

Art. 46. An insured person who becomes incapable of work as a result of an industrial accident is entitled to an invalidity pension irrespective of the length of his period at work.

This pension shall be 100 per cent of the basic pension (full disability pension).

(9) *Family Pension*

Art. 65. In case of an insured person's death, his family shall be entitled to a family pension in accordance with the conditions laid down in this Act.

The family shall be entitled to a pension in any of the following cases:

(1) If the insured person had completed a period of employment not less than five years;

(2) If the insured person lost his life as a result of an industrial accident;

(3) If the insured person was receiving a personal pension or disability benefit in group III.[1]

Art. 66. The following members of the insured person's family shall be entitled to family pension:

(1) Spouse and children;

(2) Parents; grandchildren and orphan children maintained by the insured person.

Art. 70. A parent of an insured person maintained by him, a mother over forty-five years of age, a father over sixty years of age, or a parent completely incapacitated for work permanently or for a period of over one year, shall be entitled to a family pension.

Art. 78. The family, permanently resident abroad, of an insured person who is a national of a foreign country may become entitled to and receive a family pension if the State in which the family is permanently resident treats nationals of the FPRY in like manner.

(10) *Funeral Grant*

Art. 79. An insured person shall receive a funeral grant on the death of a member of his family (article 14).

The funeral grant shall be equal to a month's regular pay, pension or disability pension, as the case may be.

. . .

Art. 80. On an insured person's death his family shall receive a funeral grant equal to two months' regular pay, pension or disability pension, as the case may be.

. . .

CHAPTER III

CESSATION, LOSS AND SUSPENSION OF THE RIGHT TO SOCIAL INSURANCE

(1) *Basic Provisions*

Art. 88. If an insured person who is a national of a foreign country and is receiving a cash benefit removes to and resides permanently in the country of which he is a national or where he has lived previously, the cash benefit shall not be discontinued if that country treats nationals of the FPRY in like manner.

. . .

CHAPTER IV

ADMINISTRATION OF SOCIAL INSURANCE

Art. 92. Social insurance benefit shall, for its more rapid and efficient administration, be administered by the State, co-operative or social undertaking or institution in which the insured person is employed.

CHAPTER V

PARTICIPATION BY TRADE UNIONS IN ADMINISTRATION OF SOCIAL INSURANCE

Art. 106. Trade unions are entitled to participate in the administration of social insurance and to supervise the proper administration of insured persons' benefits and the work of the offices charged with the operation of social insurance.

. . .

CHAPTER VI

ADMINISTRATIVE, JUDICIAL AND SOCIAL PROTECTION OF THE RIGHTS OF INSURED PERSONS

Art. 111. Benefit shall be administered to insured persons by a special administrative procedure.

The procedure for administering benefit to an insured person must be rapid and simple.

An insured person and the union to which he belongs may enter a protest against any undue delay in procedure. The protest shall be submitted to the head of the undertaking or institution handling the procedure or, if the head of the undertaking or institution is himself directing the procedure, to the head of the superior unit of the organization.

Art. 115. An insured person is entitled to enter protests and appeals.

A protest shall be referred to the Labour Disputes

[1] By article 33 this means 50–75 per cent incapacity. [ED.]

Commission if an order of a director is issued, or to the head or other person in charge of the undertaking or institution. An appeal against a ruling of the Labour Disputes Commission that the insured person has no legal claim, will be made to the Social Welfare Commissioner of the district, municipal or Regional People's Council.

An insured person may appeal against an order affecting social insurance rights made at first instance by an office charged with the operation of social insurance.

An appeal shall be lodged with the superior office.

An appeal or protest must be submitted within five days from the date of the order.

A superior office may not reject an appeal or protest as lodged out of time if the order affects a legal right of the insured person.

Art. 120. An insured person may ask for a review of the procedure of administration of benefit to him if the order appears to be based on incorrect evidence or findings or if, after it was made, changes materially affecting the rights of the insured person have occurred in his personal status or in the material circumstances.

A social insurance office may at its discretion review a case with which it is concerned.

If a review of a case shows that the insured person is entitled to a benefit refused to him in the original procedure owing to reliance on incorrect evidence, he shall receive that benefit as from the date on which he actually became entitled to it.

Art. 122. An insured person may appeal against an order made at second instance regarding a social insurance right and affecting a right secured to him by law.

An appeal shall lie to the competent district court within thirty days from the date of the judgment.

An appeal from a judgment of a district court shall lie to the competent regional court within thirty days from the date of the judgment of the district court.

Art. 123. An insured person or a person entitled by law to claim in his stead may, within thirty days from the date of an order made at second instance regarding a disability, personal or family pension and affecting a legal right to disability benefit or pension, appeal to the competent regional court against such order.

An appeal from a judgment of a regional court shall lie to the Supreme Court of the People's Republic (or of an autonomous region, province or *voivodina*) within fifteen days from the date of the judgment of the regional court.

Art. 124. Applications, reports, supporting documents, appeals, judgments, orders, rulings, protests and other instruments and procedures connected with the administration of benefit under social insurance shall be exempt from State duties.

. . .

ORDER CONCERNING THE FINANCING OF SOCIAL INSURANCE[1] of 25 March 1950

Note. The regulation establishes the principle that social insurance in the Federated People's Republic of Yugoslavia shall be provided free of charge and that no deductions for it may be made from the workers' or employees' pay.

Art. 1. Funds for social insurance shall be provided from the general State budget.

Art. 2. Provision shall be made in the federal budget for a social insurance scheme, covering:

1. Payments in case of temporary disability due to sickness;
2. Pregnancy and maternity benefits;
3. Children's allowances;
4. Payments in case of diminution of capacity to work (disability);
5. Payments to enable disabled persons to follow another profession;
6. Disability, old age and family pensions;
7. Payments for burial;

. . .

Art. 3. The public health insurance fund shall provide for the following:

1. Cost of treatment in health establishments, to be included in the estimates of the health establishments themselves, together with their other regular expenditure;
2. Cost of treatment in health establishments connected with enterprises (for climatic and watering-place cures, medicaments, etc.) to be included in the health service estimates in the State budgets of the People's Republics;
3. Costs of medical care of insured persons who are abroad, to be included in the federal budget estimates for the Committee on Public Health of the Government of the Federated People's Republic of Yugoslavia.

. . .

[1] Serbian text of the order in *Sluzbeni List* No. 22, of 25 March 1950. Text and note received through the courtesy of Dr. Jože Vilfan, Deputy Minister for Foreign Affairs, Belgrade. English translation from the Serbian text by the United Nations Secretariat.

REGULATION CONCERNING SOCIAL INSURANCE OF PERSONS SERVING SENTENCES[1]

of 15 November 1950

I. GENERAL PROVISIONS

1. Persons serving a sentence of corrective labour, deprivation of freedom or deprivation of freedom with corrective labour, minors in reformatories, persons serving an administrative sentence of corrective labour and deprivation of freedom or an administrative sentence of socially useful labour (hereinafter referred to as convicted persons) shall, under the provisions of this regulation, be entitled to health insurance and financial assistance in case of an accident suffered at work.

2. The State shall provide funds for health insurance and financial assistance for convicted persons in case of an accident suffered at work.

No deductions for social insurance shall be made from the pay earned by convicted persons.

. . .

II. MEDICAL CARE

4. Convicted persons shall be entitled to medical care in case of illness.

6. Members of the family of a beneficiary sentenced to corrective labour for a period not exceeding one year, or to deprivation of freedom for a period not exceeding six months, shall retain the right to health insurance for the time his contract of employment is still in force, in accordance with the provisions governing the health insurance of families of beneficiaries.

In all other cases, health insurance shall cover only the convicted person himself.

. . .

III. SOCIAL INSURANCE IN CASE OF ACCIDENT AT WORK

(*a*) Disability

9. Convicted persons who are incapacitated for work as a result of an accident suffered by them at work while serving a sentence—provided the disability persists after completion or remission of the sentence or after release on probation—shall be entitled to a disability allowance.

The disability allowance shall be paid to the convicted person from the day after completion or remission of the sentence or after release on probation.

. . .

(*b*) Invalidity Pension

14. Convicted persons who, as a result of an accident suffered at work, become completely incapacitated for life or for more than a year after completion or remission of the sentence or after release on probation, shall be entitled to an invalidity pension.

The invalidity pension shall be paid to convicted persons from the day of completion or remission of the sentence or release on probation.

. . .

(*c*) Family Pension

17. The family of a convicted person who loses his life as a result of an accident suffered at work while serving a sentence, shall be entitled to a family pension.

The right to a family pension shall become effective on the day on which the convicted person lost his life as a result of an accident suffered at work while serving the sentence.

[1] Serbian text of the Regulation in *Sluzbeni List* No. 64 of 15 November 1950. Text received through the courtesy of Dr. Joža Vilfan, Deputy Minister for Foreign Affairs, Belgrade. English translation from the Serbian text by the United Nations Secretariat.

ACT CONCERNING DISABLED EX-SERVICEMEN[1]

of 25 February 1950

Note. The protection of disabled ex-servicemen constitutes a separate form of social insurance in the Federated People's Republic of Yugoslavia. In 1947, provision already existed for financial assistance to disabled ex-servicemen of the First and Second World Wars. In addition to financial assistance, systematic measures are being taken to enable a larger number of disabled ex-servicemen to work and to assist seriously disabled ex-servicemen by providing whatever is necessary to alleviate their hardship.

[1] Serbian text of the Act in *Sluzbeni List* No. 14, of 24 February 1950. Text and note received through the courtesy of Dr. Joža Vilfan, Deputy Minister for Foreign Affairs, Belgrade. English translation from the Serbian text by the United Nations Secretariat.

In order to make it possible for disabled ex-servicemen to find work, various schools and training courses have been set up, and a Government order has been issued to the effect that all Government, socialized and private enterprises must set aside at least ten per cent of their posts for disabled ex-servicemen. Special care will be taken to ensure proper working and living conditions for employed disabled ex-servicemen.

All disabled ex-servicemen are entitled to free medical care.

CHAPTER II

TYPES OF STATE PROTECTION AND ASSISTANCE

Disability allowance and supplementary benefits

Art. 10. Disabled ex-servicemen shall be entitled to a monthly disability allowance, the basis of the calculation being the degree of their incapacity for work.

Art. 14. Disabled ex-servicemen, even if in receipt of the full disability allowance, shall also be entitled to family allowances for children.

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Allocation of Land and Settlement

Art. 17. Disabled ex-servicemen and their dependants referred to in article 4, paragraph 3, shall have priority rights in any allocation of land and other property in accordance with the provisions of the Agrarian Reform and Settlement Act.

Medical Care

Art. 18. Disabled ex-servicemen shall be entitled for life to medical care, at government expense, for any wounds, injuries, disability and illness.

The State shall also provide financial assistance for the treatment of needy families, parents and grandparents of persons entitled to assistance under the present Act.

Disabled ex-servicemen shall be entitled for life to free prosthetic and orthopaedic shoes and other orthopaedic appliances, such as invalids' wheel-chairs, apparatus, trusses and crutches, depending on the nature of their disability and the needs of their occupation.

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Employment

Art. 20. Disabled ex-servicemen and other persons protected by the present Act shall have priority in the allocation of all offices, executive and industrial posts, in State and public enterprises, for which they are qualified.

Economic Advancement and other Privileges

Art. 22. The State shall assist disabled ex-servicemen and the other persons protected by this Act in their economic advancement.

Art. 23. Disability allowances shall not be liable to taxation.

All the documents necessary to obtain and exercise rights under this Act shall be free of all dues.

Children of disabled ex-servicemen, persons referred to in article 4, paragraph 3, and children of deceased disabled ex-servicemen shall be exempt from any fees in connexion with their education in State schools.

Prosthetic and orthopaedic shoes and other orthopaedic appliances for persons protected by the present Act shall be free of all taxes, duties and charges.

Travel Privileges

Art. 24. Disabled ex-servicemen and the other persons protected by the present Act shall be entitled to free travel on all State-controlled means of transportation when travelling for the purpose of obtaining the benefits to which they are entitled under the present Act.

This right shall extend also to persons accompanying disabled ex-servicemen in group I.

Disabled ex-servicemen shall be entitled to privileged treatment when travelling on private business.

CHAPTER IV

TEMPORARY AND FINAL PROVISIONS

Art. 43a. The provisions of the present Act shall also apply to persons who have become citizens of the Federated People's Republic of Yugoslavia under the treaty of peace with Italy and who:

1. Were recognized by the competent Italian authorities as having the status of disabled ex-servicemen owing to disability incurred during the 1914–1918 war;

2. Enjoyed rights recognized by the competent Italian authorities with regard to dependants of deceased disabled ex-servicemen or of servicemen who were killed or missing as a result of the 1914–1918 war.

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FUNDAMENTAL ACT CONCERNING THE MANAGEMENT OF STATE ECONOMIC ENTERPRISES AND HIGHER ECONOMIC ASSOCIATIONS BY THE WORKERS' COLLECTIVES OF THE COUNTRY[1]

of 5 July 1950

Note. The purpose of this Act is to enable the working people of the Federated People's Republic of Yugoslavia to take over the direct management of all enterprises of the national economy, *i.e.*, organs of industry, trade, social policy, public health, etc., for the purpose of settling the day-to-day problems of a Socialist economy as they arise. Side by side with the directors of the enterprises, whose functions are laid down in Article 36 and others, the workers' councils are the direct managers and organizers of the entire economy of the Federated People's Republic of Yugoslavia and administer the national wealth on behalf of all workers.

. . .

In order to achieve the gradual transfer of the management of the State economic enterprises and of other economic co-operatives to the workers' collectives in accordance with socialist principles, so that the management of socialist production may be in the hands of the producers themselves;

In order to achieve the further development of the democratic principle of self-government;

The National Assembly of the Federated People's Republic of Yugoslavia has enacted the fundamental Act concerning the management of State economic enterprises and higher economic associations by the workers' collectives of the country.

I. Basic Principles

Art. 1. Industrial, mining, transport and communications, trade, agricultural, forestry, communal and other State economic enterprises, as well as other property of the people, shall be managed by workers' collectives on behalf of all the workers within the framework of the State economic plan and on the basis of the rights and duties laid down by laws and regulations.

The workers' collectives shall manage these enterprises through the workers' councils and the executive committees of the enterprises and through the workers' councils and the executive committees of the higher economic associations in which the various economic enterprises are united.

Art. 2. The workers' councils of enterprises and the workers' councils of higher economic associations shall be elected and dissolved by the workers' collectives.

In the smaller enterprises, the workers' council shall be constituted by the workers' collective as a whole.

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II. Workers' Councils of Enterprises

Art. 10. The workers' council of an enterprise shall be composed of not less than fifteen nor more than 120 members.

Art. 11. The workers' council of an enterprise shall be elected by universal, equal and direct suffrage by secret ballot.

All workers who have a contract of employment with the enterprise under the permanent regulations, technical and engineering staff and other employees of the enterprise shall have the right to vote in the elections to the workers' council.

Art. 23. The workers' council of an enterprise shall:

Approve basic and production plans of the enterprise;

Adopt decisions in connexion with the management of the enterprise and the fulfilment of the economic plan;

Elect and dissolve the executive committee of the enterprise and dismiss any of its members;

Adopt the rules of the enterprise with the approval of the executive committee of the higher economic association or the appropriate State organ;

Discuss and approve the executive committee's reports on its work;

Discuss individual measures of the executive committee and adopt decisions on them;

Effect the allocation of the funds remaining at the disposal of the workers' collective of the enterprise.

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III. Executive Committees of Enterprises

Art. 27. The executive committee of an enterprise shall:

Prepare drafts of the basic plans of the enterprise;

Make monthly reports on plans of operations;

Ensure the proper working of the enterprise;

Prepare proposals concerning the internal organization of the enterprise and proposals for the classification of types of employment;

[1] Serbian text of the Act in *Sluzbeni List* No. 43, of 5 July 1950. Text and note received through the courtesy of Dr. Joža Vilfan, Deputy Minister for Foreign Affairs, Belgrade. English translation from the Serbian text by the United Nations Secretariat.

Prepare draft rules regarding the categories of work in the enterprise and adopt measures for the enforcement of work discipline;

Adopt decisions concerning the appointment of employees to executive positions in the enterprise;

Adopt decisions concerning claims of workers or employees in respect of dismissal or working conditions;

Adopt measures to increase production, and in particular to rationalize it, to raise the productivity of labour, to reduce the cost of production, to improve the quality of production, to effect savings and to reduce waste and the quantity of rejects;

Establish quotas of work in the enterprise;

Confer the rank of shock-workers and award prizes for proposals for the rationalization or improvement of production;

Take measures to improve the skill of the manual and office workers of the enterprise, and to assign to them work for which they are qualified;

Ensure the proper putting into effect of labour regulations concerning pay, allowances, promotion of manual and office workers, protection of workers' social insurance and improvement of the living conditions of workers and employees;

Adopt plans for the utilization by the manual and office workers of their annual leave;

Take measures for the protection and proper utilization of that portion of the national wealth for which the enterprise is responsible, and measures to detect prevent and punish wilful damage, waste and other malicious acts in respect of the people's property.

The executive committee of the enterprise shall be responsible for the fulfilment of the plan and the proper management of the enterprise.

IV. The Director of the Enterprise

Art. 36. The director shall organize the work and personally supervise the fulfilment of the production plan and the management of the enterprise in accordance with the existing laws and regulations, decisions of the executive committee of the enterprise and ordinances and instructions issued by the competent State organs and by the executive committees and the director of the higher economic association.

The director shall be directly responsible for compliance with the laws and the legal ordinances and decrees of the appropriate State organs, and for their implementation by the enterprise.

Art. 39. The director of the enterprise shall assign workers to their individual tasks and determine their duties.

Manual and office workers of the enterprise shall be responsible to the director for their work.

The director shall enforce discipline at work and in the activities of the enterprise.

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V. The Workers' Council, the Executive Committee and the Director of the Higher Economic Association

Art. 41. The workers' council of the higher economic association shall be elected by the workers' collectives of all associated enterprises, each of which shall have a number of representatives corresponding to its numerical strength.

The workers' council of the higher economic association shall be composed of not less than thirty nor more than 200 members.

Art. 42. The executive committee of the higher economic association shall be composed of not less than five, nor more than fifteen members, including the director.

At least three-fourths of the members of the executive committee must be either directly engaged in production or connected with the basic economic activity of a given enterprise.

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ACT RESPECTING THE RECALL OF DEPUTIES TO THE NATIONAL ASSEMBLY OF THE FEDERATED PEOPLE'S REPUBLIC OF YUGOSLAVIA[1]

of 5 July 1950

Note. Throughout their entire history, the people have fought for the right to elect, recall and remove their representatives; this right is one of the vital elements of democracy in the Federated People's Republic of Yugoslavia.

The right of recall in the Federated People's Republic of Yugoslavia is laid down in article 7, paragraph 2, of the Federal Constitution, as follows: "The people's representatives in all organs of State

[1] Serbian text in *Službeni List* No. 43, of 5 July 1950. Text and note received through the courtesy of Dr. Jože Vilfan, Deputy Minister for Foreign Affairs, Belgrade. English translation from the Serbian text by the United Nations Secretariat.

authority are responsible to their electors. It shall be determined by law in which cases, under what conditions and in what way the electors may recall their representatives even before the end of the period for which they were elected."

This provision establishes three fundamental principles:

(*a*) The national deputies are responsible to their electors and must on their own initiative, as well as upon request, report on their work to their electors;

(*b*) The national deputies may be recalled by the electors of their electoral district, provided that their recall is requested by an absolute majority of the electors of that district;

(*c*) A national deputy may be recalled, provided that there are valid grounds for such recall—*i.e.* (i) when good reasons exist for the recall, and (ii) when a vote for recall has been taken.

BASIC PROVISIONS

Art. 1. The deputies to the National Assembly of the Federated People's Republic of Yugoslavia shall be responsible to their electors.

The national deputies shall report to their electors on their work, on the work of the National Assembly of the Federated People's Republic of Yugoslavia and on the work of the Council of which they are members.

The electors may request their deputies to report to them on their work.

Art. 2. The mandate of the deputies to the National Assembly may be withdrawn.

Electors have the right to remove their national deputy by recalling him before the expiration of his term of office when he no longer enjoys their confidence.

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PROPOSALS FOR RECALL

Art. 8. The voters in any electoral district may take the initial step in proposing the recall of the national deputy to the Federal Council from that district. This step may be taken at electoral meetings, workers' meetings in enterprises and establishments and at other meetings of the citizens.

The voters in any province of the People's Republic or autonomous unit may take the initiative in proposing the recall of the national deputy to the People's Council from that province.

Art. 10. A proposal for the recall of a national deputy to the Federal Council must be endorsed by one-third of the registered voters of the electoral district from which he was elected.

A proposal for the recall of a national deputy to the People's Council must be endorsed by one-fifth of the registered voters in one-third of the electoral districts of the People's Republic or autonomous unit from which the national deputy was elected.

The proposal for recall must be made in writing.

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PART II

LAWS AND OTHER TEXTS ON HUMAN RIGHTS IN TRUST AND NON-SELF-GOVERNING TERRITORIES

A. Trust Territories

TERRITORY OF PAPUA AND NEW GUINEA

TRUST TERRITORY OF NEW GUINEA

ORDINANCES OF THE TRUST TERRITORY OF NEW GUINEA RELATING TO HUMAN RIGHTS[1]

NATIVE LABOUR ORDINANCE, 1950

This ordinance regulates the employment of native labour in New Guinea. Employers must register as employers of native labour within the district in which the native is to be employed (section 99). A person shall not solicit or engage a native as an employee unless he holds a permit to engage employees, except in the capacity of a domestic servant, or at his place of business where the native offers for employment (section 14). The district officer must be notified where natives in his district are to be employed. Natives who are (*inter alia*) not in good health, or under the age of sixteen years, or who are females, are not to be employed under an agreement (section 21). A person endeavouring to engage natives shall not be accompanied by a person to or in respect of whom a permit to engage employees or a native assistant's permit has been refused, suspended or revoked, and has not been reissued (section 27).

Employment is to be under agreement in writing in the prescribed form (except in the case of casual labourers) (section 29). An agreement shall not be made for any period exceeding eighteen months, but may be extended for up to two years (section 30). An agreement shall not have any force or effect until it is sanctioned and attested by an authorized officer (section 33). He shall not sanction an agreement except upon the production of a medical certificate in the prescribed form, that the native is fit to perform the class of work specified in the agreement (section 34).

The monthly cash wages for an employee shall not be less than the minimum prescribed and shall be in addition to the cost of accommodation, medical attention, food, clothing, cooking utensils and such other articles as are prescribed (section 37). The working hours of an employee shall be as prescribed (section 41). Except where an employee resides in his village, the employer shall provide for an employee and his wife and children residing with him at the place of employment such housing, cooking facilities and ablution and sanitary conveniences as are prescribed (section 45).

NATIVE CHILDREN ORDINANCE 1950

This ordinance provides for the placing of native children under the age of eighteen years who have been convicted of an offence or who are orphans or deserted by their parents, under the care and control of a christian mission, public officer or a private person for the term mentioned in the mandate of the administrator made in respect of the child. The district officer is to visit each child placed in his district by mandate at least once in each year and report to the Government Secretary on the condition and treatment of the child.

SHIPPING (MARITIME CONVENTIONS) (NEW GUINEA) ORDINANCE 1950

This ordinance applies the ordinance of the same name of 1937 to natives—that is to say, it gives them the same right to wages in case of termination of services by wreck as is enjoyed by Europeans.

RATIFICATION OF INTERNATIONAL LABOUR ORGANISATION CONVENTIONS

The following International Labour Organisation conventions have been ratified by the Commonwealth on behalf of the Trust Territory of New Guinea—as the Administering Authority:

No. 8. Unemployment Indemnity (Shipwreck), 1920;
No. 27. Marking of Weight (Packages transported by Vessels), 1929;
No. 29. Forced Labour, 1930;
No. 89. Night Work (Women), 1948.

[1] Summary prepared by and received through the courtesy of Mr. H. F. E. Whitlam, Crown Solicitor, Canberra. The Government of Australia is the Administering Authority for this Trust Territory.

TRUST TERRITORY OF TOGOLAND UNDER BRITISH ADMINISTRATION

NOTE ON THE GOLD COAST (CONSTITUTION) ORDER-IN-COUNCIL, 1950[1]

Section 50 of this Order-in-Council provides that

"(1) Subject to the provisions of this order, it shall be lawful for the Governor, with the advice and consent of the Legislative Assembly, to make laws for the peace, order and good government of the Gold Coast:

"Provided that should any such law be repugnant to any provision of the Trusteeship Agreement approved by the General Assembly of the United Nations on the thirteenth day of December, 1946, in respect of Togoland under United Kingdom Trusteeship,[2] such law shall, to the extent of such repugnancy, but not otherwise, be void.

"(2) No such law shall make persons of any racial community liable to disabilities to which persons of other such communities are not made liable.

"(3) Any law made in contravention of sub-section (2) of this section shall, to the extent of such contravention, but not otherwise, be void."

[1] See also pp. 392–394 of this *Yearbook*.

[2] See the provisions on human rights in this Trusteeship Agreement in *Yearbook on Human Rights for 1947*, pp. 398–399.

TRUST TERRITORY OF TOGOLAND UNDER FRENCH ADMINISTRATION

NOTE

Act of 30 June 1950, establishing the conditions fixing salaries and allowances of civilian and military officials of the Ministry for Overseas France and the conditions of recruitment, discharge and retirement of these officials.[1]

[1]See the text on p. 378 of this *Yearbook*. The Act is applicable to Togoland under French administration.

ORDERS REGULATING MINIMUM WAGES[1]

NOTE

The following orders have fixed the minimum wages for certain categories of manual and office workers:

Order No. 980–49/IT, of 16 December 1949, fixing the minimum wage for the day workers of the *cercles*, services and offices of the Administration of the Territory of Togoland.

Order No. 981–49/IT, of 16 December 1949, fixing minimum wages for unskilled labour and domestics in the Territory.

Order No. 214–50/IT, of 16 March 1950, fixing minimum wages for unarmed guards having no official status.

Order No. 972–50/IT, of 5 December 1950, modifying the minimum wage rates for unskilled labour.

Notice of the Office of Labour Inspection regarding the new minimum wages (additional clause of the collective agreement of 9 November 1946).

Order No. 1013–50/P, of 11 December 1950, fixing the minimum wages of day workers of the *cercles*, services and offices of the Administration of the Territory of Togoland.

[1]The French texts of these orders are reproduced in *Rapport annuel du Gouvernement français à l'Assemblée générale des Nations Unies sur l'administration du Togo placé sous la tutelle de la France*, 1950, pp. 411–414. English translation from the French text by the United Nations Secretariat.

TRUST TERRITORY OF THE CAMEROONS UNDER FRENCH ADMINISTRATION

NOTE

Act of 30 June 1950, establishing the conditions fixing salaries and allowances of civilian and military officials of the Ministry for Overseas France and the conditions of recruitment, discharge and retirement of these officials.[1]

[1]See the text on p. 378 of this *Yearbook*. The Act is applicable to the Cameroons under French administration.

DECREE No. 680, OF 23 FEBRUARY 1950, ESTABLISHING MINIMUM WAGES APPLICABLE IN ENTERPRISES IN THE CAMEROONS[1]

as amended by Decree No. 1954 of 24 May 1950

Art. 1. Minimum wages for workers in enterprises in the Cameroons are fixed regionally as follows:

[Here follows a list of minimum wages for permanent and occasional workers in the regions of Adamaqua, Bamoun, Benoue, Haut-Nyong, Kribi, Lom and Kadei, M'Bam, Nord-Cameroun, N'Tem, Nyong-et-Sanage, Sanaga-Maritime and Wouri.]

Art. 2. A worker is considered permanent when he has worked the full number of working days in one month. He retains that status as long as he works in the same enterprise without interruption except for a valid reason.

[1]French text in the *Journal officiel* of French Cameroons No. 766, of 28 February 1950, and No. 782, of 30 May 1950. English translation from the French text by the United Nations Secretariat. The present decree came into force on 1 February 1950.

TRUST TERRITORY OF WESTERN SAMOA

HUMAN RIGHTS IN THE TRUST TERRITORY OF WESTERN SAMOA[1]

In its preamble, the Universal Declaration of Human Rights defines a standard of achievement in the recognition and toleration of human rights and freedoms which is to be striven for by all nations and peoples. The Declaration does not base its standard wholly upon the concepts of any single society or culture, but endeavours to express itself in an idiom which is universally comprehensible. Its application is to all nations and peoples, and it is at once the universal goal of human endeavour and the universal gauge by which progress towards the goal is assessed. Consequently, although Samoan society follows a structure and pattern in many respects different from that of European communities, an examination of the social organization of the territory in its daily operation reveals an appreciation of human rights and a respect for individual expression which is in a high degree consistent with the ideals set out in the Declaration.

The structure of Samoan society has many features peculiar to its type; as in others at a similar stage of development, any departure from the norm involves penalties, ostracism or varying degrees of public or family disfavour. But the important point is that there is a wider sphere of Samoan custom that recognizes breaches and prescribes modes of procedure for such happenings. So it is of interest to inquire to what extent, in a society that includes groups of different status, every individual may share in social organization or political activity, and above all, to what extent individuals, either singly or in groups, are free to differ from their fellows.

The unit of Samoan social life is the family, a group that is not merely biological as in the European sense of the word, but includes those related to a remote degree by blood and marriage, or even by adoption, who all acknowledge one person as the *matai*, or head of the family. Such a person is elected or appointed by agreement of the members of the family itself. The matai becomes in effect the trustee of the property of the family and the acknowledged protector of its position and good name in society. He can, however, be removed from his position either in terms of law or custom if for any proper reason his actions fail to commend themselves to his own people.[2] Not all members of the family in this wide sense will necessarily live under the same roof or even in the same village, but they will, when occasion requires it, assemble—generally at the residence of the matai—to discuss family affairs or any happenings affecting its interests, or to discharge the duties associated with deaths or weddings. Such an assembly to discuss family affairs is not merely a duty on the part of members, but is a right which is jealously guarded, and the matai risks the displeasure and dissatisfaction of anyone to whom he does not extend the opportunity of attending such a meeting or of being represented. Such rights are recognized by law as well as by custom.

It is the head of the family who, after discussion with its members, represents his and their views in gatherings of the village council. Village affairs are conducted on the basis of agreement by matai, and the business of districts or sub-districts is discharged by representatives of the villages concerned.

Untitled people, that is those who are not heads of families, have similar rights to meeting and association which are freely exercised. They discuss their own particular duties in the village, whether fishing or the cultivation of family or communal land. They are the recognized labour force of the village; but they are not oppressed, since there is clear recognition on the part of title-holders of their dependence upon the labour units. Similarly, proper representation in politics and ceremony can be effectively implemented only by the assistance of untitled people, and there is consequently a mutual interdependence that does much to preserve the equilibrium of Samoan society.

Women, too, have an importance in the community that is well recognized, and—as in other cultures—their influence is greater than a superficial survey of the form of society might at first suggest. Women's committees are organized for social and health purposes in most villages, and no family, including its head, cares to fail to carry out instructions by such a committee during the course of its inspection of a village. The women also meet freely to discuss matters falling within their own spheres, and the influence of their opinion is widely felt. Women are not precluded in terms of Samoan custom from assuming titles as heads of families, but it is true that the latter are more often males.

[1] Survey received through the courtesy of the Government of New Zealand. For certain texts referred to in this survey see *Yearbook on Human Rights for 1947*, p. 412, and *Yearbook on Human Rights for 1949*, p. 262. The Government of New Zealand is the Administering Authority for this Trust Territory.

[2] The Native Land and Titles Protection Ordinance, 1934

What has been said above bears more on the question of domestic than of national politics, but the right of consultation and discussion is just as evident in public affairs. Heads of families agree on the nomination of village officials; groups of villages defined by law meet together to choose their constitutional representatives in the Fono of Faipule,[1] who in turn are empowered to choose the twelve Samoan representatives in the Legislative Assembly.[2] These rights of consultation and of expression of opinion permeate the whole of society and, whether clearly and expressly defined by law in some cases, or in others operating effectively in terms of Samoan custom, they ensure that there is free play at the election level for the expression and determination of conflicting points of view. There are effective Samoan majorities both in the Council of State[3] and in the Legislative Assembly; and the Fono of Faipule, although it acts only in an advisory capacity is, of course, entirely Samoan. At meetings of these bodies, public institutions and Government policy are open to the fullest discussion, or even attack, a freedom of expression of opinion that is especially well demonstrated at sessions of the Legislative Assembly devoted to the consideration of estimates.

Members of the community have equal access to the public service on the basis of merit. A Samoan Public Service Commission was established in 1950 in terms of the Samoa Amendment Act 1949, which charges the Public Service Commission with the duty of selecting candidates for appointment to the public service on grounds of relative suitability, diligence and good conduct.

The organization of the Samoan family permits to its members, even of comparatively tender years, a degree of freedom not often found in higher types of society. If young or untitled people feel any dissatisfaction with what is required of them in family affairs, or are unable to obtain redress from the matai, they are free to leave the particular group with whom they have been living and transfer their allegiance to some other branch of the family, either in the same village or district or in some different part of the territory. Membership of a family carries with it, of course, duties and responsibilities as well as recognized rights. Those who wish to enjoy the benefits of the use of family lands must in turn give service either to the head of the family or the family itself.

Since, however, no form of society is perfect or operates without occasional signs of stress, it is sometimes impossible to satisfy all members in terms either of custom or of law. On such occasions, dissatisfied elements may carry complaints to departments of Government which are specially equipped to recognize their needs. The Department of Samoan Affairs and the Land and Titles Court have jurisdiction to deal with disputes affecting Samoan land and titles,[4] and if disputes cannot be settled either by negotiation between the parties at village or district levels, further attempts may be made by the department, or the case may be referred for adjudication by the full court. The decisions of this court, which includes Samoan members, are greatly respected. Further, any Samoan has the right of access to the High Commissioner himself at a known place at definite times. This right is freely exercised.

Political development in Western forms has been rapid in recent years, and the employment of democratic modes of procedure is steadily gaining recognition. In true Samoan custom a ballot is unknown, discussion proceeding freely until unanimity is achieved. Now, however, the use of the ballot at high political levels is growing, and it is not too much to say that its use in the outer districts may soon be seen.

The right of association for the formation of clubs or other groups is freely exercised, and newspapers and church publications are issued without restriction.

Samoans enjoy freedom of conscience, and there are many different religious sects in the territory. There is also movement between the different sects, particularly in the case of individuals, but instances are also known of changes of religion by entire groups or communities.

Custom and the social discipline of the family and village ensure that individual freedom does not degenerate into licence, while statutory authority is given to such human rights as freedom from arbitrary arrest and equality before the law which are formally recognized and established in European society. The Administering Authority acts in close co-operation with international bodies to give sanction to conventions concerning the preservation of the rights of various sections of the community. On the basis of these safeguards, there is at all social and political levels in the territory, the right to hold a dissenting opinion and to give expression to disagreement without persecution. The language itself, which abounds in polemical expressions, bears witness to this custom and practice. It has been rightly said that no individual or institution in the territory enjoys exemption from criticism, and that the right to disagree is one of the most striking characteristics of Samoan society. It is one of the first characteristics to disappear in dictatorial or repressive forms of government.

[1] The Faipule Election Ordinance, 1939.

[2] The Legislative Assembly Regulations, 1948; Samoa Amendment Act, 1949.

[3] Samoa Amendment Act; Fautua Appointment Regulations, 1948.

[4] Native Land and Titles Protection Ordinance 1934.

TRUST TERRITORY OF NAURU

STATEMENT ON HUMAN RIGHTS IN THE TRUST TERRITORY OF NAURU[1]

THE BASIC LAW OF NAURU

1. Article 4 of the United Nations Trusteeship Agreement for Nauru, dated 1 November, 1947, provides as follows:

"The Administering Authority will be responsible for the peace, order, good government and defence of the Territory, and for this purpose, in pursuance of an agreement made by the Governments of Australia, New Zealand and the United Kingdom, the Government of Australia, will on behalf of the Administering Authority and except and until otherwise agreed by the Governments of Australia, New Zealand and the United Kingdom, continue to exercise full powers of legislation, administration and jurisdiction in and over the territory."

2. Accordingly, the law operative within the territory continues to emanate from the agreements made between the three members of the Administering Authority in 1919 and 1923 and embodied in the Nauru Island Agreement Acts of the Australian Commonwealth Parliament of 1919 and 1932, under which full powers of legislation, administration and jurisdiction are vested in the Administrator of the Territory, who acts for the Administering Authority in providing for the government of the territory.

3. The Laws Repeal and Adopting Ordinance 1922–1938 made by the Administrator in the course of this power, provides, by section 10:

"The institutions, customs and usages of the aboriginal native of the island shall not be affected by this ordinance, and shall, subject to the provisions of the ordinance of the island from time to time in force, be permitted to continue in existence in so far as the same are not repugnant to the general principles of humanity."

Section 16 provides:

"The principles and rules of common law and equity that for the time being are in force in England shall, so far as the same are applicable to the circumstances of the Island of Nauru, be likewise the principles and rules of common law and equity that shall for the time being be in force in the island."

This ordinance also adopts certain Acts of the Commonwealth and Queensland Parliaments. The law governing powers of arrest, for instance, is contained in the Judiciary Ordinance 1922–1948 and the Criminal Code (Queensland, adopted.)

4. Hence it may be said that the law of Nauru consists of the British common law with statutory modifications as adopted from Australia and as brought about by local ordinances. Many of the fundamental human rights therefore, will be found to be inherent, and by implication, in this body of law.

PROVISION AS TO HUMAN RIGHTS IN THE TRUSTEESHIP AGREEMENT OF 1947

5. Under article 5 of the Trusteeship Agreement of 1947, the Administering Authority undertakes that it will, in accordance with its established policy:

(*a*) Take into consideration the customs and usages of the inhabitants of Nauru, and respect the rights and safeguard the interests both present and future of the indigenous inhabitants of the territory; and in particular ensure that no rights over native land in favour of any person not an indigenous inhabitant of Nauru may be created or transferred except with the consent of the competent public authority;

(*b*) Promote as may be appropriate to the circumstances of the territory the economic, social, educational and cultural advancement of the inhabitants;

(*c*) Assure to the inhabitants of the territory, as may be appropriate to the particular circumstances of the territory and its peoples, a progressively increasing share in the administrative and other services of the territory and take all appropriate measures with a view to the political advancement of the inhabitants in accordance with Article 76b of the Charter;

(*d*) Guarantee to the inhabitants of the territory, subject only to the requirements of the public order, freedom of speech, of the press, of assembly and of petition, freedom of conscience and worship and freedom of religious teaching.

6. A comprehensive general account of the extent to which these objectives have been achieved can be found in the annual reports to the General Assembly of the United Nations on the Administration of the Territory of Nauru. Hereunder is given an outline of the system of administration, which throws light

[1] Summary prepared by Mr. H. F. E. Whitlam, Crown Solicitor, Canberra. About the Administering Authority, see paragraphs 1 and 2 of this statement.

on the political rights of the people, and of the ordinances of Nauru which deal with human rights of any kind.

THE ADMINISTRATION OF THE GOVERNMENT OF NAURU—POLITICAL RIGHTS

7. The Administrator has power under the Agreement to make ordinances to provide for the peace, order and good government of the island, subject to the terms of the Agreement between the Administering Authority, and particularly (but so as not to limit the generality of the foregoing provisions) to provide for the education of children, to establish and maintain the necessary police force, and to establish and appoint courts and magistrates with civil and criminal jurisdiction. Under the agreement embodied in the Act of 1932, all ordinances made by the Administrator are subject to confirmation or disallowance by the Governor-General of the Commonwealth of Australia, and the Administrator is required to conform to such instructions as he shall from time to time receive from the Government of the Commonwealth of Australia.

8. In the performance of his office, the Administrator is assisted by a European and Nauruan staff which includes the departmental heads who act as advisers and executives to the Administrator in their particular spheres—*i.e.*, public health, secretarial, educational, judicial, public works, etc., and the Nauruan Council of Chiefs. The Council of Chiefs, under the chairmanship of the head chief, and consisting of a representative of each of the fourteen districts on the island, advises the Administrator on Nauruan matters.

9. The chiefs are elected under suffrage rights applicable to all adults within their districts. They are entrusted by the Administrator with the initial responsibility for the maintenance of order in their districts and the control of affairs associated with local government. The constitution and powers of the Council of Chiefs are not defined by ordinance, but the duties of the individual chiefs are set out in Administration Order No. 12 of 1921 and in the Native Administration Regulations.

10. The Judiciary Ordinance, 1922–1948, provides for a court of appeal (the Administrator), a central court and a district court, each of which possesses civil and criminal jurisdiction. In addition, the chiefs are empowered to deal with minor offences commited by Nauruans within their respective districts.

ORDINANCES DEALING WITH HUMAN RIGHTS

11. The Lands Ordinance, 1921–1950, provides, by section 3:

"(1) Any person, firm, or company who, without the consent in writing of the Administrator, or a person duly authorized by the Administrator to give such consent, transfers, sells, or leases, or enters into any contract or agreement for the sale, or lease of, or for the granting of any estate or interest in any land, shall be guilty of an offence and shall be liable to a penalty not exceeding £10 (ten pounds), or in default, imprisonment for a period not exceeding two months.

"(2) Any transfer, sale, lease, contract, or agreement made or entered into, in contravention of this section, shall be absolutely void and of no effect."

Section 4 provides:

"Phosphate-bearing lands may be leased to the British Phosphate Commissioners . . . subject to the following conditions:

"(*a*) . . .

"(*b*) During the period of twenty years commencing on the first day of July, one thousand nine hundred and forty-seven, the Commissioners shall:

"(i) Pay to each landowner from whom phosphate-bearing land is leased—

"(*a*) a lump sum at the rate of forty-five pounds per acre of the land leased, with a minimum of seven pounds ten shillings where the area of the land leased is less than one acre; and

"(*b*) a royalty of sixpence per ton of phosphate taken from that land according to certified weights; and

"(ii) Pay to the Administrator in respect of each ton of phosphate exported from Nauru, according to the certified weight of the quantity shipped:

"(*a*) a royalty of threepence per ton to be used solely for the benefit of the Nauruan people;

"(*b*) a royalty of twopence per ton to hold in trust for the land-owners from whose land the phosphate was taken, and invested, as received half-yearly, at compound interest, for a period of twenty years from the date of that investment, when the then capital shall be re-invested and interest thereon paid half-yearly to the land-owners or their legal personal representatives, in proportion to their respective interests in the original investment; and

"(*c*) a royalty of twopence per ton to be held in trust for the Nauruan people and invested, as received half-yearly, at compound interest, until the year two thousand."

Section 4 (*ba*) provides:

"During the period of seventeen years commencing on the first day of July, one thousand nine hundred and fifty, the Commissioners shall, in addition to the payments specified in paragraph (*b*) of this section, pay to the Administrator, in respect of each ton of phosphate exported from Nauru, according to the certified weight of the quantity shipped, a royalty of threepence per ton, to be held in trust for the Nauruan

people and invested as received half-yearly, at compound interest, until the year two thousand."

Section 4 (*c*) provides:

"As soon as practicable, all worked-out land not required for or in connexion with the operations of the Commissioners shall revert to the owner(s) concerned."

12. The Chinese and Native Labour Ordinance, 1922–1924, provides, *inter alia*, that every contract for service or work in the island entered into between an employer and a Chinese or a native shall be made in the presence and subject to the approval of the Administrator. No contract is to exceed three years' duration. No labourer shall be required to perform work for which he is physically unfit. No labourer shall be required to work on Sundays or more than nine hours per day except in specified circumstances. Any labourer may bring any complaint under the notice of the Administrator and shall be given every reasonable facility for so doing. The employer of every labourer shall assign him a suitable dwelling and keep it in repair. Minimum housing and sanitation standards are laid down by the ordinance. Employers of more than fifty labourers are to provide hospital facilities for their employees. Employers must return labourers and their families to their homes after expiration of their contracts.

13. The Arms, Liquor and Opium Prohibition Ordinance, 1936, provides, in section 5:

"No person shall supply to any native by sale, gift, or in any other way either directly or indirectly, or furnish or entrust any native with any firearm, ammunition, intoxicating liquor or opium: and any person contravening any provision of this section shall be guilty of an offence.

"*Penalty:* £200, or imprisonment for two years."

14. The Compulsory Education Ordinance, 1921–1925, provides in section 3:

"All children between the ages of six (6) and sixteen (16) (six and fifteen in the case of children of European parents) must attend on every half-day on which school is held . . ."

Section 3 (*b*) provides:

"Nauruan and other native children, on termination of school attendance, as prescribed in sections 3 and 3 (*a*) foregoing, will be required to attend for a further period of twelve months, a prescribed number of days each week, at such times and places as may be directed, for instruction in technical training, and in the case of girls, domestic arts."

Education is free and provided by the Government.

* * *

The following International Labour Organisation conventions have been ratified by the Commonwealth on behalf of the Trust Territory of Nauru, as the Administering Authority:

No. 27. Marking of Weight (Packages transported by Vessels), 1929;
No. 29. Forced Labour, 1930;
No. 89. Night Work (Women), 1948.

TRUST TERRITORY OF SOMALILAND

TRUSTEESHIP AGREEMENT FOR THE TERRITORY OF SOMALILAND UNDER ITALIAN ADMINISTRATION[1]

as approved by the General Assembly of the United Nations on 2 December 1950

Introductory Note. At its 250th plenary meeting, on 21 November 1949, the General Assembly adopted resolution 289 (IV) recommending that the former Italian colony, Somaliland, be an independent sovereign State at the end of ten years from the date of approval of the Trusteeship Agreement for the Territory of Somaliland by the General Assembly.[2] During this period of ten years, the territory was to be placed under the International Trusteeship System, with Italy as the Administering Authority, aided and advised by an Advisory Council composed of representatives of Colombia, Egypt and the Philippines.

The Trusteeship Council was requested by the General Assembly to negotiate the draft of a trusteeship agreement with Italy. A draft agreement was approved by the Trusteeship Council at the eighth meeting of its sixth session on 27 January 1950.

In conformity with the resolution of the General Assembly of 21 November 1949, the provisional administration of the territory by Italy was to begin at a proper date after the draft of the Trusteeship Agreement was approved by the Trusteeship Council, and the Italian Parliament had authorized the provisional administration of the Territory. By a telegram dated 9 February 1950, the Minister for Foreign Affairs of Italy informed the President of the Council that the Italian legislature had authorized the provisional administration of the Territory in accordance with the resolution of the General Assembly, and by a letter dated 22 February 1950, he informed the Secretary-General of the United Nations that the Government of the Italian Republic, subject to the ratification of the Trusteeship Agreement, had undertaken to assume the administration of the Territory of Somaliland in accordance with the resolution of the General Assembly and article 23, paragraph 2, of the draft Trusteeship Agreement adopted by the Trusteeship Council. By an agreement between Italy and the United Kingdom, 1 April 1950 was fixed as the date for the regular transfer of powers. By the British Administration (Termination) Proclamation, 1950, it was stated that the authority of the Government of the United Kingdom in Somaliland would terminate on 1 April 1950.

The General Assembly of the United Nations approved the Trusteeship Agreement at its 316th plenary meeting by resolution 442 (V), adopted on 2 December 1950. At the end of 1950, the Italian Parliament had not yet ratified the Trusteeship Agreement.[3]

Art. 2. Italy shall be entrusted with the administration of the territory, and the Government of Italy (designated in this agreement as the Administering Authority) shall be represented therein by an Administrator. The Administering Authority shall be responsible to the United Nations for the peace, order and good government of the territory, in accordance with the terms of this agreement.

The Administering Authority shall be aided and advised by an Advisory Council composed of representatives of Colombia, Egypt and the Philippines.

The headquarters of the Administrator and of the Advisory Council shall be in Mogadishu.

Art. 3. The Administering Authority undertakes to administer the Territory in accordance with the provisions of the Charter of the United Nations relating to the International Trusteeship System as set out in Chapters XII and XIII thereof, the relevant parts of the resolution 289 (IV) of 21 November 1949 of the General Assembly, and this agreement (which includes an annex containing a declaration of constitutional principles), with a view to making the independence of the territory effective at the end of ten years from the date of the approval of this agreement by the General Assembly.

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[1] English text of the Agreement in *Draft Trusteeship Agreement for the Territory of Somaliland under Italian Administration*, General Assembly, Official Records: Fifth Session, Supplement No. 10 (A/1294), 1950.

[2] See *Yearbook on Human Rights for 1949*, p. 402.

[3] The Italian Parliament ratified the Italian Trusteeship Agreement on 4 November 1951.

The Administering Authority shall:

1. Foster the development of free political institutions and promote the development of the inhabitants of the territory towards independence; and to this end shall give to the inhabitants of the territory a progressively increasing participation in the various organs of government;

2. Promote the economic advancement and self-sufficiency of the inhabitants, and to this end shall regulate the use of natural resources; encourage the development of fisheries, agriculture, trade and industries; protect the inhabitants against loss of their lands and resources; and improve the means of transportation and communication;

3. Promote the social advancement of the inhabitants, and to this end shall protect the rights and fundamental freedoms of all elements of the population without discrimination; protect and improve the health of the inhabitants by the development of adequate health and hospital services for all sections of the population; control the traffic in arms and ammunition, opium and other dangerous drugs, alcohol and other spirituous liquors; prohibit all forms of slavery, slave trade and child marriage; apply existing international conventions concerning prostitution; prohibit all forms of forced or compulsory labour, except for essential public works and services, and then only in time of public emergency with adequate remuneration and adequate protection of the welfare of the workers; and institute such other regulations as may be necessary to protect the inhabitants against any social abuses.

Art. 4. The Administering Authority, recognizing the fact that education in its broadest sense is the only sure foundation on which any moral, social, political and economic advancement of the inhabitants of the territory can be based, and believing that national independence, with due respect for freedom and democracy, can be established only on this basis, undertakes to establish a sound and effective system of education, with due regard for Islamic culture and religion.

The Administering Authority therefore undertakes to promote the educational advancement of the inhabitants, and to this end undertakes to establish as rapidly as possible a system of public education which shall include elementary, secondary, vocational (including institutions for the training of teachers) and technical schools to provide free of charge at least elementary education, and to facilitate higher and professional education and cultural advancement in every possible way.

In particular, the Administering Authority shall take all appropriate steps:

(*a*) To provide that an adequate number of qualified students from among the indigenous population receive university or professional education outside the territory, so as to ensure that sufficient qualified personnel will be available when the territory becomes a sovereign independent State;.

(*b*) To combat illiteracy by all possible means; and

(*c*) To ensure that instruction is given in schools and other educational institutions regarding the activities of the United Nations and its organs, the basic objectives of the International Trusteeship System and the Universal Declaration of Human Rights.

Art. 8. The Advisory Council shall be fully informed by the Administering Authority on all matters relating to the political, economic, social and educational advancement of the inhabitants of the territory, including legislation appertaining thereto, and may make to the Administering Authority such observations and recommendations as it may consider will be conducive to the attainment of the objectives of this agreement.

The Administering Authority shall seek the advice of the Advisory Council on all measures envisaged for the inauguration, development and subsequent establishment of full self-government for the territory; in particular, it shall consult the Advisory Council regarding plans for:

(*a*) The establishment and development of organs of self-government;

(*b*) Economic and financial development;

(*c*) Educational advancement;

(*d*) Labour and social advancement; and

(*e*) The transfer of the functions of government to a duly constituted independent government of the territory.

The Administering Authority shall seek the advice of the Advisory Council on ordinances which, in accordance with article 5 of the annex to this agreement, the Administrator of the Territory may make and promulgate in exceptional circumstances.

Art. 12. The Administering Authority undertakes to maintain the application of the international agreements and conventions which are at present in force in the territory, and to apply therein any conventions and recommendations made by the United Nations or by the specialized agencies referred to in Article 57 of the Charter of the United Nations, the application of which would be in the interests of the population and consistent with the basic objectives of the Trusteeship System, the provisions of resolution 289 (IV), of 21 November 1949, of the General Assembly, and the terms of this Agreement.

Art. 13. The Administering Authority shall take all the necessary steps to enable the territory to cooperate with the specialized agencies referred to in

article 57 of the Charter of the United Nations and with other international agencies and regional organizations, and to participate in their activities.

Art. 14. In order to promote the economic and social advancement of the indigenous population, the Administering Authority shall, in framing laws relating to the holding or alienation of land or other natural resources, take into consideration the laws and customs of the indigenous population and respect their rights and safeguard their interests, both present and future.

The Administering Authority shall not, without the consent in each case of a two-thirds majority of the members of the Territorial Council (provided for in article 4 of the annex to this Agreement), permit the acquisition by non-indigenous persons or by companies or associations controlled by such persons of any rights over land in the Territory save on lease for a period to be determined by law. In cases involving the alienation to non-indigenous persons or to companies or associations controlled by such persons of areas of agricultural lands in excess of one thousand acres, the Administering Authority shall also request in advance the advice of the Advisory Council. The Administering Authority shall include in its annual report to the Trusteeship Council a detailed account of such alienations.

The Administering Authority shall prohibit the acquisition by non-indigenous persons or by companies or associations controlled by such persons of any rights over any other natural resources in the territory, save on lease or grant of concession for a period to be determined by law.

Nothing in this article shall apply to building land within the municipal area of Mogadishu, which may be disposed of in accordance with regulations prescribed by law.

Art. 15. Subject to the provisions of articles 14, 16, and 17 of this Agreement, the Administering Authority shall take all necessary steps to ensure equal treatment in social, economic, industrial and commercial matters for all States Members of the United Nations and their nationals and for its own nationals, and to this end:

(*a*) Shall grant to all nationals of Members of the United Nations and to its own nationals freedom of transit and navigation, including freedom of transit and navigation by air, and the protection of persons and property, subject to the requirements of public order and on condition of compliance with the local law;

(*b*) Shall ensure the same rights to all nationals of Members of the United Nations as to its own nationals in respect of entry into and residence in the territory, acquisition of property, both movable and immovable, and the exercise of professions and trades;

(*c*) Shall not discriminate on grounds of nationality against nationals of any Member of the United Nations or its own nationals in matters relating to the grant of concessions for the development of the natural resources of the territory, and shall not grant concessions having the character of a general monopoly; and

(*d*) Shall ensure equal treatment in the administration of justice to the nationals of all Members of the United Nations and to its own nationals.

The rights conferred by this article on nationals of Members of the United Nations or on the Administering Authority's own nationals apply equally to companies and associations controlled by such nationals and organized in accordance with the law of any Member of the United Nations or with the law of the Administering Authority.

Art. 16. Measures taken to give effect to article 15 of this Agreement shall be subject always to the overriding duty of the Administering Authority, in accordance with Article 76 of the Charter of the United Nations, to promote the political, economic, social and educational advancement of the inhabitants of the Territory, to carry out the other basic objectives of the International Trusteeship System and the provisions of resolution 289 (IV) of the General Assembly of 21 November 1949, and to maintain peace, order and good government. In particular, the Administering Authority shall be free:

(*a*) To organize essential public services and works on such terms and conditions as it thinks just;

(*b*) To create monopolies of a purely fiscal character in order to provide the territory with the fiscal resources which seem best suited to local requirements or otherwise to serve the interests of the inhabitants;

(*c*) Where the interests of the economic advancement of the inhabitants may require it, to establish, or permit to be established, for specific purposes, other monopolies or undertakings having in them an element of monopoly, under conditions of proper public control; provided that, in the selection of agencies to carry out the purposes of this paragraph, other than agencies controlled by the Government of the territory or those in which that government participates, the Administering Authority shall not discriminate on grounds of nationality against Members of the United Nations or their nationals.

Art. 19. The Administering Authority shall, in a spirit of religious tolerance, ensure in the territory complete freedom of conscience and religion and shall guarantee freedom of religious teaching and the free exercise of all forms of worship.

Missionaries of any faith shall be free to enter, travel and reside in the Territory; to acquire and possess property therein, subject to the conditions laid down in article 14 of this agreement; to erect religious buildings and hospitals therein; and to open schools subject to such regulations as may be prescribed by law for the educational advancement of the inhabitants of the territory.

The provisions of this article shall be subject only to such limitations as may be necessary for the maintenance of public order and morality.

Art. 20. The Administering Authority shall guarantee to the inhabitants of the territory complete freedom of speech, of the press, of assembly and of petition, without distinction as to race, sex, language, political opinion or religion, subject only to the requirements of public order.

Art. 22. If any dispute whatever should arise between the Administering Authority and a State Member of the United Nations relating to the interpretation or the application of the provisions of this Agreement, such dispute, if it cannot be settled by direct negotiation or other means, shall be submitted to the International Court of Justice.

Art. 23. The present Agreement, of which the Declaration of Constitutional Principles attached hereto as an annex is an integral part, shall enter into force as soon as it is approved by the General Assembly of the United Nations and ratified by Italy.

Nevertheless, after the Trusteeship Council and Italy have agreed upon the terms of trusteeship and pending approval of this agreement by the General Assembly, the Administering Authority shall provisionally administer the Territory in accordance with the provisions of the Charter of the United Nations and of this agreement, and shall assume this provisional administration at a time and pursuant to arrangements for the orderly transfer of administration agreed upon between Italy and the United Kingdom of Great Britain and Northern Ireland.

DECLARATION OF CONSTITUTIONAL PRINCIPLES

PREAMBLE

In view of the recommendation made by the General Assembly of the United Nations at its fourth regular session with respect to placing the territory formerly known as Italian Somaliland under the International Trusteeship System with Italy as the Administering Authority,

Considering the provisions of the Charter of the United Nations which establish an International Trusteeship System, the terms of this Trusteeship Agreement, of which this declaration is an integral part, and in accordance with the provision of resolution 289 (IV) of the General Assembly,

For the purpose of solemnly guaranteeing the rights of the inhabitants of the territory and of providing, in accordance with democratic principles, for the gradual development of institutions designed to ensure the establishment of full self-government and independence, and the attainment of the basic objectives of the International Trusteeship System in conformity with the Charter of the United Nations,

IT IS HEREBY DECLARED:

Art. 1. The sovereignty of the territory is vested in its people and shall be exercised by the Administering Authority on their behalf and in the manner prescribed herein by decision of the United Nations.

Art. 2. The Administering Authority shall take the necessary steps to provide for the population of the territory a status of citizenship of the territory and to ensure their diplomatic and consular protection when outside the limits of the territory and of the territory of the Administering Authority.

Art. 3. The Administrator shall be the chief executive officer of the territory.

Art. 4. The Administrator shall appoint a Territorial Council, composed of inhabitants of the territory and representative of its people.

In all matters other than defence and foreign affairs, the Administrator shall consult the Territorial Council.

The legislative authority shall normally be exercised by the Administrator, after consultation with the Territorial Council, until such time as an elective legislature has been established.

Art. 5. In exceptional circumstances, the Administrator may, after consultation with the Advisory Council, make and promulgate such ordinances as in his opinion the circumstances demand.

These ordinances shall be laid before the Territorial Council as soon as may be practicable, and the Administering Authority shall include an account of all such ordinances in its annual report to the Trusteeship Council.

Art. 6. In matters relating to defence and foreign affairs as in other matters, the Administering Authority shall be accountable to the Trusteeship Council, and shall take into account any recommendations which the Council may see fit to make.

Art. 7. The Administering Authority shall establish a judicial system, and shall ensure the absolute independence of the judiciary. The Administering Authority shall also ensure that representatives of the indigenous population be progressively entrusted with judicial functions and that the jurisdiction of courts of first instance be progressively increased.

As may be appropriate in each case, the Administering Authority shall apply territorial legislation, Islamic law and customary law.

Art. 8. The Administering Authority, in accordance with the principles laid down in its own Constitution and legislation, shall guarantee to all inhabitants of the territory human rights and fundamental freedoms and full equality before the law without distinction as to race, sex, language, political opinion or religion.

Art. 9. The Administering Authority shall guarantee to all the inhabitants of the territory full civil rights, and also such political rights as are consistent with the progressive political, social, economic and educational development of the inhabitants and with the development of a democratic representative system, due regard being paid to traditional institutions.

In particular, it shall guarantee:

1. The preservation of their personal and successional status with due regard to its evolutionary development;
2. The inviolability of personal liberty, which may not be restricted except by warrant of judicial authority and only in cases and in accordance with regulations prescribed by law;
3. The inviolability of domicile, to which the competent authority may have access only by due legal process and in a manner prescribed in accordance with local customs and subject to the guarantees for the protection of personal liberty;
4. The inviolability of freedom and secrecy of communication and correspondence, which may be limited only by means of a warrant of judicial authority stating the reasons and subject to the guarantees prescribed by law;
5. The rights of property, subject to expropriation carried out for a public purpose, after payment of fair compensation, and in accordance with regulations prescribed by law;
6. The free exercise of professions and occupations in accordance with local customs and with regulations prescribed by law;
7. The right to compete for public employment in accordance with regulations prescribed by law; and
8. The right to emigrate and to travel, subject to such regulations as may be prescribed by law for health and security reasons.

Art. 10. The Administering Authority accepts as a standard of achievement for the territory the Universal Declaration of Human Rights adopted by the General Assembly of the United Nations on 10 December 1948.

ORDINANCE No. 61 CONCERNING THE ESTABLISHMENT OF A SCHOOL FOR POLITICO-ADMINISTRATIVE STUDIES[1]

dated 26 September 1950

Art. 1. A school for politico-administrative studies (*scuola di preparazione politico-amministrativa*) will be set up in Mogadishu for the purpose of training persons capable of being progressively educated to participate in the administration of the territory.

Art. 2. Any persons requesting to join the school may be admitted if they possess the following qualifications:

(*a*) Are either members of the indigenous population or are persons domiciled in the territory, not being citizens of foreign countries;

(*b*) Are over eighteen years of age;

(*c*) Are of good moral character.

Art. 3. Candidates will be admitted to the school after passing an examination before a commission appointed by the Administrator.

Art. 4. Regulations for the conduct of the school will be published subsequently.

[1] Italian text in *Bollettino Ufficiale dell'Amministrazione fiduciaria italiana della Somalia* of 1 October 1950. English translation from the Italian text in United Nations document A/AC.33/LEG.18, p. 5.

B. Non-Self-Governing Territories

AUSTRALIA

TERRITORY OF PAPUA AND NEW GUINEA

Papua

ORDINANCES OF THE TERRITORY OF PAPUA RELATING TO HUMAN RIGHTS[1]

During 1950, the Native Labour Ordinance, 1950, and the Native Children Ordinance, 1950, were issued. The texts of these ordinances, which also apply to the Trust Territory of New Guinea, are summarized in this *Yearbook*.[2]

SEAMEN (UNEMPLOYMENT INDEMNITY) (PAPUA) ORDINANCE 1950

The provisions of the Seamen (Unemployment Indemnity) Ordinance, 1937, of the Territory of Papua are applied to the indigenous population.

[1] Summary prepared by and received through the courtesy of Mr. H. F. E. Whitlam, Crown Solicitor, Canberra.
[2] See page 355.

RATIFICATION OF INTERNATIONAL LABOUR ORGANISATION CONVENTIONS

The following International Labour Organisation conventions have been ratified by the Commonwealth on behalf of the Territory of Papua, as the responsible authority:

No. 8. Unemployment Indemnity (Shipwreck), 1920;
No. 27. Marking of Weight (Packages transported by Vessels), 1929;
No. 29. Forced Labour, 1930;
No. 89. Night Work (Women), 1948.

BELGIUM

BELGIAN CONGO

DECREE TO ANNUL AUTOMATICALLY ANY CUSTOMARY MARRIAGE CONTRACTED PRIOR TO THE DISSOLUTION OR ANNULMENT OF THE PREVIOUS MARRIAGE OR MARRIAGES AND ANY MATRIMONIAL AGREEMENT CONCLUDED WITH A VIEW TO SUCH MARRIAGE, AND TO REGULATE THE RESIDENCE OF FORMER POLYGAMISTS IN CERTAIN COMMUNITIES OR REGIONS OF THE COLONY[1]

dated 4 April 1950

Art. 1. As from 1 January 1951 a person may not contract a second or further customary marriage before the dissolution or annulment of the previous marriage or marriages.

Art. 2. Any union entered into contrary to article 1, and any matrimonial agreement concluded in contemplation of such a marriage, shall be void automatically.

Art. 3. Nevertheless, in the case of a marriage automatically void under article 2, the rules of custom shall apply so far as the children are concerned.

In such a case, the rules of custom shall likewise apply with respect to any party who entered into it in good faith.

Art. 4. Any disputes arising out of the application of articles 1, 2 or 3 may not be dealt with save by the indigenous tribunals, if presided over by the District Commissioner or by one of the persons designated in paragraphs 2, 3 and 4 of article 6 of the consolidated decrees relating to indigenous jurisdiction, as contained in the Royal Order of 13 May 1938.

Art. 5. Persons holding polygamous status before 1 January 1951 shall, before that date, cause their status to be duly noted in accordance with a procedure to be determined by the Governor-General. Wives of polygamists may, upon request, cause their status to be noted in the same way.

If their status is not noted as aforesaid, polygamists and their wives shall be presumed to have contracted marriage after 1 January 1951, unless they produce sufficient evidence to the contrary.

Art. 6. Unless already lawfully resident, therein, polygamists and their wives may not, after 1 July 1950, take up residence in a European community, an extra-customary centre (*centre extra-coutumier*) or in a township declared to be an indigenous township, or, after the date fixed by the Provincial Governor, in any of the indigenous communities or regions to be specified by the said Governor in the light of the stage of evolution reached by the indigenous inhabitants.

Polygamists and their wives permitted to take up residence in one of the aforementioned places or areas may be authorized to transfer their residence to any other of these places or areas.

Art. 7. Polygamists or wives of polygamists settled in one of the places or areas enumerated in article 6 who, upon being required by officials of the territorial or indigenous authority to produce satisfactory evidence of their lawful residence there, are unable to produce this evidence, shall be liable to a penalty not exceeding seven days' penal labour (*servitude pénale*) and a fine of 100 francs, or to one of these penalties only.

If the offence is repeated, the penalties may be increased to one month's penal labour and 500 francs respectively.

Art. 8. The court shall prescribe the time-limit within which the offender shall be required to leave the place in which he settled unlawfully and from which he is evicted.

Art. 9. Any person who knowingly makes false statements to officials of the territorial or indigenous authority with the object of enabling another to evade the ban contained in article 6 shall be liable to the penalties referred to in article 7.

Art. 10. Nevertheless, so far as the offences referred to in articles 6 and 9 are concerned, the court may, according to the circumstances, confine itself to reprimanding the accused with or without an order

[1] French and Flemish texts in the *Bulletin officiel du Congo belge* No. 5, of 15 May 1950. English translation from the French text by the United Nations Secretariat. Text received through the courtesy of Mr. Edmond Lesoir, Secretary-General of the *Institut international des Sciences administratives*. Brussels. The text is preceded by a report of the *Conseil Colonial* on the draft decree.

to pay the costs of the proceedings, while at the same time making an order under article 8 with respect to persons to whom article 7 applies.

Art. 11. Indigenous tribunals, if presided over either by the district commissioner or by one of the persons designated in paragraphs 2, 3 and 4 of article 6 of the consolidated decree relating to indigenous jurisdiction as contained in the Royal Order of 13 May 1938, may deal with the offences referred to in articles 6 and 9 of this decree.

Art. 12. The Minister of the Colonies is responsible for administering this decree.

DECREE ON JUVENILE DELINQUENCY[1]

dated 6 December 1950

TITLE I

DEFINITION OF "MINOR"

Art. 1. For the purposes of this decree, a minor is a child who is, or appears to be, under the age of eighteen years at the time of the act in question.

TITLE II

JURISDICTION AND MEASURES TO BE TAKEN BY THE JUDGE

Art. 2. The district judge, sitting with a representative of the office of the public prosecutor having the prescribed judicial qualifications, has exclusive jurisdiction at first instance to order the measures relating to custody, education and protection referred to in this decree.

If a minor is found begging or wandering, or is a habitual beggar or vagrant, he may be arrested and brought before a judge, who shall have the right to:

(1) Reprimand him and return him to his parents or guardian, directing them to exercise greater care in their supervision in the future;

(2) Commit him until his twenty-first year into the care of a person, or of a charitable or educational association or institution, whether public or private;

(3) Place him at the disposal of the Government until his twenty-first year.

If habitual begging or vagrancy has been established, the only course open to the judge shall be one of the two last mentioned.

Art. 3. If a minor, by his unruly or undisciplined conduct, gives serious cause for discontent to his parents, tutor or guardian, the judge may, at the request of the said parents, tutor or guardian, take one of the measures mentioned in paragraphs 2 and 3 of article 2.

Art. 4. If a minor leads a disorderly life or endeavours to derive his livelihood from gambling or from any traffic or occupation involving the risk of prostitution, begging, vagrancy or criminal offences, the judge may take one of the measures mentioned in article 2.

Art. 5. If a minor commits an offence, jurisdiction to deal therewith at first instance shall be vested exclusively in the district judge sitting with a representative of the office of the public prosecutor having the prescribed judicial qualifications.

In lieu of a penalty, a measure relating to custody, education or protection shall be ordered, each applicable in the circumstances severally described hereinafter.

Art. 6. Irrespective of the terms in which the act in question is defined for the purposes of criminal law, the judge may, according to circumstances, either reprimand the child and return him to his guardian with a direction to exercise greater care in the supervision of the child in the future, or commit him until his twenty-first year into the care of a person or of a charitable or educational association or institution, whether public or private, or place him at the disposal of the Government until his twenty-first year.

Art. 7. If a minor commits an offence punishable by a term of penal labour (*servitude pénale*) exceeding five years, but not punishable by death or penal labour for life, the judge may, if he places him at the disposal of the Government, do so for a term extending beyond his twenty-first year, but not beyond his twenty-fifth year.

Art. 8. If a minor commits an offence punishable by death or penal labour for life, the judge may, if he places him at the disposal of the Government, do so for a term extending beyond his twenty-first year but not for more than twenty years.

Art. 9. If the act committed by a minor is connected with an act that might give rise to proceedings against an adult, the proceedings shall be severed and the minor shall be tried separately.

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[1] French and Flemish texts in the *Bulletin officiel du Congo Belge*, No. 5, of 6 December 1950. English translation from the French text by the United Nations Secretariat. Text received through the courtesy of Mr. Edmond Lesoir, Secretary-General of the *Institut international des Sciences administratives*, Brussels. The text is preceded by a report of the *Conseil Colonial* on the draft decree.

Art. 10. If a minor who commits an offence punishable by a term of penal labour exceeding two months is morally so depraved that he cannot be placed in an ordinary institution for the purposes of guardianship, education or protection, the judge shall order him to be placed at the disposal of the Government to be interned in a State reformatory institution for a term of not less than two and not more than ten years. In the circumstances described in article 8, the judge may place the minor at the disposal of the Government for a term extending beyond the minor's twenty-first year.

Art. 11. In cases where the judge makes an order placing the minor brought before the court at the disposal of the Government, the order may be made conditionally, the conditions governing the stay of execution being expressly stated.

Art. 12. If an offence has been established, the judge shall award costs against the child and, where necessary, order him to restore property or pay damages.

Persons answerable under article 260 of the Civil Code, Book III, or under any special provision, shall be summoned before the court and held jointly responsible with the child for costs, restitution and damages.

TITLE III

SUPERVISED FREEDOM

Art. 13. If, in any of the circumstances described in the preceding paragraphs, a minor is not placed at the disposal of the Government, or the order for his confinement is set aside, he shall be placed under the system of supervised freedom until he attains the age of twenty-one years.

For this purpose, the competent judge shall designate persons of both sexes whom he shall select preferably from among missionaries or from charitable, educational or social welfare institutions, whether public or private. The persons so designated shall be responsible, as directed by him and under the supervision of the public prosecutor, for supervising children brought before the courts.

The persons so designated shall be known as child welfare officers (*délégués à la protection de l'enfance*) and may receive remuneration.

Art. 14. The child welfare officers and the public prosecutor's office shall remain in contact with the minor and shall visit the parents, persons, associations or institutions, as the case may be, having custody of the minor.

They shall take note of the environment, leanings and conduct of the minor.

They shall report to the judge as often as they deem fit, but at least once every three months, on the moral and material circumstances of the minor. Copies of their reports shall be transmitted to the public prosecutor's office. The child welfare officers and the public prosecutor's office shall propose to the judge any measure they regard as beneficial to the minor.

Parents shall receive periodic information concerning the circumstances of their children.

TITLE IV

PROCEDURE

Art. 15. At each stage of the proceedings the judge shall be assisted by a representative of the office of the public prosecutor having the prescribed judicial qualifications. He shall verify the identity and age of the child and investigate into his physical and intellectual condition, and his social and moral environment. He shall order a medical examination of the child.

He may at any time order the minor, his guardian or the child welfare officers to appear before him.

Art. 16. During the investigation, the judge shall take the necessary measures for the care of the minor.

He may either leave him with his father and mother, or with other relatives, or with his guardian, or else withdraw him from his environment and commit him temporarily into the care of a private person, or of a charitable or educational association or institution, whether public or private.

In case of need, the police court judge may provisionally take the same measures for the care of the minor. He shall immediately bring his action to the attention of the district judge and the member of the office of the public prosecutor having the prescribed judicial qualifications.

Art. 17. In cases of absolute necessity, if the measures described in the previous article cannot be applied, owing either to the depravity of the child or to the physical impossibility of finding a person or an institution able to take charge of the minor, he may be held in custody pending trial in a central or district prison, provided that such custody shall not exceed two months.

A minor detained in a central or district prison shall be subject to special regulations to be prescribed by the Governor-General.

Art. 18. At any time, either on his own initiative or at the request of the public prosecutor's office, the minor, or his parents, tutor or guardian, or acting on the report of the child welfare officers, the judge may withdraw or change the measures taken and, within the limits of this decree, act in the best interests of the minor.

These measures shall in any case be subject to review every three years unless they have lapsed before the expiry of this period.

Art. 19. The decisions made by the judge under this decree are subject to appeal, in the usual form and time-limits, by the public prosecutor's office. Similarly, the minor, or his parents, tutor or guardian, may appeal against them whenever the effect of the decision would be to remove the minor from the custody of his parents, tutor or guardian.

Even if an appeal has been lodged, the judge may order his decision to be carried out provisionally.

Appeals shall be heard by the court of first instance, sitting as a court of first instance in criminal matters.

The court hearing the appeal may take the provisional measures referred to in article 16 of the present decree.

TITLE V
PENALTIES

Art. 20. If the father or mother removes or attempts to remove his or her minor child from proceedings instituted against the child under this decree, or removes or attempts to remove him from the care of the persons or institutions into whose care he has been committed by the judicial authorities, or fails to produce him to persons entitled to claim him, or takes him away or causes him to be taken away, even with his consent, he shall be liable to penal labour for a term of eight days to one year and a fine of 100 to 1,000 francs, or to one of these penalties only. If the offender has been deprived of all or part of his or her parental authority, the term of the penalty may be increased to three years.

TITLE VI
MEASURES OF APPLICATION

Art. 21. The judge shall determine the use to be made of the wages earned by a minor whom he has committed to the care of a person, or of a charitable or educational association or institution, whether public or private, or placed at the disposal of the Government while he is interned, or committed to the care of a person other than his parents or tutor.

The costs of maintenance and education of a minor entailed by the measures ordered by the judge are chargeable to the child or to the persons responsible for his maintenance, if financially solvent, and to the colony or to the district funds (*caisses de circonscription*) if these persons are not solvent.

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DENMARK

GREENLAND

NOTE ON HUMAN RIGHTS IN GREENLAND[1]

A comprehensive survey of human rights in Greenland is to be found in the *Yearbook on Human Rights for 1949*.[1]

By Act No. 271 of 27 May 1950 concerning the Provincial Council (*Landsradet*) and municipal government in Greenland,[2] a provincial council consisting of thirteen members elected by the population, has been created. The Act also provides for the appointment by the Danish Government of the Governor. This body, as well as sixteen local councils, is carrying out the administrative work in the new district of Western Greenland, the most important part of the territory, while East and North Greenland are to be administered in accordance with detailed instructions of the Danish Ministry. All metropolitan legislation relating solely to Greenland must be placed before the Provincial Council for its consideration and report before submission to the Rigsdag. The Provincial Council may nominate to the Greenland Committee in the Rigsdag two persons who were or are members of that council.

Any man or woman of Danish nationality who has attained the age of twenty-three years and has been a permanent resident of Greenland for at least six months immediately preceding the election is entitled to vote in the elections to the Provincial Council and to the local councils. Disqualifications are similar to those stipulated in the Danish Electoral Act.[3] Any person entitled to vote is eligible for membership in the Provincial Council.

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[1] This note is based on material and information received through the courtesy of Professor Max Sørensen, University of Aarhus. Professor Sørensen's survey of human rights mentioned in this note is to be found in *Yearbook on Human Rights for 1949*, p. 269. See also United Nations document A/1828, of 23 July 1951 (summary of information transmitted by the government of Denmark under Article 73 e of the Charter).

[2] This Act is published in *Lovtidenden A*, 1950, No. 32, of 15 June 1950.

[3] See *Yearbook on Human Rights for 1948*, p. 307.

EGYPT AND THE UNITED KINGDOM

NOTE ON HUMAN RIGHTS IN THE SUDAN[1]

No new developments are to be recorded in the field of human rights during 1950.

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[1]Information received through the courtesy of the Civil Secretary of the Sudan Government in Khartoum. See also the "Note on Human Rights in the Sudan" in *Yearbook on Human Rights for 1949*, pp. 270-271.

FRANCE

ACT No. 50-772 ESTABLISHING THE CONDITIONS FOR FIXING SALARIES AND ALLOWANCES OF CIVILIAN AND MILITARY OFFICIALS OF THE MINISTRY FOR OVERSEAS FRANCE AND THE CONDITIONS OF RECRUITMENT, DISCHARGE AND RETIREMENT OF THESE OFFICIALS[1]

dated 30 June 1950

Art. 1. The fixing of the salaries and any kind of accessory salary to which civilian and military staff serving in territories within the jurisdiction of the Ministry for Overseas France are entitled shall not, in any circumstances whatsoever, be based on differences of race, personal status, origin, or place of recruitment.

Subject to equality of grade, or, if the question arises, of category within the grade, or of step within the category or grade, salaries, salary increases or extra pay and bonuses and allowances of all kinds shall be fixed at uniform rates for the same service and the same territory or group of territories and the same place of residence.

Art. 3. The conditions of admission, recruitment and promotion shall be fixed by an identical regulation for all officials in the same service.

The decree of 1 November 1928 establishing an inter-colonial pension fund shall be applicable uniformly to all officials in the general service, unless notice to the contrary is given by the person concerned. In the case of officials in other services, the pension system shall be reorganized in accordance with the principles and methods provided for in the decree of 1 November 1928.

Art. 4. Special regulations for the leave system of each service category shall be drawn up in accordance with the principles defined in articles 1 and 3 above.

Art. 5. Uniform local regulations shall be drawn up for the system of family allowances for all civilian and military staff in each territory or group of territories. Nevertheless, if the persons concerned come from metropolitan France, from an overseas *département* or from an overseas territory where they would have been entitled to benefit by a more favourable system, they shall in any case receive the benefits of that system on a personal basis.

Art. 10. Details of the application of the above provisions shall be fixed by regulations to be drawn up within six months from the promulgation of this Act. They shall abrogate expressly any previous provisions which may be contrary to this Act, and in particular those of decrees Nos. 48-1646, of 20 October 1948; 48-1817, of 30 November 1948; 49-529, of 15 April 1949; 49-1026, of 27 July 1949; 49-1029, of 27 July 1949; 49-1622, of 28 December 1949; 49-1624, of 28 December 1949; and 49-1677, of 28 December 1949, concerning the origin of officials in relation to determining entitlement to administrative leave, family allowances and the grant known as the "expatriation allowance".

[1] French text in *Journal officiel* No. 155 of 1 July 1950. English translation from the French text by the United Nations Secretariat.

FRENCH EQUATORIAL AFRICA

ORDER ESTABLISHING WORKING CONDITIONS FOR CHILD LABOUR[1]

of 23 December 1949

TITLE I
MINIMUM WORKING AGE

Art. 1. Children under fourteen years of age shall not be employed in any undertaking even as apprentices.

This prohibition shall not, however, be applicable to domestic workers.

Art. 2. The minimum working age shall be eighteen years for young persons:

(1) Employed as trimmers or stokers on board vessels;

(2) Performing work requiring considerable effort and attention, such as the operation of lifting appliances;

[1] French text in the *Journal officiel de l'Afrique Equatoriale Française* No. 2, of 15 January 1950, pp. 118-119. English translation from the French text by the United Nations Secretariat.

(3) Working under dangerous or unhealthy conditions.

Art. 3. No child attending a public or private educational establishment may work during school hours, either for himself or for his parents or an employer.

Art. 4. Proof of age shall be established by the production of a birth certificate or a judicial declaration having like force, or by a medical examination.

Art. 5. Every employer shall record the age of a young worker on a document (individual card or pay roll).

This document shall be available at all times for inspection by the labour inspector or his authorized deputy.

TITLE II

AUTHORIZATION TO WORK

Art. 6. No child between fourteen and eighteen years of age may be employed without the consent of his parents or guardian.

Art. 7. The employment of persons between fourteen and eighteen years of age shall be subject to the written authorization of the labour inspector or his authorized deputy.

TITLE III

CONDITIONS AND SUPERVISION OF WORK

Art. 8. Night work by young persons shall be prohibited.

Children shall have a rest period of at least eleven consecutive hours including the period between 10 p.m. and 5 a.m.

Art. 9. The labour inspector, or his authorized deputy, may require the examination of a child by an approved medical practitioner in order to ensure that the work assigned to the child is not beyond his strength. The person concerned shall be legally entitled to request such an examination.

A child may not be kept in work which has been recognized as beyond his strength, but shall be transferred to work suitable to his physical capacity or, if there is no such work, shall be dismissed.

[Title IV deals with penalties against contraventions of the provisions of this order, and provides that the territorial labour inspector shall be responsible for its application.]

NETHERLANDS

DECREE TO PROVIDE FOR THE SEPARATE ADMINISTRATION OF NEW GUINEA (ADMINISTRATION OF NEW GUINEA DECREE)[1]

dated 29 December 1949

CHAPTER I

NEW GUINEA AND ITS INHABITANTS

Art. 3. (1) Slavery shall not be tolerated in New Guinea.

(2) Forced or compulsory labour falling within the provisions of the Convention concerning forced or compulsory labour (Geneva 1930) (*Official Gazette*, 1933, No. 236) may not be exacted.

(3) The nature and duration of forced or compulsory labour not falling within the provisions of the Convention referred to in the preceding paragraph, and the cases, the manner and the circumstances in which it may be exacted shall be regulated by ordinance in conformity with existing customs, institutions and requirements.

Art. 4. All persons resident in the territory of New Guinea shall have equal rights to the protection of their persons and possessions.

Art. 5. Aliens shall not be extradited except in accordance with the provisions of treaties, and in such cases due regard shall be paid to the rules made in general administrative regulations and conforming as far as possible with the relevant statutory provisions in force in the Netherlands.

Art. 6. (1) The rules concerning admission to and settlement in New Guinea shall so far as necessary be prescribed by general administrative regulations and otherwise by ordinance.

(2) A person shall be deemed to be a resident of New Guinea if, without having contravened the provisions of any of its regulations, he has become domiciled there.

(3) Except as provided in article 37, paragraph (2),[2] no resident can be prevented from living in any particular section of New Guinea.

(4) A person shall no longer be a resident of New Guinea if he ceases to be domiciled there. A resident who leaves New Guinea and does not return there within eighteen months shall be deemed to have ceased to be domiciled there unless there are indications to the contrary.

(5) A minor or a person under guardianship shall be considered to be a resident of New Guinea if his legal representative is such a resident; and the same shall apply in the case of a woman who is married to and has not been judicially separated from a man who is a resident of New Guinea.

(6) Residence provisions in other general regulations shall apply only as respects the subjects dealt with in such regulations.

Art. 7. (1) Every Netherlands subject may be elected and appointed to any public office, and shall have the right to vote, in accordance with the provisions laid down by ordinance.

(2) An alien shall not have the right to be elected or appointed to public office or the right to vote. Ordinances may be made to create exceptions concerning the right to participate in elections for the communities referred to in chapter VIII[3] and in the case of appointments to certain offices.

Art. 8. (1) Every person shall have the right to disseminate ideals or opinions through the Press without prior authorization.

(2) The liability of a writer, publisher, printer or any person who disseminates news, and the measures by which public order and decency shall be protected against the abuse of the freedom of the press, shall be regulated by ordinance.

Art. 9. (1) Every person shall have the right to submit petitions to the competent authorities, both in the Netherlands and in New Guinea.

(2) Petitions must be signed personally and not on behalf of others, unless they are submitted by or through a body that is legally constituted or recognized; in the latter case a petition shall not deal with any subject other than a subject comprised within the special sphere of activites of such body.

(3) Persons unable to write may, however, submit petitions through the intermediary of such officials as

[1] Dutch text in *Staatsblad van het Koninkrijk der Nederlanden*, No. J.599. Text received through the courtesy of Dr. G. van den Bergh. Professor at the Municipal University of Amsterdam. English translation from the Dutch text by the United Nations Secretariat.

[2] Article 37, paragraph (2), provides that in the interest of the indigenous population, the right to travel and to establish certain enterprises in certain parts of the territory of New Guinea may be restricted.

[3] Chapter VIII deals with the division of the territory into administrative districts and communities.

may be authorized to act in that capacity by the Governor.

Art. 10. The exercise of the right of association and assembly may be subjected to regulations and restrictions by ordinance in the interest of public order, morals or hygiene.

CHAPTER VI

THE NEW GUINEA COUNCIL

Art. 72. [This article deals with the composition of the New Guinea Council, which consists of twenty-one members ordinarily distributed as follows: ten indigenous non-Netherlander subjects; nine Netherlander subjects; and two non-indigenous non-Netherlander subjects. The indigenous non-Netherlander members are returned by constituencies consisting of indigenous non-Netherlander subjects. If the indigenous non-Netherlander subjects resident in any constituency are regarded as not yet capable of voting, the indigenous non-Netherlander member for such constituency is appointed by the Governor. If in the Governor's opinion there are no suitable indigenous non-Netherlander candidates, he appoints in their stead Netherlander subjects who must assume responsibility for looking after the interests of the indigenous non-Netherlander population. Of the nine Netherlander members of the Council, two are elected by the Netherlander subjects of New Guinea and seven are appointed by the Governor. Of the two non-indigenous non-Netherlander members, one is elected by the non-indigenous non-Netherlander subjects of New Guinea and one is appointed by the Governor. Candidates in constituencies returning one member are elected on the basis of an absolute majority and in constituencies returning more than one member on the basis of proportional representation. If the requisite number of posts are not filled by means of elections, the Governor appoints as many persons as are necessary for this purpose, and the said persons are deemed to have been elected.]

Art. 73. If and in so far as economic development or other factors change the composition of the population groups in New Guinea, such modifications as may be expedient will be made in the number of members constituting the New Guinea Council; in the proportional distribution of seats among indigenous non-Netherlander subjects, Netherlander subjects and non-indigenous non-Netherlander subjects; and in the number of appointive and elective seats.

Art. 74. (1) A person shall be entitled to vote if he is a Netherlands subject and:

1. Has been resident in New Guinea since 1 January of the year in which the list of voters is drawn up;

2. Attains the age of twenty-three years before 1 March of the year in which the list of voters is drawn up;

3. Is in full possession of his civic rights; and

4. Either (*a*) fulfils the requirements of the electoral regulations as to intellectual development; or (*b*) pays taxes on an annual income, the minimum amount of which, not exceeding one thousand guilders, shall be laid down in the electoral regulations.

(2) In the case of indigenous non-Netherlander subjects and of non-indigenous non-Netherlander subjects, the electoral regulations may provide that the right to vote shall be completely or partly denied to women if such denial is in conformity with local customs.

(3) The electoral regulations shall make provision for all other matters relating to the right to vote, and the manner of voting and shall be laid down by ordinance.

Art. 75. The following persons shall not have the right to vote:

(*a*) Persons deprived of the right to vote by an irrevocable judicial decision;

(*b*) Persons legally deprived of their freedom;

(*c*) Persons who, by an irrevocable judicial decision, on account of insanity or incapacity, can no longer administer or dispose of their possessions, or have been deprived of their authority as parents or guardians over one or more of their children;

(*d*) Persons who, by an irrevocable judicial decision, have been sentenced to imprisonment for more than one year, for a period of three years after the termination of their sentence, or of life when such a sentence has been imposed a second time;

(*e*) Persons who, by an irrevocable judicial decision, have been sentenced for begging or vagrancy, for a period of three years after the termination of their sentence; for a period of six years if a sentence has been imposed for a second time; and for life if it has been imposed for a third time;

(*f*) Persons who, by an irrevocable judicial decision, have been convicted more than twice within a period of three years of a punishable offence, including drunkenness in public, for three years after the last sentence has become definitive.

Art. 76. Netherlands subjects who satisfy the conditions stipulated in article 74 may stand for election and be appointed.

Art. 77. (1) The following persons may not be elected or appointed:

(*a*) The Governor, the vice-chairman and the members and extraordinary members of the Council of Department Heads, the Government Secretary, persons on active service in the armed forces, and diplomatic and consular representatives of foreign powers;

(*b*) Persons who have been declared to be ineligible or who are disqualified from the right to vote under the provisions of article 75; with the exception of persons who are disqualified from the exercise of that right because they have been legally deprived of their freedom, or sentenced to imprisonment, for offences other than begging, vagrancy or acts involving drunkenness in public.

(2) The ordinance shall provide, in so far as may be necessary, for any consequences arising out of the simultaneous membership of the New Guinea Council and tenure of other offices the emoluments of which are paid out of public funds.

. . .

CHAPTER IX
JUDICATURE

Part I
GENERAL PROVISIONS

Art. 125. The law shall be administered in Our name in all parts of New Guinea except those where the indigenous population enjoys the right of administering its own justice.

Art. 126. (1) Civil and commercial law, civil procedure, criminal law, criminal procedure and the profession of notary shall be governed by ordinance and shall conform as far as possible to the laws in force in the Netherlands.

(2) No proposal for any fundamental amendment to the legislation concerned shall be sent to the New Guinea Council or, in the case of a proposal submitted under article 106 of this decree,[1] be considered by the New Guinea Council, before information on the subject has been obtained by, or through the intermediary of, the Governor from the department or departments concerned of the Council of State.

. . .

Art. 127. (1) No person may be dispossessed, in the public interest, of his property or rights unless such dispossession has previously been declared by ordinance to be necessary in the public interest and compensation has previously been paid or promised as provided by ordinance.

(2) However, no such previous declaration by ordinance and no such previous payment or promise of compensation due shall be required if war, danger of war, rebellion, fire, drought, earthquake, volcanic eruption or other exceptional circumstances of like nature make it imperative to take possession of property or rights forthwith.

. . .

Art. 128. The judicial authorities shall be exclusively competent to take cognizance of all civil disputes.

Art. 129. It shall not be lawful to institute penal proceedings except before the judge, and in the manner, specified by ordinance.

Art. 130. It shall not be lawful to threaten a person who has been sentenced with the loss of all civil rights or the confiscation of all his possessions as a punishment or as the consequence of a punishment.

Art. 131. The judicial authority shall be competent to take cognizance of disputes concerning the right to vote and other civil rights, save where another authority is prescribed by ordinance.

Art. 132. (1) Every judgment shall state the grounds on which it is given, and in penal cases it shall indicate the articles of the statutory provisions on which the conviction is based.

(2) Judgment shall be passed in public.

(3) The courts shall sit in public, save in exceptional cases in the interest of public order and morality as prescribed by ordinance.

Art. 133. (1) It shall not be lawful to deprive any person against his will of his lawful judge.

(2) An ordinance shall be issued to prescribe the manner in which disputes regarding the competence of judicial and other authorities shall be decided.

Art. 134. (1) A person may be arrested or imprisoned only under a warrant issued by the authority empowered for the purpose by the criminal procedure ordinance and only in the circumstances and in the manner provided therein.

(2) The said warrant shall be served upon the person to whom it is addressed at the time of or as soon as possible after his arrest.

(3) The form of the warrant, and the time-limit within which all arrested persons must be heard, shall be specified by ordinance.

Art. 135. It shall not be lawful to trespass upon residential premises or to enter a dwelling against the will of the person residing there, save under an order issued by an authority empowered for that purpose by ordinance, and subject to the observance of the formalities prescribed by ordinance.

Art. 136. The secrecy of correspondence entrusted to the postal service or other public transport organizations shall be inviolable, unless orders to the contrary are given by a judge in the cases prescribed by ordinance.

CHAPTER X
RELIGION

Art. 150. (1) The right of every person to freedom of worship shall be recognized, subject to the protection of the community and its members against transgressions of the criminal law, and shall be guaranteed against any statutory provisions or administrative regulations which might impose political, economic or social restrictions on a person's rights on account of his religious beliefs.

[1] According to article 106, the Council is empowered to adopt draft legislation and submit it to the Governor for settling the final text.

(2) Freedom of religion shall be understood to mean:

(*a*) The freedom of a person to engage in public worship according to his conscience and to rear children in the faith of their parents;

(*b*) Freedom of every person to change his religion;

(*c*) Freedom to preach, instruct, publish, teach, engage in social and charitable activities, and freedom to establish organizations and to acquire and possess property for those purposes.

Art. 151. Equal protection shall be afforded to all religious denominations and communities.

Art. 152. The Governor shall ensure that all religious communities and denominations abide by the statutory provisions in force and obey the constituted authorities.

Art. 153. All persons, irrespective of their different religious beliefs, shall enjoy the same civic and civil rights and have equal access to dignities, offices and employments.

Art. 154. Public worship and divine service shall not be subject to any restrictions save those laid down by ordinance in the interest of public order and morality.

CHAPTER XII

DEFENCE

Art. 162. (1) All Netherlander subjects and all non-Netherlander subjects resident in New Guinea may be required by general administrative regulations to perform military service. This decree shall conform to general provisions to be prescribed by or in pursuance of a legislative enactment.

(2) General administrative regulations shall, in accordance with such general provisions as will be laid down in a legislative enactment, prescribe in what circumstances a person may be exempted from the performance of military service on the grounds of serious conscientious objections.

(3) No person performing compulsory military service in the land forces may be sent elsewhere without his consent except by vitue of general administrative regulations.

. . .

Art. 168. (1) In the event of war, threat of war, or other emergency, the Governor may without prejudice to Our powers under article 164, direct that persons resident in New Guinea who are liable for military service shall be provisionally kept on, or called to, active service. In such case a bill shall forthwith be presented to the New Guinea Council for an ordinance to make such provision as may be necessary for the retention on active duty of persons liable to military service.

(2) The decision as to whether a "threat of war", in the sense in which that expression is used in the ordinances and other statutory provisions, exists shall be made by Us.

CHAPTER XIII

EDUCATION, PUBLIC HEALTH AND POOR-LAW ADMINISTRATION

Art. 169. The Governor shall constantly encourage and promote the intellectual and physical development of the people.

Art. 170. (1) The Governor shall constantly devote his attention to the question of education.

(2) Education shall be free, subject to supervision by the authorities as prescribed by ordinance, and, in so far as primary and secondary education are concerned, subject to investigation of the competence and good moral character of the teacher, an ordinance being issued with respect thereto.

(3) Public education shall be governed by ordinance, the religious beliefs of all persons being respected.

(4) The standards required for education the cost of which is paid wholly or in part out of public funds shall be specified by ordinance, due account being taken, in so far as private education is concerned, of freedom of opinion.

(5) The standards of general primary education shall be such that the standards of private education entirely provided for out of public funds and of public education are equally guaranteed. In particular, the freedom of private education as regards the selection of means of instruction and appointment of teachers shall be respected.

(6) Private general primary education and the training of teachers for that purpose that satisfy the conditions stated in the ordinance shall be paid for out of public funds to the same extent as public education. The conditions under which allocations will be made out of public funds for private general secondary education and preparatory higher education shall be prescribed by ordinance.

(7) The Governor shall make a yearly report to the New Guinea Council on the state of education.

Art. 171. The Governor shall constantly devote his attention to the furtherance of public hygiene and public health.

Art. 173. (1) The supervision of poor-law administration and relevant measures shall be prescribed by ordinance.

(2) At the same time, the principle shall be observed that social services provided by private persons or religious bodies shall be given full freedom and shall be encouraged as much as possible.

TERRITORIAL LAW OF THE NETHERLANDS ANTILLES[1]

Approved on 4 November 1950, upon proposal made on 28 October 1950 by the Minister for Union Affairs and Overseas Territories

CHAPTER I
THE TERRITORY AND INHABITANTS OF THE NETHERLANDS ANTILLES

. . .

Art. 3. All persons resident in the territory of the Netherlands Antilles shall have equal rights to the protection of their persons and possessions.

Art. 4. Aliens shall not be extradited except in accordance with the provisions of treaties, and in such cases due regard shall be paid to the rules made in general administrative regulations and conforming as far as possible with the relevant statutory provisions in force in the Netherlands.

Art. 5. The rules concerning admission to, settlement in and expulsion from the Netherlands Antilles shall be laid down in a territorial order, without prejudice to the supervision mentioned in the second paragraph of section *b* of article II of the Interim Constitution (*Interimregeling*) for the Netherlands Antilles.[2] General administrative regulations may be made prescribing conditions governing the admission, settlement and expulsion of aliens, without prejudice to any further conditions that may be imposed by territorial order.

Art. 6. Nationality shall be governed by law.

Art. 7. 1. Every Netherlands subject may, regardless of his citizenship, be elected and appointed to any public office, and shall have the right to vote, in accordance with the provisions laid down by territorial order.

2. An alien shall not have the right to be elected or appointed to public office or the right to vote. Territorial orders may be made to create exceptions concerning the right to participate in elections for the communities referred to in Chapter VI[3] and in the case of appointments to certain offices.

Art. 8. 1. Every person shall have the right to disseminate ideas or opinions through the press without prior authorization.

2. The liability of a writer, publisher, printer or of any person who disseminates news and the measures by which public order and decency shall be protected against the abuse of the freedom of the press, shall be regulated by territorial order.

Art. 9. 1. Every person shall have the right to submit petitions to the competent authorities, both in the Netherlands and in the Netherlands Antilles.

2. Petitions must be signed personally and not on behalf of others, unless they are submitted by or through a body that is legally constituted or recognized; in the latter case a petition shall not deal with any subject other than a subject comprised within the special sphere of activities of such body.

3. Persons unable to write may, however, submit petitions through the intermediary of such officials as may be authorized to act in that capacity by territorial order.

Art. 10. The exercise of the right of association and assembly may be subjected to regulations and restrictions by territorial order in the interest of public order, morals or hygiene.

CHAPTER IV
THE LEGISLATIVE COUNCIL

Part I
COMPOSITION

Art. 74. 1. The Legislative Council (*Staten*) shall consist of twenty-two members.

2. They shall be directly elected by the electors. Each elector shall have one vote. Elections shall be free and secret.

3. Each island territory shall constitute one electoral district. The island territory of Aruba shall elect eight members, the island territory of Bonaire one member, the island territory of the Windward Islands one member, and the island territory of Curaçao twelve members. In island territories which elect more than one member, the elections shall be held according to the principle of proportional representation.

4. A member elected in a particular district need not be resident in that district.

Art. 75. 1. Residents of the Netherlands Antilles who are Netherlands subjects and have attained the age of twenty-three years shall have the right to vote.

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[1] Dutch text in *Staatsblad van het Koninkrijk der Nederlanden* No. 489. Text received through the courtesy of Dr. G. van den Bergh, Professor at the Municipal University of Amsterdam. English translation from the Dutch text by the United Nations Secretariat.

[2] This section provides for a control, in the interest of the country, of the administration of domestic affairs in the Netherlands Antilles.

[3] Chapter VI deals with the division of the Territory into administrative districts and communities.

2. The electoral regulations may impose restrictions if this should prove necessary for the purpose of giving effect to the provisions of paragraph 1; they shall also make provision for all matters concerning the right to vote and the manner in which elections are held.

Art. 76. The following persons shall not have the right to vote:

(*a*) Persons deprived of the right to vote by an irrevocable judicial decision;

(*b*) Persons legally deprived of their freedom;

(*c*) Persons who, by an irrevocable judicial decision, on account of insanity or incapacity, can no longer administer or dispose of their possessions, or have been deprived of their authority as parents or guardians over one or more of their children;

(*d*) Persons who, by an irrevocable judicial decision, have been sentenced to imprisonment for more than one year, for a period of three years after the termination of their sentence, and for life when such a sentence has been imposed a second time;

(*e*) Persons who, by an irrevocable judicial decision, have been sentenced for begging or vagrancy, for a period of three years after the termination of their sentence; for a period of six years if a sentence has been imposed for a second time; and for life if it has been imposed for a third time;

(*f*) Persons who, by an irrevocable judicial decision, have been convicted more than twice within a period of three years of a punishable offence, including drunkenness in public, for three years after the last sentence has become definitive.

Art. 77. Save as provided in article 78, Netherlands subjects who satisfy the conditions stipulated in article 75 may stand for election.

Art. 78. 1. Persons on active service in the armed forces, executive officials (*gezaghebbers*), diplomatic representatives of foreign Powers and consular representatives *de carrière* may not be members of the Legislative Council.

2. The following persons may not be elected:

(*a*) The Governor;

(*b*) Persons who are not eligible by virtue of a judicial decision or who are disqualified from the right to vote under the provisions of article 76, with the exception of persons who are disqualified from the exercise of that right because they have been legally deprived of their freedom, or sentenced to imprisonment, for offences other than begging, vagrancy or acts involving drunkenness in public.

3. The territorial order shall provide, in so far as may be necessary, for any consequence arising out of the simultaneous membership of the Legislative Council and tenure of other offices the emoluments for which are paid out of public funds.

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CHAPTER VII

JUDICATURE

Part I

GENERAL PROVISIONS

Art. 127. The law in the Netherlands Antilles shall be administered in the name of the Crown.

Art. 128. 1. Civil and commercial law, civil procedure, criminal law, criminal procedure and the profession of notary shall be governed by territorial order and shall conform as far as possible to the laws in force in the Netherlands.

2. No proposal for any fundamental amendment to the legislation concerned may be submitted to the Legislative Council and no proposal submitted under article 107 of this law,[1] may be considered by the Legislative Council before information has been obtained by, or through the intermediary of, the Governor from the department or departments concerned of the Council of State (*Raad van State*).

Art. 129. 1. A person shall not be deprived of his possessions until it has been announced by territorial order that such deprivation is necessary in the public interest and until he has received compensation or the assurance thereof.

2. No exception to this principle shall be allowed save under general regulations issued under a territorial order; nor shall any dispossessed person at any time lose the right to compensation in full.

Art. 130. The judicial authorities shall be exclusively competent to take cognizance of all civil disputes.

Art. 131. It shall not be lawful to institute penal proceedings except as prescribed in a territorial order before the judge, and in the manner, specified by a territorial order.

Art. 132. It shall not be lawful to threaten a person, who has been sentenced, with the loss of all civil rights or the confiscation of all his possessions as a punishment or as the consequence of a punishment.

Art. 133. The judicial authority shall be competent to take cognizance of disputes concerning the right to vote and other civil rights, save where another authority is prescribed by territorial order.

[1] According to article 107 the Council is empowered to adopt draft legislation and submit it to the Governor for settling the final text.

Art. 134. 1. Every judgment shall contain the grounds on which it is given and in criminal cases it shall indicate the articles of the statutory provisions on which the conviction is based.

2. Judgment shall be passed in public.

3. The courts shall sit in public, save in exceptional cases in the interest of public order and morality as prescribed by territorial order.

Art. 135. 1. It shall not be lawful to deprive any person against his will of his natural judge.

2. A territorial order shall be issued to prescribe the manner in which disputes regarding the competence of judicial and other authorities shall be decided.

Art. 136. 1. It shall not be lawful save in the cases prescribed by territorial order to place any person under detention except under a warrant issued by the court stating the reasons for the arrest.

2. The said warrant shall be served upon the person to whom it is addressed at the time of, or as soon as possible after his arrest.

3. The form of the warrant, and the time-limit within which all arrested persons must be heard, shall be specified in a territorial order.

Art. 137. It shall not be lawful to enter the dwelling of any person against his will save under an order issued by an authority empowered for that purpose by territorial order and subject to the observance of the formalities prescribed by territorial order.

Art. 138. The secrecy of correspondence entrusted to the post service or other public transport organizations shall be inviolable, unless orders to the contrary are given by a judge in the cases prescribed by territorial order.

CHAPTER VIII

RELIGION

Art. 152. 1. The right of every person to freedom of worship shall be recognized, subject to the protection to the community and its members against transgressions of the criminal law, and shall be guaranteed against any statutory provisions or administrative regulations which might impose political, economic or social restrictions on a person's rights on account of his religious beliefs.

2. Freedom of religion shall be understood to mean:

(*a*) The freedom of a person to engage in public worship according to his conscience and to rear children in the faith which the parents choose;

(*b*) Freedom of every person to change his religion;

(*c*) Freedom to preach, instruct, publish, teach, engage in social and charitable activities, and freedom to establish organizations and to acquire and possess property for those purposes.

Art. 153. 1. Equal protection shall be afforded to all religious denominations and communities.

2. Grants from any public fund to religious communities and denominations, or to the ministers and teachers thereof, shall be made on terms of equality and as prescribed by territorial order.

Art. 154. The Governor shall ensure that all religious communities and denominations abide by the statutory provisions in force and obey the constituted authorities.

Art. 155. All persons, irrespective of their different religious beliefs, shall enjoy the same civic and civil rights and have equal access to dignities, offices and employments.

Art. 156. Public worship and divine service shall not be subject to any restrictions save those laid down by territorial order in the interests of public order and morality.

CHAPTER X

DEFENCE

Art. 164. 1. All Netherlands subjects, and all persons who are not Netherlands subjects, who are resident in the Netherlands Antilles may be required by a territorial order to perform military service. Such territorial order shall conform to such general provisions as will be prescribed in or by virtue of a legislative enactment.

2. A territorial order shall, in accordance with such general provisions as will be laid down in a legislative enactment, prescribe in what circumstances a person may be exempted from the performance of military service on the grounds of serious conscientious objections.

3. No person performing compulsory service in the land forces may be sent elsewhere without his consent except by virtue of a territorial order.

Art. 171. 1. The Crown may, for the preservation of external or internal security in case of war or danger of war, or in a case where a threat to or the disruption of internal order and peace is liable seriously to affect the interests of the Kingdom, declare any part of the Netherlands Antilles to be in a state of war or under martial law.

2. A legislative enactment shall specify the manner in which such a declaration shall be made and shall contain provisions describing the consequences of the declaration.

3. With respect to these consequences, the enactment may state that the powers of the civil authority as regards public order, and the police shall be com-

pletely or partly transferred to the military authority and that the civil authorities shall be subject to the military authorities. The provisions of articles 8, 10, 137 and 138 may be set aside for this purpose. In case of war, exceptions to the provisions of articles 131 and 135 are also permissible.

4. In case of war in an area declared to be under martial law, military criminal law and military criminal procedure may be made fully or partly applicable to persons not in the military service.

Art. 172. 1. Notwithstanding the provisions of article 171, the Governor may, for the preservation of internal security and public order, declare any part of the Netherlands Antilles to be in a state of war or under martial law. A territorial order shall specify the manner in which such a declaration shall be made and shall, in accordance with such general provisions as will be laid down in a legislative enactment, contain provisions describing its consequences.

2. With respect to these consequences, the territorial order may state that the powers of the civil authority as regards public order and the police shall be completely or partly transferred to the military authority and that the civil authorities shall be subject to the military authorities. Exceptions to the provisions of articles 8, 10, 137 and 138 of this law are also permissible in this case. In case of war, exceptions to the provisions of the first paragraph of article 135 are also permissible.

CHAPTER XI

EDUCATION, PUBLIC HEALTH AND POOR-LAW ADMINISTRATION

Art. 173. The territorial Government shall constantly encourage the propagation of enlightenment and culture and the promotion of the arts and sciences.

Art. 174. 1. The territorial Government shall constantly devote its attention to the question of education.

2. Education shall be free, subject to supervision by the authorities in accordance with the territorial order, and in so far as primary and secondary education are concerned, subject to investigation of the competence and good moral character of the teacher, and the territorial order shall be issued with respect thereto.

3. Public education shall be governed by territorial order, the religious beliefs of all persons being respected.

4. The authorities shall provide adequate facilities for giving public general primary education in a sufficient number of schools. This provision may be waived by territorial order to the extent required by the financial position of the territory.

5. The standards required for education the cost of which is paid out of public funds shall be specified by territorial order, due account being taken, in so far as private education is concerned, of freedom of opinion.

6. These requirements shall be such for general primary education that the standards of private education entirely provided for out of public funds and of public education are equally guaranteed. In particular, the freedom of private education as regards the selection of means of instruction and appointment of teachers shall be respected.

7. Private education, in so far as it meets the conditions to be prescribed by territorial order, shall be paid for out of public funds according to the same principles as apply to public education.

8. The Governor shall make a yearly report to the Legislative Council on the state of education.

Art. 175. The supervision to be exercised by the authorities over the state of public health and all that concerns the practice of medicine, surgery, midwifery and pharmacology shall be prescribed by territorial order.

Art. 176. 1. The supervision of poor-law administration and relevant measures shall be prescribed by territorial order.

2. At the same time, the principle shall be observed that philanthropic institutions organized by private persons or religious bodies shall be given full freedom and shall be encouraged as much as possible.

NEW ZEALAND

HUMAN RIGHTS IN THE COOK ISLANDS AND TOKELAU ISLANDS[1]

An evaluation of human rights in the Cook and Tokelau groups requires to be related strictly to local conditions in the individual territories, and particularly to their varying stages of economic and social development. These conditions differ considerably within the two groups, and while the larger volcanic islands of the Southern Cooks have a more developed social system, the outlying coral atolls and islands of the Northern Cooks, the Island of Niue, and the Tokelaus, support primitive agricultural communities whose social structure has not been substantially modified by external contacts. Both groups are under New Zealand administration—the Cook Islands since 1901, and the Tokelaus, by agreement with the United Kingdom Government, since 1925—and there is statutory provision for the application in the territories of measures relating to human rights which parallel those in effect in New Zealand. Thus the Cook Islands Act (1915) established the availability of remedial procedures such as *habeas corpus*, injunction, *certiorari* and *mandamus*, which are exercised by the High Court, and provided that the law of England as existing on 14 January 1840 (the year of New Zealand's establishment) and as in force in New Zealand, should be in force in the Cook Islands. In the case of the Tokelaus, which were not constitutionally included within New Zealand's territorial boundaries until 1949, the codification and consolidation of laws necessitated by their comparatively recent transfer have not yet been completed, but guarantees of human rights are to be found in the laws applicable at the date of transfer, which remain in force under the Tokelau Islands Act (1948).

As a generalization, it is therefore possible to say that the traditional constitutional freedoms established in the English and the New Zealand common law and statutes—*e.g.*, freedom of speech, freedom of assembly, freedom from arbitrary arrest—have been extended to the island territories without distinction as to race or sex. However, such a statement by itself has little significance unless it is understood in the light of the local conditions referred to above.

This is illustrated (to take an extreme example) when it is considered that freedom of the press is established in New Zealand and protected by provisions of the common law which in their general sense are applicable in the Cook Islands, but which do not apply in the special sense, since there is no publication of newspapers in the group—a result of the limited resources of the individual communities, the dispersal of the total population over a wide area, and difficulties of communication. Again, the right of participation in government, freely recognized throughout the two groups, is exercised under varying forms which naturally differ from the practices of more advanced communities reflected in the formulation of article 21 of the Universal Declaration of Human Rights. For example, there are throughout the islands survivals of the traditional patriarchal form of government, comparable with the *matai* system of Western Samoa, under which the ruling heads of families exercise authority in local affairs. In the ten main islands of the Cook group there are island councils to which members are elected every three years, and which in turn elect members to the Legislative Council of the Cook Islands. The franchise for elections to island councils is held by all indigenous inhabitants over eighteen years of age, and every person qualified as an elector is also qualified for election to a council. On the other hand, in Niue, which on account of its isolated position is administered as a separate unit, there is no electoral procedure governing appointments to the island council, though in practice the councillors are selected by the villages which they represent. In the Tokelaus, which are administered by the High Commissioner for Western Samoa,[2] executive functions are performed by a small number of appointed officials; there is no European staff; and local government follows the traditional native pattern. However, although these considerable differences in form exist not only as between New Zealand and the island territories, but also within the territories themselves, an examination of each group, taking into account its particular stage of development, reveals that the people enjoy a standard of human rights which accords very well with the principles of the Universal Declaration, and that the policy of the Administration is directed towards encouraging increasing progress in this field.

* * *

The Tokelau Islands under New Zealand administration consist of three atoll islands—Fakaofo, Nuku-

[1] This note was prepared by the New Zealand Government.

[2] See extracts from the Samoa Act 1921, as amended until 25 November 1947, with an introductory note, in *Yearbook on Human Rights for 1947*, p. 412, and the Samoa Amendment Act 1949 in *Yearbook on Human Rights for 1949*, p. 262.

nono, and Atafu—lying between 8° and 10° south latitude, and longitude 171° and 173° west. The group is 270 miles north of Apia, the seat of the Administrator (who is the High Commissioner for Western Samoa),[1] and the distances between the atolls are forty miles (Fakaofo–Nukunono) and fifty-seven miles (Nukunono–Atafu). Each atoll consists of a number of islets, the largest of which, on the east of Nukunono, is four miles long and 300 yards wide. The islands are continously inhabited, the total population at the last census in 1945 being 1,388. The present population is nearer 1,500, and a new census will be held this year.

The Tokelau islanders are Polynesians, whose language and culture are closely related to those of Samoa. They are engaged in agriculture and fishing, and they produce and export copra and handicrafts to a limited extent. The economy is of the subsistence type, under which the inhabitants work to satisfy their own requirements, and although natural resources are restricted, they are sufficient to provide good living conditions and adequate foodstuffs within a limited range. The people all have access to the land under the traditional system of group tenure, which is in itself an assurance of economic security. The population is healthy and well grown, and the incidence of disease in the group is slight.

The group is visited by the Administrator once a year, and more frequently as occasion demands by officers appointed by the Administrator, but no European staff are stationed there. The indigenous officials responsible for executive administration include *fa'amasino*, or magistrates, who have limited summary jurisdiction in criminal and civil matters. Any sentence imposed by their court is subject to the review of the District Officer for the Tokelau Islands. There is an absence of serious crime in the group.

At the present time, the four schools in the group are conducted by Christian missions, and the Administration is concentrating on the provision of teaching aids and equipment (including radio sets) and on a programme for training Tokelau student teachers at the Training College in Western Samoa. When the necessary Tokelau teachers are trained, it is proposed to expand the educational organization. A New Zealand Government scholarshop scheme, under which students are enabled to attend secondary schools in New Zealand, covers all the island territories.

The medical services for the Tokelaus are administered from Western Samoa, and the Director of Health, Western Samoa, usually visits the atolls every three months. A Samoan medical practitioner is resident in the group and moves from island to island at three-monthly intervals. Assistant medical practitioners are seconded to one or other of the islands for short periods, and the remainder of the staff consists of local dressers and nurses. Each atoll has a hospital building, and medical treatment is free.

It will be appreciated from the foregoing that the social structure in the Tokelaus is very simple, and that within its traditional framework it ensures a large measure of liberty and security to the inhabitants; in itself the system guarantees such principles of the Universal Declaration as the right to work, the right to rest and leisure, and protection against unemployment. The Administration has not interfered with the Tokelau islanders' traditional social organization any more than is necessary to ensure that human rights are in fact preserved, and to assist the people in meeting practical problems relating to their economy, utilities, public health and education, on the advancement of which their future development depends.

* * *

The Cook group (excluding Niue) consists of fifteen islands which are widely scattered throughout an area of 850,000 square miles of ocean, extending from 9° south latitude to 23° south, and from 156° west longitude to 167° west. The islands fall naturally into two distinct divisions—the southern or lower group and the northern group. The lower group, which is by far the richer in natural resources, consists of eight islands, of which Rarotonga, Atiu, Mangaia Mitiaro, Mauke and Aitutaki are permanently settled The northern group includes seven islands, of which five—Penrhyn, Manihiki, Rakahanga, Pukapuka and Palmerston—are continuously inhabited. The other two islands, Suwarrow and Nassau, have not normally been inhabited, but during the present year the people of Pukapuka, displaying considerable energy and resourcefulness, have acquired Nassau for the purpose of settling their surplus population. The islands are generally small, the largest, Rarotonga, being 16,500 acres in area, with a population of 5,684. The total land area of the whole Cook group is approximately 100 square miles, and the total population a little over 15,000. The island of Niue, which is constitutionally part of the Cook Islands, is an isolated unit lying far to the west (580 miles from Rarotonga) and is administered separately from the main group.

The islands of the lower group—with the exception of Manuae, which is a coral atoll—are of volcanic origin, having a hilly or mountainous interior surrounded by fertile lowlands. The rainfall is adequate and reliable, and the rich soil permits the cultivation of the usual tropical and sub-tropical products. The northern group islands, on the other hand, are typical coral atolls, with fairly poor soil based on coral sand. Coconut palms grow well, but there is some shortage of other food crops. These basic differences of geography and economic resources are reflected in differences in social organization. The remote atolls

[1] The vesting of administrative powers in the High Commissioner for Western Samoa is an arrangement of convenience, and the Tokelau group has no direct political connexion with the Trust Territory of Western Samoa.

of the north are comparable with the Tokelaus, in that the typical Polynesian subsistence economy prevails there, under a traditional system of communal land ownership, and is supplemented by the export of copra and pearl-shell. The fertile southern islands, however, have an important export trade (bananas, pineapples, tomatoes, citrus fruit), which engages the large majority of land-owners and provides intermittent employment for stevedoring labour. On Rarotonga there is an active secondary industry manufacturing clothing and footwear.

The inhabitants of the Cook Islands are of Polynesian stock, closely related to the Maoris of New Zealand.

The islands are governed under the terms of the Cook Island Act (1915), whose constitutional provisions have been referred to in the introductory portion of these notes. A resident commissioner is charged with the administration of the islands. He resides in Rarotonga and is represented on the other islands by resident agents. An important step in the political advancement of the territory was taken in 1946 with the adoption of the Cook Islands Amendment Act, which established a Legislative Council of the Cook Islands. This body is presided over by the Resident Commissioner of Rarotonga, who has a casting, but not a deliberative vote, and half its members are elected by the island councils in the ten main islands of the group, under a universal franchise which has already been referred to. The Legislative Council has the power to make ordinances applicable to the whole of the Cook Islands, subject to certain statutory restrictions, and its proceedings have been notable for the active and responsible part taken by the elected members in the debates and in connexion with proposals for the welfare of the group as a whole.

Provision for the administration of justice was made under the Act of 1915, which established the High Court and the Native Land Court, and by the establishment of the Native Appellate Court under the Amendment Act of 1946. The High Court exercises civil and criminal jurisdiction throughout the group, and the Land Court deals with questions concerning native lands and titles. The judiciary consists of a chief judge, who is also judge of the High Court, and a puisne judge. There are in addition two commissioners of the High Court at Rarotonga, and the resident agents act as commissioners on the outer islands. The Native Appellate Court hears appeals from judgments of the Native Land Court, which previously required to be heard by the Supreme Court of New Zealand.

Throughout the group, the majority of the inhabitants are engaged in subsistence agriculture, which assures to landholders economic security, and provides a good standard of living. Native land is protected under the Act of 1915, which provides that such land cannot be alienated in fee simple, save to the Crown for public purposes, and cannot be taken in execution of debt. A further restrictive provision of the Act, which is intended to safeguard the interests of the islanders, is to the effect that the jurisdiction of the courts to enforce any contract made by a native is discretionary; if the court is of opinion, having regard to the interests of the native, that the contract is oppressive or unreasonable, it may refuse to enforce it.

Those islanders who are wage-earners are employed mainly in plantation work, stevedoring, the small secondary industry in Rarotonga, and in the Administration. With regard to the latter, it is the policy of the New Zealand Government that the indigenous people should take an increasing share in the responsibility of administering the group, and the majority of local appointees in the Administration are Cook islanders. Provision for the formation of industrial unions was made in 1947 in the Cook Islands Industrial Union Regulations (1947/78) and in the same year the Cook Islands Industrial Union of Workers was formed. Following an application by the Union early in 1950 for a review of wages and conditions, negotiations were opened which resulted in the adoption of a comprehensive industrial agreement at the end of the year. International Labour Organisation conventions which have been ratified by New Zealand are applied to the Cook Islands wherever they are relevant to the local conditions, and full reports on all conventions ratified are furnished to the I.L.O.

The medical and health services in the group are centred in the hospital and sanatorium at Rarotonga, and extended to the outer islands by resident medical practitioners and nurses who have local dispensaries. All indigenous patients receive free medical and surgical treatment, and all schoolchildren and patients admitted to hospital receive free dental treatment. A child welfare organization is in operation under the supervision of district nurses and the resident medical practitioners.

Attendance at school is compulsory for all children up to the age of fourteen years, and opportunities for higher education are available through the Government scholarship scheme, under which pupils may attend secondary schools in New Zealand. Plans for extensive development of educational facilities are under way, including the construction of a secondary school at Rarotonga.

The economic and social structure of Niue is comparable to that of the outer islands, though, as mentioned above, this island is isolated and is not part of any recognized geographical group. It is situated at longitude 169° 46′ west, and latitude 19° 10′ south, and is an elevated coral outcrop with an area of approximately 100 square miles. The total population at the last census in 1945 was 4,253, of which the great majority are employed in producing crops for local consumption and export. Land tenure is based on family ownership, and this system, which guarantees the livelihood and living standards of the people, is

protected by provisions of the Cook Islands Act. The registration of industrial unions is provided for in the Cook Islands Industrial Regulations, but the proportion of the population dependent on wages is still very small, and no unions have been formed.

The island is administered under the provisions of the Cook Islands Act by a resident commissioner, who is responsible directly to the New Zealand Government. The Resident Commissioner presides over the island council, which meets every quarter, and which is composed of representatives of all the villages on the island. The judicial organization includes a High Court, a Native Land Court and a Native Appellate Court, whose functions parallel those of the corresponding Cook Islands courts. The organization of the medical service and the education system is similar to that of the main Cook group.

* * *

In this survey it has not been possible to do more than touch on the principal features of the political, social and economic structure in the two territories, and the extent to which traditional native forms have been modified by contact with more advanced institutions. A graduation of conditions is apparent, from the more complex societies of Rarotonga and the main islands of the southern Cooks, to the isolated simple communities of the Tokelaus. Between these extremes, the variations are considerable. The larger islands of the northern Cooks and Niue, whose economy is influenced by external trade, occupy a middle position, and of course conditions in the remote atolls of the Cook group are comparable with those prevailing in the Tokelaus. Throughout all the territories the indigenous cultures, customs and local organizations strongly survive, and in the more isolated islands these forms are in fact predominant.

It is apparent that the traditional organization of society in these communities contains within itself assurances of human rights and freedoms which compare not unfavourably with those enjoyed by more mature groups, and that, where the original patterns have been modified, the changes or additions are not repressive in effect. Their purpose has been either to protect established rights and standards against upset, or to provide for the advancement of the indigenous peoples to a more developed social system and to greater mastery of their environment. The rate of advancement is increasing steadily, but the process is of necessity a gradual one, for no people can cast off traditional forms and customs abruptly; nor is it desirable that they should do so. At the present stage of development, the observance and protection of human rights and freedoms are dependent on elements of both the old systems and the new.

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

GOLD COAST

THE GOLD COAST (CONSTITUTION) ORDER-IN-COUNCIL, 1950[1]

(21 December 1950)

PART IV

LEGISLATIVE ASSEMBLY

[Part IV deals with the Legislative Assembly. Section 33 provides that the Legislative Assembly in and for the Gold Coast shall consist of a Speaker, three *ex-officio* members, six special members, of whom three shall be chosen by the members of Chambers of Commerce and the other three by the members of the Gold Coast Chamber of Mines, and seventy-five elected members.]

40. (1) The elected members of the Assembly shall be:

(i) Thirty-seven members who shall represent the Colony, and who shall consist of:

(*a*) Twelve territorial members, of whom eleven shall be elected in accordance with the provisions of part I of the second schedule to this order, and of whom one shall be elected in accordance with the provisions of part II of the second schedule to this order;

(*b*) Twenty-one rural members; and

(*c*) Four municipal members;

(ii) Nineteen members, who shall represent Ashanti, and who shall consist of:

(*a*) Six territorial members, who shall be elected in accordance with the provisions of part III of the second schedule to this order;

(*b*) Twelve rural members; and

(*c*) One municipal member;

(iii) Nineteen members who shall represent the Northern territories, and who shall be elected in accordance with the provisions of part IV of the second schedule to this order.

(2) Subject to the provisions of this order, the rural and municipal members mentioned in paragraphs (i) and (ii) of sub-section (1) of this section shall be elected in accordance with provision made under section 49 of this order or under section 3 of the Gold Coast (Constitution) (Electoral Provisions) Order-in-Council, 1950.

42. Subject to the provisions of section 43 of this order, any person who

(*a*) Is either a British subject or a British protected person; and

(*b*) Is of the age of twenty-five years or upwards; and

(*c*) Is able to speak and, unless incapacitated by blindness or other physical cause, to read the English language with a degree of proficiency sufficient to enable him to take an active part in the proceedings of the Assembly;

shall be qualified to be chosen as a special member or elected as an elected member of the Assembly, and no other person shall be qualified to be so chosen or elected, or having been so chosen or elected, shall sit or vote in the Assembly.

43. No person shall be qualified to be chosen as a special member or elected as an elected member of the Assembly who

(*a*) Is, by virtue of his own act, under any acknowledgment of allegiance, obedience or adherence to a foreign Power or State; or

(*b*) Holds or is acting in any public office; or

(*c*) Holds the office of Speaker; or

(*d*) In the case of an elected member, is a party to, or a partner in a firm, or a director or manager of a company which is a party to, any contract with the Government of the Gold Coast for or on account of the public service, and has not, within one month before the day of election, published in the English language in the *Gazette* a notice setting out the nature of such contract, and his interest, or the interest of any such firm or company, therein; or

(*e*) Is an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under any law in force in any part of His Majesty's dominions; or

(*f*) Being a person possessed of professional qualifications, is disqualified (otherwise than at his own request) in any part of His Majesty's dominions from practising his profession by the order of any competent authority made in respect of him personally; or

[1] English text in *Statutory Instruments*, 1950, No. 2094, London, H.M. Stationery Office. The Gold Coast is composed of the following divisions, for which varying provisions are made in this Order-in-Council: Gold Coast Colony (commonly referred to as "the Colony"), Ashanti, Northern Territories, and Togoland under United Kingdom trusteeship.

(*g*) Is a person adjudged to be of unsound mind or detained as a criminal lunatic under any law in force in the Gold Coast; or

(*h*) Is under sentence of death, or is serving, or has within the immediately preceding five years completed the serving of, a sentence of imprisonment (by whatever name called) exceeding twelve months imposed in any part of His Majesty's dominions and has not received a free pardon; or

(*i*) In the case of an elected member, other than a territorial member or a member representing the Northern Territories, is not qualified to be registered as an elector under the provisions of any law for the time being in force in the Gold Coast; or

(*j*) In the case of an elected member, is disqualified for election by any law for the time being in force in the Gold Coast by reason of his holding, or acting in, any office the functions of which involve any responsibility for, or in connexion with, the conduct of any election, or any responsibility for the compilation or revision of any electoral register; or

(*k*) Is disqualified for membership of the Assembly by any law for the time being in force in the Gold Coast relating to offences connected with elections.

49. Subject to the provisions of this order, provision may be made, by or in pursuance of any law enacted under this order, for the election of elected members of the Assembly including (without prejudice to the generality of the foregoing power) the following matters, that is to say:

(*a*) The qualifications and disqualifications of electors;

(*b*) The registration of electors;

(*c*) The ascertainment of the qualifications of electors and of candidates for election;

(*d*) The division of the Gold Coast into electoral districts for the purpose of elections;

(*e*) The holding of elections;

(*f*) The determination of all questions which may arise as to the right of any person to be or remain an elected member of the Assembly; and

(*g*) The definition and trial of offences relating to elections and the imposition of penalties therefor, including disqualification for membership of the Assembly, or for registration as an elector, or for voting at elections, of any person concerned in any such offence.

PART V

LEGISLATION AND PROCEDURE IN LEGISLATIVE ASSEMBLY

50. (1) Subject to the provisions of this order, it shall be lawful for the Governor, with the advice and consent of the Legislative Assembly, to make laws for the peace, order and good government of the Gold Coast:

Provided that should any such law be repugnant to any provision of the Trusteeship Agreement approved by the General Assembly of the United Nations on the thirteenth day of December 1946, in respect of Togoland under United Kingdom Trusteeship,[1] such law shall, to the extent of such repugnancy, but not otherwise, be void.

(2) No such law shall make persons of any racial community liable to disabilities to which persons of other such communities are not made liable.

(3) Any law made in contravention of sub-section (2) of this section shall, to the extent of such contravention, but not otherwise, be void.

[The second schedule deals, in part I, with territorial members of the Assembly elected by the Joint Provincial Council. It provides that eleven members shall be elected by that Council and provides for the composition of the Joint Provincial Council for the purposes of this Act.]

4. (1) No person shall be eligible for election under this part of this schedule to serve as a member or, having been so elected, shall sit or vote as such in the Assembly unless:

(*a*) He is a native of the Colony; and

(*b*) In the group for which he is elected, or proposed for election, he is a paramount chief, or owes allegiance to the stool of a paramount chief, or is a member of, or is subject to, the native authority for any area in such group where there is no paramount chief; and

(*c*) He is otherwise qualified as required by Part IV of this order.

(2) In this paragraph,

"allegiance" means the duty which according to native customary law a person owes to the stool to which he is subject;

"native of the Colony" means a person both of whose parents were born in the colony and are or were members of a tribe or tribes indigenous to Africa.

[Part II of the second schedule provides for a territorial member of the Assembly elected by Southern Togoland Council.]

4. (1) No person shall be eligible for election under this part of this schedule to serve as a member or, having been elected, shall sit or vote as such in the Assembly unless

(*a*) He is a native of Southern Togoland; and

(*b*) He is a chief in Southern Togoland or owes allegiance to the stool of a chief in Southern Togoland; and

(*c*) He is otherwise qualified as required by part IV of this order.

(2) In this paragraph,

"allegiance" means the duty which according to native customary law a person owes to the stool of a chief;

[1] See the provisions on human rights in this Trusteeship Agreement in *Yearbook on Human Rights for 1947*, pp. 398–399. See also p. 358 of this *Yearbook*.

"native of Southern Togoland" means a person both of whose parents were born in Southern Togoland and are or were members of a tribe or tribes indigenous to Africa.

[Part III of the second schedule provides for the election of six territorial members of the Assembly to be elected by the Asanteman Council and for the composition of that Council for the purposes of this part.]

4. (1) No person shall be eligible for election under this part of this schedule to serve as a member or, having been elected, shall sit or vote as such in the Assembly unless:

(*a*) He is a native of Ashanti; and

(*b*) He owes allegiance directly or indirectly to the Golden Stool of Ashanti; and

(*c*) He is otherwise qualified as required by Part IV of this order.

(2) In this paragraph,

"allegiance" means the duty which according to native customary law a person owes to the Golden Stool of Ashanti;

"native of Ashanti" means a person both of whose parents were born in Ashanti and are or were members of a tribe or tribes indigenous to Africa.

[Part IV of the second schedule provides for an electoral college for the Northern Territories and for the composition of that electoral college which shall consist of the members for the time being of the Northern Territories Council and of members appointed in accordance with provisions made under section 49 of this order or under section III of the Gold Coast (Constitution) (Electoral Provisions) Order-in-Council 1950.]

4. (1) No person shall be eligible for election under this part of this schedule to serve as a member or, having been elected, shall sit or vote as such in the Assembly unless:

(*a*) He is a native of the Northern Territories and is, at the time of his nomination for election to the Assembly, a member of the Electoral College; and

(*b*) He is otherwise qualified as required by Part IV of this order.

(2) For the purpose of this paragraph,

"native of the Northern Territories" means a person whose father was born in the Northern Territories and both of whose parents are or were members of a tribe or tribes indigenous to Africa.

THE ELECTIONS (LEGISLATIVE ASSEMBLY) ORDINANCE, 1950[1]

No. 29 of 1950

Assented to by the Governor on 15 September 1950

AN ORDINANCE TO PROVIDE FOR THE REGISTRATION OF ELECTORS AND THE ELECTION OF MEMBERS TO THE LEGISLATIVE ASSEMBLY WHICH IT IS PROPOSED SHOULD, IN DUE COURSE, BE ESTABLISHED IN AND FOR THE GOLD COAST

[The ordinance applies to the whole of the Gold Coast. Part I deals with preliminary questions and Part II with the registration of electors. For the purposes of registration of electors the territory is divided into municipal and rural electoral districts. The districts are described in schedule I, parts 1 and 2, of the ordinance.]

8. (1) Every person, whether male or female, shall be entitled to be registered as an elector for a municipal electoral district and, when registered, to vote at the election of a member of the Legislative Assembly for such electoral district, who—

(*a*) Is a British subject or a British protected person;

(*b*) At the date of his application to have his name entered on the register has attained the age of twenty-one years, the onus being cast upon the applicant to satisfy the registration officer or assistant registration officer, as to his or her age; and

(*c*) For a period of at least six months immediately before the date of his application to have his name entered on the register has owned any assessed premises or has rented a living room in any assessed premises or has occupied any part of any assessed premises within the electoral district.

(2) For the purposes of paragraph (*c*) of sub-section (1) of this section, a person occupying any part of any premises by reason of his employment in the government service, or in other service of the Crown, shall be deemed to occupy assessed premises.

9. Every person, whether male or female, shall be entitled to be registered as an elector for a rural electoral sub-district and, when registered, to vote at the election in such sub-district of a member of the electoral college for the rural electoral district, who—

(*a*) Is a British subject or a British protected person;

(*b*) At the date of his application to have his name

[1] English text: supplement to the *Gold Coast Gazette* No. 75, of 15 September 1950.

entered on the register has attained the age of twenty-one years, the onus being cast upon the applicant to satisfy the registration officer or assistant registration officer, as the case may be, as to his or her age;

(*c*) For a period of at least six months immediately before the date of his application to have his name entered on the register has resided within the rural electoral sub-district; and

(*d*) Being liable thereto, has paid the local native authority rate or levy, as the case may be, for the current or preceding year.

10. Notwithstanding the provisions of sections 8 and 9 of this ordinance, no person shall be entitled to have his name on any register of electors who—

(*a*) Has, in any part of His Majesty's dominions or in any territory under His Majesty's protection or under United Kingdom trusteeship, been sentenced to death or to imprisonment for a term exceeding twelve months and has not been granted a free pardon:

Provided that if five years or more have elapsed since the termination of imprisonment the person convicted shall not be incapable by reason only of such conviction of being registered as an elector

(*b*) Is a lunatic so found under any law for the time being in force in the Gold Coast; or

(*c*) Is, under any law for the time being in force in the Gold Coast, incapable of being so registered by reason of his conviction for any offence connected with the election of members of the Legislative Assembly or of members of an electoral college.

11. No person shall be registered as an elector in any ward or rural electoral sub-district who is so registered in any other ward or rural electoral sub-district.

[Part III deals with election procedure. The Governor-in-Council may make regulations providing for the procedure to be followed in the holding of elections, the ascertainment of the qualifications of candidates and other questions. Any regulations shall be laid before the Legislative Council and may be annulled by the Council within a period of fourteen days.]

MALAYA

JUDICIAL DECISION

RIGHT TO FAIR TRIAL—RIGHT OF ACCUSED PERSONS TO HAVE CRIMINAL PROCEEDINGS TRANSLATED INTO LANGUAGE OF THEIR CHOICE—TRANSLATION OF PROCEEDINGS INTO LANGUAGE NOT CHOSEN BY ACCUSED—VALIDITY OF TRIAL

FONG HONG SIUM *v.* THE PUBLIC PROSECUTOR

Supreme Court of Malaya[1]

26 October 1950

The facts. The appellant, who was a Hainanese and spoke the Hainanese language, appealed against his conviction on the ground (*inter alia*) that the interpreter who translated the proceedings before the trial court spoke in another language, Hokkien, of which his knowledge was poor.

Held: that the appellant-accused was entitled to have the proceedings in the trial court translated into a language of his own choice.

The learned judge said:

"The difficulties of the subordinate courts as regards interpretation in the more unusual languages are serious, and I should be reluctant to do anything to increase them. There are, however, certain rules which must be observed. I am not aware of any exception to the general rule that an accused person is entitled to have proceedings interpreted to him in any language which he desires to use. I think it doubtful whether he can be obliged to use even the language which is his native language, if he does not want to. It is the duty of the court to find an interpreter for the language required, and the court must be satisfied that the interpreter is competent to do his work efficiently. It is a general rule of practice that, unless the interpreter is officially qualified in the language, the court should ascertain that be can understand and be understood by the accused with sufficient ease to enable the proceedings to be properly conducted. The most convenient method is to allow him to talk for a few moments with the accused and to inquire whether they can so understand one another. When the court is satisfied of this, it should be incorporated in the record before the evidence is recorded. There are, of course, cases when this would be quite unnecessary—for example, if both the accused and interpreter are Siamese and are speaking Siamese and the interpreter is fluent in English."

[1] Report: (1950) *1 Malayan Law Reports* 241. Summary prepared by the United Nations Secretariat.

NORTHERN RHODESIA

THE SILICOSIS ORDINANCE[1]

No. 27 of 1950

SUMMARY

This ordinance, assented to on 23 September 1950, repeals and replaces the law relating to the assessment and payment of compensation in connexion with silicosis. It provides for the appointment by the Governor of a Silicosis Commissioner to be the chief executive and administrative officer of the Government for carrying out the provisions of this ordinance, and for establishing a Silicosis Compensation Board to be responsible, among other things, for putting into effect those provisions of the ordinance relating to the award of benefits, the obtaining of funds from owners of scheduled mines, for the control and administration of all funds and moneys placed under its control or at its disposal, and for determining the recipients entitled to benefits, the benefits to which they are entitled and the payment of such benefits from the funds at the disposal of the Board. The ordinance provides, moreover, for medical examination and the standards of physical fitness to be required of persons exposed or likely to be exposed to the risk of silicosis.

[1]English text of the ordinance in *Northern Rhodesia Government Gazette, Ordinances*, Lusaka, 1951. Summary prepared by the United Nations Secretariat.

TRINIDAD AND TOBAGO

THE TRINIDAD AND TOBAGO (CONSTITUTION) ORDER-IN-COUNCIL, 1950[1]

(31 March 1950)

[Part IV provides for a Legislative Council, which shall consist of a speaker, three *ex-officio* members, five nominated members and eighteen elected members.]

35. The elected members of the Legislative Council shall be persons qualified for election in accordance with the provisions of this order and elected in the manner provided by, or in pursuance of, any law enacted under this order.

36. (1) Subject to the provisions of section 37 of this order, any person who—

(*a*) Is a British subject of the age of twenty-one years or upwards; and

(*b*) Has resided in the Colony for a period of at least two years immediately before the date of his nomination for election or is domiciled in the Colony and is resident there at the date aforesaid; and

(*c*) Is able to speak and, unless incapacitated by blindness or other physical cause, to read the English language with a degree of proficiency sufficient to enable him to take an active part in the proceedings of the Legislative Council; and

(*d*) (i) Is in receipt of a clear income[2] in his own right of not less than nine hundred and sixty dollars per annum; or

(ii) Is the owner in his own right of real estate (which for the purpose of this sub-paragraph includes a leasehold interest) of the value of not less than five thousand dollars over and above all charges and encumbrances in respect thereof, or is in receipt of a clear income in his own right of not less than four hundred and eighty dollars per annum derived from real estate;

shall be qualified to be elected as an elected member of the Legislative Council, and no other person shall be qualified to be so elected or, having been so elected, shall sit or vote in the Legislative Council.

(2) Paragraph (*d*) of sub-section (1) of this section and the definition of "clear income" contained in sub-section (1) of section 1 of this order may be revoked or amended by any law enacted under this order; . . .

37. (1) No person shall be qualified to be appointed as a nominated member or elected as an elected member of the Legislative Council who—

(*a*) Is, by virtue of his own act, under any acknowledgment of allegiance, obedience or adherence to a foreign Power or State; or

[1]English text of the Order-in-Council in *Statutory Instruments 1950, No. 510.*

[2]According to sub-section (1) of section 1 of this order "clear income" means the gross income received by a person for his own use, less such outgoings and expenses incurred by him in the production of the income as would be allowable as deductions in arriving at a chargeable income under the provisions of any income tax ordinance, or any regulation made thereunder, in force in the Colony.

(*b*) Holds, or is acting in, any office of emolument under the Crown; or

. . .

(ii) In the case of an elected member, is a party to, or a partner in a firm, or a director or manager of a company, which is a party to, any contract with the Government of the Colony for or on account of the public service, and has not, within one month before the day of election, published in the English language in the *Gazette* and in a newspaper circulating in the electoral district for which he is a candidate a notice setting out the nature of such contract, and his interest, or the interest of any such firm or company therein; or

(*d*) Is a minister of religion;[1] or

(*e*) Is an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under any law in force in any part of His Majesty's dominions; or

(*f*) Is a person adjudged to be of unsound mind or detained as a criminal lunatic under any law in force in the Colony; or

(*g*) Has been sentenced by a court in any part of His Majesty's dominions to death, or to imprisonment (by whatever name called) for a term exceeding twelve months, and has not either suffered the punishment to which he was sentenced or such other punishment as may by competent authority have been substituted therefor, or received a free pardon; or

(*h*) In the case of an elected member, is disqualified for election by any law in force in the Colony by reason of his holding, or acting in, any office the functions of which involve—

(i) any responsibility for, or in connexion with, the conduct of any election, or

(ii) any responsibility for the compilation or revision of any electoral register; or

(*j*) Is disqualified for membership of the Legislative Council by any law in force in the Colony relating to offences connected with elections.

(2) Paragraph (*d*) of sub-section (1) of this section, and the definition of "minister of religion" contained in sub-section (1) of section 1 of this order, may be revoked or amended by any law enacted under this order; and if the said paragraph (*d*) shall be so revoked the reference thereto in paragraph (*h*) of sub-section (3) of section 38 of this order shall cease to have effect.

[1]According to sub-section (1) of section 1 of this order, "minister of religion" means any person in holy orders and any other person the functions of whose principal occupation include teaching or preaching in any congregation for religious worship.

44. (1) Subject to the provisions of section 45 of this order, any person shall be entitled to be registered as an elector in any one electoral district if he—

(*a*) Is a British subject of the age of twenty-one years or upwards; and

(*b*) Has resided in the Colony for a period of at least two years immediately before the date of registration or is domiciled in the Colony and is resident therein at that date; and

(*c*) Has resided in the electoral district in which he claims to be registered for a period of at least six months immediately before the date of registration.

(2) No person shall be registered as an elector in any electoral district who is not entitled to be so registered under the provisions of this order.

45. No person shall be entitled to be registered as an elector in any electoral district who—

(*a*) Has been sentenced by a court in any part of His Majesty's dominions to death or to imprisonment (by whatever name called) for a term exceeding twelve months, and has not either suffered the punishment to which he was sentenced, or such other punishment as may by competent authority have been substituted therefor or received a free pardon; or

(*b*) Is a person adjudged to be of unsound mind or detained as a criminal lunatic under any law in force in the Colony; or

(*c*) Is disqualified for registration as an elector by any law in force in the Colony relating to offences connected with elections.

46. Every person who is registered as an elector in any electoral district shall, while so registered, be entitled to vote at any election for that district and no person shall vote at any election for any electoral district who is not registered as an elector in that district;

Provided that nothing in this sub-section shall entitle any person to vote at any election if—

(*a*) He is prohibited from so voting, by any law in force in the Colony, by reason of his being a returning officer; or

(*b*) He is prohibited from so voting by any law in force in the Colony relating to offences connected with elections.

[Section 47 deals with the electoral laws which may be enacted under this order and with the matters which may be regulated by such laws.]

UNITED STATES OF AMERICA

ALASKA

NOTE

Federal Act of 18 July 1950 empowering the Government of Alaska to authorize public bodies or agencies to undertake slum-clearance and urban development activities.[1]

[1]See p. 331 of this *Yearbook*.

GUAM

ORGANIC ACT OF GUAM[1]

Approved on 1 August 1950

AN ACT TO PROVIDE A CIVIL GOVERNMENT FOR GUAM AND FOR OTHER PURPOSES

BILL OF RIGHTS

Sec. 5. (*a*) No law shall be enacted in Guam respecting an establishment of religion or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition the government for a redress of their grievances.

(*b*) No soldier shall, in time of peace, be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

(*c*) The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrant for arrest or search shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or things to be seized.

(*d*) No person shall be subject for the same offence to be twice put in jeopardy of punishment; nor shall he be compelled in any criminal case to be a witness against himself.

(*e*) No person shall be deprived of life, liberty, or property without due process of law.

(*f*) Private property shall not be taken for public use without just compensation.

(*g*) In all criminal prosecutions the accused shall have the right to a speedy and public trial; to be informed of the nature and cause of the accusation and to have a copy thereof; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favour, and to have the assistance of counsel for his defence.

(*b*) Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

(*i*) Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist in Guam.

(*j*) No bill of attainder, *ex post facto* law, or law impairing the obligation of contracts shall be enacted.

(*k*) No person shall be imprisoned for debt.

(*l*) The privilege of the writ of *habeas corpus* shall not be suspended, unless, when in cases of rebellion or invasion or imminent danger thereof, the public safety shall require it.

(*m*) No qualification with respect to property, income, political opinion, or any other matter apart from citizenship, civil capacity, and residence shall be imposed upon any voter.

(*n*) No discrimination shall be made in Guam against any person on account of race, language, or religion, nor shall the equal protection of the laws be denied.

(*o*) No person shall be convicted of treason against the United States unless on the testimony of two witnesses to the same overt act, or on confession in open court.

(*p*) No public money or property shall ever be appropriated, supplied, donated, or used, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, sectarian institution, or association, or system of religion, or for the use, benefit, or support of any priest, preacher, minister, or other religious teacher or dignitary as such.

(*q*) The employment of children under the age of fourteen years in any occupation injurious to health or morals or hazardous to life or limb is hereby prohibited.

[1]English text in *48 U.S. Code 1421 B.* See also p. 324 of this *Yearbook*.

(*r*) There shall be compulsory education for all children, between the ages of six and sixteen years.

(*s*) No religious test shall ever be required as a qualification to any office or public trust under the Government of Guam.

(*t*) No person who advocates, or who aids or belongs to any party, organization, or association which advocates the overthrow by force or violence of the Government of Guam or of the United States shall be qualified to hold any public office of trust or profit under the Government of Guam.

HAWAII

NOTE

Federal Act of 18 July 1950 empowering the Government of Hawaii to authorize public bodies or agencies to undertake slum clearance and urban development activities.[1]

[1] See p. 331 of this *Yearbook*.

PUERTO RICO

NOTE

Federal Act of 3 July 1950 providing for the constitutional Government of Puerto Rico.[1]

Federal Act of 18 July 1950 empowering the Government of Puerto Rico to undertake slum-clearance and urban development activities.[2]

1950 Amendments of tenant eligibility requirements.[3]

Act of 1950 outlawing discrimination in employment because of political affiliation.[4]

[1] See p. 324 of this *Yearbook*.

[2] *Ibid.*, p. 331.
[3] *Ibid.*, p. 332.
[4] *Ibid.*, p. 335.

VIRGIN ISLANDS

NOTE

Federal Act of 18 July 1950 empowering the Government of the Virgin Islands to authorize public bodies or agencies to undertake slum-clearance and urban development activities.[1]

Virgin Islands law of 1950 creating a Virgin Islands Housing and Re-development Authority.[2]

Virgin Islands law of 1950 providing for equal rights in places of accommodation, etc., without reference to race, creed, colour, national origin or ancestry.[3]

[1] See p. 331 of this *Yearbook*.

[2] *Ibid.*, p. 332.
[3] *Ibid.*, p. 332.

PART III

INTERNATIONAL TREATIES AND AGREEMENTS AND TEXTS ADOPTED BY SPECIALIZED AGENCIES AND OTHER INTER-GOVERNMENTAL ORGANIZATIONS

AGREEMENTS CONCLUDED UNDER THE AUSPICES OF SPECIALIZED AGENCIES OR BY OTHER INTER-GOVERNMENTAL ORGANIZATIONS

INTERNATIONAL LABOUR ORGANISATION

GENERAL CONFERENCE OF THE INTERNATIONAL LABOUR ORGANISATION[1]

33rd Session, Geneva, 1950

RECOMMENDATION AND RESOLUTIONS

NOTE

FREEDOM OF ASSOCIATION

At its 33rd session, held in Geneva June-July 1950, the International Labour Conference adopted a resolution concerning the establishment of a factfinding and conciliation Commission on freedom of association. The Conference approved and confirmed the decision taken on this question by the Governing Body of the International Labour Organisation,[2] and expressed its satisfaction that agreement had been reached on the subject with the United Nations.[3]

RECOMMENDATION CONCERNING VOCATIONAL TRAINING OF ADULTS, INCLUDING DISABLED PERSONS

Recommendation No. 88, concerning the vocational training of adults, including disabled persons, was adopted by the International Labour Conference on 30 June 1950.

The recommendation declares as principles of training that vocational training of adults should be studied, worked out and developed in accordance with the situation and trend of the employment market, the efforts to improve or increase production, and the possibility of absorbing trainees into suitable employment. It should take place in co-operation with employers' and workers' organizations and facilitate upgrading. Training of unemployed adults should be used to facilitate the re-employment of unemployed workers who require training in order to obtain suitable employment.

Other parts of the recommendation deal with the scope and methods of training, the training of disabled persons and the organization and administration of vocational training in which stress is laid on co-operation with employers' and workers' organizations. The final part lists action through which the Member States should co-operate where necessary and practicable, and where desired with the help of the International Labour Organisation, in measures to promote the training of adults.

RESOLUTION CONCERNING THE EXTENSION OF COMPULSORY EDUCATION AND THE PROVISION OF FACILITIES FOR ADULT EDUCATION

In the preamble to this resolution, the Conference refers to the declaration of Philadelphia, according to which programmes designed to provide facilities for recreation and culture, and the assurance of equality of education and vocational opportunity should be furthered among the nations of the world. The Conference also declared it to be desirable in accordance with the Universal Declaration of Human Rights to offer to all social categories the means of an expanding culture, beginning with the introduction and the spread of compulsory education in countries where it does not yet exist, and by offering to adults, wherever necessary, the means of elementary or secondary education and the rudiments of civic, social, economic and international subjects.

The text of the resolution is the following:

"The Conference

"1. *Expresses* the hope that the International Labour Organisation will take all appropriate measures to promote opportunities for workers to be educated in order to enable them to participate more effectively in various workers' movements and to fulfil more adequately their trade union and related functions;

[1] See the text of the recommendation concerning the vocational training of adults, including disabled persons in *Fifth Report of the International Labour Organisation to the United Nations*, Geneva 1951, pp. 208–217, and the text of the resolutions quoted below in: *International Labour Office, Resolutions adopted by the International Labour Conference at its 33rd Session*, Geneva, 1950.

[2] The decision of the Governing Body is reproduced in *Yearbook on Human Rights for 1949*, pp. 293–295.

[3] See "Trade Union Rights (freedom of association)", *ibid.*, pp. 378–380.

"2. *Reaffirms* the close and continuing interest of the International Labour Organisation in compulsory free education for children of both sexes in accordance with the principles enunciated in the Universal Declaration of Human Rights with a view to fitting them for a vocation and for family and civic responsibilities; and emphasizes also its interest in the development where necessary of elementary instruction for adults in civic, social, and economic subjects both national and international;

"3. *Expresses* the hope that the United Nations, the United Nations Educational, Scientific and Cultural Organization and the International Labour Organisation will co-operate, as appropriate, in assisting Governments to establish programmes designed to achieve the above aims."

Other Resolutions

A resolution concerning action against unemployment draws the attention of governments to different types of action against unemployment and "to the possibility of considering the advantages of an International Labour Convention covering this subject".

In another resolution, the Conference dealt with international action relating to labour problems in agriculture. The resolution stresses that agriculture is the branch of human activity in which the largest number of people are occupied and that in many countries the various categories of agricultural workers do not enjoy the same measure of protection and advantages as other workers; it also mentions the problems of hours of work, of manpower, vocational training, safety and hygiene as subjects for thorough study with a view of improving the situation of agricultural workers. The Conference requested the Governing Body to instruct the International Labour Office to continue its studies on these questions and to examine the possibility of placing them on the agenda of regional conferences of the International Labour Organisation or of other meetings under the auspices of the Organisation.

UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

RESOLUTIONS ADOPTED BY THE GENERAL CONFERENCE AT ITS FIFTH SESSION, IN FLORENCE, 22 MAY–17 JUNE 1950[1]

BASIC PROGRAMME

The main tasks of UNESCO are:

(1) To eliminate illiteracy and encourage fundamental education;

(2) To obtain for each person an education conforming to his aptitudes and to the needs of society, including technological training and higher education;

(3) To promote through education respect for human rights throughout all nations;

(4) To overcome the obstacles to the free flow of persons, ideas and knowledge between the countries of the world;

(5) To promote the progress and utilization of science for mankind;

(6) To study the cause of tensions that may lead to war and to fight them through education;

(7) To demonstrate world cultural interdependence;

(8) To advance through the press, radio and motion pictures the cause of truth, freedom and peace;

(9) To bring about better understanding among the peoples of the world and to convince them of the necessity of co-operating loyally with one another in the framework of the United Nations;

(10) To render clearing-house and exchange services in all its fields of action, together with services in reconstruction and relief assistance.

THE PROGRAMME FOR 1951

1 EDUCATION

1.13 *Special Research and Studies*

The Director-General is authorized:

1.131 To arrange, in collaboration with the International Bureau of Education, for a session of the Conference on Public Education to be devoted especially to the universalization and prolongation of free compulsory education;

1.132 To publish some monographs on a certain number of countries to illustrate the various ways of applying the principle of free compulsory education, and to invite the International Bureau of Education to continue the general inquiry into the position in this matter;

1.133 To pursue the study of the problem of the access of women to education in order to assist the work of the Commission on the Status of Women of the Economic and Social Council of the United Nations; and to prepare, jointly with the International Bureau of Education and women's international organizations, a session of the Conference on Public Education in 1952 to be specially devoted to this problem;

1.134 To furnish financial assistance to the International Universities' Bureau (or to the International Association of Universities, if founded in 1951), and to co-operate with that body in carrying out the programme of UNESCO, more particularly in carrying forward the study of the problem of the equivalence of university degrees and of conditions for matriculation;

1.135 To assemble, with the assistance of Member States, documentation and the necessary standardized statistical data for the publication of a supplement to the *Statistical Yearbook on Education* published in 1950.

1.136 Member States are invited to undertake research to study the aptitudes of children, both physical and psychological, in relation to educational demands, and to determine the effect of overwork on their physical development and personality.

1.2 *Extension of Education*

1.21 *Fundamental Education and Adult Education*

1.2111 Member States are invited to initiate or encourage projects in fundamental education and particularly research and experiment in:

1.21111 Literacy teaching methods;

[1] The following texts constitute a selection of those resolutions which are especially important from the point of view of human rights. English text in *Records of the General Conference of the United Nations Educational, Scientific and Cultural Organization*, Fifth Session, Florence, 1950, *Resolutions*.

1.21112 Teaching in indigenous or second languages;

1.21113 The educational and cultural utilization of folklore;

1.21114 The preparation and use of audio-visual aids.

1.2112 The Director-General is authorized to organize a regional seminar in the Middle East for the purpose of examining the fundamental and adult education material assembled in 1950.

1.212 *Technical aid to fundamental education and adult education undertakings*

The Director-General is authorized:

1.2121 To give special aid, in collaboration with the United Nations and its specialized agencies, to experiments in fundamental education and adult education in selected areas and to make available to the authorities responsible for each of these experiments the services of one or two experts for periods of between two and six months.

1.21211 Member States are invited to make use of the experts sent by UNESCO to contribute to the training of personnel belonging to the selected area.

The Director-General is authorized:

1.2122 To continue to provide the Haiti experiment with financial aid;

1.2123 To engage a team of experts with a view to the local production of audio-visual material, especially films and lantern slides, for fundamental education in India;

1.2124 To continue to assist the Training and Production Centre for Fundamental Education set up in 1950, in accordance with the agreements made with the Government of Mexico and the Organization of American States.

1.22 *Education for Handicapped Children*

The Director-General is authorized:

1.221 To collect and disseminate information:

1.2211 On the methods used or contemplated in various countries to protect children from the undesirable influence which may be exerted by the press, the radio and the film, and especially to improve children's newspapers and literature;

1.2212 On the special methods used for the education and re-education of handicapped children;

1.222 To extend financial assistance to the International Federation of Children's Communities and other organizations capable of making a contribution to education of handicapped children.

1.3 *Education for International Understanding*

1.31 *Curricula and Methods*

The Director-General is authorized:

. . .

1.314 To take steps, in co-operation with the United Nations and specialized agencies, to secure the participation of all Member States in educational programmes designed to promote the healthy mental and social development of pre-school- and early-school-age children, in order to lay a basis for international co-operation.

1.3141 And, to this end, to explore ways in which a long-range programme might be undertaken by UNESCO, including the feasibility and usefulness of a world conference to be preceded by two or three years' research and study in Member States.

1.35 *Teaching about the United Nations and the Specialized Agencies*

Member States are invited:

1.351 To take all necessary steps, or to continue whatever they may have undertaken, in order to make children and adults familiar with the principles contained in the Universal Declaration of Human Rights and with the United Nations system;

1.352 To check by experiments the various methods of teaching suggested for this purpose.

The Director-General is authorized:

1.353 To encourage the inclusion of teaching about the Universal Declaration of Human Rights in school syllabuses, as soon as the age of children allows it, and the working out of teaching methods adapted to different age-groups;

1.354 To contribute, on the basis of the same principles, to the development of teaching about the United Nations and the specialized agencies; . . .

1.36 *Youth Movements and Children's Communities*

The Director-General is authorized:

. . .

1.364 To encourage, if possible with the help of Member States, the associations which organize work camps to foster a spirit of international understanding among those taking part;

1.3641 And for this purpose to send representatives to advise the administrators of work camps;

1.365 To keep at the disposal of Member States expressing a wish for it, a succinct report drawn up by UNESCO representatives and lecturers on the educational aspects of youth camps and their respect for human rights.

2 NATURAL SCIENCES

2.1 *Development of International Scientific Co-operation*

. . .

The Director-General is authorized:

2.121 To assist, by means of subventions and services, the activities of the International Council of Scientific Unions and its federated Unions in promoting international co-operation in basic sciences;

. . .

2.2 *Assistance to Research especially for the Improvement of the Living Conditions of Mankind*

The Director-General is authorized:

2.21 To assist and encourage the formation and organization of regional research centres and laboratories in order to increase and make more fruitful the international collaboration of scientists in the search for new knowledge in fields where the effort of any one country in the region is insufficient for the task;

2.211 And to this end, to undertake to find out the needs and possibilities for such regional research centres, to make initial surveys of cost estimates and location, and to help in the formulation of programmes without contributing to the cost of construction or of maintenance out of UNESCO's regular budget;

. . .

2.22 To continue to study the proposal to set up an international computation centre, and if it appears opportune, to convene a conference, in collaboration with the United Nations, to complete plans for the establishment of such a centre;

2.23 To assist by means of financial aid and services the activities of the International Arid Zone Research Council in promoting international co-operation in scientific and technical research and development of arid and semi-arid areas;

2.231 To assist in sponsoring a symposium in Israel on "The Conquest of the Desert", in collaboration with the International Arid Zone Research Council, if it is established, provided that the expenses of the symposium be met outside the budget of UNESCO;

2.24 To assist, with financial aid and services, scientific and technical institutions, the activities of which are of international importance—that is to say for 1951 the International High Altitude Research Station, Jungfraujoch; the International Zoological Station, Naples, and the Oceanographic Institute, Monaco.

2.3 *Teaching and Popularization of Science*

2.31 Member States are invited to develop teaching in the natural sciences, and the dissemination among the adult public of knowledge of the methods, discoveries and applied uses of these sciences;

The Director-General is authorized:

2.32 To make known the findings of the meeting of experts convened by UNESCO in 1950 regarding the place of science in general education;

2.331 To help associations for the advancement of science in war-devastated and other areas where the need is felt, in co-operation with well-established associations;

2.332 To collect information on science clubs and circulate this information;

2.333 To supply material illustrating the application of science to the solution of urgent problems, and the mutual contribution of countries to one another in this field; and to this end,

2.3331 To collect and make available, especially for publishers of low-priced books, photographs and other illustrative material from scientific and industrial organizations;

2.3332 To stimulate and facilitate, with special attention to the general public, the organization of scientific exhibitions;

2.3333 To prepare popular scientific articles for publication in newspapers or magazines, scripts for broadcasting by radio or television, and filmstrips for use by lecturers to non-scientific groups, and continue to encourage the international exchange of such popular scientific articles, scripts or films;

2.334 To continue the publication of *Impact*, a bulletin of abstracts of articles of literature on the interaction of science and society;

2.335 To continue to provide the necessary services for stimulating worldwide discussions on themes related to the interaction between science and society, selected by UNESCO;

2.336 To prepare material for initiating discussions among selected workers' groups in Member States about the effect on their work of scientific progress;

2.337 To study, in collaboration with a Member State, a pilot project with the aim of demonstrating how the various methods for the popularization of science can bring home to the masses the importance of the protection and appropriate use of natural resources and of the influence of science on the well-being of society.

3 SOCIAL SCIENCES

3.2 *Studies of Social Tensions*

3.21 Member States are invited to develop teaching in the social sciences, to disseminate among the public the findings of these sciences, and to promote in particular teaching and dissemination of data likely to overcome racial prejudices.

The Director-General is authorized:

. . .

3.231 To study possible methods of relieving tensions caused by the introduction of modern techniques in non-industrialized countries and those in process of industrialization;

3.241 To promote, with the co-operation of the Member States concerned, the United Nations and specialized agencies, and appropriate international organizations, the study of population problems in countries in process of industrialization;

3.242 To organize or to continue the study of tensions resulting from over-population and obstacles to movement of peoples and goods, and from shifts of population;

3.27 To stimulate and co-ordinate independently conducted and financed research into social tensions, both within and between countries, and to link such work to the researches undertaken by UNESCO.

4 CULTURAL ACTIVITIES

4.12 *International Research*

The Director-General is authorized:

4.121 To arrange, in co-operation with the national commissions and appropriate international organizations, for:

4.1211 A discussion between thinkers and philosophers of different countries about the cultural and philosophical relations between the East and West;

4.1212 An inquiry into the place of the teaching of philosophy in the several educational systems, the way in which it is given, and its influence upon the moulding of the citizen;

4.122 To invite the International Council of Philosophy and Humanistic Studies to establish the programme of an inquiry designed to ascertain the main interpretation of the concept of law throughout history and to determine the practical bearing of this concept today;

. . .

4.2 *Arts and Letters*

The Director-General is authorized:

. . .

4.214 To plan an international congress of the arts to be held in 1952, with special reference to the freedom of the artist, the contribution of the artist to the work of UNESCO and the best means of securing international recognition of what is produced by creative workers in all the fields of art;

. . .

4.22 *Theatre*

The Director-General is authorized:

4.221 To assist, by means of financial aid and services, the activities of the International Theatre Institute and, in particular, to encourage that body;

. . .

4.2214 To secure the organization by national centres of international weeks designed to promote the concepts of peace and co-operation between peoples.

4.54 *Public Libraries*

The Director-General is authorized:

4.541 In collaboration with the Government of India, to continue the experiment begun in 1950 for the development of public libraries as part of that Government's fundamental education campaign;

4.542 With the collaboration of the Member States concerned, to participate in the organization of a regional conference of professional librarians of Latin America with a view to promoting the development of public libraries in that region.

4.6 *Copyright*

The Director-General is authorized:

4.61 With the assistance of the appropriate international organization, to continue the collection of information on international copyright problems and its circulation by the publication of the *International Copyright Bulletin*;

4.62 To study, in co-operation with the appropriate inter-governmental organizations and with the advice of a committee of experts to be convened in 1950, the answers sent by governments to UNESCO's request for suggestions concerning a universal convention on copyright, and to submit to the Sixth Session of the General Conference, after consultation with the United Nations, proposals regarding the procedure to be followed in the event of an inter-governmental conference being convened with a view to the drawing up of the text of such a convention;

4.621 If it be decided to convene such an intergovernmental conference, to prepare the working papers to be submitted to it;

4.622 Member States are invited to send to the sixth session of the General Conference, in addition to their delegates, specialists in copyright with a view to the holding of a meeting of experts on that occasion.

5 EXCHANGE OF PERSONS

5.1 *Clearing-house*

. . .

The Director-General is authorized:

. . .

5.17 To continue studies on the barriers to the free movement of persons and on the provisions relating to exchange of persons in bilateral or multilateral agreements with Member governments and the United Nations and specialized agencies for the development of UNESCO's action for reducing and eliminating these barriers;

5.18 To collect information about current legal, economic and academic regulations and welfare facilities concerning the movement of persons for educational, scientific and cultural purposes and publish it in a manual for the use of agencies engaged in exchange programmes;

5.19 To devote particular attention to the needs of intellectual refugees with regard to their equal rights to scholarships and their participation in the carrying out of UNESCO's programme.

6 MASS COMMUNICATIONS

6.2 *Reduction of Obstacles to the Free Flow of Information*

6.21 Member States are invited to support, at the various international conferences convened by the United Nations and the specialized agencies, the requests submitted by the Director-General in accordance with resolutions approved by them at the General Conference, with a view to the adoption of practical measures for reducing the obstacles to the international flow of information.

The Director-General is authorized:

6.221 To publish, for the benefit of governments and of persons and organizations concerned with the import and export of educational, scientific and cultural materials, two manuals describing in simple terms the practical functioning:

6.2211 of the Agreement for facilitating the International Circulation of Visual and Auditory Materials of an Educational, Scientific and Cultural Character, and

6.2212 of the Agreement on the Importation of Educational, Scientific and Cultural Materials;

6.222 To gather and circulate current information, as required, on the operation of the two agreements;

6.23 To contribute research and documentation which will assist the work of the United Nations Sub-Commission on Freedom of Information and of the Press and to attend the 1951 session of the Sub-Commission;

6.24 To maintain close contact with the Contracting Parties to the General Agreement on Tariffs and Trade, to attend its 1951 session, and to urge further reductions of customs barriers to the international circulation of educational, scientific and cultural materials;

6.25 To collaborate with the Regional Economic Commissions of the United Nations in order to increase the availability of educational, scientific and cultural materials, by encouraging domestic production, promoting the exchange of information on production and requirements, and facilitating trade agreements to overcome currency difficulties;

6.26 To collaborate with the Regional Economic Commissions and the Transport and Communications Commission of the United Nations and the International Labour Organisation, in order to seek special dispensations for persons engaged in educational activities with regard to visa and frontier formalities, labour permits, retention of professional status and facilities for obtaining foreign exchange;

6.27 To seek to secure wider application of schemes initiated by the Universal Postal Union to permit payment in national currency for subscriptions to foreign newspapers and periodicals and for a reduction of 50 per cent on postal charges for printed matter;

6.28 To attend the plenipotentiary International Telephone and Telegraph Conference to press for reduced rates, higher priorities and other facilities for the transmission of press messages by international telecommunications channels:

6.29 To prepare and disseminate a study on a special subject such as "World Press Coverage of Educational, Scientific and Cultural Information".

6.3 *Action Through Press, Film and Radio and Other Media of Information*

. . .

The Director-General is authorized:

6.32 Whenever possible, to present the activities of the Organization so as to focus them upon the Universal Declaration of Human Rights and, within

this framework, particularly upon the right to education (article 26), the right to the benefits of scientific progress (article 27) and the right to information (article 18);

6.33 To place emphasis upon material illustrating the following topics:

6.331 Fundamental education for all people and education for international understanding;

6.332 The right of all people to enjoy the benefits of scientific progress;

6.333 The relationship of the work of scientists to peace and human welfare;

6.334 The struggle to resolve racial and other problems which keep peoples apart and breed war;

6.335 The methods and achievements of international co-operation;

6.336 The part played by creative artists in establishing the solidarity of mankind;

6.337 Freedom of information and free exchange of ideas;

. . .

GENERAL RESOLUTIONS

9.2 *Promotion of Human Rights*

9.21 *Teaching about, and Dissemination of, the Universal Declaration of Human Rights*

THE GENERAL CONFERENCE,

9.211 *Considering* the importance of the Universal Declaration of Human Rights;

Convinced of the necessity of ensuring exceptionally wide distribution and dissemination, in the interest of preserving peace, of this declaration,

9.212 *Decides* that it is necessary to initiate an intensive campaign with a view to providing a better understanding of human rights and of the part played by them in society and in the relations between peoples;

9.213 *Decides* that the Director-General is authorized to plan, in co-operation with the United Nations and the other specialized agencies, a programme of activities which shall involve the fullest utilization of the educational, scientific and cultural resources of the Organization and of the means of mass communication accessible to it.

To this end, the Director-General is authorized:

9.2131 To co-operate with international organizations, Member States, national commissions and local and regional institutions;

9.2132 To formulate specific projects for which he may seek additional funds from sources outside the regular budget of UNESCO.

9.214 To collect and distribute information about the methods of teaching about human rights in schools and educational institutions and about techniques for bringing those rights to the attention of the general public.

9.215 To print and distribute:

9.2151 The text of the Universal Declaration of Human Rights together with suitable commentaries and discussion guides,

9.2152 Posters, filmstrips and other basic material.

9.2161 To promote educational methods designed to ensure a living and active understanding of human rights, and to this end to prepare for a seminar to be held in 1952, which will study methods of teaching about human rights;

9.2162 To explore the means of using the social life and spontaneous activities of young people for the purpose of providing a better understanding of human rights;

9.2163 To prepare, after consultation with Member States and experts, systematic recommendations concerning the curricula in primary and secondary schools and universities;

9.2164 To study the treatment of human rights in textbooks and other teaching aids;

9.2165 To sponsor and assist international and regional organizations to hold seminars and meetings on the subject of human rights, such as that organized in 1951 by the Inter-American Academy of International and Comparative Law.

9.2171 To supply, to the greatest extent possible, articles, radio scripts, discussion material and exhibits;

9.2172 To co-operate with film companies, radio broadcasting systems and newspapers in the development of this campaign;

9.2173 To provide international organizations, Member States and national commissions, on request, with technical assistance either in the form of documentation or by sending individual experts or field teams.

9.22 *Economic and Social Rights*

THE GENERAL CONFERENCE,

9.221 *After examining* the Director-General's report concerning the placing of economic and social rights on an international basis;

Considering that the United Nations are examining the question of the drafting of conventions by which States will pledge themselves to give

effect to the economic and social rights proclaimed in the Universal Declaration of Human Rights;

Considering that the application of the principles proclaimed in articles 26 and 27 of the Universal Declaration of Human Rights is one of UNESCO's main aims as defined by its Constitution;

Considering that the Commission on Human Rights intends, in close co-operation with the specialized agencies concerned and more particularly with UNESCO, to work out certain draft texts during 1951,

9.2211 *Instructs* the Director-General to communicate to the Secretary-General and to the competent organs of the United Nations the results of the studies made by UNESCO's Secretariat concerning the application of the principles proclaimed in articles 26 and 27 of the Universal Declaration of Human Rights;

9.2212 *Instructs* the Director-General to co-operate closely with the United Nations with a view to the working out of conventions relating to the above-mentioned articles;

9.2213 *Invites* the Director-General to make a report to the sixth session of the General Conference concerning both the measures taken for placing economic and social rights on an international basis, and the questions which might be dealt with by means of conventions or special recommendations to be adopted by the General Conference.

AGREEMENT ON THE IMPORTATION OF EDUCATIONAL, SCIENTIFIC AND CULTURAL MATERIALS[1]

Signed at Lake Success on 22 November 1950

PREAMBLE

The Contracting States,

Considering that the free exchange of ideas and knowledge and, in general, the widest possible dissemination of the diverse forms of self-expression used by civilizations are vitally important both for intellectual progress and international understanding, and consequently for the maintenance of world peace;

Considering that this interchange is accomplished primarily by means of books, publications and educational, scientific and cultural materials;

Considering that the Constitution of the United Nations Educational, Scientific and Cultural Organization urges co-operation between nations in all branches of intellectual activity, including "the exchange of publications, objects of artistic and scientific interest and other materials of information", and provides further that the Organization shall "collaborate in the work of advancing the mutual knowledge and understanding of peoples, through all means of mass communications and to that end recommend such international agreements as may be necessary to promote the free flow of ideas by word and image";

Recognize that these aims will be effectively furthered by an international agreement facilitating the free flow of books, publications and educational, scientific and cultural materials; and

Have therefore *agreed* to the following provisions:

Art. I. 1. The Contracting States undertake not to apply customs duties or other charges on, or in connexion with, the importation of:

(*a*) Books, publications and documents, listed in Annex A to this agreement;

(*b*) Educational, scientific and cultural materials, listed in Annexes B, C, D and E to this agreement;

which are the products of another Contracting State, subject to the conditions laid down in those annexes.

2. The provisions of paragraph 1 of this article shall not prevent any Contracting State from levying on imported materials:

(*a*) Internal taxes or any other internal charges of any kind imposed at the time of importation or subsequently, not exceeding those applied directly or indirectly to like domestic products;

(*b*) Fees and charges, other than customs duties, imposed by governmental authorities on, or in connexion with, importation, limited in amount to the approximate cost of the services rendered, and representing neither an indirect protection to domestic products nor a taxation of imports for revenue purposes.

Art. II. 1. The Contracting States undertake to grant necessary licences and/or foreign exchange for the importation of the following articles:

[1] This agreement, sponsored by the United Nations Educational, Scientific and Cultural Organization, was signed on 22 November 1950 by seventeen countries, namely, Belgium, Bolivia, China, Colombia, Dominican Republic, Ecuador, Egypt, Greece, Guatemala, Haiti, Israel, Luxembourg, Netherlands, Philippines, Switzerland, Thailand, and the United Kingdom. Moreover, El Salvador signed the agreement on 4 December 1950. The text of the agreement appears in *Records of the General Conference* (quoted above, p. 405), pp. 141–146.

(*a*) Books and publications consigned to public libraries and collections and to the libraries and collections of public educational, research or cultural institutions;

(*b*) Official government publications—that is, official, parliamentary and administrative documents published in their country of origin;

(*c*) Books and publications of the United Nations or any of its specialized agencies;

(*d*) Books and publications received by the United Nations Educational, Scientific and Cultural Organization and distributed free of charge by it or under its supervision;

(*e*) Publications intended to promote tourist travel outside the country of importation, sent and distributed free of charge;

(*f*) Articles for the blind:

i. Books, publications and documents of all kinds in raised characters for the blind;

ii. Other articles specially designed for the educational, scientific or cultural advancement of the blind, which are imported directly by institutions or organizations concerned with the welfare of the blind, approved by the competent authorities of the importing country for the purpose of duty-free entry of these types of articles.

2. The Contracting States which at any time apply quantitative restrictions and exchange control measures undertake to grant, as far as possible, foreign exchange and licences necessary for the importation of other educational, scientific or cultural materials, and particularly the materials referred to in the annexes to this agreement.

Art. III. 1. The Contracting States undertake to give every possible facility to the importation of educational, scientific or cultural materials which are imported exclusively for showing at a public exhibition approved by the competent authorities of the importing country and for subsequent re-exportation. These facilities shall include the granting of the necessary licences and exemption from customs duties and internal taxes and charges of all kinds payable on importation, other than fees and charges corresponding to the approximate cost of services rendered.

2. Nothing in this article shall prevent the authorities of an importing country from taking such steps as may be necessary to ensure that the materials in question shall be re-exported at the close of their exhibition.

Art. IV. The Contracting States undertake that they will as far as possible:

(*a*) Continue their common efforts to promote by every means the free circulation of educational, scientific or cultural materials, and abolish or reduce any restrictions to that free circulation which are not referred to in this agreement;

(*b*) Simplify the administrative procedure governing the importation of educational, scientific or cultural materials;

(*c*) Facilitate the expeditious and safe customs clearance of educational, scientific or cultural materials.

Art. V. Nothing in this agreement shall affect the right of Contracting States to take measures, in conformity with their legislation, to prohibit or limit the importation, or the circulation after importation, of articles on grounds relating directly to national security, public order or public morals.

Art. VI. This agreement shall not modify or affect the laws and regulations of any Contracting State or any of its international treaties, conventions, agreements or proclamations, with respect to copyright, trademarks or patents.

Art. VII. Subject to the provisions of any previous conventions to which the Contracting States may have subscribed for the settlement of disputes, the Contracting States undertake to have recourse to negotiations or conciliation, with a view to settlement of any disputes regarding the interpretation or the application of this agreement.

Art. VIII. In case of a dispute between Contracting States relating to the educational, scientific or cultural character of imported materials, the interested parties may, by common agreement, refer it to the Director-General of the United Nations Educational, Scientific and Cultural Organization for an advisory opinion.

Art. IX. 1. This agreement, of which the English and French texts are equally authentic, shall bear today's date and remain open for signature by all Member States of the United Nations Educational, Scientific and Cultural Organization, all Member States of the United Nations and any non-member State to which an invitation may have been addressed by the Executive Board of the United Nations Educational, Scientific and Cultural Organization.

2. The Agreement shall be ratified on behalf of the signatory States in accordance with their respective constitutional procedure.

3. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Art. X. The States referred to in paragraph 1 of article IX may accept this Agreement from ——. Acceptance shall become effective on the deposit of a formal instrument with the Secretary-General of the United Nations.

Art. XI. This agreement shall come into force on the date on which the Secretary-General of the United Nations receives instruments of ratification or acceptance from ten States.

Art. XII. 1. The States parties to this agreement on the date of its coming into force shall each take

all the necessary measures for its fully effective operation within a period of six months after that date.

2. For States which may deposit their instruments of ratification or acceptance after the date of the Agreement coming into force, these measures shall be taken within a period of three months from the date of deposit.

3. Within one month of the expiration of the periods mentioned in paragraphs 1 and 2 of this article, the Contracting States to this agreement shall submit a report to the United Nations Educational, Scientific and Cultural Organization of the measures which they have taken for such fully effective operation.

4. The United Nations Educational, Scientific and Cultural Organization shall transmit this report to all signatory States to this agreement and to the International Trade Organization (provisionally, to its Interim Commission).

Art. XIII. Any Contracting State may, at the time of signature or the deposit of its instrument of ratification or acceptance, or at any time thereafter, declare by notification addressed to the Secretary-General of the United Nations that this agreement shall extend to all or any of the territories for the conduct of whose foreign relations that Contracting State is responsible.

Art. XIV. 1. Two years after the date of the coming into force of this agreement, any Contracting State may, on its own behalf or on behalf of any of the territories for the conduct of whose foreign relations that Contracting State is responsible, denounce this agreement by an instrument in writing deposited with the Secretary-General of the United Nations.

2. The denunciation shall take effect one year after the receipt of the instrument of denunciation.

Art. XV. The Secretary-General of the United Nations shall inform the States referred to in paragraph 1 of article IX, as well as the United Nations Educational, Scientific and Cultural Organization, and the International Trade Organization (provisionally, its Interim Commission), of the deposit of all the instruments of ratification and acceptance provided for in articles IX and X, as well as of the notifications and denunciations provided for respectively in articles XIII and XIV.

Art. XVI. At the request of one-third of the Contracting States to this agreement, the Director-General of the United Nations Educational, Scientific and Cultural Organization shall place on the agenda of the next session of the General Conference of that organization, the question of convoking a meeting for the revision of this agreement.

Art. XVII. The Annexes to this Agreement and its Protocol are hereby made an integral part of this agreement.

Art. XVIII. 1. In accordance with Article 102 of the Charter of the United Nations, this agreement shall be registered by the Secretary-General of the United Nations on the date of its coming into force.

2. IN FAITH WHEREOF the undersigned, duly authorized, have signed this Agreement on behalf of their respective governments.

Done at —— this —— day of —— one thousand nine hundred and —— in a single copy, which shall remain deposited in the archives of the United Nations, and certified true copies of which shall be delivered to all the States referred to in paragraph 1 of article IX, as well as to the United Nations Educational, Scientific and Cultural Organization and to the International Trade Organization (provisionally, to its Interim Commission).

Annex A

BOOKS, PUBLICATIONS AND DOCUMENTS

i. Printed books.
ii. Newspapers and periodicals.
iii. Books and documents produced by duplicating processes other than printing.
iv. Official government publications—that is, official, parliamentary and administrative documents published in their country of origin.
v. Travel posters and travel literature (pamphlets, guides, time-tables, leaflets and similar publications), whether illustrated or not, including those published by private commercial enterprises, whose purpose is to stimulate travel outside the country of importation.
vi. Publications whose purpose is to stimulate study outside the country of importation.
vii. Manuscripts, including typescripts.
viii. Catalogues of books and publications, being books and publications offered for sale by publishers or booksellers established outside the country of importation.
ix. Catalogues of films, recordings or other visual and auditory material of an educational, scientific or cultural character, being catalogues issued by or on behalf of the United Nations or any of its specialized agencies.
x. Music in manuscript or printed form, or reproduced by duplicating processes other than printing.
xi. Geographical, hydrographical or astronomical maps and charts.
xii. Architectural, industrial or engineering plans and designs, and reproductions thereof, intended for study in scientific establishments or educational institutions approved by the competent authorities of the importing country for the purpose of duty-free admission of these types of articles.

The exemptions provided by Annex A shall not apply to:

(*a*) Stationery;

(*b*) Books, publications and documents (except catalogues, travel posters and travel literature referred to above) published by or for a private commercial enterprise, essentially for advertising purposes;

(*c*) Newspapers and periodicals in which the advertising matter is in excess of 70 per cent by space;

(*d*) All other items (except catalogues referred to above) in which the advertising matter is in excess of 25 per cent by space. In the case of travel posters and literature, this percentage shall apply only to private commercial advertising matter.

Annex B

WORKS OF ART AND COLLECTORS' PIECES OF AN EDUCATIONAL, SCIENTIFIC OR CULTURAL CHARACTER

i. Printings and drawings, including copies, executed entirely by hand, but excluding manufactured decorated wares.

ii. Hand-printed impressions, produced from hand-engraved or hand-etched blocks, plates or other material, and signed and numbered by the artist.

iii. Original works of art of statuary or sculpture, whether in the round, in relief, or in intaglio, excluding mass-produced reproductions and works of conventional craftsmanship of a commercial character.

iv. Collectors' pieces and objects of art consigned to public galleries, museums and other public institutions, approved by the competent authorities of the importing country for the purpose of duty-free entry of these types of articles, not intended for re-sale.

v. Collections and collectors' pieces in such scientific fields as anatomy, zoology, botany, mineralogy, palaeontology, archaeology and ethnography, not intended for re-sale.

vi. Antiques, being articles in excess of a hundred years of age.

Annex C

VISUAL AND AUDITORY MATERIALS OF AN EDUCATIONAL, SCIENTIFIC OR CULTURAL CHARACTER

i. Films, filmstrips, microfilms and slides, of an educational, scientific or cultural character, when imported by organizations (including, at the discretion of the importing country, broadcasting organizations), approved by the competent authorities of the importing country for the purpose of duty-free admission of these types of articles, exclusively for exhibition by these organizations or by other public or private educational, scientific or cultural institutions or societies approved by the aforesaid authorities.

ii. Newsreels (with or without sound track), depicting events of current news value at the time of importation, and imported in either negative form, exposed and developed, or positive form, printed and developed, when imported by organizations (including, at the discretion of the importing country, broadcasting organizations) approved by the competent authorities of the importing country for the purpose of duty-free admission of such films provided that free entry may be limited to two copies of each subject for copying purposes.

iii. Sound recordings of an educational, scientific or cultural character for use exclusively in public or private educational, scientific or cultural institutions or societies (including, at the discretion of the importing country, broadcasting organizations) approved by the competent authorities of the importing country for the purpose of duty-free admission of these types of articles.

iv. Films, filmstrips, microfilms and sound recordings of an educational, scientific or cultural character produced by the United Nations or any of its specialized agencies.

v. Patterns, models and wall charts for use exclusively for demonstrating and teaching purposes in public or private educational, scientific or cultural institutions approved by the competent authorities of the importing country for the purpose of duty-free admission of these types of articles.

Annex D

SCIENTIFIC INSTRUMENTS OR APPARATUS

Scientific instruments or apparatus, intended exclusively for educational purposes or pure scientific research, provided:

(*a*) That such scientific instruments or apparatus are consigned to public or private scientific or educational institutions approved by the competent authorities of the importing country for the purpose of duty-free entry of these types of articles, and used under the control and responsibility of these institutions;

(*b*) That instruments or apparatus of equivalent scientific value are not being manufactured in the country of importation.

Annex E

ARTICLES FOR THE BLIND

i. Books, publications and documents of all kinds in raised characters for the blind.

ii. Other articles specially designed for the educational, scientific or cultural advancement of the blind, which are imported directly by institutions or organizations concerned with the welfare of the blind, approved by the competent authorities of the importing country for the purpose of duty-free entry of these types of articles.

Protocol annexed to the Agreement on the Importation of Educational, Scientific and Cultural Materials

The Contracting States,

In the interest of facilitating the participation of the United States of America in the Agreement on the Importation of Educational, Scientific and Cultural Materials, have agreed to the following:

1. The United States of America shall have the option of ratifying this agreement, under article IX, or of accepting it, under article X, with the inclusion of the reservation hereunder.

2. In the event of the United States of America becoming party to this agreement with the reservation provided for in the preceding paragraph 1, the provisions of that reservation may be invoked by the Government of the United States of America with regard to any of the Contracting States to this Agreement, or by any Contracting State with regard to the United States of America, provided that any measure imposed pursuant to such reservation shall be applied on a non-discriminatory basis.

(TEXT OF THE RESERVATION)

(*a*) If, as a result of the obligations incurred by a Contracting State under this Agreement, any produce covered by this agreement is being imported into the territory of a Contracting State in such relatively increased quantities and under such conditions as to cause or threaten serious injury to the domestic industry in that territory producing like or directly competitive products, the Contracting State, under the conditions provided for by paragraph 2 above, shall be free, in respect of such product and to the extent and for such time as may be necessary to prevent or remedy such injury, to suspend, in whole or in part, any obligation under this Agreement with respect to such product.

(*b*) Before any Contracting State shall take action pursuant to the provisions of paragraph (*a*) above, it shall give notice in writing to the United Nations Educational, Scientific and Cultural Organization as far in advance as may be practicable and shall afford the Organization and the Contracting States which are parties to this agreement an opportunity to consult with it in respect of the proposed action.

(*c*) In critical circumstances where delay would cause damage which it would be difficult to repair, action under paragraph (*a*) above, may be taken provisionally without prior consultation, on the condition that consultation be effected immediately after taking such action.

PUBLICATIONS

During 1950, the following publications were put out by UNESCO:

1. *The Race Question* (published as No. III of the Series "UNESCO and its programme"); UNESCO publication No. 792, free of charge.

This publication has its point of departure in a resolution adopted by the United Nations Social and Economic Council at its sixth session, in 1948. By that resolution UNESCO was called upon to consider the timeliness "of proposing and recommending the general adoption of a programme of dissemination of scientific facts designed to bring about the disappearance of that which is commonly called race prejudice".

The General Conference of UNESCO in 1949 adopted three resolutions which committed the Organization "to study and collect scientific materials concerning questions of race", "to give wide diffusion to the scientific material collected", and "to prepare an educational campaign based on this information".

Thereupon, UNESCO invited a number of anthropologists and sociologists from various countries to meet as a committee of experts in December 1949. They drew up a statement issued on 18 July 1950 which is reproduced in the above mentioned publication.

The publication lists the names of those experts who drafted the original statement, as well as of those who submitted criticism; the final text was prepared by Professor Ashley Montague, United States (Rapporteur).

2. *Freedom and Culture*, compiled by UNESCO (published by Allan Wingate), London. This book comprises the six following essays:

"Culture, a Human Right", by German Arciniegas;

"The Right to Education in the Modern World", by Professor Jean Piaget;

"Freedom of Information", by Lyman Bryson;

"The Rights of the Creative Artist", by Maurice Bedel;

"Freedom of Literary and Artistic Creation", by Rex Warner;

"Freedom of Science", by Professor Bart Bok.

An introduction to this book was written by Dr. Julian Huxley.

UNITED NATIONS
INTERNATIONAL CHILDREN'S EMERGENCY FUND

AGREEMENTS WITH GOVERNMENTS

NOTE

Each of the agreements concluded between the International Children's Emergency Fund and various governments contains an article providing that "The Government undertakes to see that these supplies are dispensed or distributed equitably and efficiently on the basis of need, without discrimination because of race, creed, nationality status or political belief."

New agreements were concluded between the Fund and the Governments of the following States or territories:[1]

[1] Basic information on the United Nations International Children's Emergency Fund (with references to sources) and lists of the agreements concluded in 1948 and 1949 respectively are to be found in *Yearbook on Human Rights for 1948*, p. 434, and *Yearbook on Human Rights for 1949*, p. 298. For the complete text of the agreements see: United Nations, *Treaty Series*, vol. 65, 1950, pp. 4–105.

Country	*Place of signing*	*Date* (1950)
Afghanistan	Kabul	4 July
Bolivia	New York	3 February
Brazil	New York	9 June
Burma	Rangoon	22 April
Ceylon	Colombo	7 June
Chile	New York	3 March
China (Taiwan)	Taipeh	19 July
Colombia	New York	15 March
Costa Rica	San José	14 January
El Salvador	San Salvador	18 January
Guatemala	Guatemala City	9 February
Honduras	Tegucigalpa	17 January
Indonesia	Djakarta	6 April
Korea	Seoul	25 March
Malta	London	10 February
Nicaragua	Managua	17 January
Peru	New York	31 January

REGIONAL AND OTHER MULTILATERAL TREATIES AND AGREEMENTS

THE GENEVA CONVENTIONS OF 12 AUGUST 1949

NOTE[1]

The *Yearbook on Human Rights for 1949* contains extracts from the four Geneva Conventions of 12 August 1949.[2] Between 1 January and 12 February 1950, the date on which the time-limit for the signing of the Conventions expired, the following States signed the Conventions: Australia, New Zealand, Portugal, Romania, Venezuela and Yugoslavia. The number of States signatories to the four Conventions was thereby raised to sixty. During 1950 the Conventions were ratified by Switzerland (31 March), Yugoslavia (21 April), Monaco (5 July), Liechtenstein (21 September), Chile (12 October), India (9 November) and Czechoslovakia (19 December).

One of the articles which is common to the four Conventions provides that they were to come into force six months after the deposit of not less than two instruments of ratification, and thereafter, for each Contracting Party, six months after the deposit of its instrument of ratification. The Conventions therefore came into force on 21 October 1950, six months after Yugoslavia deposited its instrument of ratification.

[1] This note is based on the *Report on General Activities* (1 January to 31 December 1950) published by the International Committee of the Red Cross, Geneva, 1951, pp. 29–30 and on information received through the courtesy of Mr. Claude Pilloud, Chief, Legal Department of the International Committee of the Red Cross, Geneva.

[2] See pp. 299–309 of that *Yearbook*.

CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS[1]

Signed at Rome on 4 November 1950

I. NOTE

The European Convention for the Protection of Human Rights and Fundamental Freedoms was signed in Rome on 4 November 1950 on behalf of the Governments of Belgium, Denmark, France, the German Federal Republic, Iceland, Ireland, Italy, Luxembourg, the Netherlands, Norway, Saar, Turkey and the United Kingdom. It was subsequently signed in Paris on 28 November 1950, on behalf of the Governments of Greece and Sweden. These fifteen Governments constitute the total membership of the Council of Europe.

Though the Human Rights Commission of the United Nations was at the same time working on a covenant of human rights, intended to give legal effect to the general principles enunciated in the Universal Declaration of Human Rights proclaimed by the General Assembly on 10 December 1948, the Member States of the Council of Europe went ahead and concluded their own convention on a regional basis. They believed that it was possible for a smaller and comparatively homogeneous group of States to reach agreement on such contentious issues more speedily than would be possible for the much larger number of countries represented in the United Nations. At the same time, it seemed possible that this smaller group could, by reason of their common heritage and legal traditions, assume more effective commitments for the guarantee of human rights than would be possible on a world-wide basis.

As recorded in the *Yearbook on Human Rights for 1949*,[2] the Consultative Assembly of the Council of Europe adopted a recommendation on 8 September 1949 for the conclusion of a European convention on human rights. This recommendation was a logical consequence of the Statute of the Council of Europe (signed in London on 5 May 1949), which provides that the aim of the Council of Europe, which is to achieve a greater unity between its members, shall be pursued "... by agreement and common action ... in the maintenance and further realization of human rights and fundamental freedoms". Article 3 of the Statute lays down that "every member of the Council of Europe must accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms ..." The ability and willingness of a State to fulfil the provisions of article 3 is, under article 4, made a condition for the admission of new members.

The Committee of Ministers of the Council of Europe at its second session, in Paris on 5 November 1949, approved the principle of the recommendation of the Consultative Assembly and instructed a committee of governmental experts to prepare a draft convention, "due attention being paid to the progress which had been achieved in this matter by the competent organs of the United Nations". During the course of 1950, several meetings of governmental experts were held, as a result of which the Committee of Ministers at its fifth session, in Strasbourg in August 1950, approved the text of a draft convention, which it submitted to the Assembly for its opinion.

The original proposal of the Consultative Assembly of the Council of Europe for a European convention on human rights listed for inclusion in the convention ten rights from the Universal Declaration of Human Rights proclaimed by the General Assembly of the United Nations. These rights, and the corresponding articles of the Universal Declaration, are the following:

1. Security of person (articles 3, 5 and 8);
2. Exemption from slavery and servitude (article 4);
3. Freedom from arbitrary arrest, detention or exile (articles 9, 10 and 11);
4. Freedom from arbitrary interference in private and family life, home and correspondence (article 12);
5. Freedom of thought, conscience and religion (article 18);
6. Freedom of opinion and expression (article 19);
7. Freedom of assembly (article 20, paragraph (1));
8. Freedom of association (article 20, paragraphs (1) and (2));
9. Freedom to unite in trade unions (article 23, paragraph (4));
10. The right to marry and found a family (article 16, paragraph (1)).

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[1] English text received through the courtesy of Mr. A. Struycken, Political Director at the Secretariat-General of the Council of Europe, Strasbourg. Note prepared by Mr. A. H. Robertson, Member of the Political Directorate of the Council of Europe.

[2] See p. 311 of that *Yearbook*.

The Consultative Assembly proposed to set out these rights solely by means of reference to the text of the Universal Declaration.

When the text of the draft European convention was worked out in detail by the governmental experts during the first six months of 1950, however, they decided that the rights to be secured should be defined in greater detail. In drafting the definitions of these rights they made considerable use of the draft Covenant contained in the report of the fifth session of the Commission on Human Rights of the United Nations.[1] In the section following the listing of the rights, the text lays down a procedure for the protection of the rights set out—that is to say, machinery for consideration of alleged breaches of the Convention. There is established a European Commission of Human Rights, before which any signatory State may lodge a complaint. There is also provision for petitions to this Commission by individuals or private associations, but such petitions are possible only in cases where the State concerned has made a declaration expressly agreeing to this procedure. The function of the Commission is to arrange a friendly settlement of the matter if possible; if this is not possible, it will prepare a report for transmission to the Committee of Ministers of the Council of Europe, which will then decide what action is to be taken. In addition, there is created a European Court of Human Rights to hear cases arising out of alleged breaches of the Convention which cannot be settled by the Commission, though the jurisdiction of the court is limited to States which have expressly accepted it, either by a general declaration accepting its jurisdiction as compulsory or by special agreement in the particular case.

During its second session, in August 1950, the Consultative Assembly expressed a favourable opinion on the draft Convention, but also made certain proposals for its amendment, including the addition of three rights not covered by the draft—namely, the right to education, the right to property and the right to political liberty and free elections.

At its sixth session, in Rome in November 1950, the Committee of Ministers considered the opinion of the Assembly and decided that the three rights mentioned required further careful consideration by the governmental experts. Moreover, in order to lose no time, they decided to sign the Convention forthwith, without the three additional rights proposed by the Assembly, while indicating that these might be included in a protocol to the Convention at a later date, if it proved possible to obtain agreement on acceptable texts. The Convention was accordingly signed on 4 November 1950 substantially in the form which had been approved by the Committee of Ministers in August of that year. The governmental experts were due to meet early in 1951 with a view to preparing a protocol on the three rights of education, property and political liberties.

[1] United Nations document E/1371, of 23 June 1949. The extent to which the text of the draft covenant was used in elaborating the text of the European convention is shown in the annex to this note.

Annex

The following survey shows the extent to which the text of the draft Covenant as prepared by the Commission on Human Rights in 1949 was used in elaborating the text of the European Convention.

European Convention	*Draft Covenant and other texts used*
Art. 1	Based on article 2 of the draft Covenant
Art. 2	Based on article 5 of the text proposed by the representatives of Australia, Denmark, France, Lebanon and the United Kingdom (document E/1371, p. 32)
Art. 3	Copied from article 5 of the Universal Declaration and article 6 of the draft Covenant
Art. 4	Based on article 8 of the draft Covenant
Art. 5	Paragraph 1 is based on article 9 of the text proposed by the representatives of Australia, Denmark, France, Lebanon and the United Kingdom (document E/1371, p. 32) Paragraphs 2–5 are based on article 9 of the draft Covenant
Art. 6	Based on article 13 of the draft Covenant
Art. 7	Paragraph 1 is based on article 14 of the draft Covenant
Art. 8	Paragraph 1 is based on article 12 of the Universal Declaration
Art. 9	Based on article 16 of the draft Covenant
Art. 10 ...	Paragraph 1 is based on article 19 of the Universal Declaration
Art. 11 ...	Based on articles 18 and 19 of the draft Covenant
Art. 12 ...	Based on article 16 (i) of the Universal Declaration
Art. 13 ...	Based on paragraph 2 of article 2 of the draft Covenant
Art. 14 ...	Based on paragraph 2 of article 20 of the draft Covenant
Art. 15 ...	Based on article 4 of the draft Covenant
Art. 17 ...	Based on paragraph (i) of article 22 of the draft Covenant
Art. 60 ...	Based on paragraph 2 of Article 22 of the draft Covenant
Art. 63 ...	Paragraphs 1 and 2 are based on the proposal of the United States representative for article 25 of the draft Covenant (document E/1371, p. 27)
Art. 64 ...	Based on the text proposed by the representative of Denmark for insertion after article 23 of the draft Covenant (document E/1371, p. 31)

II. TEXT

PREAMBLE

The Governments signatory hereto, being Members of the Council of Europe,

Considering the Universal Declaration of Human Rights proclaimed by the General Assembly of the United Nations on 10 December 1948;

Considering that this declaration aims at securing the universal and effective recognition and observance of the rights therein declared;

Considering that the aim of the Council of Europe is the achievement of greater unity between its Members and that one of the methods by which that aim is to be pursued is the maintenance and further realization of human rights and fundamental freedoms;

Reaffirming their profound belief in those fundamental freedoms which are the foundation of justice and peace in the world and are best maintained on the one hand by an effective political democracy and on the other by a common understanding and observance of the human rights upon which they depend;

Being resolved, as the Governments of European countries which are like-minded and have a common heritage of political traditions, ideals, freedom and the rule of law, to take the first steps for the collective enforcement of certain of the rights stated in the Universal Declaration;

HAVE AGREED AS FOLLOWS:

Art. 1. The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in section I of this convention.

SECTION I

Art. 2. (1) Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

(2) Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

(*a*) In defence of any person from unlawful violence;

(*b*) In order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(*c*) In action lawfully taken for the purpose of quelling a riot or insurrection.

Art. 3. No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Art. 4. (1) No one shall be held in slavery or servitude.

(2) No one shall be required to perform forced or compulsory labour.

(3) For the purpose of this article the term "forced or compulsory labour" shall not include:

(*a*) Any work required to be done in the ordinary course of detention imposed according to the provisions of article 5 of this convention or during conditional release from such detention;

(*b*) Any service of a military character or, in case of conscientious objectors in countries where they are recognized, service exacted instead of compulsory military service;

(*c*) Any service exacted in case of an emergency or calamity threatening the life or well-being of the community;

(*d*) Any work or service which forms part of normal civic obligations.

Art. 5. (1) Everyone has the right to liberty and security of person.

No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(*a*) The lawful detention of a person after conviction by a competent court;

(*b*) The lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

(*c*) The lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

(*d*) The detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

(*e*) The lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

(*f*) The lawful arrest or detention of a person to prevent his effecting an unauthorized entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

(2) Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

(3) Everyone arrested or detained in accordance with the provisions of paragraph 1 (*c*) of this article shall be

brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

(4) Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

(5) Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation.

Art. 6. (1) In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly, but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

(2) Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

(3) Everyone charged with a criminal offence has the following minimum rights:

(*a*) To be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

(*b*) To have adequate time and facilities for the preparation of his defence;

(*c*) To defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

(*d*) To examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(*e*) To have the free assistance of an interpreter if he cannot understand or speak the language used in court.

Art. 7. (1) No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

(2) This article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by civilized nations.

Art. 8. (1) Everyone has the right to respect for his private and family life, his home and his correspondence.

(2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Art. 9. (1) Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community, with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

(2) Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

Art. 10. (1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

(2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Art. 11. (1) Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

(2) No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the pre-

vention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

Art. 12. Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.

Art. 13. Everyone whose rights and freedoms as set forth in this convention are violated shall have an effective remedy before a national authority, notwithstanding that the violation has been committed by persons acting in an official capacity.

Art. 14. The enjoyment of the rights and freedoms set forth in this convention shall be secured without discrimation on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Art. 15. (1) In time of war or other public emergency threatening the life of the nation, any High Contracting Party may take measures derogating from its obligations under this convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.

(2) No derogation from article 2, except in respect of deaths resulting from lawful acts of war, or from articles 3, 4 (paragraph 1) and 7 shall be made under this provision.

(3) Any High Contracting Party availing itself of this right of derogation shall keep the Secretary-General of the Council of Europe fully informed of the measures which it has taken and the reasons therefor. It shall also inform the Secretary-General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed.

Art. 16. Nothing in articles 10, 11 and 14 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens.

Art. 17. Nothing in this convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.

Art. 18. The restrictions permitted under this convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.

SECTION II

Art. 19. To ensure the observance of the engagements undertaken by the High Contracting Parties in the present convention, there shall be set up:

(1) A European Commission of Human Rights hereinafter referred to as "the Commission";

(2) A European Court of Human Rights, hereinafter referred to as "the Court".

SECTION III

Art. 20. The Commission shall consist of a number of members equal to that of the High Contracting Parties. No two members of the Commission may be nationals of the same State.

Art. 21. (*a*) The members of the Commision shall be elected by the Committee of Ministers by an absolute majority of votes, from a list of names drawn up by the bureau of the Consultative Assembly; each group of the representatives of the High Contracting Parties in the Consultative Assembly shall put forward three candidates, of whom two at least shall be its nationals.

(2) As far as applicable, the same procedure shall be followed to complete the Commission in the event of other States subsequently becoming Parties to this Convention, and in filling casual vacancies.

Art. 22. (1) The members of the Commission shall be elected for a period of six years. They may be re-elected. However, of the members elected at the first election, the terms of seven members shall expire at the end of three years.

(2) The members whose terms are to expire at the end of the initial period of three years shall be chosen by lot by the Secretary-General of the Council of Europe immediately after the first election has been completed.

(3) A member of the Commission elected to replace a member whose term of office has not expired shall hold office for the remainder of his predecessor's term.

(4) The members of the Commission shall hold office until replaced. After having been replaced, they shall continue to deal with such cases as they already have under consideration.

Art. 23. The members of the Commission shall sit on the Commission in their individual capacity.

Art. 24. Any High Contracting Party may refer to the Commission, through the Secretary-General of the Council of Europe, any alleged breach of the provisions of the Convention by another High Contracting Party.

Art. 25. (1) The Commission may receive petitions addressed to the Secretary-General of the Council

of Europe from any person, non-governmental organization or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in this convention, provided that the High Contracting Party against which the complaint has been lodged has declared that it recognizes the competence of the Commission to receive such petitions. Those of the High Contracting Parties who have made such a declaration undertake not do hinder in any way the effective exercise of this right.

(2) Such declarations may be made for a specific period.

(3) The declarations shall be deposited with the Secretary-General of the Council of Europe, who shall transmit copies thereof to the High Contracting Parties and publish them.

(4) The Commission shall only exercise the powers provided for in this article when at least six High Contracting Parties are bound by declarations made in accordance with the preceding paragraphs.

Art. 26. The Commission may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognized rules of international law, and within a period of six months from the date on which the final decision was taken.

Art. 27. (1) The Commission shall not deal with any petition submitted under article 25 which

(*a*) Is anonymous, or

(*b*) Is substantially the same as a matter which has already been examined by the Commission or has already been submitted to another procedure of international investigation or settlement and if it contains no relevant new information.

(2) The Commission shall consider inadmissible any petition submitted under article 25 which it considers incompatible with the provisions of the present Convention, manifestly ill-founded, or an abuse of the right of petition.

(3) The Commission shall reject any petition referred to it which it considers inadmissible under article 26.

Art. 28. In the event of the Commission accepting a petition referred to it:

(*a*) It shall, with a view to ascertaining the facts, undertake together with the representatives of the parties an examination of the petition and, if need be, an investigation, for the effective conduct of which the States concerned shall furnish all necessary facilities, after an exchange of views with the Commission;

(*b*) It shall place itself at the disposal of the parties concerned with a view to securing a friendly settlement of the matter on the basis of respect for human rights as defined in this convention.

Art. 29. (1) The Commission shall perform the functions set out in article 28 by means of a sub-commission consisting of seven members of the Commission.

(2) Each of the parties concerned may appoint as members of this sub-commission a person of its choice.

(3) The remaining members shall be chosen by lot in accordance with arrangements prescribed in the rules of procedure of the Commission.

Art. 30. If the sub-commission succeeds in effecting a friendly settlement in accordance with article 28, it shall draw up a report, which shall be sent to the States concerned, to the Committee of Ministers and to the Secretary-General of the Council of Europe for publication. This report shall be confined to a brief statement of the facts and of the solution reached.

Art. 31. (1) If a solution is not reached, the Commission shall draw up a report on the facts and state its opinion as to whether the facts found disclose a breach by the State concerned of its obligations under the Convention. The opinions of all the members of the Commission on this point may be stated in the report.

(2) The report shall be transmitted to the Committee of Ministers. It shall also be transmitted to the States concerned, who shall not be at liberty to publish it.

(3) In transmitting the report to the Committee of Ministers the Commission may make such proposals as it thinks fit.

Art. 32. (1) If the question is not referred to the Court in accordance with article 48 of this convention within a period of three months from the date of the transmission of the report to the Committee of Ministers, the Committee of Ministers shall decide by a majority of two-thirds of the members entitled to sit on the Committee whether there has been a violation of the Convention.

(2) In the affirmative case, the Committee of Ministers shall prescribe a period during which the High Contracting Party concerned must take the measures required by the decision of the Committee of Ministers.

(3) If the High Contracting Party concerned has not taken satisfactory measures within the prescribed period, the Committee of Ministers shall decide by the majority provided for in paragraph (1) above what effect shall be given to its original decision and shall publish the report.

(4) The High Contracting Parties undertake to regard as binding on them any decision which the Committee of Ministers may take in application of the preceding paragraphs.

Art. 33. The Commission shall meet in camera.

Art. 34. The Commission shall take its decisions by a majority of the Members present and voting; the sub-commission shall take its decisions by a majority of its members.

Art. 35. The Commission shall meet as the circumstances require. The meetings shall be convened by the Secretary-General of the Council of Europe.

Art. 36. The Commission shall draw up its own rules of procedure.

Art. 37. The secretariat of the Commission shall be provided by the Secretary-General of the Council of Europe.

SECTION IV

Art. 38. The European Court of Human Rights shall consist of a number of judges equal to that of the Members of the Council of Europe. No two judges may be nationals of the same State.

Art. 39. (1) The members of the Court shall be elected by the Consultative Assembly by a majority of the votes cast from a list of persons nominated by the Members of the Council of Europe; each Member shall nominate three candidates, of whom two at least shall be its nationals.

(2) As far as applicable, the same procedure shall be followed to complete the Court in the event of the admission of new Members of the Council of Europe, and in filling casual vacancies.

(3) The candidates shall be of high moral character and must either possess the qualifications required for appointment to high judicial office or be jurisconsults of recognized competence.

Art. 40. (1) The members of the Court shall be elected for a period of nine years. They may be re-elected. However, of the members elected at the first election the terms of four members shall expire at the end of three years, and the terms of four more members shall expire at the end of six years.

(2) The members whose terms are to expire at the end of the initial periods of three and six years shall be chosen by lot by the Secretary-General immediately after the first election has been completed.

Art. 41. The Court shall elect its President and Vice-President for a period of three years. They may be re-elected.

Art. 42. The members of the Court shall receive for each day of duty a compensation to be determined by the Committee of Ministers.

Art. 43. For the consideration of each case brought before it, the Court shall consist of a chamber composed of seven judges. There shall sit as an *ex officio* member of the chamber the judge who is a national of any State party concerned, or, if there is none, a person of its choice who shall sit in the capacity of judge; the names of the other judges shall be chosen by lot by the President before the opening of the case.

Art. 44. Only the High Contracting Parties and the Commission shall have the right to bring a case before the Court.

Art. 45. The jurisdiction of the Court shall extend to all cases concerning the interpretation and application of the present Convention which the High Contracting Parties or the Commission shall refer to it in accordance with article 48.

Art. 46. (1) Any of the High Contracting Parties may at any time declare that it recognizes as compulsory *ipso facto* and without special agreement the jurisdiction of the Court in all matters concerning the interpretation and application of the present convention.

(2) The declarations referred to above may be made unconditionally or on condition of reciprocity on the part of several or certain other High Contracting Parties or for a specified period.

(3) These declarations shall be deposited with the Secretary-General of the Council of Europe, who shall transmit copies thereof to the High Contracting Parties.

Art. 47. The Court may only deal with a case after the Commission has acknowledged the failure of efforts for a friendly settlement and within the period of three months provided for in article 32.

Art. 48. The following may bring a case before the Court, provided that the High Contracting Party concerned, if there is only one, or the High Contracting Parties concerned, if there are more than one, are subject to the compulsory jurisdiction of the Court or, failing that, with the consent of the High Contracting Party concerned, if there is only one, or of the High Contracting Parties concerned if there are more than one:

(*a*) The Commission;

(*b*) A High Contracting Party whose national is alleged to be a victim;

(*c*) A High Contracting Party which referred the case to the Commission;

(*d*) A High Contracting Party against which the complaint has been lodged.

Art. 49. In the event of dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court.

Art. 50. If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from

the present Convention, and if the internal law of the said party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party.

Art. 51. (1) Reasons shall be given for the judgment of the Court.

(2) If the judgment does not represent in whole or in part the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.

Art. 52. The judgment of the Court shall be final.

Art. 53. The High Contracting Parties undertake to abide by the decision of the Court in any case to which they are parties.

Art. 54. The judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.

Art. 55. The Court shall draw up its own rules and shall determine its own procedure.

Art. 56. (1) The first election of the members of the Court shall take place after the declarations by the High Contracting Parties mentioned in article 46 have reached a total of eight.

(2) No case can be brought before the Court before this election.

SECTION V

Art. 57. On receipt of a request from the Secretary-General of the Council of Europe, any High Contracting Party shall furnish an explanation of the manner in which its internal law ensures the effective implementation of any of the provisions of this Convention.

Art. 58. The expenses of the Commission and the Court shall be borne by the Council of Europe.

Art. 59. The members of the Commission and of the Court shall be entitled, during the discharge of their functions, to the privileges and immunities provided for in article 40 of the Statute of the Council of Europe and in the agreements made thereunder.

Art. 60. Nothing in this Convention shall be construed as limiting or derogating from any of the human rights and fundamental freedoms which may be ensured under the laws of any High Contracting Party or under any other agreement to which it is a party.

Art. 61. Nothing in this Convention shall prejudice the powers conferred on the Committee of Ministers by the Statute of the Council of Europe.

Art. 62. The High Contracting Parties agree that, except by special agreement, they will not avail themselves of treaties, conventions or declarations in force between them for the purpose of submitting, by way of petition, a dispute arising out of the interpretation or application of this Convention to a means of settlement other than those provided for in this Convention.

Art. 63. (1) Any State may, at the time of its ratification or at any time thereafter, declare by notification addressed to the Secretary-General of the Council of Europe that the present convention shall extend to all or any of the territories for whose international relations it is responsible.

(2) The Convention shall extend to the territory or territories named in the notification as from the thirtieth day after the receipt of this notification by the Secretary-General of the Council of Europe.

(3) The provisions of this convention shall be applied in such territories with due regard, however, to local requirements.

(4) Any State which has made a declaration in accordance with paragraph 1 of this article may at any time thereafter declare on behalf of one or more of the territories to which the declaration relates that it accepts the competence of the Commission to receive petitions from individuals, non-governmental organizations or groups of individuals in accordance with article 25 of the present convention.

Art. 64. (1) Any State may, when signing this Convention or when depositing its instrument of ratification, make a reservation in respect of any particular provision of the Convention to the extent that any law then in force in its territory is not in conformity with the provision. Reservations of a general character shall not be permitted under this article.

(2) Any reservation made under this article shall contain a brief statement of the law concerned.

Art. 65. (1) A High Contracting Party may denounce the present convention only after the expiry of five years from the date on which it became a party to it and after six months' notice contained in a notification addressed to the Secretary-General of the Council of Europe, who shall inform the other High Contracting Parties.

(2) Such a denunciation shall not have the effect of releasing the High Contracting Party concerned from its obligations under this convention in respect of any act which, being capable of constituting a violation of such obligations, may have been performed by it before the date at which the denunciation became effective.

(3) Any High Contracting Party which shall cease to be a Member of the Council of Europe shall cease

to be a party to this convention under the same conditions.

(4) The Convention may be denounced in accordance with the provisions of the preceding paragraphs in respect of any territory to which it has been declared to extend under the terms of article 63.

Art. 66. (1) This Convention shall be open to the signature of the Members of the Council of Europe. It shall be ratified. Ratifications shall be deposited with the Secretary-General of the Council of Europe.

(2) The present Convention shall come into force after the deposit of ten instruments of ratification.

(3) As regards any signatory ratifying subsequently, the Convention shall come into force at the date of the deposit of its instrument of ratification.

(4) The Secretary-General of the Council of Europe shall notify all the Members of the Council of Europe of the entry into force of the Convention, the names of the High Contracting Parties who have ratified it, and the deposit of all instruments of ratification which may be effected subsequently.

RESOLUTION CONCERNING AN INTER-AMERICAN COURT TO PROTECT THE RIGHTS OF MAN[1]

Approved by the Inter-American Council of Jurists on 13 June 1950

NOTE

The Inter-American Council of Jurists, created by virtue of article 57 of the Charter of the Organization of American States, held its first meeting at Rio de Janeiro, 22 May–15 June 1950. The functions of the Council of Jurists are described in the charter as being "to serve as an advisory body on juridical matters; to promote the development and codification of public and private international law; and to study the possibility of attaining uniformity in the legislation of the various American countries, in so far as it may appear desirable".

The agenda of the meeting had been prepared in advance by the Pan American Union, acting in cooperation with a special committee of the Council of the Organization. Fourteen topics were listed, dealing successively with the statutes of the Council, its regulations and the regulations of its Permanent Committee, the former Inter-American Juridical Committee; a number of concrete problems of international law, and the elaboration of a plan for the codification of public and private international law. Among the concrete problems was the preparation of the draft statute of an inter-American court to protect the rights of man. This project had its origin in a resolution of the Bogotá Conference of 1948, in which the conference proclaimed that the protection of the internationally recognized rights of man should be guaranteed by a juridical organ, and that where internationally recognized rights were concerned the juridical protection to be effective should emanate from an international organ, and then proceeded to recommend that the Inter-American Juridical Committee should prepare a draft statute providing for the creation and functioning of such a court.

The Juridical Committee, acting upon the mandate entrusted to it, examined the problem in detail and arrived at the conclusion, among others, that the lack of positive substantive law upon the subject of human rights constituted a serious obstacle to the jurisdiction of an international court. Moreover, the Juridical Committee was of the opinion that the proposed statute would "involve a radical transformation of the constitutional systems in effect in all the American countries", particularly in States which had adopted a federal regime, and that in consequence the time had not arrived for drafting the proposed statute.

The Council of Jurists approved the report of its permanent committee and referred it, together with the relevant documents, to the secretariat of the Council of the Organization with the recommendation that the Council include the problem in the agenda of the second meeting of the Council of Jurists. Resolution X of the Final Act reads as follows:

INTER-AMERICAN COURT TO PROTECT THE RIGHTS OF MAN

Whereas:

Resolution XXXI of the Ninth International Conference of American States assigned to the Inter-American Juridical Committee of Rio de Janeiro the preparation of a draft statute for the creation and functioning of an inter-American court to guarantee the rights of man;

The Inter-American Juridical Committee of Rio de Janeiro duly presented a report[2] in which it states that "the lack of positive law on the subject is a serious obstacle to the preparation of such a Statute"; that it would be advisable first to prepare, with the approval of the States, a Convention thereon; and that the preparation of a Statute of such a nature "would necessarily imply a radical change in the constitutional systems in force". In this report there is one dissenting vote, which agrees with the conclusions and dissents in part from their justification;

The Inter-American Juridical Committee of Rio de Janeiro demonstrates in its report that it made an exhaustive study of the problem in the light of the principles of American law,

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[1] Text of the Resolution in *Final Act of the First Meeting of the Inter-American Council of Jurists*, Rio de Janeiro, 22 May–15 June 1950, Washington (Pan American Union), 1950, pp. 23–24. Text transmitted through the courtesy of Professor Charles G. Fenwick, Director, Department of International Law and Organization, Pan American Union, Washington. The introductory note was prepared by Professor Fenwick.

[2] Inter-American Juridical Committee, *Report to the Inter-American Council of Jurists concerning Resolution XXXI of the Conference of Bogotá (Inter-American Court to Protect the Rights of Man)*, Washington (Pan American Union), November 1949.

The Inter-American Council of Jurists,

Taking into account the antecedents and facts furnished by experience and present realities surrounding the matter under study,

Resolves:

1. To approve the report of the Inter-American Juridical Committee of Rio de Janeiro on the creation of an inter-American court to protect the rights of man.

2. To transmit the said report to the general secretariat of the Council of the Organization of American States with the documents, draft texts, and opinions presented at this first meeting, with the recommendation that the said council include the same topic in the agenda of the second meeting of the Inter-American Council of Jurists.

DECLARATIONS, RESOLUTIONS AND RECOMMENDATIONS ADOPTED BY THE FOURTH INTER-AMERICAN RADIO CONFERENCE, WASHINGTON, 1949[1]

Introductory Note. In 1936, the Inter-American Conference for the Maintenance of Peace, meeting in Buenos Aires, adopted a resolution recommending "that the governments of America . . . shall endeavor to encourage, in radio broadcasting, the inclusion of themes relative to the benefits of peace and the peaceful settlement of international controversies". On the other hand, the Inter-American Conference on Problems of War and Peace, in Mexico City in 1945, recommended "that the American Republics recognize the essential obligation to guarantee to their peoples free and impartial access to sources of information" and "take measures, individually and in co-operation with one another, to promote a free exchange of information among their peoples".

The Inter-American Radio Conferences have devoted particular attention to these questions, as evidenced by a great many resolutions and recommendations. The purpose of these conferences, which were attended by representatives from almost all American countries, is the examination and discussion of regional radio problems and developments. The first meeting was held in Havana, Cuba, in 1937, the second in Santiago, Chile, in 1940; the third in Rio de Janeiro, Brazil, in 1945, and the fourth in Washington, D.C., in the United States, in 1949, combined with the Radio Conference of the International Telecommunication Union (region 2).[2]

Since the recommendations relating to freedom of radio communication, freedom of information and the international exchange of programmes adopted in Santiago and Rio de Janeiro have not been implemented to the desired extent, the Washington Conference decided to endorse the decisions previously taken and to strengthen their wording. This applies, in particular, to the declaration concerning the freedom of radio communication, a statement of principles placed ahead of all other resolutions and recommendations. It also applies to the resolution relating to the interchange and re-transmission of radio broadcast programmes, which, more strongly worded than most recommendations of this kind, constitutes an "urgent appeal to the administrations and broadcasting organizations of the American nations" to take the necessary and appropriate measures. These two texts, as well as two recommendations relating to freedom of information in radio communication and to the use of radio in international relations, are reproduced hereunder.

DECLARATION CONCERNING THE FREEDOM OF RADIO COMMUNICATION

The Fourth Inter-American Radio Conference, Washington (1949),

Considering:

A. That the second Inter-American Radio Conference, Santiago, 1940, adopted recommendation III relating to freedom of radio communications;

B. That the American countries should at this conference reaffirm the basic importance of said principle;

C. That consideration of this matter at the next plenipotentiary Inter-American Telecommunication

[1] English text in *Inter-American Radio Agreement*, Washington, 1949. The Fourth Inter-American Radio Conference adopted, in July 1949, an Inter-American Radio Agreement, which replaces the Inter-American Radio Agreement done at Santiago, 1940. The delegates of the following countries, duly authorized by their Governments, adopted the Agreement: Argentina, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, El Salvador, Ecuador, United States of America, Guatemala, Honduras, Mexico, Nicaragua, Panama, Uruguay and Venezuela.

[2] It may be mentioned here that in September 1946 the "*Asociación Interamericana de Radiodifusión*" (The Inter-American Association for Radio Broadcasting) was established in Mexico City, as a result of discussions which had taken place in Rio de Janeiro in 1945 with the third Inter-American Radio Conference. The fundamental objectives of this association are to establish principles of freedom and responsibility within the radio broadcasting industry, so as to promote peace and continental solidarity and a better understanding among peoples. To attain these aims, the Association promised to carry out the doctrine of international and inter-American agreements which reached definitive expression in the Inter-American Conference on the Problems of War and Peace in Mexico City in 1945.

Among the rights which the Association intends to protect are the right to free expression of thought by radio to the same extent as the right of written expression of thought, and the affirmation of the right of every individual to listen freely to the broadcasts of national or foreign stations.

At its meeting in São Paulo in 1950, the Association approved a resolution providing that broadcasting stations of the New World would agree to collaborate with the Radio Division of the United Nations in the broadcasting of its programmes and news reports and would recommend the setting aside of five minutes a day for the re-transmission of news about the United Nations.

Conference should receive most thorough attention and study so as to appropriately reflect the dignity of this subject.

Declares:

1. That the American countries, in order to maintain and further improve the friendly relations existing among their peoples, affirm the principle of freedom of radio communication, particularly in those services connected with the dissemination of information to the public;

2. That each one of the American countries should take such steps to put into effect and apply this principle in practice as may be practicable and consistent with its internal legal provisions and the applicable international agreements;

3. That the subject matter covered by this declaration should receive the most thorough study by the next plenipotentiary Inter-American Telecommunication Conference, with a view to including in future conventions an article concerning freedom of radio communication.

RESOLUTION RELATING TO INTERCHANGE AND RE-TRANSMISSION OF RADIO BROADCAST PROGRAMMES

The Fourth Inter-American Radio Conference, Washington (1949),

Considering:

A. That in previous Inter-American Radio Conferences the vital importance of the interchange and transmission of broadcasting programmes between the American nations has been set forth and fully discussed, for the strengthening of good relations and mutual knowledge and the development of their respective cultural, artistic, educational, scientific, historical and informative activities;

B. That a clear result of such considerations was contained in the Agreement of the Second Inter-American Radio Conference, Santiago, Chile (1940), recommendation IV of which reads textually as follows:

"It is recommended that authorized broadcasting organizations of the interested countries exchange, sufficiently in advance, programmes of their broadcasts, especially all those relating to important national or international events. In this case, it is recommended that telegraph or telephone be utilized, if necessary, to thus assure receipt with sufficient time for appropriate publicity and its re-transmission, as far as possible";

C. That the Agreement of the third Inter-American Conference signed in Rio de Janeiro (1945) contained in article 25 the following provisions which substantially confirm the recommendation quoted in the preceding consideration:

"With the purpose of promoting the closest possible relations between the peoples of the American region, the contracting governments shall adopt the necessary measures, to the extent of their respective possibilities, to facilitate and extend the re-transmission and continued reciprocal interchange of cultural broadcasting programmes of an artistic, educational, scientific, and historical nature. The information concerning such broadcasts shall be furnished with as much advance notice as possible, in order to assure maximum publicity and dissemination";

D. That, despite the preceding considerations, up to the present time interchange of programmes and transmissions has not been made to the desired extent;

E. That this conference acknowledges and confirms the vital importance and urgent need that this interchange be effected as soon as possible for the purposes indicated,

Resolves:

1. To make an urgent appeal to the administrations and broadcasting organizations of the American nations in order that, as a contribution to the culture and solidarity between their peoples, they should adopt the necessary and appropriate measures in accordance with their respective interests and possibilities to intensify as soon as possible the interchange of programmes and cultural broadcasting material of artistic, educational, scientific, historical and informative character, of national and international interest, for the re-transmission thereof;

2. To recommend that the next plenipotentiary Inter-American Telecommunication Conference fully review this question in order to achieve the specific means deemed necessary and advisable so that such interchange of programmes and the retransmission thereof may be made in a manner which fundamentally tends to strengthen the democratic feelings of the peoples of America.

RECOMMENDATION RELATING TO FREEDOM OF INFORMATION IN RADIO COMMUNICATION

The Fourth Inter-American Radio Conference, Washington (1949),

Considering:

A. That in the Acts of Chapultepec, emanating from the Inter-American Conference held in Mexico in 1945, it was recommended to the American countries:

(1) That they recognize the essential obligation they have to guarantee to their peoples free and impartial access to the sources of information;

(2) That they adopt jointly and separately measures to develop unrestricted interchange of information between their peoples,

B. That one of the most effective means of promoting the interchange of information among the peoples is by the liberalization of all government regulations dealing with the transmission and reception of press news addressed to multiple destinations;

C. That freedom of thought is one of the most important conquests of civilization and is the fundamental basis of democratic systems of government;

D. That radio communication provides an effective medium for the expression of human thought which is comparable to the press;

Recommends:

1. That the new Inter-American and international regulations be drafted to provide as follows:

(*a*) Press radio communications for multiple destinations may consist of information and news intended for publication, reproduction, or broadcasting, and of Press service messages dealing with the collection and distribution of news, with messages of a private nature strictly prohibited. Any portion of these communications may be addressed for the specific attention of any one or more of the authorized recipients.

(*b*) The news organization sending those communications shall communicate to the transmitting organization the names and addresses of all authorized recipients. The transmitting organizations shall in turn notify each interested administration of the names and addresses of the authorized recipients in its territory.

(*c*) The administration of each country of reception, after confirming the good faith of the recipients shall, in so far as its internal legislation permits, authorize them to carry out reception by means of their own facilities or installations, by means of radio receivers of the recipients, and/or of other private persons;

2. That the American Governments promulgate the necessary measures to give the expression of thought on the radio the same effective guarantees of freedom as the Press enjoys;

3. That the American Governments adopt the measures necessary for lowering the cost of services to radio broadcasting stations and of radio transmitting and receiving equipment, and especially the elimination of fiscal charges which burden the development and use of these facilities for the expression of thought.

RECOMMENDATION CONCERNING THE USE OF RADIO IN INTERNATIONAL RELATIONS

The Fourth Inter-American Radio Conference, Washington (1949),

Considering:

That it is highly desirable that radio—and especially broadcasting services—contribute to the greatest extent to further international co-operation and strengthen peace,

Recommends:

1. That radio and especially broadcasting services, be utilized in the interest of peace, in order to increase international co-operation and mutual understanding among peoples;

2. That the countries of the American region, Members of the International Telecommunication Union, the United Nations, and UNESCO, take steps to implement this recommendation and keep these organizations informed.

RECOMMENDATION CONCERNING THE USE OF RADIO IN THE FIELD OF EDUCATION

The Fourth Inter-American Radio Conference, Washington (1949),

Considering:

A. That it is necessary to develop and increase the international use of radio, especially broadcasting services, in order to strengthen moral and intellectual ties among peoples;

B. That it is necessary to foster international information and provide facilities leading to the attainment of a better culture;

C. That many countries need technical assistance, as evidenced in the reports of the Commission on Technical Needs of UNESCO, making it necessary to remedy the lack of radio equipment and personnel, as soon as possible;

D. That radio is one of the means of communication which is most effective in reducing illiteracy and promoting basic education;

E. That in the American region some countries possess highly developed broadcasting services, while others lack adequate facilities;

F. That in the American region great opportunities exist for mutual help among radio organizations;

Recommends:

1. That the countries of the American region use radio—especially broadcasting services—to the maximum possible extent in order to reduce illiteracy and promote basic education;

2. That material and technical aid should be given to those countries which have not yet developed efficient broadcasting services;

3. That the training of technical radio personnel should be encouraged for the mutual benefit of all the countries of the American region;

4. That the countries of the American region which are Members of the International Telecommunication Union, the United Nations, and UNESCO, take steps to implement this recommendation and keep these organizations informed.

WEST INDIAN CONFERENCE

Fourth Session,[1] held in Curaçao (Netherlands West Indies), 27 November to 8 December 1950

NOTE

In January 1944, the Governments of the United Kingdom and the United States announced a system of regular consultation with representatives of their Caribbean territories on matters of common interest, to be conducted under the auspices of the Anglo-American Caribbean Commission, a regional organization formed by the two governments in 1942. As a result of this announcement, the first West Indian Conference was held in Barbados, British West Indies, in 1944. The idea of a regular conference where representatives of the territories could discuss matters of common interest was incorporated in the later four-Power agreement signed by the Governments of the French Republic, the Kingdom of the Netherlands, the United Kingdom of Great Britain and Northern Ireland, and the United States of America on 30 October 1946, by the terms of which the Anglo-American Caribbean Commission became the Caribbean Commission. The aim of the Agreement, as in the earlier one, is to encourage and strengthen co-operation among the signatories and their territories in the Caribbean, with a view to improving the economic and social well-being of the peoples of those territories and to promote scientific, technological and economic development in the Caribbean area.

Articles X–XIII of the Agreement provide for the "West Indian Conference" as an auxiliary body of the Caribbean Commission whose sessions shall afford the opportunity to present to the Commission recommendations on matters of common interest within the terms of reference of the Commission. The Conference meets every two years. Delegates to the Conference are appointed for each territory in accordance with its constitutional procedure. Territories within the scope of the Caribbean Commission and therefore eligible to send representatives to the West Indian Conference are the Bahamas, Barbados, British Guiana, British Honduras, French Guiana, Guadeloupe, Jamaica, the Leeward Islands, Martinique, Netherlands Antilles, Puerto Rico, Surinam, Trinidad, the Virgin Islands of the United States, and the Windward Islands.

The signatories to the Agreement agreed that the objectives set forth therein are in accord with the principles of the Charter of the United Nations. The basis for relations between the Caribbean Commission and the United Nations is to be found in article XVIII of the Agreement, which reads as follows:

"The Commission and its auxiliary bodies, while having no present connexion with the United Nations, shall co-operate as fully as possible with the United Nations and with appropriate specialized agencies on matters of mutual concern within the terms of reference of the Commission.

"The Member Governments undertake to consult with the United Nations and the appropriate specialized agencies, at such times and in such manner as may be considered desirable, with a view to defining the relationship which shall exist and to ensuring effective co-operation between the Commission and its auxiliary bodies and the appropriate organs of the United Nations and specialized agencies, dealing with economic and social matters."

Upon invitation by the Secretary-General of the Caribbean Commission, an observer represented the Secretary-General of the United Nations at the third and fourth sessions of the West Indian Conference.

INTERNATIONAL DECLARATION OF HUMAN RIGHTS[2]

Recommendation:

That the Conference, having taken note of the work already done by the United Nations in the drafting of an International Declaration of Human Rights, expresses the hope that a declaration in the spirit of the draft will be finally adopted as early as possible; that, in the meantime, the legislatures of the Caribbean territories will be guided by such of the principles enunciated in the draft Declaration as have not already

[1] The complete report on the fourth session of the West Indian Conference is to be found in *Caribbean Commission, Central Secretariat, West Indian Conference, Fourth Session, 1951.*

[2] This document is taken from the report of the Secretary-General of the Caribbean Commission concerning action taken by metropolitan or territorial governments on recommendations made by the third session of the West Indian Conference in 1948. The report was submitted to the fourth session of the West Indian Conference (1950) in conformity with instructions issued by the Caribbean Commission (seventh meeting), December 1948. When this recommendation was adopted by the third session of the West Indian Conference, the exact title and text of the Universal Declaration of Human Rights adopted and proclaimed on 10 December 1948 by the General Assembly of the United Nations was not yet known to the participants. Text, *op. cit.*, p. 25.

been incorporated in their statutes or constitutions; and that, as soon as the Declaration has been finally adopted by the United Nations, the terms thereof will be implemented in full, as speedily as possible.

Action taken:

The national sections agreed to make the necessary representations to the territorial governments. It is worthy of note that this recommendation was endorsed by the Member Governments in their joint statement of March 1950.

HUMAN RIGHTS[1]

We realize that the Universal Declaration of Human Rights, to which reference is made in the report of the third session of this conference, has been adopted by the General Assembly of the United Nations.

We note that the national sections of the Caribbean Commission agreed to make the necessary representations to the territorial governments concerning the Declaration, and that the Member Governments of the Commission endorsed this decision in their joint statement of March 1950. We wish to place on record our appreciation of the progress already made.

We recommend:

That the Commission be requested to recommend to member and territorial Governments the continued and accelerated implementation, wherever necessary in the Caribbean territories, of the principles and objectives set forth in the Declaration of Human Rights, with special reference to article 21 of the Declaration.[2]

[1]This recommendation was adopted by the fourth session of the West Indian Conference on 27 November 1950. Text, *op. cit.*, p. 58.

[2]Article 21 of the Universal Declaration reads as follows:

"(1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

"(2) Everyone has the right of equal access to public service in his country.

"(3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections, which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures."

JOINT STATEMENT OF THE GOVERNMENTS OF THE FRENCH REPUBLIC, THE KINGDOM OF THE NETHERLANDS, THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE UNITED STATES OF AMERICA REGARDING RECOMMENDATIONS OF THE WEST INDIAN CONFERENCE (THIRD SESSION) AND THE OBJECTIVES OF THE CARIBBEAN COMMISSION[3]

issued on 6 March 1950

1. The Governments of the French Republic, the Kingdom of the Netherlands, the United Kingdom of Great Britain and Northern Ireland and the United States of America have given careful study and consideration to the recommendations made by the West Indian Conference (third session), which was held under the auspices of the Caribbean Commission at Basse-Terre, Guadeloupe, on 1-14 December 1948, and to the Caribbean Commission's views on these recommendations.

. . .

13. The four Governments support the recommendations that the legislatures of the Caribbean territories should be guided by the principles enunciated in the Universal Declaration of Human Rights, in so far as these principles may not have already been incorporated in the statutes or constitutions of the territories concerned.

[3]English text of the statement in *Caribbean Commission Monthly Information Bulletin*, Vol. 3, April 1950, pp. 308 and 304.

AGREEMENT ON THE IMPLEMENTATION OF THE PROVISIONS IN SECT. 10 OF THE DANISH NATIONALITY ACT OF 27 MAY 1950, IN SECT. 10 OF THE NORWEGIAN NATIONALITY ACT OF 8 DECEMBER 1950, AND IN SECT. 10 OF THE SWEDISH NATIONALITY ACT OF 22 JUNE 1950[1]

dated 21 December 1950

Art. 1. If, under the legislation of one of the Contracting States, birth within the territory of that State is a condition for the acquisition of its nationality, birth within the territory of one of the other Contracting States shall have equal validity when such provision is applied.

Art. 2. If, under the legislation of one of the Contracting States, residence in that State is a condition for the acquisition of its nationality, residence in any of the other Contracting States shall have the same effect when such provision is applied. However, this shall only apply with respect to periods of residence held before the person in question attained the age of twelve years.

Further, this article shall not apply in relation to provisions as to whether a child shall acquire the nationality of a Contracting State by and through the acquisition of such nationality by one of its parents, nor in relation to naturalization or to the acquisition of nationality pursuant to article 3 of this agreement.

Art. 3. A citizen of one of the Contracting States may acquire the nationality of any of the other Contracting States by a written declaration to this effect to the authority appointed for this purpose by the latter State, provided that he

(1) Has not acquired the nationality of the former State by naturalization;

(2) Has completed his twenty-first but not his sixtieth year;

(3) Has been resident in the latter State for the last ten years;

(4) During that period has not been sentenced to imprisonment nor has received a sentence involving measures which, in this respect, according to the legislation of the latter State, have the same disqualifying consequences as an imprisonment.

Furthermore, when applying the provision in paragraph 1, sub-paragraph 1, of the present article, a person who has acquired citizenship by the naturalization of one of his parents is also considered as having himself acquired citizenship by naturalization.

Art. 4. A citizen of one of the Contracting States who has previously been a citizen of any of the other Contracting States and who has taken up residence in the latter State may reacquire the nationality of this State by a written declaration to this effect to the authority appointed for this purpose by the said State.

Such declaration, however, can be made only if the person, since the time when he lost the nationality he wishes to reacquire, without interruption has been in possession of the nationality of one or more of the Contracting States.

Art. 5. If, under articles 3 or 4 of this agreement, a citizen of one of the Contracting States acquires the nationality of any of the other Contracting States, his unmarried children under the age of eighteen years shall acquire the same nationality in accordance with the provisions pertaining thereto in the nationality law of that State.

Art. 6. The provisions in articles 1 and 2 of the present agreement shall not apply in cases in which birth or residence within the territory of one of the Contracting States is a condition for the acquisition of the nationality of that State under the provisional arrangements of article 13, paragraphs 1 and 3, of the Danish Nationality Act of 27 May 1950, articles 11, 13 and 14 of the Norwegian Nationality Act of 8 December 1950, or articles 15 (paragraph 2), 16 and 18, of the Swedish Nationality Act of 22 June 1950.

Art. 7. The present agreement shall come into force on 1 January 1951.

Should the Danish Nationality Act of 27 May 1950, or the Norwegian Nationality Act of 8 December 1950, or the Swedish Nationality Act of 22 June 1950, be amended, the present Agreement shall be considered as no longer valid in relation between the State which has amended its legislation and the other Contracting Parties, unless the latter declare their willingness to continue to apply the provisions of the present Agreement.

Furthermore, the present Agreement may be denounced on a notice of six months by any of the Contracting States.

[1] The help of the governments concerned in providing the original texts is gratefully acknowledged. The English text will be published in the United Nations *Treaty Series*. See also Professor Sørensen's comments on this agreement, p. 67 of the present *Yearbook*. Article 10 of the Swedish Act, reproduced on p. 266 of the present *Yearbook*, is identical with article 10 of the Danish and Norwegian Acts.

BILATERAL TREATIES AND AGREEMENTS

AGREEMENT BETWEEN THE GOVERNMENT OF INDIA AND THE GOVERNMENT OF PAKISTAN

dated 8 April 1950

Introductory Note.[1] The Agreement was arrived at on 8 April 1950, between the Prime Ministers of India and Pakistan, as a result of discussions between them following the serious situation created by communal disturbances in West Bengal, Assam and Tripura, in India, and East Bengal, in Pakistan.

The Agreement has a general aspect and a special one. Generally, it deals with the fundamental rights of the minorities in India and Pakistan, with measures for preventing communal disorders and for repressing any such disorders as might occur in any part of India or Pakistan in the future. In addition, this Agreement deals with the special situation created in West Bengal, Assam and Tripura, in India, and in East Pakistan, aiming particularly at the suppression of disorders wherever they may occur, ending the exodus of minorities by creating conditions necessary for the restoration of confidence, return of refugees to their homes, and establishment of machinery for implementation of these purposes.

The fundamental rights of minorities, as embodied in the constitutional instruments of India and Pakistan, include complete equality of citizenship irrespective of religion, protection of life, property, personal honour and culture, and choice of occupation, and freedom of speech and worship, subject to law and public morality. Under the Agreement, the two Governments reaffirm that the enjoyment of these rights is guaranteed to all their nationals without distinction, and state that minorities shall have equal opportunity with the majority to participate in public life, hold political and other office and serve in the civil and armed forces. It has also been re-emphasized as a most important principle that the minorities owe allegiance and loyalty to the State of which they are citizens, and that they should look for redress of grievances to their own Government.

Among measures of general application approved by the two Governments with the aim of preventing future communal disturbances are: punishment of those found guilty of offences against persons and property and other criminal offences; imposition of collective fines where necessary; recovery of looted property; prohibition of propaganda in either country directed against the territorial integrity of the other, or purporting to incite war between them; prevention of dissemination of distorted information and mischievous opinion designed to rouse communal animosities by the press or radio or by individuals or organizations, and punishment of those responsible for such propaganda. Other important features of the Agreement are non-recognition of forced religious conversions and establishment of an agency to assist in the return of abducted women to their homes.

The part of the Agreement relating to conditions in West Bengal, Assam and Tripura in India and East Bengal in Pakistan, contains further special provisions. The most important of these measures is the decision of the Governments of India and Pakistan to depute one Minister in each Government to remain in the affected areas as long as necessary in order to help restore confidence, facilitate the return of refugees to their homes, and assist generally in the implementation of the provisions of the agreement.

Still another important measure accepted by both Governments provides that a Minister of the minority community would be included in the Governments of West Bengal and Assam, in India, and East Bengal in Pakistan; minority commissions are to be established in West Bengal, Assam and East Bengal. Each of these commissions is to consist of a Minister of the provincial or State government concerned and a representative of each of the majority and minority communities, chosen by and from among their respective representatives in the provincial or State legislature. These commissions are to observe and report on the implementation of the Agreement, make recommendations, and advise on action to be taken on their recommendations. The two central Ministers are to remain in touch with the commissions and may attend and participate in their meetings.

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[1] This note was jointly agreed to by Sir Benegal N. Rau, Permanent Representative of India to the United Nations, and Mr. R. S. Chhatari, Alternate Permanent Representative of Pakistan to the United Nations.

Provision has also been made in the Agreement for freedom of movement and protection in transit of migrants and for liberalization of customs restrictions. Furthermore, the rights of a migrant to ownership of his immoveable property and to occupancy of land are to be respected. The immoveable property of a migrant is to be restored to him if he has returned to his home by 31 December 1950. This time-limit was subsequently extended to 31 March 1951. Where restoration is not possible, the Government concerned is to take other measures to rehabilitate the migrants. The right to dispose of property by sale, exchange or otherwise is recognized, and separate committees consisting of three representatives of the minority and presided over by a representative of the government concerned are to be established by the Governments of West Bengal, Assam, Tripura and East Bengal to act as trustees on behalf of the migrant owner with the duty of recovering rents for property according to law. This provision for recognizing the right of disposal of immoveable property and for setting up committees to act as trustees will also apply to all migrants from the four areas who had left their homes prior to the recent disturbances in these areas but after 15 August 1947, as well as to the migrants who left Bihar (India) for East Bengal owing to communal disorder or fear of such disorder.

Provision has also been made for the establishment of an inquiry commission by each Government to report on the causes and extent of the recent disturbances and to make recommendations with a view to preventing a recurrence of communal disorders.

On 10 April 1950, the Prime Minister of India made a comprehensive statement on the agreement when presenting it to Parliament.[1] On the same date, the Prime Minister of Pakistan made a statement on the agreement before the Constituent Assembly of Pakistan.[2]

TEXT

A. The Governments of India and Pakistan solemnly agree that each shall ensure to the minorities throughout its territory, complete equality of citizenship, irrespective of religion, a full sense of security in respect of life, culture, property and personal honour, freedom of movement within each country and freedom of occupation, speech and worship, subject to law and morality. Members of the minorities shall have equal opportunity with members of the majority community to participate in the public life of their country, to hold political or other office, and to serve in their country's civil and armed forces. Both Governments declare these rights to be fundamental and undertake to enforce them effectively. The Prime Minister of India has drawn attention to the fact that these rights are guaranteed to all minorities in India by its Constitution. The Prime Minister of Pakistan has pointed out that similar provision exists in the Objectives Resolution adopted by the Constituent Assembly of Pakistan. It is the policy of both Governments that the enjoyment of these democratic rights shall be assured to all their nationals without distinction.

Both Governments wish to emphasize that the allegiance and loyalty of the minorities is to the State of which they are citizens, and that it is to the Government of their own State that they should look for the redress of their grievances.

B. In respect of migrants from East Bengal, West Bengal, Assam and Tripura, where communal disturbances have recently occurred, it is agreed between the two Governments:

(i) That there shall be freedom of movement and protection in transit.

(ii) That there shall be freedom to remove as much of his moveable personal effects and household goods as a migrant may wish to take with him. Moveable property shall include personal jewellery. The maximum cash allowed to each adult migrant will be Rs. 150 and to each migrant child Rs. 75.

(iii) That a migrant may deposit such of his personal jewellery or cash as he does not wish to take with him with a bank. A proper receipt shall be furnished to him by the bank for cash or jewellery thus deposited, and facilities shall be provided, as and when required, for their transfer to him, subject, as regards cash, to the exchange regulations of the Government concerned.

(iv) That there shall be no harassment by the customs authorities. At each customs post agreed upon by the Governments concerned, liaison officers of the other Government shall be posted to ensure this in practice.

(v) Rights of ownership in or occupancy of the immoveable property of a migrant shall not be disturbed. If, during his absence, such property is occupied by another person, it shall be returned to him, provided that he comes back by 31 December 1950. Where the migrant was a cultivating owner or tenant, the land shall be restored to him, provided that he returns not later than 31 December 1950. In exceptional cases, if a Government considers that a migrant's immoveable property cannot be returned to him, the matter shall be referred to the appropriate minority commission for advice.

[1] This statement was published in *India News Bulletin*, issued by the Embassy of India to the United States, Washington, 10 April 1950.

[2] This statement was published in a document issued on 11 April 1950 by the Permanent Delegation of Pakistan to the United Nations.

Where restoration of immoveable property to the migrant who returns within the specified period is found not possible, the Government concerned shall take steps to rehabilitate him.

(vi) That in the case of a migrant who decides not to return, ownership of all his immoveable property shall continue to vest in him and he shall have unrestricted right to dispose of it by sale, by exchange with an evacuee in the other country, or otherwise. A committee consisting of three representatives of the minority and presided over by a representative of Government shall act as trustees of the owner. The committee shall be empowered to recover rent for such immoveable property according to law.

The Governments of East Bengal, West Bengal, Assam and Tripura shall enact the necessary legislation to set up these committees.

The provincial or State government, as the case may be, will instruct the district or other appropriate authority to give all possible assistance for the discharge of the committee's functions.

The provisions of this sub-paragraph shall also apply to migrants who may have left East Bengal for any part of India, or West Bengal, Assam or Tripura for any part of Pakistan, prior to the recent disturbances but after 15 August 1947. The arrangement in this sub-paragraph will apply also to migrants who have left Bihar for East Bengal owing to communal disturbances or fear thereof.

C. As regards the Province of East Bengal and each of the States of West Bengal, Assam and Tripura respectively, the two Governments further agree that they shall:

(1) Continue their efforts to restore normal conditions and shall take suitable measures to prevent recurrence of disorder;

(2) Punish all those who are found guilty of offences against persons and property and of other criminal offences. In view of their deterrent effect, collective fines shall be imposed, where necessary. Special courts will, where necessary, be appointed to ensure that wrongdoers are promptly punished;

(3) Make every possible effort to recover looted property;

(4) Set up immediately an agency, with which representatives of the minority shall be associated, to assist in the recovery of abducted women;

(5) Not recognize forced conversions. Any conversion effected during a period of communal disturbance shall be deemed to be a forced conversion. Those found guilty of converting people forcibly shall be punished.

(6) Set up a commission of inquiry at once to inquire into and report on the causes and extent of the recent disturbance and to make recommendations with a view to preventing recrudescence of similar trouble in future. The personnel of the commission, which shall be presided over by a judge of the High Court, shall be such as to inspire confidence among the minority;

(7) Take prompt and effective steps to prevent the dissemination of news and mischievous opinion calculated to rouse communal passion by press or radio or by any individual or organization. Those guilty of such activity shall be rigorously dealt with;

(8) Not permit propaganda in either country directed against the territorial integrity of the other or purporting to incite war between them, and shall take prompt and effective action against any individual or organization guilty of such propaganda.

D. Sub-paragraphs (1), (2), (3), (4), (5), (7) and (8) of *C* of the Agreement are of general scope and applicable, according to exigency, to any part of India or Pakistan.

E. In order to help restore confidence, so that refugees may return to their homes, the two Governments have decided (i) to depute two Ministers, one from each Government, to remain in the affected areas for such period as may be necessary; (ii) to include in the Cabinets of East Bengal, West Bengal and Assam a representative of the minority community. In Assam, the minority community is already represented in the Cabinet. Appointments to the Cabinets of East Bengal and West Bengal shall be made immediately.

F. In order to assist in the implementation of this agreement, the two Governments have decided, apart from the deputation of their Ministers referred to in *E*, to set up minority commissions, one for East Bengal, one for West Bengal and one for Assam. These commissions will be constituted and will have the functions described below.

(i) Each Commission will consist of one Minister of the provincial or State government concerned, who will be Chairman, and one representative each of the majority and minority communities from East Bengal, West Bengal and Assam, chosen by and from among their respective representatives in the provincial or State legislatures, as the case may be.

(ii) The two Ministers of the Governments of India and Pakistan may attend and participate in any meeting of any commission. A minority commission or any two minority commissions jointly shall meet when so required by either central Minister for the satisfactory implementation of this agreement.

(iii) Each commission shall appoint such staff as it deems necessary for the proper discharge of its functions and shall determine its own procedure.

(iv) Each commission shall maintain contact with the minorities in districts and small administrative headquarters through minority boards formed in accordance with the Inter-Dominion Agreement of December 1948.

(v) The minority commissions in East Bengal and West Bengal shall replace the provincial minorities boards set up under the Inter-Dominion Agreement of December 1948.

(vi) The two Ministers of the central Governments will from time to time consult such persons or organizations as they may consider necessary.

(vii) The functions of the minority commission shall be:

(*a*) To observe and to report on the implementation of this agreement and, for this purpose, to take cognizance of breaches or neglect.

(*b*) To advise on action to be taken on their recommendations.

(viii) Each commission shall submit reports, as and when necessary, to the provincial and State governments concerned. Copies of such reports will be submitted simultaneously to the two central Ministers during the period referred to in *E*.

(ix) The Governments of India and Pakistan, and the State and provincial governments, will normally give effect to recommendations that concern them when such recommendations are supported by both the central Ministers. In the event of disagreement between the two central Ministers, the matter shall be referred to the Prime Ministers of India and Pakistan, who shall either resolve it themselves or determine the agency and procedure by which it will be resolved.

(x) In respect of Tripura, the two central Ministers shall constitute a commission and shall discharge the functions that are assigned under the Agreement to the minority commissions for East Bengal, West Bengal and Assam. Before the expiration of the period referred to in *E*, the two central Ministers shall make recommendations for the establishment in Tripura of appropriate machinery to discharge the functions of the minority commissions envisaged in respect of East Bengal, West Bengal and Assam.

G. Except where modified by this agreement, the Inter-Dominion Agreement of December 1948 shall remain in force.

Jawaharlal NEHRU,
Prime Minister of India

Liaquat Ali KHAN,
Prime Minister of Pakistan

DECISION TAKEN AT THE REVIEW IN AUGUST 1950 OF THE WORKING OF THE INDO-PAKISTAN MINORITY AGREEMENT OF 8 APRIL 1950[1]

1. JOINT PRESS NOTE ISSUED BY THE GOVERNMENTS OF INDIA AND PAKISTAN ON 16 AUGUST 1950

The two central Ministers of India and Pakistan, Mr. Biswas and Dr. Malik, and the Chairman of the Minority Commissions of East Bengal and West Bengal, held discussions with the Prime Minister and representatives of the Government of India from 3 to 5 August and with the Prime Minister and representatives of the Government of Pakistan on 9 and 10 August. At these meetings, the working of the Indo-Pakistan Minorities Agreement of 8 April was brought under close review. In particular, difficulties that have been experienced in practice in the implementation of some clauses of the Agreement and the further measures necessary to speed up the restoration of confidence in the minds of the minority community in West Bengal, East Bengal and Assam were fully discussed. The decisions taken have been embodied in the annexure.

These decisions provide in particular for measures for dealing with communal incidents and their prevention, the restoration to the returning migrant owner or migrant occupier of his property and the tightening up of the procedure for the recovery and restoration of abducted women and the punishment of offenders.

COMMUNAL INCIDENTS

As regards communal incidents, it has been agreed that every communal incident brought to the notice of the authorities shall be promptly investigated and effective deterrent action taken against the miscreants, including government servants, if any, who may have been guilty of dereliction of duty; that the widest publicity should be given to action taken to deal with the offenders; and that in each case the causes underlying the incident shall be investigated in order that remedial measures may be taken to prevent the recurrence of such incidents. The presidents and members of union boards will be charged with the special responsibility of preventing communal incidents in rural areas and of actively promoting goodwill between the two communities. In areas where communal incidents are of frequent occurrence, influential persons,

[1] The text of the following joint press note, issued by the Governments of India and Pakistan, and of the annexure was received through the courtesy of Sir Benegal N. Rau, Ambassador, Permanent Representative of India to the United Nations, and Mr. R. S. Chhatari, Alternate Representative of Pakistan to the United Nations.

particularly those belonging to the majority community, should be appointed special constables and charged with the responsibility for preventing such incidents. In addition in such areas, or whenever in any area a serious communal disturbance takes place and the inhabitants are found to have been either responsible for such crimes or not diligent in preventing them, a collective fine shall be imposed or a punitive police force stationed. Action shall also be taken against government officers who are found to have acted against the spirit of the agreement or who in any way fail to implement it or who directly or indirectly lend support to persons opposed to the Agreement.

Returning Migrants

As regards returning migrants, the following principal decisions have been taken.

Firstly, the Governments of West Bengal, East Bengal and Assam will persuade employers of industrial labour and other private employers to reinstate returning migrants in their old jobs.

Secondly, all migrants shall be entitled to the restoration of their immoveable property as stated below:

A. *Urban property*

Third parties occupying migrants' houses without lawful authority shall be ejected by the Government, and the possession of such houses shall be restored to the migrant owner or migrant occupier immediately he returns. As regards houses requisitioned by Government, those requisitioned after the Agreement shall be de-requisitioned if at the time they were requisitioned they were in occupation of the owner or his relations or tenants. Every attempt will also be made to de-requisition such of the recently requisitioned houses as are periodically visited by their owners and remain for the rest of the year in the occupation of their employees. As far as practicable, the same principles should apply to houses requisitioned before the disturbances. In future, houses occupied by the owners or their relatives or tenants in a *bona fide* manner will not be requisitioned except for urgent governmental requirements. Rent or compensation for a requisitioned house shall be promptly assessed and regularly paid. In the event of the migrant owner or migrant occupier returning before 31 December 1950, the house shall be de-requisitioned.

B. *Rural property*

Migrants' lands which are under the *aus* and jute crops shall be restored to returning migrants whenever they return after the end of the *aus* or jute harvest and third parties now in occupation shall be ejected. Where according to this arrangement the entire holding, including the homestead, cannot be restored to the migrant, he shall be provided with alternative accommodation.

As regards lands under the *aman* crop, it shall be open to the migrant to return at any time after 15 January and before 31 March 1951, when such lands shall be restored to him on return.

Vacant homesteads and lands on which no crops have so far been grown shall not be allotted to third parties. It shall be open to the migrant owner or migrant tenant or occupier to return and occupy such lands and houses at any time before 31 March 1951, and the State or provincial government shall assist him in obtaining possession of such lands and houses immediately on return.

Recovery and Restoration of Abducted Women

As regards the recovery and restoration of abducted women, it has been agreed that recovery should be quick; that during the investigation and trial the abducted woman should be kept in neutral custody; that the trial should be speedy and the punishment to the offender deterrent; and that such women must eventually be restored to their relations. For this purpose, it was agreed that police officers should be given powers to search without a warrant houses and places where an abducted woman is suspected to have been kept and that the two central Ministers should examine the question whether any other additional legal powers are necessary to facilitate recovery and punish offenders.

2. TEXT OF ANNEXURE TO THE INDO-PAKISTAN MINORITY AGREEMENT

I. Communal Incidents

1. It was agreed:

(i) That whenever a communal incident is brought to the notice of the authorities, it should be promptly investigated and effective action should be taken against the miscreants, including government servants, if any, who may have been guilty of dereliction of duty;

(ii) That the widest publicity should be given by Government to action taken to deal with the offenders;

(iii) That investigation should be directed to determine the causes of the particular incident in order that remedial measures might be devised and taken to prevent the recurrence of such incidents.

2. It was agreed that each and every incident reported by one Government to the other should be inquired into promptly and, if the facts are established, action taken to bring the wrongdoers to book. The result of the inquiry and the action taken should be communicated to the other Government. Priority in the matter of inquiry and action should be given to the more serious incidents, including cases involving offences against women. Wherever necessary, the State or provincial government should set up a special machinery or place officers on special duty so that those inquiries may be undertaken quickly.

3. It was agreed that the presidents and members of union boards should be charged with special responsibility for the prevention of communal incidents in their areas, the protection and the welfare of the minorities and the promotion of goodwill between the two communities. Instructions to this effect should be issued to the union boards by each State or provincial government.

It was also agreed that the legal implications of this should be further examined, as also the possibilities of penal or disciplinary action against the presidents and members of union boards in the event of their failure to discharge this responsibility.

4. It was agreed that in areas where communal incidents are of frequent occurrence, influential persons—particularly those belonging to the majority community—should be appointed as special constables and charged with responsibility for the prevention of such incidents—in particular, abduction or molestation of, or insults to, women—and for the apprehension of offenders.

5. It was agreed that an area where a serious communal disturbance takes place, or where there is a succession of incidents involving oppression or harassment of the minorities, and where the inhabitants have either themselves been responsible for the crimes or have not been diligent in preventing the commission of such crimes, should be penalized by the levy of a collective fine or the imposition of a punitive police force.

6. It was agreed that a deterrent sentence should be awarded on an offender convicted of communal crime, particularly in cases involving offences against women.

II. Recovery and Restoration of Abducted Women

1. It was agreed that the procedure to be adopted in East Bengal, West Bengal and Assam should be such as to ensure (*a*) speedy recovery of abducted women, (*b*) during investigation and trial her interim custody in a neutral institution where she can be free from extraneous influence, (*c*) speedy trial and punishment of the offenders, and (*d*) the ultimate restoration of the recovered woman to her relations.

2. So far as trial and punishment of the offender are concerned, it was agreed that the normal penal law and procedure should continue to be followed; but that steps should be taken to ensure that investigation and trial are prompt and that a deterrent sentence is awarded in case of conviction.

3. It was agreed that police officers of a stated rank should be given the power to search without a warrant houses and places where, according to information received by them, an abducted woman might be found.

4. It was further agreed that the two central Ministers should examine the question whether any other additional powers were necessary to deal with such cases, and in particular whether for the purpose of recovery and custody the definition of an abducted woman should be framed on the model of the Punjab Acts.

5. It was agreed that upon the recovery of an abducted woman, it should be obligatory for the police and the court to remit her to the custody of a home to be established by the provincial or State government, and that this should be done irrespective of the age of the recovered woman, her statement before the magistrate or the police, or the defence case.

6. Such homes for the custody of recovered women should be established by the provincial or State government at such places as may be considered necessary. With the management of such homes should be associated an advisory committee consisting of an official chairman and non-official women members, a majority of whom shall belong to the minority community.

III. Delinquent Government Officers

1. Attention of officers of both Governments should be drawn to the provisions of paragraph 7 of the Delhi Agreement of December 1948.

2. It was agreed that disciplinary action should be taken against officers who are found to be acting against the spirit of the Agreement or in any way fail to implement it, or who directly or indirectly lend support to persons who are against the agreement.

3. The Governments of East Bengal and West Bengal have already taken steps to appoint a focal officer who would receive copies of complaints received against government officers and who would be kept informed of the progress of the departmental proceedings. It will be the responsibility of the focal officer to ensure that these cases are dealt with promptly and that the punishment awarded is adequate. It was agreed that the Government of Assam should also be asked to appoint a similar focal officer.

IV. Restoration of Houses and Lands to Migrants

It was agreed that the Governments of West Bengal, East Bengal and Assam should immediately assume powers necessary to eject unauthorized occupants of migrants' property and to restore the possession of such property to the migrant owner or occupier on his return.

In this connexion, the following decisions should be given the widest publicity:

(A) *Urban Property*

As regards migrants' houses occupied by third parties without lawful authority, the provincial or State

governments concerned undertake to eject such persons from those houses immediately on the return of migrant owners or migrant occupiers, and to restore possession of such houses to them.

As regards houses belonging to the minority community which have been requisitioned by Government, it is agreed as follows

(*a*) That with regard to houses requisitioned after the April agreement all houses belonging to the minority community which were in the occupation of owners or their relations or tenants shall, if requisitioned, be de-requisitioned and possession shall be restored to those who occupied such houses at the time of requisitioning. Every attempt will also be made to de-requisition such requisitioned houses as are periodically visited by their owners and for the rest of the year remain in the occupation of their employees. As far as practicable, the same principles should apply to houses requisitioned before the disturbances;

(*b*) That in future, houses which are occupied by the owners or their relations or by their tenants will not be requisitioned, provided, however, that houses which are occupied in a *bona fide* manner by members of the minority community may be requisitioned in future only for urgent governmental requirements, and orders of requisition should be issued only after a careful examination of the case by a responsible government officer of high status;

Note. Urgent governmental requirements shall not include finding accommodation for individual refugee families, but may include the establishment of refugee camps by Government.

(*c*) That the procedure for de-requisitioning should be made as simple as possible;

(*d*) That, in the event of requisition, adequate time should be allowed to the owners for the removal of their furniture and other moveable property;

(*e*) That rent or compensation will be promptly assessed and, in the case of rent, shall be paid regularly; any arrears of rent that may have accumulated shall be cleared off as quickly as possible;

(*f*) That in the event of a migrant owner or migrant occupier of a requisitioned house returning to his home before 31 December 1950, the house shall be de-requisitioned.

(B) *Rural Property*

1. (*a*) It was agreed that migrants' lands which are under the *aus* and jute crops shall be restored to returning migrants whenever they return after the end of the *aus* or jute harvest and the third parties (whether authorized allottees or trespassers) now in occupation shall be ejected.

(*b*) In the event of the migrant not returning, such lands shall not be re-allocated to third parties before 31 March 1951.

(*c*) Where according to these arrangements, the entire holding, along with the homestead, cannot be restored to the migrant, he shall be provided with alternative accommodation.

(*d*) In all such cases the overriding consideration should be the restoration of all the immoveable property of the migrant to him at the earliest possible date.

2. As regards lands under the *aman* crop, it shall be open to the migrant to return at any time after 15 January 1951 and before 31 March 1951, when such lands shall be restored to him on return.

3. Vacant homesteads and lands on which no crops have so far been grown shall not be allotted to third parties. It shall be open to the migrant owner or migrant tenant or occupier to return and occupy such lands and houses at any time before 31 March 1951, and the provincial or State government shall assist him in obtaining possession of such lands and houses immediately on return.

V. Jurisdiction of Trust Committees

With regard to the difference of opinion which has arisen between East Bengal and West Bengal as to whether the trust committees, under clause (VI), section *B* of the Agreement, could assume management of the property of a migrant who applies in writing asking for such arrangement without formally declaring his intention not to return, it was decided that the two central Ministers will give their final decision in the matter on return to Calcutta.

VI. Customs

1. It was agreed that customs officers on both sides should be asked to give liberal interpretation to the term "migrant", and that elaborate examination of a traveller to ascertain whether he is a migrant or not should be avoided.

2. It was agreed that it should be impressed upon the customs authorities on both sides of the border that a "certificate of status" was not necessary in order to enable a migrant to bring his personal jewellery.

3. It was agreed that the question of the detention of cattle at Benapole and other border points in East Bengal should receive the highest priority of consideration at the next chief secretaries' conference.

4. It was also agreed that the procedure for the speedy return of articles seized by customs before the Agreement should be resolved at the next chief secretaries' conference. In the meantime, the time-limit of three months after which seized articles are due to be sold by auction should be extended.

VII. Displaced Industrial Labour

The Governments of West Bengal, East Bengal and Assam agree to persuade employers of industrial labour and other private employers to reinstate returning migrants in their old jobs.

VIII. Publication of Figures of Migration between West Bengal and East Bengal

It was decided that only agreed figures of migrant traffic at checking stations in East Bengal and West Bengal should in future be published. The mechanism necessary for obtaining such figures should be worked out at the next chief secretaries' conference.

IX. District Minorities Boards

1. In view of the fact that some members of district minorities boards had migrated to the other country, it was agreed that district minorities boards in either country should be reconstituted immediately, wherever necessary.

2. It is understood that rules relating to the grant of transport facilities and travelling allowances to members of minorities boards in respect of journeys authorized by the boards already exist. These rules should be brought to the notice of the members of the boards by the district officers.

3. It was agreed that sub-divisional minorities boards should be established both in East Bengal and in West Bengal and Assam.

X. Publicity and Propaganda

1. It was agreed that pamphlets and literature regarding the Indo-Pakistan Agreement should be circulated more widely—particularly in the rural areas.

2. It was agreed that a communal harmony week should be celebrated in East Bengal, West Bengal and Assam in the near future.

3. It was also agreed that such propaganda, in order to be effective, should be sustained.

TREATY OF FRIENDSHIP, COMMERCE, AND NAVIGATION BETWEEN THE UNITED STATES OF AMERICA AND IRELAND[1]

signed at Dublin, 21 January 1950

Art. I. . . . Nationals of either Party, within the territories of the other Party, shall be permitted: (*a*) to travel therein freely, and to reside at places of their choice; (*b*) to enjoy liberty of conscience; (*c*) to hold both private and public religious services; (*d*) to bury their dead according to their religious customs in suitable and convenient places; and (*e*) to gather and to transmit material for dissemination to the public abroad, and otherwise to communicate with other persons inside and outside such territories by mail, telegraph and other means open to general public use . . . subject to . . . measures . . . necessary to maintain public order and . . . to protect the public health, morals and safety.

Art. II. Nationals of either Party within the territories of the other Party shall be free from unlawful molestations of every kind, and shall receive the most constant protection and security, in no case less than that required by international law. . . . If . . . a national of the other Party is accused of crime and taken into custody, the diplomatic representative or nearest consular representative of his country shall on the demand of such national be immediately notified. Such national shall: (*a*) receive reasonable and humane treatment; (*b*) be formally and immediately informed of the accusations against him; (*c*) be brought to trial as promptly as is consistent with the proper preparation of his defence; and (*d*) enjoy all means reasonably necessary to his defence.

Art. III. Nationals . . . shall . . . be exempt from compulsory service in the armed forces of the other Party and . . . exempt from all contributions in money or in kind . . . in lieu thereof . . . [except] when both Parties are . . . concurrently conducting hostilities or enforcing measures . . . for the maintenance or restoration of international peace and security. . . . In this event, nationals of either Party . . . [may] elect . . . to serve in the armed forces of the Party of which they are nationals. . . .

Art. IV. Nationals of either Party shall be accorded national treatment in the application of laws and regulations within the territories of the other Party that (*a*) establish a right of recovery for injury or death, or that (*b*) establish a pecuniary compensation, or other benefit or service, on account of disease, injury or death arising out of and in the course of employment or due to the nature of employment . . . and . . . shall . . . be accorded national treatment in the application of laws and regulations establishing systems of compulsory insurance, under which benefits are paid without an individual test of financial need: (*a*) against loss of wages or earnings due to old age, unemployment, sickness or disability, or (*b*) against loss of financial support due to the death of father, husband or other person on whom such support had depended.

Art. V. Each Party shall at all times accord equitable treatment to the capital of nationals and companies of the other Party. . . .

Art. VI. Nationals and companies of either Party shall be accorded . . . national treatment with respect to: (*a*) . . . . publishing, scientific, educational, religious, philanthropic and professional activities, except the practice of law; (*b*) obtaining and maintaining patents of invention, and rights in trade marks, trade names, trade labels, and industrial property of all kinds; (*c*) having access to the courts of justice and to administrative tribunals and agencies, in all degrees of jurisdiction, both in pursuit and in defence of their rights; and (*d*) employing attorneys, interpreters and other agents and employees of their choice . . . and . . . shall further be accorded . . . most-favoured-nation treatment with respect to: (*a*) the matters referred to in . . . the present article; and (*b*) engaging . . . in fields of . . . cultural activities . . .

Art. VIII. The dwellings, offices, warehouses, factories and other premises of nationals and companies of either Party located within the territories of the other Party shall not be subject to unlawful entry or molestation. Official searches and examinations of such premises and their contents, when necessary, shall be made with careful regard for the convenience of the occu-

[1] *Source:* United States, Department of State publication No. 4076, Treaties and Other International Acts Series 2155. Ireland, *Treaty Series, 1950*, No. 7, Dublin, Stationery Office, 1950. Text received through the courtesy of the United States Government and the Government of Ireland. See also the summary on p. 323 of this *Yearbook*. This treaty was signed at Dublin, 21 January 1950; ratification advised by the Senate of the United States, 6 July 1950; ratified by the President of the United States, 26 July 1950; and ratified by Ireland, 13 September 1950. Ratifications were exchanged at Dublin, 14 September 1950; the treaty was proclaimed by the President of the United States, 15 December 1950; and it entered into force 14 September 1950.

pants and the conduct of business . . . Property . . . shall receive the most constant protection and security . . . in no case less than that required by international law [and] . . . not be taken without the prompt payment of just and effective compensation. Nationals and companies . . . shall be permitted to withdraw from the territories of the other Party the whole or any portion of such compensation, and . . . to obtain exchange in the currency of their own country freely at a rate of exchange that is just and reasonable. . . .

Art. XIX. There shall be freedom of transit through the territories of each Party by the routes most convenient for international transit: (*a*) for nationals of the other Party, together with their baggage; (*b*) for other persons . . . and (*c*) for articles en route to or from the territories of such other Party . . . free from unnecessary delays and restrictions. . . .

Art. XX. . . . The present treaty does not accord any rights to engage in political activities. . . .

TREATY OF FRIENDSHIP BETWEEN THE PHILIPPINES AND THAILAND[1]

Signed in Washington on 14 June 1949
Ratifications exchanged on 1 August 1950

Article 5 of this treaty contains provisions securing to nationals of each contracting party within the territory of the other party the right to acquire, possess and dispose of property, to travel, to reside and to engage in trade, industry and other peaceful and lawful pursuits. Nationals of each contracting party shall also enjoy in the territory of the other party the same treatment as is accorded to the nationals of the other party in matters of procedure with respect to the protection and security of their persons and property and in regard to all judicial, administrative and other legal proceedings.

[1]This note is based on information transmitted through the courtesy of the Secretary-General of the Council of Ministers, Bangkok.

PART IV

A. THE UNITED NATIONS AND HUMAN RIGHTS

B. ADVISORY OPINIONS AND JUDGMENTS OF THE INTERNATIONAL COURT OF JUSTICE

A. THE UNITED NATIONS AND HUMAN RIGHTS

CHAPTER I

THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

SECTION I

PUBLICIZING THE DECLARATION

The year 1950 was marked by the increasing impact of the Universal Declaration of Human Rights upon the peoples of the world. In accordance with the terms of General Assembly resolution 217 D (III) and with the co-operation of many governments, the text of the Declaration was translated into a number of new languages. By the end of the year it was available in the following: Arabic, Basque, Chinese, Czech, Danish, Dutch, English, Esperanto, Finnish, Flemish, French, German (Austrian version), Greek, Hebrew, Iranian (Persian), Irish, Italian, Japanese, Korean, Macedonian, Norwegian, Portuguese, Russian, Serbo-Croat, Sinhalese, Slovak, Slovene, Spanish, Swedish, Tagalog, Tamil and Turkish. The efforts of the United Nations Member Governments, specialized agencies, and non-governmental organizations resulted in wide distribution of these texts and greatly increased the publicity and educational materials based on the Declaration.

The United Nations itself, mainly through the Department of Public Information, produced and distributed new pamphlets, posters, discussion guides, films and filmstrips, radio and television broadcasts. Regional United Nations information centres made these materials available to governments, newspapers, periodicals, radio stations, non-governmental organizations and interested individuals. In many instances they were reproduced and adapted to local needs.

The Economic and Social Council, when discussing the teaching of the purposes and principles of the United Nations at its eleventh session, invited UNESCO (resolution 314 (XI)) in consultation with the United Nations ". . . to encourage and facilitate teaching about the Universal Declaration of Human Rights in schools and adult education programmes and through the press, radio and film services".

UNESCO continued to enlarge the educational programme based on the Universal Declaration which it had inaugurated in 1949. The General Conference, held in Florence, Italy, in the summer of 1950, mapped out a programme of education in human rights to be developed and implemented by its departments of Mass Communication, Education, Social Sciences, Natural Sciences and Cultural Activities. During the year, UNESCO produced a number of pamphlets, films, filmstrips, radio scripts, posters and other materials in the field of human rights. The human rights exhibit which had been mounted in the Musée Galliera (Paris) late in 1949 was made available to a number of French university cities during 1950 and attracted wide attention. UNESCO, in addition, prepared an inexpensive album of photographs, taken from the exhibit, with text and commentary in a number of languages, suitable for the use of schools and interested non-governmental organizations.

Ministries of education in many countries made increasing use of the Universal Declaration in teaching about human rights. In many instances, United Nations and UNESCO materials were used as teaching aids in schools. Many State and private universities held lectures on the Declaration and the United Nations human rights programmes, organized seminars and essay contests, and prepared special studies adapted for the use of their students. Model United Nations assemblies laid special emphasis on the human rights programme.

The first Regional Conference of National Commissions of UNESCO, held in Havana, Cuba, late in 1950, adopted resolutions urging Member Governments to make wider use of the materials already prepared in the languages of the Western hemisphere, to teach about human rights "with maximum intensity" on all levels of public and private education, and to give added prominence to the celebration of 10 December, the anniversary of the adoption of the Universal Declaration as Human Rights Day.

Conferences of non-governmental organizations closely associated with the United Nations and UNESCO took a special interest in the dissemination of the Universal Declaration. In the publications of a large number of non-governmental organizations the text of the Universal Declaration was reproduced and an increasing demand was made for material prepared by the United Nations and UNESCO suitable for use in study programmes. The International Federation of University Women devoted a conference held in Zurich, Switzerland, to the theme of the Universal Declaration of Human Rights. A pamphlet including the principal addresses was published subsequently by UNESCO in English and French.

SECTION II

HUMAN RIGHTS DAY

Early in 1949, the Director-General of UNESCO had called for the world-wide observance of 10 December as Human Rights Day. As reported in the *Yearbook on Human Rights for 1949* (p. 327), celebrations took place in a large number of countries.

At its fifth session, the General Assembly adopted resolution 423 (V), on 4 December 1950, which reads as follows:

The General Assembly,

Considering that on 10 December 1948 the General Assembly proclaimed the Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations,

Considering that the Declaration marks a distinct step forward in the march of human progress,

Considering that the anniversary of this event should be appropriately celebrated in all countries as part of a common effort to bring the Declaration to the attention of the peoples of the world,

Expressing its appreciation to all those countries Members and non-members of the United Nations which have already celebrated this anniversary,

1. *Invites* all States and interested organizations to adopt 10 December of each year as Human Rights Day, to observe this day to celebrate the proclamation of the Universal Declaration of Human Rights by the General Assembly on 10 December 1948, and to exercise increasing efforts in this field of human progress;

2. *Invites* all States to report annually through the Secretary-General concerning the observance of Human Rights Day.

The adoption of the Human Rights Day resolution gave added weight to the appeals of the Secretary-General and the Director-General of UNESCO for a widespread observance of the day in all member countries.[1] UNESCO, in calling for a Human Rights Week, had prepared suggestions for celebrations in the schools and for special features in the local press and in radio programmes as well as for public ceremonies. These appeals found wide response. Reports indicated that the anniversary was celebrated in some forty-six countries, in most instances the celebration being a co-operative effort in the planning of which governmental authorities, UNESCO, national commissions, United Nations information centres and non-governmental organizations participated. At United Nations headquarters in New York, the celebration took the form of a concert sponsored jointly by the United Nations and UNESCO.

[1] See also "National Laws and other texts concerning the observance of Human Rights Day", on pp. 3–6 of this *Yearbook*.

SECTION III

THE UNIVERSAL DECLARATION OF HUMAN RIGHTS AND DECISIONS OF THE UNITED NATIONS

Since the adoption of the Universal Declaration of Human Rights on 10 December 1948, it has frequently been quoted or referred to in recommendations of the various principal organs of the United Nations. Certain examples were given in the 1949 *Yearbook*. In 1950, the number of resolutions of the General Assembly, the Economic and Social Council and the Trusteeship Council which mention the principles of the Declaration or refer to one or more of its articles has increased. Examples are given in the paragraphs below.

1. *General Assembly*

A. *Treatment of People of Indian Origin in the Union of South Africa*

In resolution 395 (V) the General Assembly repeated the reference to the Universal Declaration which it had made in its previous resolution (265 (III)) when recommending the holding of a round table conference. The relevant paragraphs of resolution 395 (V) read:

"*The General Assembly,*

. . .

"*Having in mind* its resolution 103 (I) of 19 November 1946 against racial persecution and discrimination, and its resolution 217 (III) dated 10 December 1948 relating to the Universal Declaration of Human Rights,

"*Considering* that a policy of racial segregation (*Apartheid*) is necessarily based on doctrines of racial discrimination,

"1. *Recommends* that the Governments of India, Pakistan and the Union of South Africa proceed, in accordance with resolution 265 (III), with the holding of a round table conference on the basis of their agreed agenda and bearing in mind the provisions of the Charter of the United Nations and of the Universal Declaration of Human Rights. . . ."

B. *Freedom of Information: Interference with Radio Signals*

Resolution 424 (V), which the General Assembly adopted inviting all governments to refrain from interference with the right of their peoples to freedom of information, opens with a reference to article 19 of the Universal Declaration, as follows:

"Whereas freedom to listen to radio broadcasts regardless of source is embodied in article 19 of the Universal Declaration of Human Rights, which reads: 'Everyone has the right to freedom of opinion and expression', and whereas this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media

and regardless of frontiers". (For the full text of resolution 424 (V), see Chapter III, section II, p. 481 of this *Yearbook*.)

C. *Definition of the Term "Refugee"*

In the Statute of the High Commissioner's Office (General Assembly resolution 428 (V)) and in article 1 of the draft Convention relating to the status of refugees drawn up by the *ad hoc* Committee on Refugees and Stateless Persons, the definition of a refugee in both cases excluded persons who fall "under the provisions of article 14, paragraph 2, of the Universal Declaration of Human Rights". (For the full text of the Statute, see Chapter X, section II, and for the draft Convention see the annex to that chapter, article 1, section E, p. 507 and p. 510 respectively.)

D. *Draft International Covenant on Human Rights and Measures of Implementation*

In resolution 421 (V), the General Assembly stated its views regarding the draft Covenant. In section *E* of this resolution, which concerns especially economic, social and cultural rights, the General Assembly referred to the Universal Declaration five times in emphasizing that the draft Covenant should be based on the principles proclaimed in the Declaration. The relevant paragraphs are:

"*Whereas* the Covenant should be drawn up in the spirit and based on the principles of the Universal Declaration of Human Rights,

"*Whereas* the Universal Declaration regards man as a person, to whom civic and political freedoms as well as economic, social and cultural rights indubitably belong,

. . .

"*Whereas*, when deprived of economic, social and cultural rights, man does not represent the human person whom the Universal Declaration regards as the ideal of the free man,

. . .

"*Calls upon* the Economic and Social Council to request the Commission on Human Rights, in accordance with the spirit of the Universal Declaration, to include in the draft Covenant a clear expression of economic, social and cultural rights in a manner which relates them to the civic and political freedoms proclaimed by the draft Covenant." (For the full text of this resolution see Chapter II, section III, p. 457, of this *Yearbook*.)

E. *Information on Human Rights in Non-Self-Governing Territories*

In resolution 446 (V), the General Assembly requested the Special Committee on information transmitted under Article 73 e of the Charter to include in its report to the sixth session of the General Assembly "such recommendations as it may deem desirable relating to the application in Non-Self-Governing Territories of the principles contained in the Universal Declaration of Human Rights". (For the full text of this resolution, see Chapter XIII, section II.)

In resolution 390 (V), which concerns the future of Eritrea, the General Assembly recommended the inclusion of certain human rights and fundamental freedoms in the future Constitution of Eritrea. The relevant provisions of the resolution, many of which reflect the influence of the Universal Declaration, are reproduced in section III of Chapter XIII.[1]

F. *Observance in Bulgaria, Hungary and Romania of Human Rights and Fundamental Freedoms*

Although the Universal Declaration of Human Rights was not expressly mentioned in the texts of some resolutions, it may be noted that the General Assembly has specifically drawn the attention of governments to their obligations to promote respect for human rights. In resolution 385 (V), for example, which is entitled "Observance in Bulgaria, Hungary and Romania of Human Rights and Fundamental Freedoms", the General Assembly stressed again, as in previous resolutions on this item (272 (III) and 294 (IV)), that promotion of human rights for all is one of the purposes of the United Nations. The opening paragraph of this resolution reads as follows:

"*The General Assembly*,

"*Considering* that one of the purposes of the United Nations is to achieve international co-operation in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion . . ."

G. *Uniting for Peace*

In resolution 377 (V) the General Assembly established a Collective Measures Committee to study and report to the General Assembly and the Security Council on methods which might be used to maintain and strengthen international peace and security in accordance with the purposes and principles of the Charter. In section *E* of this resolution the General Assembly emphasized that lasting peace depends especially on respect for human rights and fundamental freedoms. The text of this section of the resolution reads:

"*The General Assembly*

. . .

"*Is fully conscious* that, in adopting the proposals set forth above, enduring peace will not be secured solely by collective security arrangements against breaches of international peace and acts of aggression, but that a genuine and lasting peace depends also upon the observance of all the principles and purposes estab-

[1] See p. 536 of this *Yearbook*.

lished in the Charter of the United Nations, upon the implementation of the resolutions of the Security Council, the General Assembly and other principal organs of the United Nations intended to achieve the maintenance of international peace and security, and especially upon respect for an observance of economic and social well-being in all countries; and accordingly

"*Urges* Member States to respect fully, and to intensify, joint action, in co-operation with the United Nations, to develop and stimulate universal respect for and observance of human rights and fundamental freedoms, and to intensify individual and collective efforts to achieve conditions of economic stability and social progress, particularly through the development of under-developed countries and areas."

2. *Economic and Social Council*

A. *Provisional Questionnaire of the Trusteeship Council*

In its resolution 275 (X), the Economic and Social Council, acting on the Report of the Commission on Human Rights (fifth session), recommended to the Trusteeship Council that in its revision of the provisional questionnaire the latter Council take into consideration the Universal Declaration of Human Rights, and consider urging the Administering Authorities to continue to secure the effective recognition and observance of the rights and freedoms set forth in the Declaration among the peoples in the Trust Territory under their administration. (For the full text of the resolution, see Chapter XIII, section I.)

B. *Prevention of Discrimination and Protection of Minorities*

In resolution 303 F (XI), the Economic and Social Council requested the Secretary-General to invite all governments to furnish examples of legislation, judicial decisions, and other types of action which have been found especially useful in preventing discrimination "in one or more of the fields covered by the Universal Declaration of Human Rights, and full information regarding the protection of any minority within their jurisdiction by legislative measures and in the light of the Universal Declaration of Human Rights". (For the full text of this resolution, see Chapter V, section III, p. 494 of this *Yearbook*.)

C. *Provisions relating to the Problem of Statelessness*

In resolution 319 B III (IX), the Economic and Social Council made certain recommendations to States regarding the avoidance of statelessness, mentioning the Declaration in the opening paragraphs as follows:

"*The Economic and Social Council,*

. . .

"*Taking note* of article 15 of the Universal Declaration of Human Rights concerning the right of every individual to a nationality;"

. . .

3. *The Trusteeship Council*

A. *Questions of Human Rights and Fundamental Freedoms raised in Certain Petitions concerning the Cameroons under French Administration*

At its sixth session, the Trusteeship Council considered, *inter alia*, certain petitions which raised questions of human rights. In resolution 218 (VI), the Council noted the statement of the Administering Authority that human rights and fundamental freedoms were guaranteed to the inhabitants of the Territory by the French Constitution and that the Universal Declaration of Human Rights had been published in the territory. The Council also expressed the hope that the Administering Authority would continue to take all possible steps to ensure the observance of human rights in the territory.

B. *Statute for the City of Jerusalem*

Towards the end of its sixth session, the Trusteeship Council, in resolution 232 (VI), adopted a statute for the City of Jerusalem (T/592) which, although it was not put into effect, shows the influence of the Universal Declaration in article 9 in the sections in which the human rights and fundamental freedoms to be guaranteed to all inhabitants of the city are set forth. (See Chapter XIII, section I.)

CHAPTER II

DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS AND MEASURES OF IMPLEMENTATION

During the year 1950, considerable progress was made in drafting a covenant on human rights and measures of implementation, which under the terms of General Assembly resolution 217 F (III) were assigned priority in the work of the Commission on Human Rights. Important decisions, especially on matters of policy, were taken by the Commission at its sixth session, by the Economic and Social Council at its eleventh session, and by the General Assembly at its fifth session.

SECTION I

COMMISSION ON HUMAN RIGHTS

(*Sixth Session*)

After the fifth session of the Commission on Human Rights, the text which had then been drawn up was, in accordance with the Commission's decision, transmitted to governments for comment, together with various proposals for additional articles to be included in the Covenant, proposals relating to measures of implementation, and a questionnaire on measures of implementation which the Commission had adopted at that session.[1]

Replies were received from the following Governments: Australia, Denmark, France, India, Israel, Netherlands, Norway, Philippines, USSR, United Kingdom, United States of America, and Yugoslavia (document E/CN.4/353 and addenda).

On the question of economic, social and cultural rights, besides transmitting to governments the texts of all proposals on articles dealing with these rights, the Commission had asked the Secretary-General to prepare a survey of the activities of other bodies of the United Nations and the specialized agencies in matters within the scope of articles 22 to 27 of the Universal Declaration of Human Rights in order to enable the Commission to determine what action it should take in these fields, in particular for the inclusion of these rights either in the Covenant on Human Rights or in later conventions. This survey was submitted to the Commission at its sixth session (documents E/CN.4/364 and E/CN.4/364/Corr.1, 2 and 3).

[1] For an account of the action taken by the Commission at its fifth session, see *Yearbook on Human Rights for 1949*, pp. 330-353.

In addition to the comments of governments and the above survey, the Commission had the following documentation before it at its sixth session:

(*a*) Draft International Covenant on Human Rights (report of the fifth session of the Commission on Human Rights, E/1371, annexes I and II);

(*b*) Recommendations of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on the Draft International Covenant on Human Rights and Measures of Implementation (E/CN.4/351, resolutions D and E, paragraphs 18 to 23, resolution E, paragraph 47; E/CN.4/358, chapters VII, VIII and IX);

(*c*) Proposals on implementation (report of the fifth session of the Commission on Human Rights, E/1371, annex III);

(*d*) Documents referred to the Commission by the General Assembly and by the Economic and Social Council, which included:

i. The Freedom of Association and Protection of the Right to Organize Convention, 1948, and the resolution on international machinery for safeguarding freedom of association adopted by the thirty-first International Labour Conference (resolution 193 (VIII) of the Economic and Social Council; E/CN.4/164 and Add.1);

ii. Infringements of trade union rights (resolution 194 (VIII) of the Economic and Social Council; E/CN.4/156);

iii. Survey of forced labour and measures for its abolition (resolution 195 (VIII) of the Economic and Social Council; E/CN.4/157 and Add.1);

iv. Draft Convention on Freedom of Information (resolution 313 (IV) of the General Assembly and resolution 278 (X) of the Economic and Social Council; E/CN.4/360 and Corr. 1 and 2);

(*e*) Communication from the Director-General of the World Health Organization (E/CN.4/359);

(*f*) Communication from the Director-General of the International Labour Office (E/CN.4/403).

A. *Draft International Covenant on Human Rights*

The Commission took as the basis for its work on the draft Covenant at its sixth session the text adopted at its fifth session (E/1371, annexes 1 and 2) and examined

it article by article in the light of the comments of governments and the above documentation, and it made a number of revisions in the draft. It transmitted to the Economic and Social Council without discussion articles 24 and 25 of the draft (articles 43 and 44 in the draft as transmitted to the Council) which concerned the federal and territorial application clauses, by which the provisions of the Covenant would be extended to the individual states of a Federal State and to Non-Self-Governing Territories.

The Commission discussed the question of including in the draft Covenant articles on economic, social and cultural rights. While some representatives thought that such articles should be included in the draft Covenant, the majority considered that more detailed discussion was necessary than would be possible at the sixth session and that such discussion should include full consultation with the specialized agencies, especially with the International Labour Organisation and the United Nations Educational, Scientific and Cultural Organization.

At its 186th and 187th meetings, the Commission adopted two resolutions concerning the above matters. The first resolution reads as follows:

The Commission on Human Rights,

Considering that the draft Covenant on Human Rights relating to some of the fundamental rights of the individual and to certain essential civil freedoms is the first of the series of covenants and measures to be adopted in order to cover the whole of the Universal Declaration,

Decides to proceed at its first session in 1951 with the consideration of additional covenants and measures dealing with economic, social, cultural, political and other categories of human rights; and to this end

Decides further to consider then the additional proposed articles (included in annex III of the Commission's report on its sixth session) which have not been examined at its sixth session, and the importance of which it fully recognizes, together with any other articles which governments might further propose;

Requests the Economic and Social Council to confirm this decision.

The second resolution reads as follows:

The Commission on Human Rights,

Being resolved to begin at once the preparation of the execution of its programme of work for the year 1951, with a view to assuring to everyone the enjoyment of economic, social and cultural rights as set forth in articles 22 to 27 of the Universal Declaration of Human Rights,

Taking note of the survey prepared by the Secretary-General regarding the activities of other bodies of the United Nations and of the specialized agencies in matters within the scope of the said articles,

Considering the significance of measures already taken or planned to be taken by such bodies and by the specialized agencies, as well as the desirability of promoting and supplementing their activities,

Takes note with gratitude of the readiness of ILO and UNESCO to assist in preparing the draft texts to be considered at its next session; and

Recommends to the Economic and Social Council that it instruct the Secretary-General to take the necessary steps to secure similar co-operation from other United Nations organs and the specialized agencies, and requests him to submit to the Commission, before its first session in 1951, the documents thus assembled, together with any others which he may deem useful.

When the Commission had adopted the article on freedom of information (article 17 of the fifth session draft), it discussed the question of the proposed draft Convention on Freedom of Information in relation to that article of the Covenant, as the General Assembly had requested it to do in resolution 426(V). The Commission pronounced itself in favour of a separate convention on freedom of information and adopted a resolution to that effect (see Chapter III, section II).

B. *Measures of Implementation*

The Commission decided unanimously that some machinery of implementation should be included in the draft Covenant. It was understood, however, that this did not prejudice the possibility of the submission of further measures of implementation by members of the Commission for inclusion in a separate protocol to the Covenant. It decided that the machinery to be established should take the form of a permanent, not an *ad hoc*, body. It rejected a proposal for the consideration of complaints from non-governmental organizations selected in any manner which might be decided upon. It also rejected a proposal for the consideration of petitions from individuals.

The Commission decided in favour of the establishment of a permanent "Human Rights Committee" to be chosen by the States parties to the Covenant. Its functions would consist of ascertaining the facts in cases of alleged violations brought to its attention by a State party to the Covenant, and in making available its good offices to the States concerned with a view to a friendly solution of the matter on the basis of respect for human rights as defined in the Covenant. The Committee would be empowered to act only after available and domestic remedies had been invoked and exhausted.

At its 192nd meeting, the Commission adopted the following resolution:

The Commission on Human Rights

Considers that it is desirable that the Human Rights Committee should be able to obtain from the Inter-

national Court of Justice advisory opinions on questions of law arising in the course of its work; and

Requests the Secretary-General of the United Nations to report to the Economic and Social Council upon the means by which this can be secured in conformity with the Charter of the United Nations.

The Commission adopted the following additional resolution dealing with annual reports by Member States:

The Commission on Human Rights

Submits the draft resolution appearing in the annex hereto to the Economic and Social Council for consideration by the Council with a view to its adoption by the General Assembly:

ANNEX

The General Assembly,

Considering that the States Members of the United Nations have pledged themselves, under Article 56 of the Charter, to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55, and, in particular, to encourage and promote "universal respect for, and observance of, human rights",

Considering that the United Nations has subsequently proclaimed the Universal Declaration of Human Rights,

Requests the Economic and Social Council to instruct the Commission on Human Rights to draw up, subject to its approval, a scheme providing for annual reports to be compiled by States in conjunction with the publication of the *Yearbook on Human Rights*;

Recommends States Members to agree to act in the spirit of the said scheme by forwarding annually to the Secretary-General of the United Nations, in particular with a view to the preparation of the *Yearbook*, a report on the manner in which they have promoted respect for, and the progress of, human rights in the course of the preceding year.

C. *The Right of Petition*

The Commission had before it resolution 217 B (III) of the General Assembly concerning the right of petition, which had been transmitted to it by the Economic and Social Council in resolution 191 (VIII) for the action contemplated therein.

As noted above, the Commission discussed the right of petition when it was considering measures of implementation, and approved the principle that the measures of implementation to be included in the first draft Covenant should include provisions for the consideration of complaints by States and rejected the consideration of complaints from non-governmental organizations.

D. *Transmission of Draft First International Covenant on Human Rights to the Economic and Social Council*

At its 199th meeting, the Commission on Human Rights unanimously decided to submit to the Economic and Social Council, for consideration at its eleventh session, the draft First Covenant on Human Rights with the draft Measures of Implementation, together with the summary records of the 198th and 199th meetings of the Commission, which concerned the federal and territorial application articles. The Commission also included in its report to the Council various written comments submitted by certain of its members on the draft First International Covenant on Human Rights as drawn up at the sixth session and the proposals for additional articles put forward at the fifth and sixth sessions.

SECTION II

ECONOMIC AND SOCIAL COUNCIL

(Eleventh Session)

Before it considered the draft Covenant which the Commission on Human Rights had transmitted to it, the Economic and Social Council discussed the various draft resolutions which the Commission had proposed, relating to economic, social and cultural rights, and annual reports from Member States.

In resolution 303 C (XI), the Council approved the Commission's decision to proceed at its seventh session with the consideration of additional covenants and measures dealing with economic, social and cultural, political and other categories of human rights.

In the resolution concerning co-operation with the specialized agencies, and economic, social and cultural rights, the Council thought that the nature of the assistance should be more clearly defined than had been done by the Commission. It adopted the following resolution as resolution 303 D (XI):

The Economic and Social Council,

Considering that the Commission on Human Rights, at its sixth session, resolved to begin at once the preparation of the execution of its work programme for the year 1951, with a view to assuring to everyone the enjoyment of economic, social and cultural rights set forth in articles 22 to 27 of the Universal Declaration of Human Rights,

Having noted with interest the report submitted by the Director-General of the United Nations Educational,

Scientific and Cultural Organization on regulations concerning economic and social rights in the International Covenant on Human Rights,

Requests the Secretary-General:

(*a*) To transmit to the International Labour Organisation the proposals for relevant articles on economic and social rights contained in Annex III to the report of the sixth session of the Commission on Human Rights, together with the summary records of the debates in the Commission concerning the inclusion of economic and social rights in the draft covenant or covenants on human rights, so that the said specialized agency may submit to the Secretary-General, before the seventh session of the Commission on Human Rights, a detailed report on what has already been achieved in these fields, what still remains to be achieved and how it might be accomplished;

(*b*) To make the necessary arrangements for obtaining any collaboration he may think desirable from the other organs of the United Nations and the other specialized agencies; and

(*c*) To submit to the Commission on Human Rights, before its seventh session to be held in 1951, a report on the information and observations thus obtained, together with any documentation he may consider relevant.

With regard to the recommendation concerning annual reports by Member Governments, the Council adopted the following resolution (303 E (XI)):

The Economic and Social Council

Decides to return the annex to draft resolution V submitted by the Commission on Human Rights (sixth session) to the latter for further study, together with the records of the discussion in the Council.

In considering the draft Covenant as a whole, the Council decided to examine it in its broad aspects and not the individual articles. The discussion was directed to the following subjects: the preamble and the first eighteen articles, the articles on measures of implementation, the inclusion of articles on economic, social and cultural rights in the first covenant, the federal clause and the territorial application clause. Opinions differed widely on these important questions and the Council decided to ask the General Assembly for decisions of policy. It adopted the following resolution as resolution 303 I (XI):

The Economic and Social Council,

Having considered in its broad aspects the draft Covenant on Human Rights submitted by the Commission on Human Rights, in accordance with General Assembly resolution 217 (III),

Having noted the valuable work done by the Commission with a view to submitting a draft Covenant to the General Assembly,

Having noted with satisfaction that the draft Covenant includes articles relating to implementation,

Thanking the Commission for the contribution it has already made towards the accomplishment of a task of great importance,

Having given consideration to the questions of: (*a*) the general adequacy of the first eighteen articles; (*b*) the desirability of including special articles on the application of the Covenant to federal States and to Non-Self-Governing and Trust Territories; (*c*) the desirability of including articles on economic, social and cultural rights; and (*d*) the adequacy of the articles relating to implementation,

Concluding that further progress on the Covenant cannot be made without basic policy decisions on the above matters being taken by the General Assembly,

Transmits the draft Covenant on Human Rights, together with relevant documentation and records of the discussion in the Council, to the General Assembly at its fifth session for consideration with a view to reaching policy decisions on the points mentioned in the fifth paragraph above;

Requests the Commission on Human Rights to consider the draft Covenant further, bearing in mind the policy decisions of the General Assembly and the views expressed in the Council at its eleventh session, and to submit a revised draft Covenant to the Council at its thirteenth session; and

Requests the Secretary-General to transmit this resolution, together with the records of the debate at the eleventh session of the Council, to Member States with a view to obtaining their observations after the fifth session of the General Assembly for transmission to the Commission on Human Rights.

SECTION III

GENERAL ASSEMBLY

(*Fifth Session*)

The General Assembly discussed the above resolution of the Economic and Social Council at its fifth session at great length, and in its resolution 421 (V) and 422 (V) took decisions of policy which were very important for the future work on the Covenant. It expressed the view that the first eighteen articles should be precisely defined. It asked the Commission on Human Rights to study the question of a federal clause. It decided to include economic, social and cultural rights in the Covenant, and it asked the Commission to consider provisions either for inclusion in the Covenant

or separate protocols on the right of petition of individuals and non-governmental organizations. It also included in this resolution a request to the Commission to study the right of peoples and nations to self-determination. In a second resolution, the General Assembly decided against the inclusion in the Covenant of a territorial application clause and adopted an article extending the provisions of the Covenant to all territories, whether Non-Self-Governing, Trust or colonial territories. The texts of these two resolutions are as follows:

The General Assembly,

Appreciating the priority which, in accordance with General Assembly resolution 217 (III), the Commission on Human Rights during its 1949 and 1950 sessions gave to the preparation of a draft International Covenant on Human Rights and measures for its implementation,

Noting the decision of the Economic and Social Council at its eleventh session to transmit the draft Covenant together with the relevant documentation and records of the discussion in the Council to the General Assembly at its fifth session for consideration with a view to reaching policy decisions on the points listed in Economic and Social Council resolution 303 I (XI),

Considering it essential that the Covenant should include provisions rendering it obligatory for States to promote the implementation of the human rights and fundamental freedoms proclaimed in the Covenant and to take the necessary steps, including legislation, to guarantee to everyone the real opportunity of enjoying those rights and freedoms,

Having considered the draft Covenant prepared by the Commission on Human Rights, particularly with reference to certain basic policies,

A

1. *Commends* the Commission on Human Rights for the important work it has thus far accomplished;

2. *Calls upon* the Economic and Social Council to request the Commission on Human Rights to continue to give priority in its work to the completion of the draft Covenant and measures for its implementation in order that the General Assembly may have before it at its sixth session the revised draft of this Covenant;

B

3. *Considers:*

(*a*) That the list of rights in the first eighteen articles of the draft Covenant does not contain certain of the most elementary rights;

(*b*) That the present wording of some of the first eighteen articles of the draft Covenant should be improved in order to protect more effectively the rights to which they refer;

(*c*) That in the drafting of the Covenant account should be taken of the purposes and principles of the Charter of the United Nations and that these purposes and principles should be consistently applied and assiduously protected;

4. *Calls upon* the Economic and Social Council to request the Commission on Human Rights to take into consideration in its work of revision of the draft Covenant:

(i) The views expressed during the discussion of the draft Covenant at the fifth session of the General Assembly and at the eleventh session of the Economic and Social Council, including those relating to articles 13 and 14 of the draft Covenant and, with a view to the addition in the draft Covenant of other rights, those relating to the rights set forth by the Union of Soviet Socialist Republics in document A/C.3/L.96 and Yugoslavia in document A/C.3/L.92;

(ii) The view, expressed during the discussion of the draft Covenant at the fifth session of the General Assembly and at the eleventh session of the Economic and Social Council, that it is desirable to define the rights set forth in the Covenant and the limitations thereto with the greatest possible precision;

C

5. *Calls upon* the Economic and Social Council to request the Commission on Human Rights to study a federal State article and to prepare, for the consideration of the General Assembly at its sixth session, recommendations which will have as their purpose the securing of the maximum extension of the Covenant of the constituent units of federal States, and the meeting of the constitutional problems of federal States;

D

6. *Calls upon* the Economic and Social Council to request the Commission on Human Rights to study ways and means which would ensure the right of peoples and nations to self-determination, and to prepare recommendations for consideration by the General Assembly at its sixth session;

E

Whereas the Covenant should be drawn up in the spirit and based on the principles of the Universal Declaration of Human Rights,

Whereas the Universal Declaration regards man as a person, to whom civic and political freedoms as well as economic, social and cultural rights indubitably belong,

Whereas the enjoyment of civic and political freedoms and of economic, social and cultural rights are interconnected and interdependent,

Whereas, when deprived of economic, social and cultural rights, man does not represent the human person whom the Universal Declaration regards as the ideal of the free man,

7. (*a*) *Decides* to include in the Covenant on Human Rights economic, social and cultural rights and an explicit recognition of equality of men and women in related rights, as set forth in the Charter of the United Nations;

(*b*) *Calls upon* the Economic and Social Council to request the Commission on Human Rights, in accordance with the spirit of the Universal Declaration, to include in the draft Covenant a clear expression of economic, social and cultural rights in a manner which relates them to the civic and political freedoms proclaimed by the draft Covenant;

(*c*) *Calls upon* the Economic and Social Council to request the Commission on Human Rights to take such steps as are necessary to obtain the co-operation of other organs of the United Nations and of the specialized agencies in the consideration of such rights;

(*d*) *Requests* the Economic and Social Council to consider, at its twelfth session, the methods by which the specialized agencies might co-operate with the Commission on Human Rights with regard to economic, social and cultural rights;

F

8. *Calls upon* the Economic and Social Council to request the Commission on Human Rights to proceed with the consideration of provisions, to be inserted in the draft Covenant or in separate protocols, for the receipt and examination of petitions from individuals and organizations with respect to alleged violations of the Covenant; and to take into consideration in its studies of questions relating to petitions and implementation the proposals presented by Chile (A/C.3/L.81), Ethiopia and France (A/C.3/L.78), Israel (A/C.3/L.91/Rev.1) and Uruguay (A/C.3/L.93);

G

9. *Calls upon* the Economic and Social Council to request the Commission on Human Rights to report to the Economic and Social Council at its thirteenth session concerning the above matters;

H

10. *Requests* the Secretary-General to invite Member States to submit, by 15 February 1951, their views concerning the draft Covenant as revised by the Commission on Human Rights at its sixth session, in order that the Commission may have such views before it during its further consideration of the draft Covenant at its seventh session.

The General Assembly

Requests the Commission on Human Rights to include the following article in the International Covenant on Human Rights:

"*Art.* . . . The provisions of the present Covenant shall extend to or be applicable equally to a signatory metropolitan State and to all the territories, be they Non-Self-Governing, Trust or colonial territories, which are being administered or governed by such metropolitan State."

Annex I

DRAFT FIRST INTERNATIONAL COVENANT ON HUMAN RIGHTS

[*Note.* The Commission drafted both the English and French texts of the Preamble and all the articles and considered them equally authentic. Annex I, with all the relevant documentary references, is set forth in pages 15–23 of the report of the sixth session of the Commission on Human Rights (E/1681).]

PREAMBLE

The States Parties hereto,

Considering the obligation under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Bearing in mind the Universal Declaration of Human Rights,

Recognizing that the rights and freedoms recognized in this covenant flow from the inherent dignity of the human person,

By this covenant agree upon the following articles with respect to these rights and freedoms.

PART I

ARTICLE 1

1. Each State Party hereto undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in this covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of this covenant, to adopt within a reasonable time such legislative or other measures as may be necessary to give effect to the rights recognized in this covenant.

3. Each State Party hereto undertakes to ensure:

(*a*) That any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(*b*) That any person claiming such a remedy shall have his right thereto determined by competent authorities, political, administrative or judicial;

(*c*) That the competent authorities shall enforce such remedies when granted.

ARTICLE 2

1. In the case of a state of emergency officially proclaimed by the authorities or in the case of public disaster, a State may take measures derogating, to the extent strictly limited by the exigencies of the situation, from its obligations under article 1, paragraph 1 and Part II of this covenant.

2. No derogation from articles 3, 4, 5 (paragraphs 1 and 2), 7, 11, 12 and 13 may be made under this provision. No derogation which is otherwise incompatible with international law may be made by a State under this provision.

3. Any State Party hereto availing itself of the right of derogation shall inform immediately the other States Parties to the Covenant, through the intermediary of the Secretary-General, of the provisions from which it has derogated and the date on which it has terminated such derogation.

PART II

ARTICLE 3

1. Everyone's right to life shall be protected by law.

2. To take life shall be a crime, save in the execution of a sentence of a court, or in self-defence, or in the case of enforcement measures authorized by the Charter.

3. In countries where capital punishment exists, sentence of death may be imposed only as a penalty for the most serious crimes, pursuant to the sentence of a competent court and in accordance with law not contrary to the Universal Declaration of Human Rights.

4. Anyone sentenced to death shall have the right to seek amnesty, or pardon, or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

ARTICLE 4

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected against his will to medical or scientific experimentation involving risk, where such is not required by his state of physical or mental health.

ARTICLE 5

1. No one shall be held in slavery; slavery and the slave trade in all their forms shall be prohibited.

2. No one shall be held in servitude.

3. (*a*) No one shall be required to perform forced or compulsory labour.

(*b*) The preceding sub-paragraph shall not be held to preclude, in countries where imprisonment with "hard labour" may be imposed as a punishment for a crime, the performance of "hard labour" in pursuance of a sentence to such punishment by a competent court.

(*c*) For the purpose of this paragraph the term "forced or compulsory labour" shall not include:

(i) Any work or service, other than work performed in pursuance of a sentence of "hard labour" required to be done in the course of detention in consequence of a lawful order of a court;

(ii) Any service of a military character or, in the case of conscientious objectors, in countries where they are recognized, service exacted in virtue of laws requiring compulsory national service;

(iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;

(iv) Any work or service which forms part of normal civic obligations.

ARTICLE 6

1. No one shall be subjected to arbitrary arrest or detention.

2. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

3. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

4. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. Pending trial, detention shall not be the general rule, but release may be subject to guarantees to appear for trial.

5. Anyone who is deprived of his liberty, by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided without delay by a court and his release ordered if the detention is not lawful.

6. Anyone who has been the victim of unlawful arrest or deprivation of liberty shall have an enforceable right to compensation.

ARTICLE 7

No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.

ARTICLE 8

1. Subject to any general law, consistent with the rights recognized in this covenant:

(*a*) Everyone legally within the territory of a State shall, within that territory, have the right to (i) liberty of movement and (ii) freedom to choose his residence;

(*b*) Everyone shall be free to leave any country, including his own.

2. (*a*) No one shall be subjected to arbitrary exile;

(*b*) Subject to the preceding sub-paragraph, anyone shall be free to enter the country of which he is a national.

ARTICLE 9

No alien legally admitted to the territory of a State shall be expelled therefrom except on established legal grounds and according to procedure and safeguards which shall in all cases be provided by law.

ARTICLE 10

1. In the determination of any criminal charge against him, or of his rights and obligation in a suit at law, everyone shall be entitled to a fair and public hearing, by an independent and impartial tribunal established by law. The Press and public may be excluded from all or part of a trial for reasons of morals, public order or national security, or where the interest of juveniles so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interest of justice; but the judgment shall be pronounced publicly except where the interest of juveniles otherwise requires.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(*a*) To be informed promptly of the nature and cause of the accusation against him;

(*b*) To defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case where he does not have sufficient means to pay for it;

(*c*) To examine, or have examined, the witnesses against him and to obtain compulsory attendance of witnesses in his behalf who are within the jurisdiction and subject to the process of the tribunal;

(*d*) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(*e*) No one shall be compelled to testify against himself, or to confess guilt;

(*f*) In the case of juveniles, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

3. In any case where by a final decision a person has been convicted of a criminal offence and where subsequently a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated. This compensation shall be awarded to the heirs of a person executed by virtue of an erroneous sentence.

ARTICLE 11

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.

2. Nothing in this article shall prejudice the trial and punishment of any person for the commission of any act which, at the time when it was committed, was criminal according to the generally recognized principles of law.

ARTICLE 12

Everyone shall have the right to recognition everywhere as a person before the law.

ARTICLE 13

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are pursuant to law and are reasonable and necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

ARTICLE 14

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The right to seek, receive and impart information and ideas carries with it special duties and responsibilities and may therefore be subject to certain penalties, liabilities and restrictions, but these shall be such only as are provided by law and are necessary for the protection of national security, public order, safety, health or morals, or of the rights, freedoms or reputations of others.

ARTICLE 15

The right of peaceful assembly shall be recognized. No restrictions shall be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary to ensure national security, public order, the protection of health or morals or the protection of the rights and freedoms of others.

ARTICLE 16

1. The right of association shall be recognized.

2. No restrictions shall be placed on the exercise of this right other than those prescribed by law and which are necessary to ensure national security, public order, the protection of health or morals or the protection of the rights and freedoms of others.

3. Nothing in this article shall authorize States Parties to the Freedom of Association and Protection of the

Right to Organize Convention, 1948, to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that convention.

ARTICLE 17

All are equal before the law: all shall be accorded equal protection of the law without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

ARTICLE 18

1. Nothing in this covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in this covenant.

2. Nothing in this covenant may be interpreted as limiting or derogating from any of the rights and freedoms which may be guaranteed under the laws of any Contracting State or any conventions to which it is a party.

PART III

ARTICLE 19

1. With a view to the implementation of the provisions of the International Covenant on Human Rights, there shall be set up a Human Rights Committee, hereinafter referred to as "the Committee", composed of seven members with the functions hereinafter provided.

2. The Committee shall be composed of nationals of the States Parties to the Covenant, who shall be persons of high standing and of recognized experience in the field of human rights.

ARTICLE 20

1. The members of the Committee shall be elected from a list of persons possessing the qualifications prescribed in article 19 and specially nominated for that purpose by the States Parties to the Covenant.

2. Each State shall nominate at least two and not more than four persons. These persons may be nationals of the nominating State or of any other State Party to the Covenant.

3. Nominations shall remain valid until new nominations are made for the purpose of the next election under article 25. A person shall be eligible to be renominated.

ARTICLE 21

At least three months before the date of each election to the Committee, the Secretary-General of the United Nations shall address a written request to the States Parties to the Covenant inviting them, if they have not already submitted their nominations, to submit them within two months.

ARTICLE 22

The Secretary-General of the United Nations shall prepare a panel of the persons thus nominated, and submit it to the States Parties to the Covenant.

ARTICLE 23

The Committee shall be elected from the panel provided for in article 22 by the States Parties to the Covenant, who shall send representatives to a meeting convened by the Secretary-General for the purpose of such elections. No more than one national of any State may be a member of the Committee at any time. In the election of the Committee consideration shall be given to equitable geographical distribution of membership.

ARTICLE 24

The Secretary-General of the United Nations shall make the arrangements for, and fix the time of, elections. The members of the Committee shall be elected by a majority vote of the representatives of the States Parties to this covenant present and voting. A quorum for such election shall consist of two-thirds of the States Parties to the Covenant.

ARTICLE 25

The members of the Committee shall be elected for a term of five years and be eligible for re-election. However, the terms of four of the members elected at the first election shall expire at the end of two years. Immediately after the first election the names of the members whose terms expire at the end of the initial period of two years shall be chosen by lot by the Secretary-General of the United Nations.

ARTICLE 26

1. Vacancies shall be filled by election, and articles 21, 22, 23 and 24 shall apply.

2. A member of the Committee elected to fill a vacancy shall, if his predecessor's term of office has not expired, hold office for the remainder of that term.

ARTICLE 27

A member of the Committee shall remain in office until his successor has been elected; but if the Committee has, prior to the election of his successor, begun to consider a case, he shall continue to act in that case, and his successor shall not act in that case.

ARTICLE 28

The resignation of a member of the Committee shall be addressed to the Chairman of the Committee through the Secretary of the Committee who shall immediately notify the Secretary-General of the United Nations.

ARTICLE 29

The members of the Committee, when engaged on the business of the Committee, shall enjoy diplomatic privileges and immunities.

ARTICLE 30

The Secretary and the Assistant Secretary of the Committee shall be appointed by the Secretary-General of the United Nations, with the approval of the Committee.

ARTICLE 31

The Secretary-General of the United Nations shall convene the initial meeting of the Committee at the Headquarters of the United Nations.

ARTICLE 32

1. The Committee shall, at its initial meeting, elect its Chairman and Vice-Chairman for the period of one year and consider the rules of procedure to be established in accordance with article 33.

2. Thereafter, the holding of these offices shall rotate among the members of the Committee in accordance with arrangements prescribed by the rules of procedure.

ARTICLE 33

The Committee shall establish its own rules of procedure, but these rules shall provide that:

(*a*) Five members shall constitute a quorum;

(*b*) The work of the Committee shall proceed by a majority vote of the members present; in the event of an equality of votes the Chairman shall have a casting vote;

(*c*) The States referred to in article 38 shall have the right to be represented at the hearings of the Committee and to make submissions to it orally and in writing;

(*d*) The Committee shall hold hearings and other meetings in closed session.

ARTICLE 34

1. A State Party to the Covenant concerned in a case referred to the Committee may, if none of its nationals is a member of the Committee, designate as a member, to participate with the right to vote in the deliberations on the case under consideration, a person chosen from the list referred to in article 20.

2. Should there be several States in the same interest, they shall, for the purpose of the preceding sentence, be reckoned as one only. Any doubt upon this point shall be settled by the Committee.

ARTICLE 35

1. After its initial meeting the Committee shall meet at such times as it deems necessary, and shall be convened by its Chairman or at the request of not less than four of its members and in any event when a matter is referred to it under article 38.

2. The Committee shall meet at the permanent Headquarters of the United Nations or at Geneva.

ARTICLE 36

The Secretary of the Committee shall attend its meetings and, under the instructions of the Committee, shall make all neeessary arrangements for the preparation and conduct of the work of the Committee.

ARTICLE 37

The Secretary-General of the United Nations shall provide the necessary services and facilities for the Committee and its members.

ARTICLE 38

1. If a State Party to the Covenant considers that another State Party is not giving effect to a provision of the Covenant, it may, by written communication, bring the matter to the attention of that State. Within three months after the receipt of the communication, the receiving State shall afford the communicating State an explanation or statement in writing concerning the matter, which should include, to the extent possible and pertinent, references to domestic procedures and remedies taken, or pending, or available in the matter.

2. If the matter is not adjusted to the satisfaction of both Parties within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Secretary of the Committee and to the other State.

ARTICLE 39

Normally, the Committee shall deal with a matter referred to it only if available domestic remedies have been invoked and exhausted in the case. This shall not be the rule where the application of the remedies is unreasonably prolonged.

ARTICLE 40

In any matter referred to it, the Committee may call upon the States concerned to supply any relevant information.

ARTICLE 41

1. Subject to the provisions of article 39, the Committee shall ascertain the facts and make available its good offices to the States concerned with a view to a friendly solution of the matter on the basis of respect for human rights as recognized in this covenant.

2. The Committee shall, in every case and in no event later than eighteen months after the date of receipt of the notice under article 38, draw up a report which will be sent to the States concerned and then communicated to the Secretary-General of the United Nations for publication.

3. If a solution within the terms of paragraph 1 of this article is reached the Committee shall confine its report to a brief statement of the facts and of the solution reached. If such a solution is not reached, the Committee shall state in its report its conclusions on the facts.

PART IV

ARTICLE 42

1. This covenant shall be open for signature and ratification or accession on behalf of any State Member of the United Nations or of any non-member State to

which an invitation has been extended by the General Assembly.

2. Ratification of or accession to this covenant shall be effected by the deposit of an instrument of ratification or accession with the Secretary-General of the United Nations, and as soon as twenty States have deposited such instruments, the Covenant shall come into force among them. As regards any State which ratifies or accedes thereafter the Covenant shall come into force on the date of the deposit of its instrument of ratification or accession.

3. The Secretary-General of the United Nations shall inform all Members of the United Nations, and other States which have signed or acceded, of the deposit of each instrument of ratification or accession.

ARTICLE 43 (formerly article 24)

[The Commission decided not to discuss this article, but to transmit to the Economic and Social Council for its consideration the texts of the article proposed at previous sessions together with comments and amendments thereto.]

Report of the Fifth Session of the Commission as it concerned the above Article

[*Note.* The Commission decided by 12 votes to none, with 3 abstentions, to submit the following texts to Governments together with the record of the discussions at its fifth session.]

I. *Text contained in the Report of the Third Session of the Commission (E/800)*

"In the case of a federal State, the following provisions shall apply:

"(*a*) With respect to any articles of this covenant which the federal Government regards as wholly or in part appropriate for federal action, the obligations of the federal Government shall, to this extent, be the same as those of Parties which are not federal States;

"(*b*) In respect of articles which the federal Government regards as appropriate under its constitutional system, in whole or in part, for action by the constituent States, provinces, or cantons, the federal Government shall bring such provisions, with favourable recommendation, to the notice of the appropriate authorities of the States, provinces or cantons at the earliest possible moment."

II. *Texts before the Commission at its Fifth Session*

1. *Text proposed by the representative of the United States of America to replace paragraph (a):*

"(*a*) With respect to any articles of this covenant which the federal Government regards as appropriate under its constitutional system, in whole or in part, for federal action, the obligations of the federal Government shall to this extent be the same as those of Parties which are not federal States."

2. *Text proposed by the representative of India:*

"(*a*) In respect of any articles of the Covenant, the implementation of which is, under the Constitution of the federation, wholly or in part within federal jurisdiction, the obligations of the federal Government shall, to that extent, be the same as those of Parties which are not federal States.

"(*b*) In respect of any articles of this covenant, the implementation of which is under the constitution of the federation, wholly or in part within the jurisdiction of the constituent units (whether described as States, provinces, cantons, autonomous regions, or by any other name), the federal Government shall bring such provisions with favourable recommendations to the notice of the appropriate authorities of the units."

3. *Text proposed by the representative of the United Kingdom for the second sub-paragraph:*

"(*b*) Each federal State Party to this covenant shall at the request of another State Party report what effect has been given to the provisions of this covenant by the governments of the constituent States, provinces or cantons following the recommendation referred to in the preceding paragraph."

Comments of Governments on the Report of the Fifth Session of the Commission

1. *Australia*

Subject to further observations that may be offered at the sixth session of the Human Rights Commission, the text contained in document E/800 is preferred with the amendment proposed by the United States delegation. The text, as amended, adheres closely to that contained in the International Labour Organisation's Constitution—a formula which resulted from long and expert consultations and has already secured a wide measure of agreement.

2. *France*

The French Government would be willing to agree to the text contained in the draft communicated to the Secretary-General of the United Nations by the United States Government on 20 December 1949. This text is an improvement on that submitted by the United States Government at the third session of the Commission on Human Rights, since it is more objectively drafted and offers the additional advantage of being closer to the text submitted by the representative of India.

3. *Netherlands*

The Netherlands Government prefer the text proposed by the representative of India supplemented by the text proposed by the representative of the United Kingdom.

4. *Philippines*

The text proposed by the representative of India seems to be the most satisfactory.

5. *United Kingdom*

[The comments of the United Kingdom apply to articles 24 and 25 as previously numbered.]

His Majesty's Government will support the inclusion in the Covenant of articles intended to make suitable provision for the particular constitutional circumstances of federal States or of metropolitan States with dependent overseas territories.

In this connexion, His Majesty's Government has noted with interest the decision of the Social Commission at its fourth session (E/CN.5/SR.76, pp. 3–7 and E/1359, p. 22) that it was not competent to decide questions of international law such as are raised by these two articles and to "refer consideration of the article to a higher body". His Majesty's Government consider that the Social Commission has established a useful precedent by this decision and suggest that the Human Rights Commission should follow the same procedure and refer these two articles to the Economic and Social Council, which should in its turn refer them to the Sixth Committee of the General Assembly.

There is one further comment which His Majesty's Government in the United Kingdom feels obliged to make in this connexion. The constitutional circumstances which oblige them to press for the inclusion in many international agreements of a colonial application article have been explained by United Kingdom representatives on many occasions in many different bodies of the United Nations. His Majesty's Government feels bound to point out that these constitutional considerations apply with all their force to the Covenant on Human Rights. If therefore the Covenant, as finally drawn up, has no such article, His Majesty's Government will have no option but to oppose it.

6. *United States*

This article should read as follows:

"In the case of a federal State, the following provisions shall apply:

"(*a*) With respect to any articles of this covenant which are determined in accordance with the constitutional processes of that State to be appropriate in whole or in part for federal action, the obligations of the federal government shall to this extent be the same as those of Parties which are not federal States;

"(*b*) With respect to articles which are determined in accordance with the constitutional processes of that State to be appropriate in whole or in part for action by the constituent States, provinces or cantons, the federal government shall bring such articles, with favourable recommendation, to the notice of the appropriate authorities of the States, provinces or cantons at the earliest possible moment."

Amendments proposed at the Sixth Session of the Commission

1. *United Kingdom.—Amendment to the proposal contained in the comment of the Government of the United States*

In paragraph (*b*) insert "(1)" after the word "shall", and add at the end a new sub-paragraph, as follows:

"2. Informs the Secretary-General of the United Nations when the laws of any constituent State, province or canton give effect fully to the provisions of the Covenant which lie within its jurisdictional sphere."

2. *Yugoslavia.—Amendment to the text contained in the Report of the Third Session of the Commission*

Add a new sub-paragraph (*c*) as follows:

"(*c*) No Federal State shall ratify the present Covenant unless it has previously ensured the application thereof throughout its territory."

ARTICLE 44 (formerly article 25)

[The Commission decided not to discuss this article, but to transmit to the Economic and Social Council for its consideration the texts of the article proposed at previous sessions together with comments and amendments thereto.]

Report of the Fifth Session of the Commission as it concerned the above Article

[*Note.* The Commission decided by 7 votes to 4, with 2 abstentions, to submit the following texts to governments, together with the record of the discussion at its fifth session.]

I. *Texts contained in the Report of the Third Session of the Commission (E/800)*

The Drafting Committee voted in favour of the first of the following texts:

"A State Party to this covenant may at the same time of its accession thereto or at any time thereafter by notification addressed to the Secretary-General of the United Nations declare that this covenant shall extend to any of the territories for the international relations of which it is responsible, and the Covenant shall extend to the territories named in the notification as from the thirtieth day after the date of receipt by the Secretary-General of the United Nations of the notification. The Contracting States undertake, with respect to those territories on behalf of which they do not accede to this covenant at the time of their accession, to seek the consent at the earliest possible moment of the governments of such territories and to accede forthwith on behalf of and in respect of each such territory, if and when its consent has been obtained."

Text proposed by the representative of the Union of Soviet Socialist Republics:

"The conditions of the present covenant shall extend or be applicable both to the metropolitan territory which is signatory to the present covenant, as well as to all the other territories (Non-Self-Governing, Trust, and colonial territories) which are being administered or governed by the metropolitan Power in question."

II. *Texts before the Commission at its Fifth Session*

1. *Text proposed by the representative of the United States of America:*

"Any State may, at the time of signature or the deposit of its instrument of ratification or accession or at any time thereafter, declare by notification addressed to the Secretary-General of the United Nations that this covenant shall extend to all or any of the territories for the international relations of which it is responsible. This covenant shall extend to the territory or territories named in the notification from the date of receipt by the Secretary-General of the United Nations of this notification.

"Each State Party to this covenant undertakes to take as soon as possible the necessary steps in order to extend the application of this covenant to such terri-

tories, subject, where necessary for constitutional reasons, to the consent of the governments of such territories."

2. *Text proposed by the representative of the Union of Soviet Socialist Republics:*

If the Commission adopts in full the wording of article 25 proposed by the Drafting Committee (E/800) or a similar wording, re-draft the first line to read:

"A State Party to this covenant shall . . ."

If the Commission adopts the text for article 25 proposed by the representative of the Soviet Union (E/800), the above amendment will disappear.

3. *Text proposed by the representative of the Philippines:*

"The provisions of the present covenant shall extend or be applicable to a signatory metropolitan State as well as to all the territories, be they Non-Self-Governing, Trust, or colonial territories, which are being administered or governed by such metropolitan State."

Comments of Governments on the Report of the Fifth Session of the Commission

1. *Australia*

The following draft is preferred to the existing alternative drafts:

"At the time of deposit of its instrument of ratification or accession, each State which is responsible for the external relations of other territories shall declare to which of such territories this covenant extends and the reasons why the Covenant has not been extend to the remainder. As from the date of receipt by the Secretary-General of the declaration, the Covenant shall extend to each territory to which a State declares it to extend. Each such State shall take as soon as possible the necessary steps to have the application of this covenant extended to all such territories, subject where necessary for constitutional reasons to the consent of the governments of such territories."

2. *France*

The French Government proposes to accept the text submitted by the United States Government at the fifth session:

"Any State may, at the time of signature or the deposit of its instrument of ratification or accession or any time thereafter, declare by notification addressed to the Secretary-General of the United Nations that this covenant shall extend to all or any of the territories for the international relations of which it is responsible. This covenant shall extend to the territory or territories named in the notification from the date of receipt by the Secretary-General of the United Nations of this notification.

"Each State Party to this covenant undertakes to take as soon as possible the necessary steps in order to extend the application of this covenant to such territories, subject, where necessary for constitutional reasons, to the consent of the governments of such territories."

3. *Netherlands*

The Netherlands Government prefers the text proposed by the representative of the United States.

4. *Philippines*

The text proposed by the representative of the Philippines should be adopted. It reads as follows:

"The provisions of the present covenant shall extend or be applicable to a signatory metropolitan State as well as all the territories, be they Non-Self-Governing, Trust, or colonial territories, which are being administered or governed by such metropolitan State.

5. *United Kingdom*

[See under article 43, which includes comments on both articles 24 and 25.]

6. *United States*

This article should read as follows:

"Any State may, at the time of deposit of its instrument of ratification or accession or at any time thereafter, declare by notification addressed to the Secretary-General of the United Nations that this covenant shall extend to all or any of the territories for the international relations of which it is responsible. This covenant shall extend to the territory or territories named in the notification from the date of receipt by the Secretary-General of the United Nations of this notification.

"Each State Party to this covenant undertakes, with respect to those territories to which the Covenant is not extended at the time of ratification or accession, to take as soon as possible the necessary steps in order to extend the application of this covenant to such territories, subject, where necessary for constitutional reasons, to the consent of the governments of such territories."

Amendment proposed at the Sixth Session of the Commission

United Kingdom

"1. Any State may at the time of signature, ratification or accession to the present covenant or at any time thereafter declare by notification given to the Secretary-General of the United Nations that the present covenant shall extend to any of the territories for whose international relations it is responsible and the Covenant shall from the date of the receipt of the notification extend to the territories named therein.

"2. A State which has made a declaration under paragraph (*a*) above extending the present covenant to any territory for whose international relations it is responsible may at any time thereafter declare by notification given to the Secretary-General of the United Nations that the Covenant shall cease to extend to any territory named in the notification and the Covenant shall from the date of the notification cease to extend to such territory."

ARTICLE 45

1. Any State Party to the Covenant may propose an amendment and file it with the Secretary-General. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties to the

Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that at least one-third of the States favour such a conference the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States present and voting at the conference shall be submitted to the General Assembly for approval.

2. Such amendments shall come into force when they have been approved by the General Assembly and accepted by a two-thirds majority of the States Parties to the Covenant in accordance with their respective constitutional processes.

3. When such amendments come into force they shall be binding on those Parties which have accepted them, other Parties being still bound by the provisions of the Covenant and any earlier amendment which they have accepted.

Annex II

COMMENTS ON THE DRAFT FIRST INTERNATIONAL COVENANT ON HUMAN RIGHTS

[*Note.* Annex II, with all the relevant documentary references, is set forth in pages 23–26 of the report of the sixth session of the Commission on Human Rights (E/1681).]

AUSTRALIA

The Australian delegation considers that the draft articles should be amended in the following respects.

Article 2

Paragraph 1: At the beginning, insert "In the case of war" so that the opening words will read, "In the case of war, in the case of a state of emergency . . .".

Paragraph 2: Delete "articles 3" and insert "article 3, except in respect of deaths resulting from lawful acts of war, or from articles . . ."

Article 3

Paragraph 2: The qualification of "self-defence" is inadequate, and a provision expressing the sense of paragraph 2 of the article suggested by the United Kingdom in E/CN.4/365, at page 23, is necessary.

The United Kingdom, in the document referred to above, suggested the following draft for this article:

"1. No one shall be deprived of his life intentionally.

"2. There shall be no exception to this rule save where death results, in those States where capital punishment is lawful, from the execution of such a penalty in accordance with the sentence of a court.

"3. Deprivation of life shall not be regarded as intentional when it results from the use of force which is no more than absolutely necessary

"(i) In defence of any person from unlawful violence;

"(ii) In order to effect a lawful arrest or to prevent an escape from lawful custody; or

"(iii) In action lawfully taken for the purpose of quelling a riot or insurrection, or for prohibiting entry to a clearly defined place to which access is forbidden on grounds of national security."

Article 6

Reconsideration of paragraphs 1 and 2 in relation to one another is advisable.

Article 8

Limitations are necessary to the extent indicated in E/CN.4/353/Add.10.

The following is the comment in document E/CN.4/353/Add.10:

"This is unacceptable in its present form. The Australian Government considers that certain restrictions on freedom of movement are desirable—*e.g.*, restrictions involved in legislation to prevent exploitation of, or traffic in, women and minors. Restrictions on the movement of aborigines and the inhabitants of Trust and colonial territories are also desirable in their own interests. New Australians who have been welcomed from other parts of the world and given a new home in Australia voluntarily accept restrictions on their liberty of movement for a short time in agreeing to work in specified industries where there is a shortage of manpower.

"For these and other reasons it is suggested that a preferable draft for article 11 might be as follows, although it is realized that additional qualifications may be necessary.

"1. Subject to any general law adopted for specific reasons of national security, public safety or order, welfare or health or for the protection or well-being of women or indigenous peoples, or for immigration purposes—

"(*a*) Everyone has the right to liberty of movement and is free to choose his residence within the border of each State;

"(*b*) Everyone shall be free to leave any country, including his own;

"(*c*) Everyone is free to return to his own country.

"It is noted that at the fifth session of the Human Rights Commission many representatives felt difficulties in relation to this article and that the majority of the Commission abstained from approving the text as circulated. It is appreciated that it will be difficult to find a formula which will take into account the many restrictions of movement imposed by a great number of States in the interests of the people under their jurisdiction. This raised the question whether freedom of movement is a right as basic or as fundamental as, for example, the right to live (article 5) or the right to personal liberty (article 9). If no wide agreement is possible on a formula providing for freedom of movement, it might be preferable in the interests of speedy and widspread acceptance of a convention on fundamental rights to defer to a later convention the draft article 11."

Article 10

Paragraph 3: Delete "This compensation shall be awarded to the heirs of a person executed by virtue of an erroneous sentence".

Articles 13, 14, 15, 16

The limitations in these articles should be in corresponding terms.

Article 17

Delete "without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status", these words being unnecessary and inadvisable in view of the inclusion of a similar expression in article 1.

Implementation

Australia wishes to reserve its position completely on the draft measures of implementation.

FRANCE

In support of its oral observations, the French delegation wishes to express its regret at what it considers the inadequacy of certain parts of the draft International Covenant on Human Rights. Notwithstanding the decision taken at the first reading, it was not possible, owing to lack of time, to deal with questions of substance at the second reading, which, incidentally, was incomplete.

The French delegation regrets in particular:

1. In article 1 (former article 2), the addition of the words "within its territory" to the words "subject to its jurisdiction", which were sufficient in themselves. There is a danger that this addition may be interpreted as allowing a State to evade its duties towards its nationals abroad.

2. In article 3 (former article 5), the introduction of a first clause, introducing an idea of doubtful legal validity in front of the second, which is in itself entirely sufficient;

3. In articles 14, 15 and 16 (former articles 17, 18 and 19), the omission of the words "in a democratic society" after the words "public order", the idea conveyed by the former expression being alone capable of restricting the excessively wide connotation of the latter in a manner in accordance with the spirit of the Declaration—in which, incidentally, it is used in article 29;

4. For article 17 (former article 20), the adoption of an ambiguous wording, apparently extending to all rights and all cases the obligation of non-discrimination of the law, which at first applied only to the "rights set forth in this covenant";

5. The deletion of the former draft article 21, which prohibited any advocacy of national, racial or religious hostility that constitutes an incitement to violence;

6. In the former article 23 (article 42), the fixing at 20, a figure which in the French delegation's opinion is definitely insufficient, of the number of ratifications required for the entry into force of the Covenant.

The French delegation also feels bound to draw attention to the serious defect in the draft Covenant as it now stands, articles 24 and 25 embodying the federal and colonial clauses having been submitted to the Economic and Social Council without preliminary study. The French delegation is of the opinion that, when a question of human rights is involved, it is for the Commission to consider these clauses in the first instance.

Lastly, in the matter of implementation, the French delegation repeats its general reservations with regard to the composition, election and functions of the body denominated "Human Rights Committee", and with regard to the deletion of articles 21 and 25 of the joint proposal of the representatives of France, India, United Kingdom and United States of America (E/CN.4/474), which restricted that body's competence in cases for which a special procedure was provided within the framework of the United Nations or the specialized agencies, and made reference to the International Court of Justice conditional on the conclusion of a special compromise.

INDIA

The following are the comments by the representative of India.

Article 4

The second sentence, beginning with the words "In particular . . . etc.", has been adopted against the advice of the representative of the WHO. The WHO was consulted with regard to the inclusion of an article to this effect. Its reply was that a separate article was not necessary, as article 6 of the original draft covered the subject. The representative of the WHO advised against the text adopted by the Commission as it might lead to complications and come in the way of genuine medical progress. The advice deserves careful attention.

Article 15

Instead of "the right of peaceful assembly shall be recognized", it would be consistent with the form of other articles if the words "Everyone shall have the right to assemble peaceably" were used.

Article 16

Here also the form is not consistent. "Everyone shall have a right of association" would be more consistent.

Article 17

Though I voted for the accepted text, I still prefer the text I had submitted by way of amendment, as it brings out the central idea of this article, which is "non-discrimination". There should be a period after the word "law" in the third line. The following sentence, or preferably a second paragraph, would read as follows:

"No one shall be discriminated against on grounds only of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

Article 42

The Commission has adopted twenty as the number for ratification of the Covenant. Once the General Assembly accepts the Covenant as the first step towards the implementation of human rights, it should become obligatory for all the States Members to ratify it within a reasonable time. Unless this is done, the obligation to promote and protect human rights under the Charter of the United Nations will not be fulfilled.

The measures of implementation are not adequate. A permanent machinery is set up, but its function is limited to receiving complaints from States only. This will entail very little work. It is to be elected by States which are parties to the Covenant. Again, only those States which are parties to the Covenant will be entitled to complain. Such a body will not command the confidence of the people who are the culprits where violation of human rights is concerned. In the circumstances little by way of protection of human rights can be expected from such a machinery.

Under the Charter, it is the obligation of the United Nations to promote and protect human rights. The machinery to be set up for such purpose should be elected by the General Assembly or by an impartial body such as the International Court of Justice. The provisions for setting up such machinery should not form part of the Covenant, but should form a separate instrument. It should receive complaints from States as well as associations, groups of individuals or individuals. The minimum function it should have, if judicial powers are not given to begin with, should be to supervise the observance of human rights by keeping in touch with the matters relevant to the promotion and protection of human rights in the States. It should act as a conciliation committee when a dispute arises over the violation of human rights. This is the least that one can do in the present circumstances. Anything less than this, however, will not satisfy those who have put their trust in the good faith of the United Nations to fulfil their obligations under the Charter, to protect human rights.

LEBANON

Article 8 of the draft first international convenant is to be construed as meaning that no general law shall be inconsistent with the article, and in particular its paragraphs 1 (*a*) and 1 (*b*).

UNITED KINGDOM

The following are the comments by the representative of the United Kingdom.

Article 1

1. The inclusion in paragraph 1 of this article of the provision relating to non-discrimination raises doubt whether the derogation for which provision is made in article 2 must be subject to the provision in this paragraph of article 1 forbidding discrimination. See comment on article 2, below.

2. The United Kingdom considers that an effective remedy must be a legal remedy, and that a claim that a human right has been violated must be determined by a court of law or by a tribunal whose decision has the force of law. Paragraph 3 (*b*) would permit of this question's being determined by political or administrative authorities which have no judicial character. While it is right that political or administrative authorities should take action if a violation of a human right has occurred, and should, for example, make *ex gratia* payments by way of compensation in proper cases, such action is no substitute for a right on the part of the individual to have his claim that one of his rights as defined in the Covenant has been violated determined by an independent judicial tribunal; and the United Kingdom cannot accept sub-paragraph (*b*) of paragraph 3.

Article 2

1. In the United Kingdom view, the circumstances in which derogation is permitted by this article are too narrowly defined, and the wording of the text of paragraph 1 of this article as set out in E/CN.4/365 is to be preferred.

2. The provision in paragraph 2 that there shall be no derogation from article 3 does not provide for the exception, proposed in the United Kingdom comments on this article, in respect of deaths resulting from lawful acts of war. The provision in paragraph 2 of article 3 which makes exception for the case of enforcement measures authorized by the Charter is not sufficient provision for this purpose, since Article 51 of the Charter recognizes the right of collective self-defence against armed attack independently of enforcement measures.

In the United Kingdom view, the exception proposed in the United Kingdom comments on this article should be retained, and the reference to enforcement measures authorized by the Charter deleted from article 3.

3. In view of the doubt referred to in the comment on article 1 above, it seems necessary to provide in article 2 for derogation in emergency conditions not only from part II of the Covenant, but also from paragraph 1 of article 1. Similarly, provision seems necessary for derogation from paragraph 3 of article 1.

Article 3

1. Discussions in the Commission have shown that the word "self-defence" in paragraph 2 is not a sufficient translation of the content of the French term "légitime défense", although in Article 51 of the Charter "légitime défense" is translated "self-defence". "Self-defence" is certainly insufficient to cover all the exceptions which ought to be made to the proposition that it shall be a crime to take life. The English equivalent, "legitimate defence", has no meaning in Anglo-Saxon law. The United Kingdom cannot accept paragraph 2 of this article, and still considers that it is necessary to set out, as was proposed in the United Kingdom comments on this article in E/CN.4/365, the categories of case in which the taking of life shall not be a crime.

2. As regards the words "or in the case of enforcement measures authorized by the Charter", see the comment above on article 2.

Article 6

The term "arbitrary arrest or detention" is too vague and uncertain in its content for use in defining the important right which is the subject of this article. The discussion in the Commission has shown that there is no agreement on the question whether this paragraph merely says in another form what is said in paragraph 2 or whether it adds to the conception in paragraph 2 the further conception that the law itself must be a just law. The United Kingdom could not in any event agree that the latter conception is one which can properly be included in this article.

Article 8

The introductory words in paragraph 1, to which the rest of the paragraph is subject, are completely circular, since the right with which this paragraph is concerned is itself one of the rights recognized in the Covenant. The effect is thus to make provisions of sub-paragraphs (*a*) and (*b*) absolute in their character and subject to no limitation of any kind.

The United Kingdom suggests that the introductory words should be: "Subject to any law which is not contrary to the principles expressed in the Universal Declaration of Human Rights". Alternatively, the introductory words proposed for this article in the Australian comments (E/CN.4/353/Add.10, page 8) would be acceptable.

Article 10

Paragraph 3 of this article confines the requirement that compensation shall be given to persons who have been the victims of a miscarriage of justice to a limited class of case. The making of payments *ex gratia* by way of compensation ought to, and does in the United Kingdom, extend to many other classes of case in which a miscarriage of justice has occurred, and the United Kingdom does not consider that the question what cases are proper for such payments is one on which provision should be made in the Covenant.

Article 14

1. Attention is drawn to the different sense of the English and French texts of paragraph 1. The French text imposes a legal requirement which the United Kingdom cannot accept, since it would mean that any form of molestation of a person because of his opinions —*e.g.*, picketing or public demonstration—would have to be prohibited by domestic law.

2. The United Kingdom considers that in view of the recorded expression of opinion by the Commission as to the wide meaning to be given to the term "public order" used in paragraph 3 of this article, the article, with the limitations allowed by paragraph 3, affords no guarantee of the freedoms which are its subject.

Article 17

The addition to the original text of the words which follow "equal protection of the law" is, in the United Kingdom view, not only unnecessary, but casts doubt upon the meaning of the propositions that all are equal before the law and that all shall be accorded equal protection of the law. The discussions in the Commission have shown that it is possible to regard the present article as prohibiting the existence or the passing of laws which discriminate on grounds such as race, colour, etc. The necessary provision for this purpose is already made by the first paragraph of article 1. The United Kingdom considers that the concept of discrimination on grounds such as race, colour, etc., has no place in this article, and that all the words after "equal protection of the law" should be deleted.

Articles on implementation

The United Kingdom considers that it is necessary, in order to avoid the possibility of the same matter being considered at the same time both by the Human Rights Committee and by the International Court of Justice, to include an article in the terms of the draft article 25 in document E/CN.4/474 (including the words "by a State Party to the Covenant" which appear in square brackets on that text).

The United Kingdom also considers that it is necessary to make provision in the general sense of the draft article 21 in document E/CN.4/474.

UNITED STATES OF AMERICA

The representative of the United States stresses the importance of including a federal State article in the covenant on human rights along the lines of the proposal submitted by the United States at the sixth session of the Commission, in order to make it possible for federal States to adhere to the Covenant.

The representative of the United States is not submitting any further comments at this time with respect to the draft Covenant revised at the sixth session of the Commission, but reserves the right of the United States to review this draft further and to submit such amendments as it may consider appropriate in connexion with the further consideration of the draft Covenant in the United Nations.

URUGUAY

The representative of Uruguay reserves the right of Uruguay to present later any comments on the final text of the first draft covenant.

Annex III

PROPOSALS FOR ADDITIONAL ARTICLES

[*Note.* Annex III with all the relevant documentary references is set forth in pages 26-28 of the report of the sixth session of the Commission on Human Rights (E/1681).]

AUSTRALIA

Articles on Economic, Social and Cultural Rights

1. Everyone shall have the right to work, and correlatively shall be under the duty to fulfil his obligations with respect to work for which he is voluntarily engaged. Each State shall take such measures as may be practical to ensure that all persons ordinarily resident in its territory have an opportunity for useful work.

2. In order to ensure fair and reasonable wages and working conditions in occupations where wages and conditions are not determined by collective bargaining, or other arrangements are not available against exceptionally low wages, the States shall establish and maintain machinery for fixing minimum wages and conditions.

3. Everyone shall have the right to social security, which shall be guaranteed by the provision of social benefits, either in cash or in kind, assuring to every person at least the means of subsistence and, when necessary, adequate treatment in any common contingency occasioning the involuntary loss of income or its insufficiency to meet family necessities. The State may prescribe that all or any of such benefits may be provided under a general contributory system.

4. Everyone has the right to education. Free education shall be available for all, at least in elementary and fundamental stages.

FRANCE

Article on Persons deprived of Liberty and on Penitentiary System

All persons deprived of their liberty shall be treated with humanity. Accused persons shall not be subjected to the same treatment as convicted persons.

The penitentiary system shall comprise treatment directed to the fullest possible extent towards the reformation and social rehabilitation of prisoners.

PHILIPPINES

Articles on Protection of Privacy, Home, Correspondence, Honour and Reputation, Right to Property and the Right to Just Compensation for Private Property

1. No one shall be subjected to arbitrary and unlawful interference with his privacy, home or correspondence, nor to attacks on his honour and reputation.

This text is derived from article 12 of the Declaration of Human Rights, with the insertion of the word "unlawful" before the word "interference".

2. No one shall be deprived of his property without due process of law.

This guaranty is found in many constitutions. No covenant of human rights is complete without such a safeguard against confiscation.

3. No private property shall be taken unless just compensation has first been paid.

This is also an important guaranty against confiscation of property.

UNION OF SOVIET SOCIALIST REPUBLICS

1. *Article on Participation in the Government of the State*

Every citizen, irrespective of race, colour, nationality, social position, property status, social origin, language, religion or sex, shall be guaranteed by the State an opportunity to take part in the government of the State, to elect and be elected to all organs of authority on the basis of universal, equal and direct suffrage with secret ballot, and to occupy any State or public office. Property, educational or other qualifications restricting the participation of citizens in voting at elections to representative organs shall be abolished.

Amendment proposed by the representative of Yugoslavia:

Replace the first part of the first sentence by the following text:

"Every citizen, irrespective of race, nationality, the social class to which he belongs, property, descent, language, religion or sex, has the right to be guaranteed by the State an opportunity . . . (to elect . . .)."

2. *Article on National Self-determination and Minorities*

Every people and every nation shall have the right to national self-determination. States which have responsibilities for the administration of Non-Self-Governing Territories shall promote the fulfilment of this right, guided by the aims and principles of the United Nations in relation to the peoples of such territories.

The State shall ensure to national minorities the right to use their native tongue and to possess their national schools, libraries, museums and other cultural and educational institutions.

3. *Articles on Economic, Social and Cultural Rights*

(*a*) It is the duty of the State to guarantee to everyone the right to work and to choose his occupation in such a manner as to create conditions which will exclude the threat of death from hunger and from exhaustion.

(*b*) Women shall enjoy in their work rights and privileges which shall not be less than those enjoyed by men and they shall receive equal pay with men for equal work.

(*c*) The right to rest and leisure shall be guaranteed by the State to everyone employed in enterprises and institutions, either by law or on the basis of collective agreements providing, in particular, for a reasonable limitation of working hours and for periodic holidays with pay.

(*d*) Social security and social insurance for workers and employees shall be effected at the expense of the State or at the expense of the employers in accordance with the laws of each country.

(*e*) The State shall take all necessary measures, legislative measures in particular, to ensure decent living accommodation to every person.

(*f*) Access to education shall be open to all without distinction of race, sex, language, economic situation or social origin and this right shall be ensured by the State by the provision of free elementary education, a system of scholarships and the requisite system of schools.

(*g*) The State shall ensure the development of science and education in the interests of progress and democracy and in the interests of ensuring international peace and co-operation.

(*b*) (i) The implementation of trade union rights, which are inviolable and essential for improving the

life and economic welfare of workers, shall be guaranteed to all hired workers without distinction as to nationality, race, religion, sex, occupation, political or philosophical views.

(ii) All regulations of whatever kind directed against trade union organizations by hired workers and employees shall be prohibited.

(iii) Trade union organizations shall have the right freely to elect all their representatives, to make their own administrative arrangements and democratically to fulfil their functions and tasks in the interests of their members, and shall be protected against any interference on the part of public authorities or officials. Public authorities or officials may not attempt to exert pressure of any kind whatsoever, whether directly or indirectly, upon trade unions and their members. Public authorities or officials shall be required to abstain from founding, financing or interfering in the direction of trade union organizations.

(iv) The right to strike shall be guaranteed.

(v) Legislative measures shall be adopted to enable trade union organizations to participate in the determination of economic and social policy in undertakings and on the local, regional and national levels.

(vi) Trade union organizations shall have the right to amalgamate on a trade, inter-union, local, regional and national basis and to affiliate to international trade union organizations.

(vii) No one may prevent an international trade union organization from fulfilling its functions and communicating with the organizations affiliated to it.

Amendment proposed by the representative of Yugoslavia:

Replace the first seven articles by the following texts:

(*a*) Every person has the right, irrespective of the nature of his work, to be protected against exploitation by others and it is the duty of the State to grant him the right to combat such exploitation, individually or collectively.

(*b*) Every person has the right to work which it is the duty of the State to guarantee to each person according to his aptitude and capacity. In the event of unemployment, it is the duty of the State to guarantee to every person sufficient livelihood to satisfy his material and cultural requirements.

(*c*) In labour relations, it is the right of every person to be guaranteed by the State decent conditions of work—in particular, hygienic and technical protective measures and satisfactory conditions of life in accordance with his cultural and other requirements.

(*d*) Every person has the right to equal pay for equal work and to the other rights arising from labour relations.

(*e*) In labour relations, it is the duty of the State to guarantee to mothers special facilities for the protection of their interests and the interests of their children by establishing maternity clinics, nurseries, etc. It is also the duty of the State to guarantee to mothers the right to paid leave before and after confinement.

(*f*) In labour relations, minors shall enjoy the special protection of the State, which shall prohibit their employment under arduous or unhealthy conditions or under conditions which interfere with their normal development. Minors under the age of sixteen years may not normally enter employment.

(*g*) In labour relations, every person has the right to be assured regular working hours, which shall normally be eight hours a day. If the working conditions are especially arduous or unhealthy, the working day shall be reduced and the wage shall be the same as the wage that would have been paid for a normal working day.

It is the right of every worker to be ensured by the State of a rest period during his work, if the work is carried on continuously or in shifts, of a day of rest on Sunday as well as of annual paid holidays.

(*h*) Every worker is entitled to a guarantee from the State of insurance against sickness, exhaustion and old age, and in the case of risk to his health and life, to special coverage against accident, sickness, exhaustion and old age and to the care of his family in the event of his death.

(*i*) The cost of such insurance shall not be payable by the insured person.

(*j*) Every person has the right to be guaranteed by the State an opportunity to study in all cultural and academic institutions and to free education at all stages. Elementary education at least shall be compulsory for all.

YUGOSLAVIA

1. *Article on Right of Asylum*

Any person persecuted for his activities in support of democratic principles, national liberation, the rights of the working people or scientific or cultural freedom or in support of the accomplishment of the principles of the Charter of the United Nations or the rights embodied in the present covenant, shall have the right of asylum in any country.

2. *Article on protection of Minorities' Languages*

Every member of a minority has the right to make use of his national language, and the State may not prevent him from studying and developing his culture in his own language.

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES

Proposals on Non-discrimination and Minority Rights

1. *The Sub-Commission on Prevention of Discrimination and Protection of Minorities,*

Considering that the Commission on Human Rights is preparing a draft international covenant on human rights,

Recommends that the Commission include in the draft Covenant a provision pledging the contracting States not to use governmental licensing arrangements, or to permit restrictions, prohibiting the entry into any business, profession, vocation or employment of a citizen by reason of his race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. *The Sub-Commission on Prevention of Discrimination and Protection of Minorities,*

Having considered the problem of the fate of minorities referred to it by the General Assembly in its resolution 217 C (III),

Having adopted, in resolution C of its third session, a definition of minorities for purposes of protection by the United Nations,

Is of the opinion that the most effective means of securing such protection would be the inclusion in the international covenant on human rights of the following article:

"Persons belonging to ethnic, religious, or linguistic minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language."

Annex IV

DRAFT RESOLUTIONS FOR THE ECONOMIC AND SOCIAL COUNCIL

I

The Economic and Social Council

Approves the decision of the Commission on Human Rights to reduce the membership of the Sub-Commission on Prevention of Discrimination and Protection of Minorities from thirteen to twelve.

II

The Economic and Social Council,

Having transmitted by its resolution 278 (X) the General Assembly resolution 313 (IV) to the Commission on Human Rights for the action contemplated therein,

Notes that the draft First International Covenant on Human Rights submitted to the Council by the Commission on Human Rights at its sixth session contains an article on freedom of information; and

Recommends to the General Assembly to proceed at its fifth session with the elaboration of a special convention on freedom of information as a means of ensuring adequately this freedom throughout the world.

III

The Economic and Social Council

Notes that the Commission on Human Rights considers that the draft international covenant on human rights relating to some of the fundamental rights of the individual and to certain essential civil freedoms is the first of the series of covenants and measures to be adopted in order to cover the whole of the Universal Declaration of Human Rights;

Notes further the decision of the Commission to proceed at its seventh session with the consideration of additional covenants and measures dealing with economic, social cultural, political and other categories of human rights, and to consider additional proposed articles included in annex III of its report of the sixth session, together with any other articles which might be further proposed by Governments; and

Approves the decision of the Commission.

IV

The Economic and Social Council,

Having considered the decision of the Commission on Human Rights at its sixth session to begin at once with the execution of its programme of work for 1951, with a view to assuring to everyone the enjoyment of economic, social and cultural rights, as set forth in articles 22 to 27 of the Universal Declaration of Human Rights,

Having noted the readiness of the International Labour Office and of UNESCO to assist in preparing draft texts to be considered at the seventh session of the Commission,

Instructs the Secretary-General to take the necessary steps to secure similar co-operation from the other organs of the United Nations and the specialized agencies; and

Requests him to submit to the Commission, before its seventh session in 1951, the documents thus assembled, together with any others which he may deem useful.

V

The Economic and Social Council

Submits to the General Assembly for its consideration the draft resolution transmitted to the Council by the Commission on Human Rights and annexed hereto.

ANNEX

The General Assembly,

Considering that the States Members of the United Nations have pledged themselves under Article 56 of the Charter, to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55, and, in particular, to encourage and promote "universal respect for, and observance of, human rights",

Considering that the United Nations has subsequently proclaimed the Universal Declaration of Human Rights,

Requests the Economic and Social Council to instruct the Commission on Human Rights to draw up, subject to its approval, a scheme providing for annual reports to be compiled by States in conjunction with the publication of the *Yearbook on Human Rights*;

Recommends States Members to agree to act in the spirit of the said scheme by forwarding annually to the Secretary-General of the United Nations, in particular with a view to the preparation of the *Yearbook*, a report on the manner in which they have promoted respect for, and the progress of, human rights in the course of the preceding year.

VI

The Economic and Social Council,

Considering the need for thorough and precise information relating to the prevention of discrimination and the protection of minorities,

Requests the Secretary-General:

1. To invite governments, Members and non-members of the United Nations,

(*a*) To furnish him, as soon as practicable, but in any case not later than 1 January 1951, examples (with appropriate citations, where possible) of legislation, judicial decisions, and other types of action which have been found to be especially useful in that country in preventing discrimination in one or more of the fields covered by the Universal Declaration of Human Rights;

(*b*) To furnish him, as soon as practicable, full information regarding the protection of any minority within their jurisdiction by legislative measures and in the light of the Universal Declaration of Human Rights; and

(*c*) To furnish him, in particular, such information as could serve as a basis for the establishment of a definition of minorities;

2. To distribute the information received from Governments in response to this invitation to the members of the Sub-Commission on Prevention of Discrimination and Protection of Minorities prior to its fourth session.

VII

The Economic and Social Council,

Believing that much may be accomplished in the prevention of discrimination through education, and that lasting and positive results in preventing discrimination are attainable in the school,

Affirms its conviction that the principal goals of education in this field should be:

1. To abolish all forms of discrimination; and

2. To eradicate such prejudices as may lead to the commission of unlawful acts of discrimination;

Draws the attention of all Member States to the urgent necessity of taking steps to eliminate all forms of discrimination in the schools;

Emphasizes the part which private educational establishments and non-governmental organizations have to play in combating prejudice and discrimination;

Invites the United Nations Educational, Scientific and Cultural Organization to give due emphasis to those practical activities in the field of education which are likely to lead to the eradication of prejudice and the elimination of discrimination, and, in this connexion, to bear in mind the opportunities for progress to this end afforded by adult educational activities;

Notes with pleasure the following resolutions in the 1950 programme of UNESCO, which it considers capable of producing practical results:

1. *Resolution 2.3.* The improvement of textbooks and teaching materials (which work could be directed to preventing the creation of prejudice which leads to discrimination);

2. *Resolution 2.2.* The conduct of educational seminars (since the attitude of the teacher is among the most significant factors in preventing the formulation of prejudice);

3. *Resolution 2.4.* The publication and distribution of selected materials from each seminar (which can be of use, both to teachers and in connexion with adult educational activities, to the general public); and

Urgently awaits UNESCO's forthcoming statement on race from the viewpoint of present scientific knowledge; and

1. *Recommends* that UNESCO proceed as soon as practicable with the preparation, publication and dissemination of simple and readable books or pamphlets, based on scientific facts, explaining the fallacies of mistaken race theories and religious and other prejudices; and

2. *Invites* Member States to distribute such books or pamphlets widely among all their peoples, and to disseminate these ideas through their public education programmes.

VIII

The Economic and Social Council,

Having requested, in its resolution of 21 June 1946 (resolution 2/9, section 4*a*), the Secretary-General to make arrangements for the compilation and publication of a yearbook on law and usage relating to human rights,

Having considered the reports of the fifth and sixth sessions of the Commission on Human Rights relating to the question of the *Yearbook,*

Having considered the *Yearbooks on Human Rights* for 1946, 1947 and 1948 compiled and published by the Secretary-General,

Requests the Secretary-General to continue annually the compilation and publication of the *Yearbook on Human Rights* which, beginning as soon as possible but not later than with the *Yearbook* for 1951, shall be compiled on the following general lines:

1. Each volume of the *Yearbook* shall contain a compilation concerning the application, and so far as necessary, the evolution, in as many countries as possible, of one of the rights or of a group of closely related rights set forth in the Universal Declaration of Human Rights. This compilation shall be prepared from information supplied by governments, and may include digests of this information prepared by the Secretary-General, and shall be documented by reference to legislative enactments and other authoritative sources;

2. For this purpose, the Secretary-General shall draw up a plan indicating, for a number of years ahead, which right or group of rights should be treated in each year;

3. The *Yearbook* shall continue to record international and national developments concerning human rights which have taken place during the year, and for this purpose shall contain:

(*a*) A report on the work of the United Nations in the field of human rights;

(*b*) Relevant texts or summaries of international instruments in this field, including decisions of international courts and arbitral tribunals;

(*c*) Texts or summaries of, or sufficient references to, constitutional and statutory provisions which constitute important developments in the field of human rights during the year;

(*d*) Summaries of, or sufficient references to, decisions of national courts where these decisions constitute

important developments in the field of human rights;

4. The *Yearbook* shall also include texts or summaries of, or sufficient references to, basic laws on human rights in respect of Non-Self-Governing and Trust Territories;

5. The *Yearbook* shall include adequate references to the sources of any texts or summaries which appear in it. It shall be produced in a form which is easy to handle and of moderate price, and the reproduction of constitutional or statutory texts shall be confined within the limits imposed by these requirements.

IX

The Economic and Social Council

Takes note of the report of the sixth session of the Commission on Human Rights.

CHAPTER III

FREEDOM OF INFORMATION

At its fourth session, the General Assembly, in resolution 313 (IV), asked the Commission on Human Rights to include adequate provisions on freedom of information in the draft International Covenant on Human Rights, and postponed further action on the draft Convention on Freedom of Information pending the receipt of the draft Covenant.[1] Various recommendations were made during 1950 regarding the draft Convention on Freedom of Information, which culminated in the appointment by the General Assembly at its fifth session of an *ad hoc* committee to prepare a draft convention, taking into account the existing texts and the discussions relating to them.

The Sub-Commission on Freedom of Information and of the Press held its fourth session in Montevideo, Uruguay, from 15 to 26 May 1950. The session was devoted largely to a study of the question of the adequacy of the news available to the peoples of the world and the obstacles to the free flow of information (first item of the programme of work and priorities for the three-year period of life of the Sub-Commission which it had adopted at its third session[2]), and to the elaboration of a draft international code of ethics for news personnel. The Economic and Social Council considered the report of the Sub-Commission at its eleventh session, and acted on those recommendations which required Council action. Two resolutions were forwarded to the General Assembly.

The General Assembly, at its fifth session, also adopted a resolution condemning propaganda against peace.

All these developments are described in the following sections.

SECTION I

DRAFT CONVENTION ON FREEDOM OF INFORMATION

1. *Economic and Social Council* (Tenth Session)

At its tenth session, the Economic and Social Council, in resolution 278 (X), transmitted resolution 313 (IV) of the General Assembly, concerning the draft International Covenant on Human Rights and the draft Convention on Freedom of Information, to the Commission on Human Rights for the action contemplated therein.

[1] See *Yearbook on Human Rights for 1949*, p. 367.

[2] *Ibid.*, p. 361.

2. *Commission on Human Rights* (Sixth Session)

Following the adoption, in first reading, of the article of the draft Covenant relating to freedom of opinion and expression, the Commission considered General Assembly resolution 313 (IV) mentioned above, and recommended in the following resolution that a separate convention on freedom of information be drafted:

The Commission on Human Rights,

Having taken into account the resolution of the General Assembly 313 (IV), of 20 October 1949, and the resolution of the Economic and Social Council 278 (X), of 13 February 1950, transmitting this Assembly resolution to the Commission, and

Having consequently *adopted* an article on freedom of information in the draft Covenant on Human Rights,

Recommends to the Economic and Social Council that it recommend to the General Assembly to proceed at its fifth session with the elaboration of a special convention on freedom of information as a means of ensuring adequately this freedom throughout the world.

3. *Economic and Social Council* (Eleventh Session)

The Economic and Social Council, in considering the report of the Commission on Human Rights (document E/1681) at its eleventh session, rejected the draft resolution which the Commission had submitted and made no recommendation regarding the draft Convention on Freedom of Information.

4. *General Assembly* (Fifth Session)

When considering the report of the Economic and Social Council, Chapter V, section VII, the General Assembly decided, in resolution 426 (V), to appoint an *ad hoc* committee composed of representatives of fifteen Member States to draft a convention on freedom of information. The text of this resolution reads as follows:

The General Assembly,

Recalling its resolution 313 (IV), of 20 October 1949, the recommendation of the sixth session of the Commission on Human Rights regarding freedom of information and the discussion concerning that recommendation at the eleventh session of the Economic and Social Council.

Considering that freedom of information and the purposes of the United Nations are indivisible,

1. *Appoints* a committee consisting of the representatives of the following fifteen countries: Cuba, Ecuador, Egypt, France, India, Lebanon, Mexico, the Netherlands, Pakistan, the Philippines, Saudi Arabia, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, the United States of America, and Yugoslavia, which shall meet at the headquarters of the United Nations as soon as possible, but not later than 1 March 1951, to prepare a draft convention on freedom of information, taking into consideration the draft approved by the United Nations Conference on Freedom of Information held at Geneva from 23 March to 21 April 1948, the text voted during the second part of the third session of the General Assembly, article 14 of the provisional text of the draft First International Covenant on Human Rights, and the observations contained in the summary records of the meetings of the Third Committee dealing with the question;

2. *Requests* the committee to report to the Economic and Social Council at its thirteenth session on the results of its work and to submit recommendations, in particular, with regard to the advisability of convening a conference of plenipotentiaries with a view to the framing and signature of a convention on freedom of information;

3. *Requests* the Secretary-General to submit the committee's report, together with the draft or drafts of the convention prepared by the committee, to the various governments concerned for their consideration;

4. *Invites* the governments so consulted to transmit their suggestions and observations to the Secretary-General by 15 June 1951;

5. *Recommends* the Economic and Social Council to consider the committee's report at its thirteenth session and if it thinks fit, in the light of the committee's recommendations and the observations of governments, and also taking into consideration the General Assembly's wish that one or more conventions to ensure freedom of information in the world should be adopted as soon as possible, to convene a conference of plenipotentiaries to meet as soon as possible and not later than 1 February 1952, with a view to the framing and signature of a Convention on Freedom of Information, based on the draft or drafts prepared by the above-mentioned committee and on the observations of governments.

SECTION II

WORK OF THE SUB-COMMISSION ON FREEDOM OF INFORMATION AND OF THE PRESS AND REVIEW OF THIS WORK BY THE ECONOMIC AND SOCIAL COUNCIL AND THE GENERAL ASSEMBLY

1. *Sub-Commission on Freedom of Information and of the Press* (Fourth Session)

The Sub-Commission adopted several resolutions at its fourth session. They concern especially the adequacy of the news available to the peoples of the world and the obstacles to the free flow of information to them and a draft international code of ethics for news personnel, including the text of such a code.

A. *The Adequacy of the News available to the Peoples of the World and the Obstacles to the Free Flow of Information to them*

(i) On 17 May 1950, the Sub-Commission adopted a resolution condemning the jamming of radio broadcasts and other interferences with the free flow of information across national boundaries, which reads as follows:

Whereas the General Assembly in its resolution 59(I) authorizing the holding of the United Nations Conference on Freedom of Information declared that freedom of information is a fundamental human right and is the touchstone of all freedoms to which the United Nations is consecrated,

Whereas freedom to listen to radio broadcasts regardless of source is embodied in article 19 of the Universal Declaration of Human Rights, which reads "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers",

Whereas article 44 of the International Telecommunication Convention, Atlantic City, 1947, provides that "1. All stations, whatever their purpose, must be established and operated in such a manner as not to result in harmful interference to the radio services or communications of other Members or Associate Members . . . Each Member or Associate Member undertakes to require the private operating agencies which it recognizes, and the other operating agencies duly authorized for this purpose, to observe the provisions of the preceding paragraph", and

Considering that the duly authorized radio operating agencies in the USSR are deliberately interfering with the reception by the people of the USSR of certain radio signals originating beyond the territory of the USSR,

The Sub-Commission on Freedom of Information and of the Press

1. *Declares* these types of interference to be a violation of the accepted principles of freedom of information;

2. *Condemns* all measures of this nature as denial of the right of all persons to be fully informed concerning news, opinions and ideas regardless of frontiers; and

3. *Requests* the Economic and Social Council to transmit this resolution to the General Assembly with a recommendation that it call upon all Member Governments to refrain from such interference with the right of their peoples to freedom of information.

(ii) On 17 May 1950, the Sub-Commission adopted a resolution concerning the limitation of freedom of information in a state of emergency, which reads as follows:

The Sub-Commission on Freedom of Information and of the Press

Recommends to the Economic and Social Council that it request the General Assembly to adopt the following resolution:

Considering that freedom of information of the press is a fundamental human right and should be advanced and safeguarded in all circumstances; and

Considering that limitations have been placed on this right in emergencies or the pretext of emergencies,

The General Assembly

Recommends to all Member States that when they are compelled to declare a state of emergency, measures to limit freedom of information and of the Press shall be taken only in the most exceptional circumstances and then only to the extent strictly required by the situation.

(iii) On 24 May 1950, the Sub-Commission adopted a resolution concerning restrictions on the gathering, transmission and dissemination of information by means of newsreels, which reads as follows:

The Sub-Commission on Freedom of Information and of the Press

Recommends to the Economic and Social Council that it adopt the following resolution:

The Economic and Social Council,

Whereas the free circulation of newsreels is one of the most important means of disseminating information about other peoples and their culture and civilizations,

Appeals to all governments

1. To permit movement within their territories of personnel engaged in the gathering, transmission and dissemination of information through the medium of newsreels;

2. Not to seize, impound or otherwise place restrictions or hindrances without justifiable legal cause on newsreel equipment used by them; and

3. Not to confiscate or censor newsreels or portions of newsreels unless absolutely required on grounds relating directly to public morals or national defence.

(iv) On 25 May 1950, the Sub-Commission adopted a resolution concerning access of families of accredited news personnel to countries where meetings of the United Nations and its specialized agencies are held. The resolution reads as follows:

The Sub-Commission on Freedom of Information and of the Press,

Whereas certain agreements between the United Nations and governments and between specialized agencies and governments make specific reference to freedom of access for representatives of the press, radio, film and other information agencies accredited to the United Nations and specialized agencies, and

Whereas the absence of any provisions aimed at facilitating the entry to such countries of wives and families of accredited news personnel can, especially in the event of long-term assignments, hinder the work of news personnel through hardship and the disruption of families,

Draws the attention of the Economic and Social Council to this situation with the recommendation that the Council take such action as it considers necessary in the circumstances.

(v) On 26 May 1950, the Sub-Commission adopted the following resolution concerning the preparation of a model agreement on access for news personnel to meetings of the United Nations and the specialized agencies:

The Sub-Commission on Freedom of Information and of the Press,

Whereas the General Assembly adopted resolution 314 (IV) of 21 October 1949 concerning access for news personnel to meetings of the United Nations and the specialized agencies, and

Whereas the Sub-Commission is of the opinion that a model agreement for future agreements on this subject between the United Nations and countries where meetings of the United Nations are held, and between the specialized agencies and such countries, would more adequately protect the rights and privileges of news personnel,

Recommends to the Economic and Social Council that it request the Secretary-General to prepare a draft of such an agreement for consideration at the fifth session of the Sub-Commission with a view to its eventual approval by the General Assembly.

(vi) The Sub-Commission also adopted a resolution on governmental intervention in the sale and purchase of newsprint. This resolution reads as follows:

The Sub-Commission on Freedom of Information and of the Press,

Considering that for economic reasons serious problems have arisen in various countries of the world with regard to the supply of newsprint,

Considering that this situation has caused certain governments to intervene officially in the sale and purchase of newsprint, either by restricting the amount of foreign currency allocated for its importation or by

rationing it among the various organs of the Press, or by confiscating it,

Considering that governmental interference in these matters may lead to arbitrary and discriminatory action, which it is desirable to avoid, and further

Considering that one of the functions of the Sub-Commission, as stated in paragraph (1) (*a*) of its terms of reference (resolution 197 (VIII)) is to make recommendations to the Economic and Social Council with regard to the economic, political and other obstacles to freedom of the Press,

Agrees to recommend the cessation of these practices in so far as that is compatible with the economic situation and to request the Economic and Social Council to invite Member States to put an end to confiscatory measures and discriminatory actions as being contrary to freedom of the Press.

(vii) On 26 May 1950, the Sub-Commission adopted a resolution condemning discriminatory treatment or mistreatment of foreign information personnel, which reads as follows:

Considering that the practice of discriminating against or mistreating foreign information personnel exists in certain countries,

Therefore the Sub-Commission on Freedom of Information and of the Press

1. *Declares* this practice to be a serious interference with the right of the peoples to freedom of information; and

2. *Condemns* it as a violation of the accepted fundamental human right of all persons to be fully informed.

B. *Draft International Code of Ethics*

(i) On 23 May 1950, the Sub-Commission adopted the following draft of an International Code of Ethics:

Whereas freedom of information and of the press is vital to the peace of humanity and to the fundamental freedoms consecrated by the Charter of the United Nations and the Universal Declaration of Human Rights;

Whereas that freedom can best be safeguarded by the personnel of the press and of other media of information constantly maintaining and promoting, through their voluntary action, the spirit of responsibility in which they seek the truth and report facts or comment on them;

Therefore the following Code of Ethics is proclaimed as a standard of practice and professional conduct for all engaged in the gathering, transmission and dissemination of news and in commenting thereon.

Art. I. All engaged in the gathering, transmission and dissemination of news and in commenting thereon shall make the utmost endeavour to ensure that the information the public receives is factually accurate and objective. They shall check all items of information whose veracity is open to doubt. No fact shall be distorted or essential fact suppressed. They shall never publish, or in any way be party to the publishing of, information known to be false.

Art. II. 1. Personal interest shall not influence professional conduct. Whether for publication or suppression the acceptance of an inducement or bribe is one of the gravest professional offences.

2. Calumny, slander, libel, unfounded accusations and plagarism are also serious professional offences.

3. Any published information which is found to be inaccurate shall be voluntarily and immediately rectified.

4. Rumour and unconfirmed news shall be identified and treated as such.

Art. III. 1. All engaged in the gathering, transmission and dissemination of news and in commenting thereon shall seek to maintain full public confidence in the integrity and dignity of their profession. They shall assign and accept only such tasks as are compatible with this integrity and dignity; and they shall guard against exploitation of their status.

2. Full responsibility shall be assumed for all information and comments published. If responsibility is disclaimed, this shall be explicitly stated in advance.

3. The reputation of individuals shall be respected, and news regarding their private lives likely to harm their reputation shall not be published unless it is in the public interest, as distinguished from public curiosity, to do so. Charges against reputation or moral character shall not be made without opportunity for reply.

4. Discretion shall be observed about sources of information and matters revealed in confidence. Professional secrecy must be observed; and this privilege may always be invoked, taking the law of the country into account.

Art. IV. All engaged in the gathering of information about countries other than their own, or in commenting on them, shall make the utmost endeavour to acquire the necessary background knowledge conducive to accurate and objective reporting and comment concerning such countries.

(ii) On 24 May 1950, the Sub-Commission adopted a resolution on the calling of an international professional conference to be entrusted with the task of preparing and adopting the final draft of an international code of ethics. The resolution reads as follows:

The Sub-Commission on Freedom of Information and of the Press

Recommends to the Economic and Social Council that it request the Secretary-General

1. To transmit to all governments the draft International Code of Ethics formulated by the Sub-Commission at its fourth session, together with available texts of existing codes of ethics and other relevant information;

2. To request governments to refer such working material to information enterprises and professional associations in their respective territories for comment and suggestions to be returned to the Secretary-General; and

3. To analyse the comments received and to submit them to the fifth session of the Sub-Commission in order that it may re-examine the draft in the light of these comments and adopt a text to be presented to an international professional conference which could be convoked at a later date pursuant to resolution No. 36 of the United Nations Conference on Freedom of Information.

C. *Other Decisions taken by the Sub-Commission*

(i) On 25 May 1950, the Sub-Commission adopted a resolution concerning the implementation of the principles contained in resolutions No. 2 and No. 3 of the United Nations Conference on Freedom of Information. This resolution reads as follows:

The Sub-Commission on Freedom of Information and of the Press,

Taking note of resolution No. 2 of the United Nations Conference on Freedom of Information condemning war propaganda and the spreading of false or distorted reports, and of resolution No. 3 which deals with the implementation of resolution No. 2, both these resolutions having been referred to the Sub-Commission by the Economic and Social Council in resolution 241 B (IX) of 22 July 1949,

Recalling that the terms of reference of the Sub-Commission refer to the need to study the problems involved in the application of the resolutions adopted by the Conference,

Requests the Secretary-General to submit to the fifth session of the Sub-Commission a full report on the measures or actions taken by governments pursuant to the above resolutions on the basis of the information which governments have supplied him on this matter, as well as on the publicity already given these resolutions by the United Nations.

(ii) On 26 May 1950, the Sub-Commission adopted a resolution concerning the documentation on the current status of freedom of information in the world, which reads as follows:

The Sub-Commission on Freedom of Information and of the Press,

Considering that in the present circumstances defence of freedom of information implies efforts not only to broaden its scope and to improve its functioning, but also to prevent it from being further restricted and trampled upon,

Considering that, subject to the legitimate interests of national defence and public security, freedom of information is a force working for the peoples able to safeguard it, even in the midst of international rivalry,

Considering that, in a recent resolution addressed to the Economic and Social Council and to the General Assembly, the Sub-Commission on Freedom of Information and of the Press requested that governments should be cautioned against placing undue restrictions on freedom of information and of the press in cases of public emergency, and

Considering that governments are less likely to impose undue restrictions and to err on the side of arbitrary action if these do not pass unnoticed,

Recommends to the Economic and Social Council that it request the Secretary-General to include a special section in the *Yearbook on Human Rights* containing excerpts from, or summaries of, new national legislation concerning freedom of information, to be furnished to him by the correspondents appointed by governments; and, further

Recommends that the Council request the Secretary-General to

(*a*) Continue to approach governments with a view to obtaining regularly from them the new legislative and administrative measures which they may deem it necessary to take with regard to freedom of information and of the Press;

(*b*) In accordance with paragraphs 2 and 3 of resolution 240 B (IX) of the Economic and Social Council, obtain from the enterprises or associations mentioned therein any reports or surveys that they may compile concerning the current status of freedom of information in any part of the world; and

(*c*) Compile all pertinent data, analyse all information received, conduct appropriate research and prepare studies thereon for submission to the Sub-Commission at each session.

2. *Economic and Social Council* (Eleventh Session)

The Economic and Social Council considered the report of the fourth session of the Sub-Commission on Freedom of Information and of the Press at its eleventh session and adopted the following resolution (306 (XI)), which concerned interference with the reception of radio broadcasts, freedom of information in a state of emergency, the sale and purchase of newsprint, the draft International Code of Ethics, and reports and surveys on the status of freedom of information in different parts of the world:

A

The Economic and Social Council

Takes note of the report of the Sub-Commission on Freedom of Information and of the Press (fourth session) to the Economic and Social Council; and

Requests the Secretary-General to transmit to the Sub-Commission the records of the relevant discussion at the eleventh session of the Council.

B

Whereas the General Assembly in its resolution 59 (I) authorizing the holding of the United Nations Conference on Freedom of Information declared that freedom of information is a fundamental human right and is the touchstone of all the freedoms to which the United Nations is consecrated,

Whereas freedom to listen to radio broadcasts regardless of source is embodied in article 19 of the Universal Declaration of Human Rights, which reads: "Everyone has the right to freedom of opinion and expression" and whereas this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers,

Whereas article 44 of the International Telecommunication Convention, Atlantic City, 1947, provides that "All stations whatever their purpose, must be established and operated in such a manner as not to result in harmful interference to the radio service or communications of other members or associate members . . . [and that] each Member or associate Member undertakes to require the private operating agencies which it recognizes, and the other operating agencies duly authorized for this purpose, to observe the provisions of the preceding paragraph", and

Considering that the duly authorized radio operating agencies in some countries are deliberately interfering with the reception by the people of those countries of certain radio signals originating beyond their territories,

The Economic and Social Council

Declares this type of interference to be a violation of the accepted principles of freedom of information; condemns all measures of this nature as a denial of the right of all persons to be fully informed concerning news, opinions and ideas regardless of frontiers;

Transmits to the General Assembly the records of the discussion on this subject in the Council; and

Recommends to the General Assembly that it call upon all Member Governments to refrain from such interference with the right of their peoples to freedom of information.

C

The Economic and Social Council

Recommends to the General Assembly that it adopt the following resolution:

Considering that freedom of information and of the Press is a fundamental human right and should be advanced and safeguarded in all circumstances, and,

Considering that limitations have been placed on this right in emergencies or on the pretext of emergencies,

The General Assembly

Recommends to all Member States that, when they are compelled to declare a state of emergency, measures to limit freedom of information and of the Press shall be taken only in the most exceptional circumstances and then only to the extent strictly required by the situation.

D

The Economic and Social Council,

Considering that for economic reasons serious problems have arisen in various countries of the world with regard to the supply of newsprint,

Considering that this situation has caused certain governments to intervene officially in the sale and purchase of newsprint, either by restricting the amount of foreign currency allocated for its importation or by rationing it among the various organs of the Press, or by regulating the use by Press enterprises of the newsprint placed at their disposal,

Considering that governmental interference in these matters has led in certain cases to confiscation or other forms of arbitrary and discriminatory action, which it is desirable to avoid,

Invites the Member States concerned to put an end to such confiscatory measures and discriminatory actions as being contrary to freedom of the Press.

E

The Economic and Social Council

Requests the Secretary-General:

(1) To communicate to information enterprises and national and international professional associations, for comment and suggestions (including comment on the usefulness of such a code) to be returned to the Secretary-General, the draft International Code of Ethics formulated by the Sub-Commission on Freedom of Information and of the Press at its fourth session, together with the relevant section of its report; and

(2) To analyse the comments received and submit them to the Sub-Commission on Freedom of Information and of the Press at its fifth session in order that it

may re-examine the draft in the light of these comments and recommend any further action it may deem desirable, including the possibility of convening an international professional conference.

F

The Economic and Social Council

Requests the Secretary-General:

(1) To continue to approach governments with a view to obtaining regularly from them the new legislative and administrative measures which they may deem it necessary to take with regard to freedom of information and of the Press;

(2) To obtain from the enterprises or associations mentioned therein, in accordance with paragraphs 2 and 3 of resolution 240 B (IX) of the Council, any reports or surveys that they may compile concerning the current status of freedom of information in any part of the world; and

(3) To compile all pertinent data, analyse all information received, conduct appropriate research and prepare studies thereon for submission to the Sub-Commission on Freedom of Information and of the Press at each session.

On 15 August 1950, the Economic and Social Council took note of the report of the first session of the Technical Assistance Committee (resolution 291 (XI)).[1]

At its eleventh session, the Council also raised the point of whether there was not some danger of overlapping between the work of the Sub-Commission and UNESCO and, in resolution 331 B (XI) requested that a study be undertaken delimiting the respective activities of UNESCO and the Sub-Commission. The text of the resolution is as follows:

The Economic and Social Council,

Considering that the United Nations and the United Nations Educational, Scientific and Cultural Organization carry on, within their own spheres, activities relating to freedom of information,

Requests the Secretary-General to prepare for the Council, in collaboration with the Director-General of UNESCO, a report delimiting the respective activities of the two organizations with a view to their co-ordination, in particular including comparison of the terms of reference and programme of the Sub-Commission on Freedom of Information and of the Press with the Constitution and programme of UNESCO.

[1] Acting upon the Economic and Social Council resolution 240 D (IX) (Encouragement of Independent Domestic Agencies), the Technical Assistance Committee reported to the Council that, if a request for technical assistance in connexion with the development of domestic information agencies in an under-developed country was received from a government, the Technical Assistance Board would give it consideration in the normal manner and report to the Technical Assistance Committee. See *Yearbook on Human Rights for 1949*, p. 365.

On 16 August 1950, the Council considered the report of its Interim Committee on Programme of Meetings (document E/1834) and approved the Calendar of Conferences for 1951. This committee had recommended, in respect of the Sub-Commission, that, in view of the administrative difficulties confronting the Secretariat in 1951 and in order to allow sufficient time for material to be received and prepared for transmission to the Sub-Commission, its next session should be postponed until 1952.

3. *General Assembly* (Fifth Session)

The General Assembly considered at its fifth session, Chapter V, section VII, of the report of the Economic and Social Council which described the action taken during 1950 regarding the draft Convention on Freedom of Information and the recommendations of the Sub-Commission on Freedom of Information and of the Press at its fourth session. It adopted the following resolutions in addition to that on the draft Convention[2] relating to this chapter of the report:

(i) *Resolution 420 (V)*. On 1 December 1950, the General Assembly adopted a resolution relating to holding a session of the Sub-Commission on Freedom of Information and of the Press in 1951. This resolution reads as follows:

The General Assembly,

Considering it desirable that the Sub-Commission on Freedom of Information and of the Press should continue the study of the agenda items referred to it by the Economic and Social Council for consideration,

Resolves to invite the Economic and Social Council to reconsider its resolution 336 (XI) of 16 August 1950, with a view to including in its calendar of conferences for 1951 a session of the Sub-Commission on Freedom of Information and of the Press.

(ii) *Resolution 424 (V)*. On 14 December 1950, the General Assembly adopted a resolution on interference with radio signals, as follows:

The General Assembly,

Whereas freedom to listen to radio broadcasts regardless of source is embodied in article 19 of the Universal Declaration of Human Rights, which reads: "Everyone has the right to freedom of opinion and expression" and whereas this right "includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers,

Whereas article 44 of the International Telecommunication Convention, Atlantic City, 1947, provides that "All stations, whatever their purpose, must be established and operated in such a manner as not to result

[2] See p. 475 above.

in harmful interference to the radio service or communications of other members or associate members ... [and that] each member or associate member undertakes to require the private operating agencies which it recognizes and the other operating agencies duly authorized for this purpose, to observe the provisions of the preceding paragraph",

Considering that the duly authorized radio operating agencies in some countries are deliberately interfering with the reception by the people of those countries of certain radio signals originating beyond their territories, and bearing in mind the discussion which took place in the Economic and Social Council and in the Sub-Commission on Freedom of Information and of the Press on this subject,

Considering that peace among nations rests on the goodwill of all peoples and governments and that tolerance and understanding are pre-requisites for establishing goodwill in the international field,

1. *Adopts* the declaration of the Economic and Social Council contained in its resolution 306 B (XI) of 9 August 1950 to the effect that this type of interference constitutes a violation of the accepted principles of freedom of information;

2. *Condemns* measures of this nature as a denial of the right of all persons to be fully informed concerning news, opinions and ideas regardless of frontiers;

3. *Invites* the governments of all Member States to refrain from such interference with the right of their peoples to freedom of information;

4. *Invites* all governments to refrain from radio broadcasts that would mean unfair attacks or slanders against other peoples anywhere and in so doing to conform strictly to an ethical conduct in the interest of world peace by reporting truly and objectively;

5. *Invites* also Member States to give every possible facility so that their peoples may know objectively the activities of the United Nations in promoting peace and, in particular, to facilitate the reception and transmission of the United Nations official broadcasts.

(iii) *Resolution 425 (V)*. On 14 December 1950, the General Assembly adopted a resolution on the question of the freedom of information and of the Press in times of emergency. This resolution reads as follows:

The General Assembly,

Considering that freedom of information and of the Press is one of the fundamental freedoms and should be advanced and safeguarded,

Considering that limitations might be placed on this freedom in emergencies or on the pretext of emergencies,

Recommends to all Member States that, when they are compelled to declare a state of emergency, measures to limit freedom of information and of the Press shall be taken only in the most exceptional circumstances and then only to the extent strictly required by the situation.

4. *Economic and Social Council*
(Eleventh Session, resumed)

On 13 December 1950, the Economic and Social Council reconsidered the question of a 1951 session of the Sub-Commission on Freedom of Information and of the Press and decided not to hold such a session (document E/SR.436).

SECTION III

CONDEMNATION OF PROPAGANDA AGAINST PEACE

In connexion with a declaration on the removal of the threat of a new war and the strengthening of peace and security among nations, the General Assembly at its fifth session adopted the following resolution (381 (V)) condemning propaganda against peace:

The General Assembly

1. *Reaffirms* its resolutions 110 (II) and 290 (IV), paragraph 8, which condemn all propaganda against peace and recommend the free exchange of information and ideas as one of the foundations of good-neighbourly relations between the peoples;

2. *Declares* that such propaganda includes:

(1) Incitement to conflicts or acts of aggression;

(2) Measures tending to isolate the peoples from any contact with the outside world, by preventing the Press, radio and other media of communication from reporting international events, and thus hindering mutual comprehension and understanding between peoples;

(3) Measures tending to silence or distort the activities of the United Nations in favour of peace or to prevent their peoples from knowing the views of other States Members.

CHAPTER IV

STATUS OF WOMEN

SECTION I

COMMISSION ON THE STATUS OF WOMEN

(Fourth Session)

The Commission on the Status of Women held its fourth session at Lake Success, New York, from 8 to 19 May 1950. It adopted a number of resolutions relating to political rights of women, nationality of married women, information on the legal status and treatment of women, participation of women in the work of the United Nations, the application of penal law to women, the technical assistance programme in relation to the status of women, educational opportunities for women, and communications concerning the status of women.[1] These were all matters which the Commission had studied at previous sessions. At its fourth session, the Commission took up two new questions, the problem of Greek mothers whose children have not been repatriated, and the situation of women who were subjected to so-called scientific experiments in Nazi concentration camps.

The resolutions and decisions of the Commission are as follows:

A. *Political Rights of Women*

1. *Convention on Political Rights of Women*

The Commission on the Status of Women,

Taking into consideration the memorandum of the Secretary-General on constitutions, electoral laws and other legal instruments relating to the franchise of women and their eligibility to public office and functions (A/1163),

Invites the Secretary-General to continue his valuable annual reports on this subject and suggests that in future reports he include also pertinent information on the political rights of women in Trust Territories, drawn from annual reports of the administering authorities, and also information which may be communicated to him by the administering authorities of Non-Self-Governing Territories;

Considering that the Charter of the United Nations was signed in 1945, and noting that document E/CN.6/131, as corrected, lists twenty countries as still denying women equal political rights,

Considering that at the third session of the Commission on the Status of Women, held in Beirut in March 1949, the Commission requested the Secretary-General to examine the possibility of proposing a convention on the political rights of women, similar to the Convention signed at Bogotá in 1948, which has to date been signed by fourteen States and ratified by four, and noting that since its signature, Chile and Costa Rica have granted equal political rights to women,

Considering that the Commission on the Status of Women has worked for four years on a detailed investigation of the position of women in various fields, and that sufficient information has already been presented clearly to reveal the discrimination against women in the political field,

Requests the Secretary-General to prepare for submission to this Commission at its next session a draft convention on the granting to women of equal political rights with men.

2. *Political Education of Women*

The Commission on the Status of Women,

Having studied the Secretary-General's report on the collection and dissemination of information on effective programmes of political education for women who have recently acquired the right to vote,

Appreciates the work done by non-governmental organizations in the field of political education;

Notes that effective programmes of such education cannot be undertaken as extensively as desired in certain regions by non-governmental organizations without further assistance; and therefore

Requests the Economic and Social Council to instruct the Secretary-General to make available the information already collected by the Secretariat, in the form of a study guide or a pamphlet which would serve as a guide to organizations working for the political education of women in countries where women have recently acquired the right to vote or are beginning to participate in public affairs.

B. *Nationality of Married Women*

The Commission on the Status of Women

Requests the Economic and Social Council:

(*a*) To take appropriate measures, as soon as possible, to ensure the drafting of a convention on

[1] For the action taken by the Commission and the Council on communications, see Chapter VI, section II.

nationality of married women, embodying the following principles:

(i) There shall be no distinction based on sex as regards nationality, in legislation or in practice;

(ii) Neither marriage nor its dissolution shall affect the nationality of either spouse. Nothing in such a convention shall preclude the parties to it from making provision for the voluntary naturalization of aliens married to their nationals;

(*b*) To instruct the appropriate bodies of the United Nations to give consideration to the problem of the transmission of nationality to children from either the father or the mother on a basis of equality.

C. *Information on the Legal Status and Treatment of Women*

The Commission on the Status of Women,

Having examined the questionnaire prepared by the Secretary-General on the legal status and treatment of women, parts II and III,

Requests the Secretary-General:

(*a*) To circulate to governments part II of the questionnaire, on property rights of women, and part III, on family law, with the request that they supply replies at the earliest possible time, but not later than 31 December 1951 in the case of part III, and 30 June 1952 in the case of part II;

(*b*) To forward copies of the questionnaire, together with simplified questions based on parts II and III, to specialized agencies and non-governmental organizations, and request their comments by 31 December 1950;

(*c*) To prepare, for its next session, a survey of various legal systems, based on documentation available on the subjects included in parts II and III of the questionnaire, together with an analysis of replies thereto received from governments and comments received from specialized agencies and non-governmental organizations;

(*d*) To prepare also, if possible four months in advance of the next meeting of the Commission, a compilation and an analysis of the information contained in the replies already supplied by governments to the sections of part I of the questionnaire not yet so compiled and analysed—namely, section C—on public services and functions; section E, on civil liberties; and section F, on fiscal laws; supplementing this information from other sources necessary to ensure a complete and accurate picture.

D. *Participation of Women in the United Nations*

The Commission on the Status of Women,

Having studied the Secretary-General's report on the participation of women in the work of the United Nations in relation to their employment in the Secretariat and the extent of their participation in delegations;

Having regard to article 8 of the Charter, which provides that no restriction shall be placed on the eligibility of men and women to participate in any capacity under conditions of equality in the principal and subsidiary organs of the United Nations,

Noting that women have been engaged mainly in subordinate positions in the Secretariat, and that very few women have been appointed as members of delegations,

Considering that the appointment of delegations is within the jurisdiction of the Member States of the United Nations,

Suggests that the Economic and Social Council draw the attention of Member States to the desirability of greater participation of women in delegations;

Requests the Secretary-General to examine the reasons why women have not yet been able to take up more important positions in the Secretariat, and report thereon;

Invites the Secretary-General to take the necessary steps to give promotion to qualified women staff members and to appoint more women to higher posts which they are competent to fill in order to secure equality between the sexes in the Secretariat and thereby assure more fully the participation of women in all capacities in United Nations organs.

E. *Application of Penal Law to Women*

The Commission on the Status of Women,

Noting the report on the application of penal law to women (E/CN.6/139) prepared by the Secretary-General on the basis of information supplied by non-governmental organizations,

Noting also that the Social Commission has undertaken a comprehensive study of problems concerning the prevention of crime and the treatment of offenders,

Considering that certain aspects of these problems are of direct interest to the work of the Commission on the Status of Women, in particular the importance of adequate and appropriate measures for the care and the social and vocational rehabilitation of women offenders,

Requests the Economic and Social Council to ask the Social Commission:

(*a*) To bear in mind, in its study, the concern of the Commission on the Status of Women that there should be no discrimination against women in penal law and its application; and that there should be provision for the particular needs of women in all parole, probation, welfare, vocational training and rehabilitation services;

(*b*) To refer to the Commission on the Status of Women, for its consideration and comment, any question arising in the special field referred to in (*a*) above.

F. *Technical Assistance Programme in Relation to the Status of Women*

The Commission on the Status of Women,

Noting the types of technical assistance to be rendered by the United Nations and the specialized agencies,

Expresses the belief that the status of women will be improved through the operation of technical assistance programmes directed toward economic development, including improvement of standards of living, health and family welfare;

Recommends to the Economic and Social Council that attention be given to the part that women should play in these programmes (for example, as doctors and nurses, teachers and technical advisers) both as to the eligibility of women in the countries concernd for employment in technical, professional and administrative positions and their consideration as trainees;

Recommends also that in areas in the process of economic development, attention be given by governments, in co-operation with the International Labour Organisation and other specialized agencies interested in the matter, to the need of safeguarding women workers against exploitation and of promoting equal pay for equal work.

G. *Educational Opportunities for Women*

The Commission on the Status of Women

Expresses its appreciation to UNESCO for its assistance in the study of educational opportunities for women throughout the world, and of obstacles to the equality of sexes in this field;

Requests the Secretary-General of the United Nations and the Director-General of UNESCO to pursue jointly their work in this field, and, in particular:

(*a*) To complete the survey with such additional and later information as is available;

(*b*) To promote, throughout the world, opinion in favour of equal opportunities of access to education for both sexes;

(*c*) To direct attention to the development of fundamental education and adult education in agricultural and less-developed countries, with special emphasis on such techniques as would encourage the social advancement of women;

Requests the Secretary-General to invite the ILO to collaborate in the study and promotion of measures for the development of vocational guidance and technical education among women.

H. *The Problem of Greek Mothers whose Children have not been repatriated*

The Commission on the Status of Women,

Having heard the statement presented by the representative of Greece concerning the plight of the Greek mothers who were deprived of their children more than two years ago,

Considering that the Universal Declaration of Human Rights, adopted by the General Assembly of the United Nations in December 1948, specifically refers to the family as "the natural and fundamental group unit of society which is entitled to protection by society and the State",

Taking into account General Assembly resolutions 193 (III) of 27 November 1948, and 288 (IV) of 18 November 1949, and more particularly the announcement of the League of Red Cross Societies on 13 May 1950 that despite continuous efforts "no Greek child has so far been returned to Greece", and that "even elementary indications indispensable for solution of the problem have not been furnished by the governments concerned",

Appreciates the endeavours of the Secretary-General of the United Nations and of the International Red Cross organizations for the repatriation of these children;

Expresses the hope that the result of the continuing activities of the Secretary-General on this matter, in co-operation with the International Red Cross organizations, will be the prompt repatriation of the children, so as to put an end to the agony of the Greek mothers;

Expresses its confidence that the Secretary-General will submit to the General Assembly the urgent necessity of finding new ways for the solution of this very important question, in case that the countries detaining the children have not returned them; and

Requests the Economic and Social Council to transmit this resolution to the General Assembly.

I. *Information concerning the Situation of Women who were subjected to So-called Scientific Experiments in the Nazi Concentration Camps*[1]

The Commission on the Status of Women,

Considering the plight of women survivors of concentration camps who were subjected, during the Nazi regime, to so-called medical experiments,

Requests the Economic and Social Council to call the attention of the Social Commission, the World Health Organization, or other appropriate agencies, to the plight of these war victims who were compelled by

[1] Concerning the Economic and Social Council's action in this field, see p. 524 of this *Yearbook*.

force to reside in Germany during the war, or at least those who may be unable to obtain compensation from any country; and to keep the Commission on the Status of Women informed of actions taken in respect thereto.

SECTION II

ECONOMIC AND SOCIAL COUNCIL

(*Eleventh Session*)

The Economic and Social Council considered the report of the fourth session of the Commission on the Status of Women (E/1712) at its eleventh session and on 14 and 17 July 1950 adopted resolution 304 (XI), parts A–I, dealing with the various recommendations made by the Commission. On the question of Greek mothers whose children have not been repatriated, the Council transmitted the Commission's resolution to the General Assembly.

The text of resolution 304 (XI) is as follows:

A

Report of the Commission on the Status of Women

The Economic and Social Council

Takes note of the report of the Commission on the Status of Women (fourth session).

B

Political Rights of Women

The Economic and Social Council,

Having regard to the resolution of the Commission on the Status of Women (fourth session) on Political Rights of Women,

Draws the attention of the Commission, in connexion with its consideration of a draft convention on the political rights of women, to the opinions expressed in the relevant summary records of the Council.

C

Political Education of Women

The Economic and Social Council,

Having noted the recommendations of the Commission on the Status of Women on the dissemination of information on effective programmes of political education for women having recently acquired the right to vote,

Appreciates the work done by non-governmental organizations in the field of political education;

Notes that effective programmes of such education cannot be undertaken as extensively as desired in certain regions by non-governmental organizations without further assistance; and therefore,

Requests the Secretary-General to make available the information already collected by the Secretariat, in the form of a study guide or pamphlet which would serve as a guide to organizations working for the political education of women in countries where women have recently acquired the right to vote or are beginning to participate in public affairs.

D

Nationality of Married Women

The Economic and Social Council,

Noting the recommendation of the Commission on the Status of Women (fourth session) in regard to the nationality of married women,

Noting, further, that the International Law Commission, at its first session, included among the topics selected for study and codification "nationality, including statelessness",

Proposes to the International Law Commission that it undertake as soon as possible the drafting of a convention to embody the principles recommended by the Commission on the Status of Women;

Requests the International Law Commission to determine at its present session whether it deems it appropriate to proceed with this proposal and, if so, to inform the Economic and Social Council as to the approximate time when the International Law Commission might proceed to initiate action on this problem, and

Invites the Secretary-General to transmit this resolution to the International Law Commission together with the recommendation of the Commission on the Status of Women.

E

Application of Penal Law to Women

The Economic and Social Council

Invites the Social Commission:

(*a*) To bear in mind, in its study of problems concerning the prevention of crime and the treatment of offenders, the concern of the Commission on the Status of Women that there should be no discrimination against women in penal law and its application; and that there should be provision for the particular needs of women in all parole, probation, welfare, vocational training and rehabilitation services; and

(*b*) To refer to the Commission on the Status of Women, for its consideration and comment, any question arising in the special field referred to in (*a*) above.

F

Technical Assistance Programme in Relation to the Status of Women

The Economic and Social Council,

Noting the recommendations of the Commission on the Status of Women (fourth session) on technical assistance programmes in relation to the Status of Women,

Requests the Secretary-General to forward this resolution to the appropriate bodies in the United Nations and the specialized agencies for their consideration in developing and administering programmes of technical assistance.

G

Educational Opportunities for Women

The Economic and Social Council

Notes the recommendations of the Commission on the Status of Women (fourth session) on Educational Opportunities for Women;

Expresses its appreciation to UNESCO for its assistance in the study of educational opportunities for women throughout the world and of obstacles to the equality of the sexes in this field;

Requests the Secretary-General of the United Nations and the Director-General of UNESCO to pursue jointly their work in this field, and, in particular:

(*a*) To complete the survey with such additional and later information as is available;

(*b*) To promote throughout the world opinion in favour of equal opportunities of access to education for both sexes;

(*c*) To direct attention to the development of fundamental education and adult education in agricultural and less-developed countries, with special emphasis on such techniques as would encourage the social advancement of women; and

Invites the International Labour Organisation to collaborate in this study with particular reference to the study and the promotion of measures for the development of vocational guidance and vocational and technical education among women.

H

Problem of Greek Mothers whose Children have not yet been repatriated

The Economic and Social Council

Transmits to the General Assembly the resolution contained in the report of the Commission on the Status of Women (fourth session) on the problem of Greek mothers whose children have not been repatriated.

I

Communications concerning the Status of Women

The Economic and Social Council

Decides to amend paragraphs (*a*), (*b*) and (*e*) of resolution 76 (V) of the Economic and Social Council to read as follows:

"*The Economic and Social Council,*

". . .

"*Requests* the Secretary-General:

"(*a*) To compile and distribute to members of the Commission on the Status of Women, before each session, a non-confidential list containing a brief indication of the substance of each communication, however addressed, which deals with the principles relating to the promotion of women's rights in the political, economic, civil, social and educational fields, and to divulge the identity of the authors of such communications, unless they indicate that they wish their names to remain confidential;

"(*b*) To compile, before each session of the Commission, a confidential list containing a brief indication of the substance of other communications concerning the status of women, however addressed, and to furnish this list to members of the Commission in private meeting without divulging the identity of the authors of communications, except in cases where the authors state that they have already divulged or intend to divulge their names or that they have no objection to their names' being divulged;

". . .

"(*e*) In the future, to furnish each Member State concerned with a copy of any communication concerning the status of women which refers explicitly to that State, or to territories under its jurisdiction, without divulging the identity of the author, except as provided for in paragraph (*b*) above."

SECTION III

GENERAL ASSEMBLY

(*Fifth Session*)

On 1 December 1950, the General Assembly at its fifth session adopted three resolutions (382 (V), A, B and C), dealing with threats to the political independence and territorial integrity of Greece. Resolution 382 C (V) concerns the problem of Greek children who have not been repatriated. The text of this resolution reads as follows:

The General Assembly,

Noting with grave concern the reports of the International Committee of the Red Cross and the League of Red Cross Societies and of the Secretary-General, and particularly the statement that "not a single

Greek child has yet been returned to his native land and, except for Yugoslavia, no country harbouring Greek children has taken definite action to comply with the resolutions unanimously adopted in two successive years by the General Assembly",

Recognizing that every possible effort should be made to restore the children to their homes, in a humanitarian spirit detached from political or ideological considerations,

Expressing its full appreciation of the efforts made by the International Committee of the Red Cross and the League of Red Cross Societies and by the Secretary-General to implement General Assembly resolutions 193 C (III) and 288 B (IV),

1. *Requests* the Secretary-General and the International Committee of the Red Cross and the League of Red Cross Societies to continue their efforts in accordance with the aforementioned resolutions;

2. *Urges* all States harbouring the Greek children to make all the necessary arrangements, in co-operation with the Secretary-General and the international Red Cross organizations, for the early return of the Greek children to their parents and, whenever necessary, to allow the international Red Cross organizations free access to their territories for this purpose;

3. *Establishes* a standing committee, to be composed of the representatives of Peru, the Philippines and Sweden, to act in consultation with the Secretary-General, and to consult with the representatives of the States concerned, with a view to the early repatriation of the children;

4. *Requests* the International Committee of the Red Cross and the League of Red Cross Societies to co-operate with the standing committee;

5. Requests the Secretary-General to report from time to time to Member States on the progress made in the implementation of the present resolution, and requests the international Red Cross organizations and the Secretary-General to submit reports to the General Assembly at its sixth session.

CHAPTER V

PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES

The Sub-Commission on Prevention of Discrimination and Protection of Minorities, at its third session, held at Lake Success, New York, 9 to 27 January 1950, gave particular attention to the question of the protection of minorities, following especially on the adoption of resolution 217 C (III) by the General Assembly in 1948. This resolution called for a thorough study of the problem of minorities in order that the United Nations might be able to take effective measures for the protection of racial, national, religious or linguistic minorities. The Sub-Commission also adopted two resolutions relating to the prevention of discrimination. It then turned its attention to the draft International Covenant on Human Rights and examined the articles dealing with questions coming within the terms of reference of the Sub-Commission, and it made certain recommendations regarding measures of implementation. All these recommendations and the action of the Commission on Human Rights and the Economic and Social Council relating to them are described in this chapter.

SECTION I

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES

(Third Session)

The first resolution which the Sub-Commission adopted on the prevention of discrimination sought to collect information from Member States on legal measures concerning the prevention of discrimination within their territories. The text is as follows:

Prevention of Discrimination

The Sub-Commission on the Prevention of Discrimination and the Protection of Minorities,

Considering the need for thorough and precise information on efforts being made to prevent discrimination,

Recommends that the Commission on Human Rights request the Secretary-General:

(1) To make arrangements with each Member Government, and other governments, to furnish him as soon as practicable, but in any case not later than 31 December 1950, examples (with appropriate citations where possible) of legislation, judicial decisions, and other methods which have been found to be especially useful in that country in preventing discrimination, in one or more of the fields covered by the Universal Declaration of Human Rights; and

(2) To distribute a brief summary of that material to the members of the Sub-Commission prior to its fourth session.

The second resolution which the Sub-Commission adopted on this question emphasized that discrimination can be prevented through education, especially in schools, and it asked the assistance of UNESCO in preparing books and pamphlets. This resolution reads as follows:

Educational Measures to prevent Discrimination

The Sub-Commission on Prevention of Discrimination and Protection of Minorities

Requests the Commission on Human Rights to recommend to the Economic and Social Council the adoption of the following draft resolution:

Draft resolution on educational measures to prevent discrimination

The Economic and Social Council,

Believing that much may be accomplished in the prevention of discrimination through education, and that more lasting and more positive results in preventing discrimination are attainable in the school than in other social spheres;

Affirms its conviction that the principal goals of education in this field should be:

(1) To abolish all forms of social discrimination;

(2) To abolish such prejudices as may lead to the commission of unlawful acts of discrimination;

and to this end:

Calls upon all Member States to take all steps available to them to eliminate all forms of discrimination from their schools;

Emphasizes the part which private educational establishments and non-governmental organizations have to play in combating prejudice and discrimination;

Invites UNESCO to give due emphasis to those practical activities in the field of education which are likely to lead to the abolition of prejudice and discrimination, and in this connexion to bear in mind the opportunities for progress to this end afforded by adult educational schemes;

Notes with pleasure the following resolutions in the programme of UNESCO, which it considers capable of producing practical results:

(*a*) *Resolution 2.3.* The improvement of textbooks and teaching materials, which work could be directed to preventing the creation of prejudice which leads to discrimination;

(*b*) *Resolution 2.2.* The conduct of educational seminars, since the attitude of the teacher is among the most significant factors in preventing the formulation of prejudice;

(*c*) *Resolution 2.4.* The publication and distribution of selected materials from each seminar, which can be of use, both to teachers and, in connexion with schemes of adult education, to the general public, and

Urgently awaits UNESCO's forthcoming statement on race from the viewpoint of present scientific knowledge, and as soon as it is available.

1. *Requests* UNESCO to give priority and the necessary funds to the preparation, publication and dissemination of simple and readable books or pamphlets, based on scientific facts, explaining the fallacies of exaggerated race theories and religious and other prejudices; and

2. *Invites* Member States to distribute such books or pamphlets widely among all their peoples, and to disseminate these ideas in their public education programmes.

When the Sub-Commission began to study the question of minorities at this session, it first attempted to define the term for the purposes of protection by the United Nations, and it adopted the following resolution:

Definition of Minorities for Purposes of Protection by the United Nations

The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

(1) *Recognizing* that there are among the nationals of many States distinctive population groups, usually known as minorities, possessing ethnic, religious, or linguistic traditions or characteristics different from those of the rest of the population, and that among these are groups that need to be protected by special measures, national or international, so that they can preserve and develop the traditions or characteristics in question,

(2) Recognizing, however, that not all such groups pose this problem of protection, which is not required:

(*a*) When the group in question, though numerically inferior to the rest of the population, is the dominant group therein; and

(*b*) When the group in question seeks complete identity of treatment with the rest of the population, in which case its problems are covered by those articles of the Charter of the United Nations, the Universal Declaration of Human Rights and the Draft International Covenant on Human Rights that are directed towards the prevention of discrimination,

(3) *Recognizing* at the same time that any definition of minorities that is made with a view to their protection by the United Nations must take into account complex situations such as:

(*a*) The undesirability of imposing unwanted distinctions upon individuals belonging to a group who, while possessing the distinctive characteristics described above, do not wish to be treated differently from the rest of the population,

(*b*) The undesirability of interfering with the spontaneous developments which take place when impacts such as that of a new environment or that of modern means of communication produce a state of rapid racial, social, cultural or linguistic evolution,

(*c*) The risk of taking measures that might lend themselves to misuse amongst a minority whose members' spontaneous desire for a tranquil life as contented citizens of a State might be disturbed by parties interested in fomenting amongst them a disloyalty to that State,

(*d*) The undesirability of affording protection to practices which are inconsistent with human rights as proclaimed in the Universal Declaration of Human Rights, and

(*e*) The difficulties raised by claims to the status of a minority by groups so small that special treatment would, for instance, place a disproportionate burden upon the resources of the State;

(4) *Resolves* that from the standpoint of such measures of protection of minorities as the United Nations may wish to take, and in the light of the exceptions and complexities set out above:

(*a*) The term "minority" includes only those non-dominant groups in a population which possess and wish to preserve stable ethnic, religious or linguistic traditions or characteristics markedly different from those of the rest of the population;

(*b*) Such minorities should properly include a number of persons sufficient by themselves to develop such characteristics; and

(*c*) The members of such minorities must be loyal to the State of which they are nationals.

The Sub-Commission then turned its attention to classifying minorities and adopted the following resolution:

Classification of Minorities

The Sub-Commission on Prevention of Discrimination and Protection of Minorities

Takes note of the heads of classification of minorities contained in chapter 3 of the Secretary-General's

memorandum on definition and classification of minorities (E/CN.4/Sub.2/85); and

Appoints a committee consisting of three members to improve upon this classification in order to assist governments in replying to any inquiry on minorities the United Nations may make of them.

The Sub-Commission discussed at some length the matters raised by General Assembly resolution 217 C (III) on the fate of minorities, and it attempted to draw up a resolution which would provide a satisfactory interim reply to the General Assembly. It was aware that the draft International Covenant on Human Rights was not in final form, but it noted that linguistic rights of minorities were not adequately protected either in the Universal Declaration of Human Rights or in the draft Covenant as it then stood. It was of the opinion, therefore, that the General Assembly should be asked to adopt interim measures immediately to protect these rights. The Sub-Commission adopted two resolutions on this question. In the first, it expressed the view that the best method of protecting minorities would be through the International Covenant on Human Rights, and it proposed a draft article to be included. The text of the resolution is as follows:

Measures for the Protection of Minorities to be included in the International Covenant on Human Rights

The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Having considered the problem of the fate of minorities referred to it by the General Assembly in its resolution 217 C (III),

Having adopted, in resolution C of its third session, a definition of minorities for purposes of protection by the United Nations,

Is of the opinion that the most effective means of securing such protection would be the inclusion in the International Covenant on Human Rights of the following article:

"Persons belonging to ethnic, religious or linguistic minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language."

The second resolution dealt with linguistic rights of minorities. The Sub-Commission proposed that the General Assembly adopt as its own resolution the recommendations which the Sub-Commission had made at its second session on this matter and so place the full weight of its authority behind these recommendations. That part of the draft resolution was therefore drawn up in the form of a draft resolution of the General Assembly. The text of the whole resolution as submitted to the Economic and Social Council is as follows:

Interim Measures to be taken for the Protection of Minorities

The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Recommends to the Commission on Human Rights that the following draft resolution be recommended for adoption by the Economic and Social Council, for transmission to the General Assembly:

"*Interim measures to be taken for the protection of minorities*

"*The Economic and Social Council,*

"*Considering* that the problem of the fate of minorities was referred to the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities by the General Assembly in part C of resolution 217 (III),

"*Considering* that the Sub-Commission on Prevention of Discrimination and Protection of Minorities has adopted a definition of minorities for purposes of protection by the United Nations in resolution C of its third session; and that the Sub-Commission is now engaged in a further study of the problem of minorities in order that the United Nations may be able to take effective measures for such protection,

"*Considering* that the rights traditionally desired by minorities were extensively set forth in the minorities treaties and declarations which came into force after the First World War,

"*Considering* that many of the rights traditionally claimed by minorities are proclaimed in the Universal Declaration of Human Rights, and that, pending the coming into force of an international covenant on human rights, it is not feasible fully to determine what further measures will become necessary for the protection of minorities,

"*Considering*, however, that neither the Universal Declaration of Human Rights nor the draft International Covenant on Human Rights fully covers the right of using the minority language before the courts, or of teaching the minority language as one of the courses of study in State-supported schools,

"*Recommends* that, as an interim means of protecting minorities, the General Assembly adopt, and so place the full weight of its authority behind, the draft resolution on facilities to be provided for minorities recommended by the Sub-Commission on Prevention of Discrimination and Protection of Minorities at its second session (E/CN.4/351, annex, resolution V):

"*The General Assembly,*

"*Considering* that the discriminatory treatment of minorities has been and could be a major cause of international tension leading to war,

"*Considering* at the same time that rights accorded minorities entail a corresponding obligation on their part towards the larger society in which they live and must not, therefore, be used to threaten or undermine the unity and security of States.

"*Considering* that provision has been made in the Universal Declaration of Human Rights and in the draft International Covenant on Human Rights for the recognition of such traditional minority rights as freedom of religion, speech, assembly and association;

"*Recommends* that, in the interest of enabling recognized minority groups to maintain their cultural heritage when they desire to do so, Member Governments should provide, as a minimum, adequate facilities, in districts, regions and territories where they represent a considerable proportion of the population, for:

(1) The use before the courts of languages of such groups, in those cases where the member of the minority group does not speak or understand the language ordinarily used in the courts;

(2) The teaching in State-supported schools of languages of such groups, provided that such groups request it and that the request in reality expresses the spontaneous desire of such groups;

"*Affirms* that such groups shall possess these or other rights so long as they are not used for the purpose of threatening or undermining the unity or security of States."

The Sub-Commission also considered at this session those articles of the draft International Covenant on Human Rights as drawn up by the Commission on Human Rights at its fifth session[1] which concerned prevention of discrimination and protection of minorities (articles 13, 16, 20 and 21) and expressed its opinion concerning them, in some cases suggesting certain changes.

The Sub-Commission also considered the proposals on measures of implementation which had been included in the report of the fifth session of the Commission on Human Rights, and it adopted the following resolution giving its views on three very important questions—namely, the submission of petitions or complaints, the machinery of implementation, and the recognition of minorities:

The Problem of Implementation

The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Having examined the question of the subsequent implementation of the proposed International Covenant on Human Rights from the point of view of the effective prevention of discrimination and protection of minorities,

Having examined the various proposals and projects submitted to the Commission on Human Rights which have been made available to the Sub-Commission,

Appreciates the natural desire of States to prevent abuse, in particular, by States not parties to the Covenant, of the procedure that may be envisaged for such implementation, on the ground that such abuse might adversely affect States in which there is full freedom of expression, while leaving authoritarian States unaffected; and

Takes this opportunity of placing before the Commission on Human Rights its views upon:

(a) *Submission of petitions or complaints*

The right to petition the United Nations as a means of initiating procedure for the enforcement of human rights should be granted to both individuals and groups. The Sub-Commission therefore considers it of the utmost importance that non-governmental organizations and groups, as well as individuals, should be given adequate place in a comprehensive machinery for the implementation of the proposed International Covenant on Human Rights.

The Sub-Commission is of the opinion that, in the special case of minorities, a decision to confine the right of initiating proceedings to contracting States presents a grave drawback. This drawback is that, by impelling a dissatisfied minority to seek the support of a foreign State, it increases the risk to which attention is drawn in paragraph 3 (*c*) of the definition of minorities contained in resolution C of the Sub-Commission's third session. The Sub-Commission is of the opinion that, for this reason, every effort must be made to provide a minority with other recourses, and that due attention should be paid to the experience of the League of Nations in general and, in particular, to the lessons of the experiment in the direction of alternative recourse carried out under the auspices of the League of Nations in Upper Silesia. The Sub-Commission intends further to study this and other possible solutions of the intricate problem described above.

(b) *Machinery of implementation*

The Sub-Commission is of the opinion that an international court or tribunal still remains the most effective guarantee of human rights, and looks forward to the establishment, as soon as may be, of such an instrument of international justice. If the Commission on Human Rights feels, however, that such a step is not immediately feasible, the next most effective method of securing the prevention of discrimination and the protection of minorities, through the execution of the International Covenant on Human Rights, would be the establishment of a single, permanent and non-political body having broad powers of supervision and conciliation.

(c) *Recognition of minorities*

The Sub-Commission is of the opinion that the protection of minorities calls for more than a mere remedy of violations of minority rights. The very demand for minority status may raise complications and give rise to disagreements which only an impartial judicial body can settle. If the rights of minorities are to be

[1] See document E/1371, Annex A.

adequately protected, the Commission on Human Rights should make provision for placing the relevant powers of decision in the hands of the court or body mentioned above, or to some section of that court or body.

Finally, the Sub-Commission adopted the following resolution, which concerns certain matters not covered by the Convention on the Prevention and Punishment of the Crime of Genocide, particularly the rights of political groups:

Certain Matters not covered by the Convention on the Prevention and Punishment of the Crime of Genocide

The Sub-Commission on the Prevention of Discrimination and the Protection of Minorities,

Considering that the Convention on the Prevention and Punishment of the Crime of Genocide, while open to improvement, constitutes an important instrument for the defence of the rights and freedoms which it is designed to safeguard,

Considering that the reason why certain provisions contained in the original draft of the Convention were not ultimately adopted was that, in the view of a majority of States Members, these provisions could more appropriately be taken care of in the instruments covering the protection of human rights, the prevention of discrimination and the protection of minorities,

Requests the Commission on Human Rights to take these circumstances into account when advising on the measures of implementation and the procedure for appeal to be adopted, in order that rights eminently deserving of respect, including, in particular, those of political groups, should be in no danger of omission from the various instruments which may concern them.

SECTION II

COMMISSION ON HUMAN RIGHTS

(*Sixth Session*)

The Commission on Human Rights, at its sixth session, held at Lake Success from 27 March to 19 May 1950, had before it the reports of both the second[1] and third sessions of the Sub-Commission on Prevention of Discrimination and Protection of Minorities (documents E/CN.4/351 and E/CN.4/358). It noted these reports and took into account the various suggestions which the Sub-Commission had made regarding the draft Covenant and Measures of Implementation. The recommendations arising out of the two reports were first considered in an *ad hoc* Committee on Prevention of Discrimination and Protection of Minorities established by the Commission for that purpose and composed of the representatives of Denmark (Chairman and Rapporteur), Egypt, Greece, India, the Philippines and the United States of America. The Commission adopted this committee's report (document E/CN.4/450) with very few changes.

The Commission took the following action on the recommendations of its Sub-Commission:

(*a*) It combined into one resolution the two resolutions proposed by the Sub-Commission at its second and third sessions by which governments were invited to furnish information relating to legal measures concerning the prevention of discrimination and information on the status (protection) of minorities, and it made certain drafting amendments.

(*b*) It adopted the Sub-Commission's resolution on educational measures for the prevention of discrimination with certain drafting changes.

(*c*) It adopted the following resolution on the Sub-Commission's proposals regarding a definition of minorities and interim measures for their protection:

The Commission on Human Rights,

Having considered the draft resolutions recommended by the Sub-Commission on Prevention of Discrimination and Protection of Minorities relating to a definition of minorities and interim measures to be taken for the protection of minorities,

Recognizing that the Sub-Commission decided at its third session that the protection of minorities by international agreement should be considered further at its next session, and

Recognizing that the Sub-Commission will have additional information at its next session from Member Governments regarding minorities which it proposes to consider before completing its recommendations relating to their protection by international agreement,

Decides that it is premature to forward to the Economic and Social Council the resolution relating to a definition of minorities and the resolution on interim measures to be taken for the protection of minorities;

Decides accordingly not to forward these two draft resolutions to the Economic and Social Council in order to enable the Sub-Commission to use them if necessary for the development of its further proposals on minorities, drawing the attention of the Sub-Commission to the discussion of these draft resolutions in the Commission on Human Rights.

(*d*) It decided that no action should be taken on proposals submitted by the Sub-Commission at its second session relating to national co-ordinating committees, the right of the Sub-Commission to forward proposals to the Economic and Social Council, and the co-operation of non-governmental organizations with the Sub-Commission. It rejected as premature the recommendation of the Sub-Commission for the handling of petitions (see Chapter VI, section IV, of this *Yearbook*).

[1] For an account of the second session of the Sub-Commission, see *Yearbook on Human Rights for 1949*, pp. 373–374.

The Commission also decided, though not as a result of a recommendation of the Sub-Commission, that as no nominations had been proposed, the number of members of the Sub-Commission should be reduced from thirteen to twelve.

SECTION III

ECONOMIC AND SOCIAL COUNCIL

(Eleventh Session)

At its eleventh session, the Council took up the draft resolutions on prevention of discrimination and protection of minorities arising out of the report of the sixth session of the Commission on Human Rights (document E/1681) and requiring action on the part of the Council. These draft resolutions related to the request for information from governments concerning prevention of discrimination and protection of minorities and educational measures for the prevention of discrimination. The resolutions adopted by the Council became resolutions 303 F (XI) and 303 G (XI) respectively.

Resolution 303 F (XI) reproduces with minor drafting changes the draft resolution as put forward by the Commission. It reads as follows:

The Economic and Social Council,

Considering the need for thorough and precise information relating to the prevention of discrimination and the protection of minorities,

Requests the Secretary-General:

(*a*) To invite Governments, Members and non-members of the United Nations,

(i) To furnish him, as soon as practicable, examples (with appropriate citations, where possible) of legislation, judicial decisions, and other types of action which have been found to be especially useful in that country in preventing discrimination in one or more of the fields covered by the Universal Declaration of Human Rights;

(ii) To furnish him, as soon as practicable, full information regarding the protection of any minority within their jurisdiction by legislative measures and in the light of the Universal Declaration of Human Rights; and

(iii) To furnish him, in particular, such information as could serve as a basis for defining the term "minorities";

(*b*) To distribute the information received from governments in response to this invitation to the members of the Sub-Commission on the Prevention of Discrimination and Protection of Minorities prior to its fourth session.

Resolution 303 G (XI) is the draft resolution of the Commission with some drafting changes and amendments to bring the references to UNESCO up to date in accordance with action which had been taken since the Commission's sixth session. It reads as follows:

The Economic and Social Council,

Believing that education plays a great part in the prevention of discrimination, and that positive and lasting results in preventing discrimination are attainable in educational establishments,

Affirming its conviction that one of the principal goals of education should be to eliminate all forms of discrimination and to eradicate such prejudices as may lead to the commission of acts of discrimination,

Emphasizing that considerable assistance in this matter may be given by non-governmental organizations and private institutions,

Noting with satisfaction the initiative taken in this field by the United Nations Educational, Scientific and Cultural Organization in the improvement of textbooks and teaching materials, in the conduct of educational seminars in the training of teaching personnel, and in the preparation of a statement on race from the viewpoint of present scientific knowledge,

Recommends that Member States:

(*a*) Adopt measures to be applied in educational establishments designed to eliminate discrimination;

(*b*) Distribute the books and pamphlets referred to in sub-paragraph (*b*) below as widely as possible among all their peoples; and

(*c*) Introduce, in so far as possible, the ideas contained in the books or pamphlets referred to in sub-paragraph (*b*) below into their education programmes; and

Recommends that the United Nations Educational, Scientific and Cultural Organization:

(*a*) Give emphasis to such practical educational activities as are likely to eradicate prejudice and discrimination, bearing in mind the opportunities afforded through adult education; and

(*b*) Undertake, as soon as practicable, preparation and widest possible dissemination of information through suitable books and pamphlets based on scientific knowledge as well as general moral principles contained in the Charter of the United Nations and the Universal Declaration of Human Rights and designed to expose fallacies of race theories and to combat prejudices which give rise to discrimination.

The Council at this session also approved, in resolution 303 B (XI), the Commission's decision to reduce from thirteen to twelve the number of members of the Sub-Commission on Prevention of Discrimination and Protection of Minorities.

When adopting the Calendar of Conferences for 1951, in resolution 336 (XI), the Council decided that no session of the Sub-Commission should be scheduled for that year.

SECTION IV

GENERAL ASSEMBLY

(Fifth Session)

At its fifth session, the General Assembly adopted the following resolution (419 (V)) concerning the decision of the Economic and Social Council not to schedule a session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities for 1951:

The General Assembly,

Considering the importance of the studies entrusted to the Sub-Commission on Prevention of Discrimination and Protection of Minorities, and having regard to the fact that, in order to enable the Sub-Commission to continue these studies, the term of office of its members was extended by three years by a decision of the Commission on Human Rights dated 16 May 1949,

Considering, moreover, that the last meeting of the Sub-Commission was held in January 1950,

Resolves to invite the Economic and Social Council to reconsider its resolution 336 (XI) of 16 August 1950,[1] with a view to including in its calendar of conferences for 1951 a session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities.

SECTION V

ECONOMIC AND SOCIAL COUNCIL

(Eleventh Session, resumed)

In the light of the above resolution of the General Assembly, the Council reconsidered the question of the 1951 session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, and decided on 13 December 1950 to hold a session of the Sub-Commission in 1951 at a date and place to be decided upon at the beginning of the twelfth session of the Council.

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[1] Resolution 336 (XI), of 16 August 1950, contains the calendar of conferences for 1951, which did not provide for a session of the Sub-Commission during that year. See also section V of this chapter.

CHAPTER VI

PROCEDURES FOR DEALING WITH COMMUNICATIONS

Several of the changes in the procedures for dealing with communications concerning human rights which had been recommended in 1949 by the various organs dealing particularly with human rights questions came into effect in 1950. Resolutions 75 (V) and 76 (V) of the Economic and Social Council adopted in 1947 established the original procedure governing the treatment of communications dealing with human rights and the status of women. In 1949, however, the Commission on Human Rights, the Sub-Commission on Freedom of Information and of the Press and the Sub-Commission on Prevention of Discrimination and Protection of Minorities each recommended that the procedure laid down at that time should be amended in certain respects.[1] The Economic and Social Council considered the proposals made by the Sub-Commission on Freedom of Information and of the Press at its ninth session, held in July and August 1949, and accepted them in a somewhat modified form.[2] In 1950, the Council adopted the changes proposed by the Commission on Human Rights. The Commission, however, did not accept for the time being the recommendations of its Sub-Commission on Prevention of Discrimination and Protection of Minorities. This chapter outlines the details of the various changes proposed and the action taken thereon during 1950.

SECTION I
COMMUNICATIONS DEALING WITH HUMAN RIGHTS

1. *Economic and Social Council* (Tenth Session)

At its tenth session, the Economic and Social Council adopted the recommendations to amend certain paragraphs of resolution 75 (V) which the Commission on Human Rights had suggested at its fifth session. It adopted the draft resolution exactly as it had been proposed by the Commission. This became resolution 275 B (X) of the Council, reading as follows:

The Economic and Social Council

Decides to amend paragraphs (*a*), (*b*) and (*e*) of resolution 75 (V), as amended by resolutions 116 A (VI) and 192 A (VIII), to read as follows:

"*The Economic and Social Council*

". . .

"*Requests* the Secretary-General:

"(*a*) To compile and distribute to members of the Commission on Human Rights, before each session, a non-confidential list containing a brief indication of the substance of each communication, however addressed, which deals with the principles involved in the promotion of universal respect for and observance of human rights and to divulge the identity of the authors of such communications unless they indicate that they wish their names to remain confidential;

"(*b*) To compile, before each session of the Commission, a confidential list containing a brief indication of the substance of other communications concerning human rights, however addressed, and to furnish this list to members of the Commission, in private meeting, without divulging the identity of the authors of communications except in cases where the authors state that they have already divulged or intend to divulge their names or that they have no objection to their names' being divulged;

". . .

"(*e*) In the future, to furnish each Member State concerned with a copy of any communication concerning human rights which refers explicitly to that State or to territories under its jurisdiction, without divulging the identity of the author, except as provided for in paragraph (*b*) above."

2. *Commission on Human Rights* (Sixth Session)

In the following resolution the Commission on Human Rights took note at its sixth session of the lists of communications concerning human rights which had been prepared in accordance with the new procedure.

The Commission on Human Rights

Takes note of the lists of communications concerning human rights prepared for its sixth session by the Secretary-General in accordance with resolution 75 (V), as amended by resolution 275 B (X).

SECTION II
COMMUNICATIONS DEALING WITH THE STATUS OF WOMEN

1. *Commission on the Status of Women* (Fourth Session)

At its fourth session, the Commission on the Status of Women recommended that the procedure laid down

[1] See *Yearbook on Human Rights for 1949*, pp. 375–377.

[2] *Ibid.*, pp. 375–376.

in resolution 76 (V) of the Economic and Social Council for the treatment of communications concerning the status of women should be amended so as to conform to the procedure governing the treatment of communications concerning human rights by the Commission on Human Rights. It adopted the following resolution:

The Economic and Social Council

Decides to amend paragraphs (*a*), (*b*) and (*e*), of resolution 76 (V) to read as follows:

"*The Economic and Social Council*

". . .

"*Requests* the Secretary-General:

"(*a*) To compile and distribute to members of the Commission on the Status of Women, before each session, a non-confidential list containing a brief indication of the substance of each communication, however addressed, which deals with the principles relating to the promotion of women's rights in the political, economic, civil, social and educational fields, and to divulge the identity of the authors of such communications, unless they indicate that they wish their names to remain confidential;

"(*b*) To compile, before each session of the Commission, a confidential list containing a brief indication of the substance of other communications concerning the status of women, however addressed, and to furnish this list to members of the Commission in private meeting without divulging the identity of the authors of communications, except in cases where the authors state that they have already divulged or intend to divulge their names or that they have no objection to their names' being divulged;

". . .

"(*e*) In the future, to furnish each Member State concerned with a copy of any communication concerning the status of women which refers explicitly to that State, or to territories under its jurisdiction, without divulging the identity of the author, except as provided for in paragraph (*b*) above."

2. *Economic and Social Council* (Eleventh Session)

At its eleventh session, the Economic and Social Council adopted the draft resolution exactly as it had been submitted by the Commission on the Status of Women, and it became resolution 304 I (XI) of the Council.

SECTION III

COMMUNICATIONS DEALING WITH FREEDOM OF INFORMATION

The Commission on Human Rights, at its sixth session, took note of resolution 240 C (IX) of the Economic and Social Council, which had established a procedure for the treatment of communications concerning freedom of information by the Sub-Commission on Freedom of Information and of the Press. Under this resolution,[1] members of the Sub-Commission would receive twice a year a summary of all communications relating to principles and practices in the field of information from any legally constituted national or international press, information, broadcasting or newsreel enterprise or association; any communications containing complaints that freedom of information was being violated would be dealt with according to whatever procedure was followed by the Commission on Human Rights.

SECTION IV

COMMUNICATIONS DEALING WITH THE PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES

At its second session, the Sub-Commission on Prevention of Discrimination and Protection of Minorities drew up a draft resolution on the handling of petitions, which it submitted to the Commission on Human Rights. The resolution aimed at making it possible for the Sub-Commission to act on any petition drawing attention to urgent problems in the field of the prevention of discrimination and protection of minorities.

At its sixth session, the Commission on Human Rights took note of this resolution but was of the opinion that, until the measures of implementation of the International Covenant of Human Rights had been decided upon, it would be premature to sanction any procedure for dealing with complaints or petitions by a Sub-Commission other than that at present in force for dealing with communications relating to human rights.[2]

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[1] See *Yearbook on Human Rights for 1949*, pp. 375–376, for the full text.

[2] See document E/1681, paragraphs 54–56.

CHAPTER VII

TRADE UNION RIGHTS (FREEDOM OF ASSOCIATION)

In 1950, the Economic and Social Council and the International Labour Organisation continued to consider the question of safeguarding human rights.[1] The most recent development had been the decision of the Governing Body of the International Labour Office, at its 110th session, held from 29 December 1949 to 7 January 1950, to establish a Fact-finding and Conciliation Commission on Freedom of Association to take up alleged violations of trade union rights. The Governing Body had also worked out a detailed procedure for the functioning of this commission.[2]

SECTION I

ECONOMIC AND SOCIAL COUNCIL

(*Tenth Session*)

The Economic and Social Council considered the question of trade union rights at its tenth session in the light of the Governing Body's decision, which was reported to it by the Director-General of the International Labour Office (document E/1595). It also had before it at this session a progress report by the Secretary-General and the Director-General (document E/1566), which the Council had itself requested in resolution 239 (IX). This report, which was written before the Governing Body's decision was taken, related to the possible establishment of a commission on freedom of association, and it included the Secretary-General's comments on the question. The Governments of Canada, Greece, Lebanon, Netherlands, Pakistan, Philippines, the Union of Soviet Socialist Republics and the United States of America commented on this report, and these observations were circulated to the Council at this session (document E/1605 and Add. 1-5).

The Council in general approved the Governing Body's decision, and gave particular attention to defining the relationship between the United Nations and the International Labour Organisation in utilizing the services of the Fact-finding and Conciliation Commission. A draft resolution submitted by the delegation of Denmark suggested a possible procedure which might be followed in dealing with alleged violations of trade union rights. Many amendments were, however, put forward before the resolution as amended was finally adopted. It became resolution 277 (X) of the Council, reading as follows:

The Economic and Social Council

Notes with approval the decision taken by the Governing Body of the International Labour Office at its one hundred and tenth session to establish a Fact-finding and Conciliation Commission on Freedom of Association with the terms of reference set forth in the letter of 19 January 1950 from the Director-General of the International Labour Office to the Secretary-General of the United Nations;[3]

Considering that this action corresponds to the intent of Council resolution 239 (IX) and is likely to prove the most effective way of safeguarding trade union rights,

Decides:

(*a*) To accept on behalf of the United Nations the services of the International Labour Organisation and the Fact-finding and Conciliation Commission as established by the International Labour Organisation;

(*b*) To forward to the Governing Body of the International Labour Office, for its consideration as to referral to the Commission, all allegations regarding infringements of trade union rights received from governments or trade union or employers' organizations against member States of the International Labour Organisation;

(*c*) (i) That, before acting on such allegations regarding any Member of the United Nations which is not a member of the International Labour Organisation, the Secretary-General, on behalf of the Council, will seek the consent of the Government concerned;

(ii) That upon receiving such consent, the Council will transmit to the Fact-finding and Conciliation Commission, through the Governing Body of the International Labour Office, any allegations regarding infringements of trade union rights by Members of the United Nations which are not members of the International Labour Organisation, received from governments or trade union or employers' organizations, which it considers suitable for transmittal;

(iii) That if such consent is not forthcoming, the Council will give consideration to such refusal with

[1] See *Yearbook on Human Rights for 1947*, pp. 525-526, *Yearbook on Human Rights for 1948*, pp. 519-520, and *Yearbook on Human Rights for 1949*, pp. 378-380.

[2] See *Yearbook on Human Rights for 1949*, pp. 293-295 and p. 380.

[3] See document E/1595 and Corr. 1.

a view to taking any appropriate alternative action designed to safeguard the rights relating to freedom of association involved in the case;

Requests the Secretary-General to bring allegations regarding infringements of trade union rights received from governments or trade union or employers' organizations to the attention of the Council, notwithstanding the provisions of resolution 75 (V) as amended;[1]

Invites the International Labour Organisation:

(*a*) To refer, in the first instance, to the Council any allegations regarding infringements of trade union rights against a Member of the United Nations which is not a member of the International Labour Organisation;

(*b*) To make suitable arrangements which would permit the Fact-finding and Conciliation Commission of the International Labour Organisation to transmit to the Council any reports on cases regarding non-members of the International Labour Organisation;

(*c*) To include in the annual report of the International Labour Organisation to the United Nations an account of the work of the Commission; and

Recommends that the General Assembly refer allegations regarding trade union rights to the Council for action in accordance with the procedures adopted by it as provided in this resolution.

SECTION II

THE GOVERNING BODY OF THE INTERNATIONAL LABOUR OFFICE

(*111th Session*)

At its 111th session, held in Geneva in February and March 1950, the Governing Body of the International Labour Office was informed of the decision taken by the Economic and Social Council in resolution 277 (X). It expressed its satisfaction at this decision and took appropriate steps for its implementation. This was reported to the Council at its eleventh session (document E/1659).

[1] See Council resolutions 116 A (VI), 192 A (VIII) and 275 (X).

SECTION III

ECONOMIC AND SOCIAL COUNCIL

(*Eleventh Session*)

At its eleventh session various communications were submitted to the Economic and Social Council alleging that trade union rights were being violated in certain countries. They were received by the Secretary-General in February, March and May 1950 from the World Federation of Trade Unions, from the Central Council of the Trade Unions Confederation of Yugoslavia, from the Confédération générale du Travail of France, from the Great Lakes Licensed Officers' Organization—Foremen's Association of America, and from the Secretary of the Hind Mazdoor Sabha (documents E/C.2/250, E/1648 and Add. 1 and 2).

The Council noted that all these communications referred to States which were members of the ILO and therefore in accordance with resolution 277 (X) should be transmitted to that body. It decided to refer this item without discussion to the ILO, at the same time pointing out that this action did not mean that the Council was permanently delegating trade union rights to another organ and, if it thought fit, it might itself deal with any allegation that such rights were being infringed.[2]

[2] See document E/SR.376.

CHAPTER VIII

FORCED LABOUR

During 1950, the Economic and Social Council discussed the question of forced labour in general terms at its tenth and eleventh sessions. This item had first been placed on its agenda at the request of the American Federation of Labor in 1947. In these discussions, the Council took into account the replies received from governments regarding their willingness to co-operate in an impartial inquiry into the extent of forced labour in their territories. The Secretary-General had addressed this question to all governments, Members and non-members of the United Nations, in accordance with resolutions 195 (VIII) and 237 (IX) of the Economic and Social Council.[1]

At its tenth session, the Council decided to defer further consideration of the item to its twelfth session. It was thought that the replies received from governments up to that date did not, on the whole, indicate that an impartial inquiry would be effective at that time.

The question was included in the agenda of the eleventh session as a result of a communication from the Director-General of the International Labour Office (document E/1671), drawing attention to discussions in the Governing Body and the International Organizations Committee of the ILO, where it was proposed that the ILO should establish an impartial committee to inquire into the nature and extent of forced labour without prejudice to the establishment of joint machinery by the ILO and the United Nations if the Economic and Social Council should subsequently decide in favour of that course.

The Council also had before it at its eleventh session all the replies received from governments. The Secretary-General reported (document E/1636/Rev.1) that up to that date the following thirty-seven Member and non-member States had stated they were prepared to co-operate in an impartial inquiry or to render assistance in some manner—Argentina, Australia, Belgium, Bolivia, Brazil, Burma, Canada, China, Colombia, Cuba, Denmark, Egypt, Ethiopia, France, Greece, Iceland, India, Iran, Israel, Lebanon, Netherlands, New Zealand, Norway, Pakistan, Philippines, Sweden, Syria, Thailand, Turkey, United Kingdom and United States, Austria, Federal Republic of Germany, Italy, Japan, Nepal and Switzerland; that the following five countries had made no comment on the question of an inquiry—Chile, Saudi Arabia, Union of South Africa, Ceylon and Finland; that the Government of the USSR had replied that it reiterated its views as embodied in the proposals which it had submitted at the eighth session of the Council and that the Government of the Byelorussian SSR supported these proposals; that the Government of Yugoslavia had submitted its own proposals; and that the Governments of Bulgaria, Czechoslovakia and Iraq had stated that they were unable to co-operate.

A proposal was put forward jointly by the United Kingdom and United States delegations that an *ad hoc* committee of not more than five independent members be appointed by the Secretary-General of the United Nations and the Director-General of the International Labour Office, whose task would be;

(i) To survey the field of forced labour, especially systems of "corrective labour" employed as a means of political coercion or punishment for holding or expressing political views or which are on such a scale as to constitute an important element in the economy of a given country;

(ii) To assess the nature and extent of this problem at the present time, and

(iii) To report to the Economic and Social Council and the Governing Body of the International Labour Office (document E/L.104).

The Council, however, did not discuss the proposal in detail at this session, and deferred consideration until its twelfth session.

[1] See *Yearbook on Human Rights for 1949*, pp. 381 and 382.

CHAPTER IX

SLAVERY

At its ninth session, the Economic and Social Council asked the Secretary-General to appoint an *ad hoc* committee of not more than five experts to survey the field of slavery and other institutions or customs resembling slavery, to assess the nature and extent of the problem at the present time, to suggest methods of attacking it, and to suggest an appropriate division of responsibility among the various competent bodies within the framework of the United Nations.[1] Four experts were appointed[2] and held their first session at Lake Success, New York, from 13 February to 23 March 1950. This session was devoted largely to discussing the problem in general terms and deciding what methods should be used to assemble information in order to enable the committee to survey the field of slavery and carry out the other tasks assigned to it.

The *ad hoc* Committee on Slavery decided at its first session that a questionnaire on slavery and institutions or customs analogous thereto should be submitted to governments of Member and non-member States. It prepared the draft of such a questionnaire and, in an interim report (document E/1617), asked the approval of the Economic and Social Council, which was then holding its tenth session. The Committee also requested the Council to authorize it to hold a second session later in 1950, and a third session in 1951.

The Council adopted the following resolution relating to the interim report of the *ad hoc* Committee. It is resolution 276 (X), and reads as follows:

The Economic and Social Council,

Having taken note of the interim report of the *ad hoc* Committee on Slavery,

Considering that the Council has examined otherwise or that it has referred to other bodies for action or report such issues as forced labour and trade union rights,

Returns to the *ad hoc* Committee the questionnaire on slavery and institutions or customs analogous thereto with the request to revise it in the light of the discussions on the subject in the course of the tenth session of the Council and in keeping with the present resolution;

Authorizes the *ad hoc* Committee to transmit the revised questionnaire to governments, Members and non-members of the United Nations, subject to resolution 39 (I) of the General Assembly; and

Considers that the next session of the *ad hoc* Committee should be held not earlier than November 1950 with a view to the submission of a final report to the Council in 1951.

The Committee subsequently revised the draft questionnaire and adopted the following resolution requesting the Secretary-General to transmit the questionnaire to Governments:

The ad hoc *Committee on Slavery,*

Acting in accordance with resolution 276 (X) of the Economic and Social Council of 6 March 1950, concerning the Interim Report of the *ad hoc* Committee on Slavery (E/1617),

Approves the questionnaire on slavery and servitude annexed hereto; and

Requests the Secretary-General to transmit this questionnaire to governments of Members of the United Nations and of non-member States, and to ask them to reply thereto before 1 October 1950.

ANNEX

Questionnaire on Slavery and Servitude

The International Slavery Convention of 1926 defined slavery and the slave trade in article 1 as follows:

"1. Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.

"2. The slave trade includes all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged and, in general, every act of trade or transport in slaves."

The Economic and Social Council, at its ninth session, instructed the Secretary-General to appoint an *ad hoc* committee of experts to survey the field of slavery and other institutions or customs resembling slavery.

The object of this questionnaire is to secure official information on the present situation of slavery and servitude for the use of the *ad hoc* Committee on Slavery.

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[1] See *Yearbook on Human Rights for 1949*, p. 393.

[2] *Ibid.*

1. Does slavery, as defined in article 1 of the International Slavery Convention of 1926, exist in any territory subject to the control of your Government?
2. Does the slave trade, as defined in article 1 of the International Slavery Convention of 1926, exist in any of the territories subject to the control of your Government?
3. Do any practices exist in any territory subject to the control of your Government which are restrictive of the liberty of the person and which tend to subject that person to a state of servitude, as for instance:
   (*a*) Serfdom (compulsory and hereditary attachment to land accompanied by obligations to render service to the landlord);
   (*b*) Traditional forms of involuntary unpaid service exacted by land-owners and other employers of labour;[1]
   (*c*) Debt bondage;[2]
   (*d*) Pledging and pawning of third persons as security for debt;[3]
   (*e*) Exploitation of children under the form of adoption;
   (*f*) Purchase of wives and inheritance of widows by the heir of the deceased husband involving involuntary subjection of a woman to a man not of her choice;
   (*g*) Forms of prostitution of women and children involving exercise of ownership over them?

   Please describe in detail such institutions or practices as may exist.
4. What legislation has been passed, and what administrative methods have been applied, since 1926, to check slavery, the slave trade, or any practices which are restrictive of the liberty of the person and which tend to subject that person to a state of servitude?
5. What have been the results of the application of these measures and activities?

The Committee decided that not only the governments to whom the questionnaire was addressed, but also non-governmental organizations, research institutions, religious organizations and other bodies, as well as individual experts, might be able to supply information relating to slavery and similar customs, and it drafted certain questions to be addressed to such individuals or organizations. It also submitted a special request for information to the International Labour Office. The Committee asked that two more sessions should be held to evaluate the replies received to the questionnaire and the information obtained from the other sources and to formulate any new requests for information which might prove necessary.

At its eleventh session, the Economic and Social Council considered the report of the *ad hoc* Committee (document E/1660) and adopted the following resolution as resolution 307 (XI):

The Economic and Social Council

Takes note of the report of the first session of the *ad hoc* Committee on Slavery;

Decides that the meeting of the *ad hoc* Committee on Slavery planned for November of this year shall take place during the first half of 1951; and

Requests the Committee to submit its final report to the Council at its thirteenth session.

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[1] Such as *concertaje*, *servicio personal*, *pongaje* or *pongueaje*, *yanaconazge* and others.

[2] Such as *siringales* or *cauchales*.

[3] Such as *iwofa*.

CHAPTER X

REFUGEES AND STATELESS PERSONS

As in 1949, United Nations activities concerning refugees and stateless persons during 1950 were directed towards two goals: the setting up of an organ to take over the protection of refugees after the International Refugee Organization ceases its activities, and the drafting of instruments to grant a legal status to refugees and stateless persons. The year 1950 saw the establishment of the Office of a United Nations High Commissioner for Refugees and the election of a High Commissioner. A draft Convention relating to the status of Refugees and a draft Protocol relating to the Status of Stateless Persons were also drawn up during 1950 for completion and signature at a diplomatic conference of plenipotentiaries to be convened in 1951. These events are described in the following sections, one being devoted to developments concerning the draft convention and draft protocol and resolutions concerning the elimination of statelessness, and a second to the establishment of the High Commissioner's Office. A third section concerns a resolution of the General Assembly on the problems of assistance to refugees.

SECTION I

DRAFT CONVENTION RELATING TO THE STATUS OF REFUGEES AND DRAFT PROTOCOL RELATING TO THE STATUS OF STATELESS PERSONS

1. Ad hoc *Committee on Statelessness and Related Problems* (First Session)[1]

The *ad hoc* Committee on Statelessness and Related Problems, appointed by the Economic and Social Council at its ninth session,[2] met at Lake Success, New York, from 16 January to 16 February 1950. It recommended to the Economic and Social Council as the most effective approach to the solution of the problems which had been referred to it the conclusion of conventions, and it drafted two instruments—(1) a draft Convention relating to the Status of Refugees, consisting of a preamble, seven chapters (General Provisions, Legal Status, Gainful Occupation, Welfare, Administrative Measures, Implementation and Transitory Provisions, Final Clauses) with a schedule which concerned a travel document for refugees; and (2) a draft Protocol relating to the Status of Stateless Persons, which would extend certain provisions of the Convention to stateless persons. The Secretary-General was asked to transmit these drafts to governments.

The *ad hoc* Committee believed that it could not examine the complex problem of the elimination of statelessness in great detail or draft a convention on the subject. It therefore adopted the following resolution for the consideration of the Economic and Social Council:

The Economic and Social Council

A. 1. *Invites* Member States to re-examine their nationality laws with a view to reducing so far as possible cases of statelessness which arise from the operation of such laws; and

2. *Recommends* to Member States involved in changes of territorial sovereignty that they include in the arrangements for such changes the necessary provisions for the avoidance of statelessness; and

3. *Invites* Member States to contribute to the reduction of the number of stateless persons by extending to persons in their territory the opportunity to be naturalized; and

4. *Requests* the Secretary-General to seek information from Member States with regard to the carrying out of this resolution and to report thereon to the Council; and

B. 1. *Considering* that progress in the elimination of statelessness requires joint international action; and

2. *Considering* that the conclusion of an agreement or of agreements for this purpose is necessary;

3. *Requests* the International Law Commission to prepare the necessary draft documents at the earliest possible date.

2. *Economic and Social Council* (Eleventh Session)

At its eleventh session, the Economic and Social Council discussed the report of the *ad hoc* Committee

[1] At its eleventh session, the Economic and Social Council, while deciding to convene a second session of this committee, re-named it the *ad hoc* Committee on Refugees and Stateless Persons.

[2] See resolution 348 B (IX) of 8 August 1949, *Yearbook on Human Rights for 1949*, p. 384. The following Member States were represented: Belgium, Brazil, Canada, China, Denmark, France, Israel, Poland, Turkey, Union of Soviet Socialist Republics, United Kingdom, United States, Venezuela.

and decided to reconvene the *ad hoc* Committee on Refugees and Stateless Persons[1] so that it might review the draft instruments in the light of the comments of governments received[2] and the discussions and decisions of the Council itself at its eleventh session. The Council also discussed in considerable detail the definition of the term "refugee" to be included in the Convention and the preamble to the Convention. It adopted the following resolution on these matters, which is resolution 319 B (XI):

I

REPORT OF THE AD HOC COMMITTEE ON REFUGEES AND STATELESS PERSONS

The Economic and Social Council

Takes note of the report of the *ad hoc* Committee on Refugees and Stateless Persons including, in particular, the draft agreements contained therein, and of the comments of governments thereon,

Submits to the General Assembly the report of the *ad hoc* Committee, together with the comments of governments thereon, and the records of the proceedings of this Council on this subject;

Requests the Secretary-General:

(1) To reconvene the *ad hoc* Committee on Refugees and Stateless Persons in order that it may prepare revised drafts of these agreements in the light of comments of governments and of specialized agencies and the discussions and decisions of this Council at its eleventh session, which shall include the definition of "refugee" and the preamble approved by the Council, making such other revisions as appear necessary; and

(2) To submit the drafts, as revised, to the General Assembly at its fifth session;

Draws to the attention of the *ad hoc* Committee the fact that, under rules 75 and 77 of the rules of procedure of the Council, the Committee is authorized to hear statements from Member States not members of the Committee and from such specialized agencies as may wish to participate without vote in the deliberations of the Committee;

Decides that, in addition, the *ad hoc* Committee is authorized to hear statements from such non-member States, because of their special interest in the problem, as may wish to participate as observers, without vote, in the deliberations of the Committee; and

Recommends to the General Assembly that it approve international agreements on the basis of the draft agreements prepared by the *ad hoc* Committee, as revised, taking into account comments of Governments and the views expressed at the eleventh session of the Council.

II

DRAFT CONVENTION RELATING TO THE STATUS OF REFUGEES

The Economic and Social Council,

Having examined the preamble of the draft Convention relating to the Status of Refugees, prepared by the *ad hoc* Committee on Refugees and Stateless Persons, and the definition of "refugee" contained in article I of the draft Convention,

Decides that the revised draft Convention to be submitted to the fifth session of the General Assembly after further review by the *ad hoc* Committee shall contain the following texts of the preamble[3] and definition of the term "refugee" (article I).

"*Definition of the Term 'Refugee'* (Chapter I, article I)

"*A.* For the purposes of this convention, the term 'refugee' shall apply to any person

"(1) Who in the period between 1 August 1914 and 15 December 1946 was considered a refugee under the Arrangements of 12 May 1926 and 30 June 1928 or under the Conventions of 28 October 1933 and 10 February 1938, and the Protocol of 14 September 1939;

"(2) Who has been accepted by the International Refugee Organization as falling under its mandate;

"(3) Who has had, or has, well-founded fear of being the victim of persecution for reasons of race, religion, nationality or political opinion, as a result of events in Europe before 1 January 1951, or circumstances directly resulting from such events, and, owing to such fear, has had to leave, shall leave, or remains outside the country of his nationality, before or after 1 January 1951, and is unable, or, owing to such fear or for reasons other than personal convenience, unwilling, to avail himself of the protection of the government of the country of his nationality, or, if he has no nationality, has left, shall leave, or remains outside the country of his former habitual residence.

"The decision as to eligibility taken by the International Refugee Organization during the period of its activities shall not prevent the status of refugees being recognized in the case of persons who otherwise fulfil the conditions of this article.

[1] It will be noted that the name of the Committee has been changed. See footnote 1 on p. 503.

[2] Comments were received from the Governments of Australia, Austria, Canada, Chile, Egypt, France, India, Israel, Italy, Lebanon, the United Kingdom and the United States (E/1703 and Addenda) and from the IRO (E/1704).

[3] The text of the preamble as adopted in this resolution is not reproduced here, but in the annex to this chapter, since the text was not changed subsequently by the General Assembly.

"*B.* This Convention shall not apply to any refugee enjoying the protection of a government because

"(1) He has voluntarily re-availed himself of the protection of the government of the country of his nationality;

"(2) Having lost his nationality, he has voluntarily reacquired it;

"(3) He has acquired a new nationality and enjoys the protection of the government of the country of his nationality;

"(4) He has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution;

"(5) As a former member of a German minority, he has established himself in Germany or is living there.

"*C.* No contracting State shall apply the benefits of this Convention to any person who, in its opinion, has committed a crime specified in article VI of the London Charter of the International Military Tribunal. No contracting State shall be obliged, under the provisions of this Convention, to grant refugee status to any person whom it has serious reasons to consider as falling under the provisions of article 14 (2) of the Universal Declaration of Human Rights."

In a third part of the same resolution, the Council made certain recommendations to governments arising out of the *ad hoc* Committee's draft resolution relating to the elimination of statelessness:

III

PROVISIONS RELATING TO THE PROBLEM OF STATELESSNESS

The Economic and Social Council,

Recalling its concern with the problem of statelessness as expressed in its resolution 248 B (IX) of 8 August 1949, in which it established an *ad hoc* committee to study this problem,

Having considered the report of the *ad hoc* Committee and its recommendations concerning the elimination of statelessness,

Taking note of article 15 of the Universal Declaration of Human Rights concerning the right of every individual to a nationality,

Considering that statelessness entails serious problems both for individuals and for States, and that it is necessary both to reduce the number of stateless persons and to eliminate the cause of statelessness,

Considering that these different aims cannot be achieved except through the co-operation of each State and by the adoption of international conventions,

Recommends to States involved in changes of territorial sovereignty that they include in the arrangements for such changes provisions, if necessary, for the avoidance of statelessness;

Invites States to examine sympathetically applications for naturalization submitted by stateless persons habitually resident in their territory and, if necessary, to re-examine their nationality laws with a view to reducing as far as possible the number of cases of statelessness created by the operation of such laws;

Requests the Secretary-General to seek information from States with regard to the above-mentioned matters and to report thereon to the Council;

Notes with satisfaction that the International Law Commission intends to initiate as soon as possible work on the subject of nationality, including statelessness, and urges that the International Law Commission prepare at the earliest possible date the necessary draft international convention or conventions for the elimination of statelessness;

Invites the Secretary-General to transmit this resolution to the International Law Commission.

3. Ad hoc *Committee on Refugees and Stateless Persons* (Second Session)

The *ad hoc* Committee re-convened in Geneva from 14 to 25 August 1950. It revised the draft Convention relating to the Status of Refugees and the draft Protocol relating to the Status of Stateless Persons in the light of the directives given to it by the Economic and Social Council. It did not, therefore, revise the preamble or the definition.[1]

4. *General Assembly* (Fifth Session)

At its fifth session, the General Assembly considered the drafts prepared by the *ad hoc* Committee and decided to convene a conference of plenipotentiaries to complete and sign the draft Convention and draft Protocol. It discussed at some length the definition of the term "refugee" which the Economic and Social Council had adopted in resolution 319 B II (IX). The General Assembly revised this definition in certain respects and referred it to the diplomatic conference for its consideration. The following is the text of resolution 429 (V), which the General Assembly adopted on these matters:

The General Assembly,

Considering that, by its resolution 362 (IV) of 22 October 1949, it approved the recommendation of the Special Committee on Methods and Procedures that the General Assembly might decide to convene a conference of plenipotentiaries to study, negotiate,

[1] For the text of the draft Convention as revised by the Committee, see annex to this chapter.

draft, and possibly sign conventions that had been drawn up by conferences in which all Members of the United Nations had not been invited to take part,

Considering the desirability of enabling the governments of States not Members of the United Nations to participate in the final stages of the drafting of the Convention relating to the Status of Refugees, as prepared by the *ad hoc* Committee on Refugees and Stateless Persons and the Economic and Social Council,

1. *Decides* to convene in Geneva a conference of plenipotentiaries to complete the drafting of and to sign both the Convention relating to the Status of Refugees and the Protocol relating to the Status of Stateless Persons;

2. *Recommends* to governments participating in the conference to take into consideration the draft Convention submitted by the Economic and Social Council and, in particular, the text of the definition of the term "refugee" as set forth in the annex[1] hereto;

3. *Requests* the Secretary-General to take the steps necessary for the convening of such a conference at the earliest possible opportunity;

4. *Instructs* the Secretary-General to invite the governments of all States, both Members and non-members of the United Nations, to attend the said conference of plenipotentiaries;

5. *Calls upon* the United Nations High Commissioner for Refugees, in accordance with the provisions of the Statute of his Office, to participate in the work of the Conference.

SECTION II

ESTABLISHMENT OF A HIGH COMMISSIONER'S OFFICE FOR REFUGEES

1. *Economic and Social Council* (Eleventh Session)

At its fourth session, the General Assembly, in resolution 319 A (IV), had asked the Secretary-General to prepare and submit to governments for comment detailed draft provisions concerning the establishment of a High Commissioner's Office for Refugees. The General Assembly had asked the Council to draft a resolution embodying provisions for the functioning of the High Commissioner's Office. It had also asked the Council to make such recommendations as it might deem appropriate regarding the definition of the term "refugee" to be applied by the High Commissioner.[2]

The draft resolution prepared by the Secretary-General (document E/1669) and the comments of the Governments of Belgium, France, Italy, the Philippines, and the United States of America relating to it (documents E/1767, E/1703, with Addenda, and E/1801) were submitted to the Economic and Social Council at its eleventh session. The Council also had before it a resolution of the General Council of the International Refugee Organization (document E/1668) commenting on the provisions of its constitution in relation to the statute of the High Commissioner's Office then being drawn up.

The Council adopted a statute of the High Commissioner's Office based on a proposal by the delegation of France (document E/AC.7/L.60). The matter was discussed at some length, and the Council paid particular attention to the question of the definition of refugees falling within the competence of the High Commissioner. It decided that they should be those defined in the Convention relating to the Status of Refugees, and such other persons as the General Assembly might from time to time determine. A provision was added that the High Commissioner might intercede with governments on behalf of other categories of refugees, pending consideration by the General Assembly as to whether to bring such categories within his mandate. As approved by the Council, the statute contained four chapters: chapter I, general principles; chapter II, organization; chapter III, powers, functions and competence of the High Commissioner; chapter IV, general provisions covering the administration of the Office and financial regulations. The Council also adopted the following resolution, to which the Statute was appended as an annex:

The Economic and Social Council,

Considering that, at its fourth session, the General Assembly requested the Council to prepare, at its eleventh session, a draft resolution embodying provisions for the functioning of the High Commissioner's Office for Refugees and to submit this draft resolution to the General Assembly for consideration at its fifth regular session, and

Having considered the draft resolution submitted by the Secretary-General,

Decides to transmit to the General Assembly the following draft resolution for consideration by the General Assembly at its fifth session:

The General Assembly,

In view of its resolution 319 A (IV) of 3 December 1949,

Adopts the Annex to the present resolution, being the Statute of the High Commissioner's Office for Refugees; and

Calls upon governments to co-operate with the High Commissioner in the performance of his duties concerning refugees falling under the competence of his Office, especially by:

[1] For the text of the definition referred to, see the annex to this chapter, article 1.

[2] See *Yearbook on Human Rights for 1949*, pp. 384–386.

(*a*) Becoming parties to international conventions providing for the protection of refugees, and by taking the necessary steps of implementation under such conventions;

(*b*) Entering into special agreements with him for the execution of measures calculated to improve the situation of refugees and to reduce the number requiring protection;

(*c*) Admitting refugees to their territories, not excluding those in the most destitute categories;

(*d*) Co-operating with the High Commissioner in efforts to promote the voluntary repatriation of refugees;

(*e*) Promoting the assimilation of refugees, especially by facilitating their naturalization;

(*f*) Providing refugees with travel and other documents such as would normally be provided to other aliens by their national authorities, especially documents which would facilitate their resettlement; and in particular, where a State is Party to the Inter-Governmental Agreement on Refugee Travel Documents signed in London on 15 October 1946, by continuing to issue and accept as valid documents as provided by that Agreement until such State shall become a party to any agreement superseding it;

(*g*) Permitting refugees to transfer their assets, and especially those necessary for their ressettlement; and

(*h*) Providing the High Commissioner with information concerning the number and condition of refugees, and laws and regulations concerning them.

2. *The General Assembly* (Fifth Session)

At its fifth session, the General Assembly examined the provisions adopted by the Council regarding the functioning of the Office of a High Commissioner for Refugees and adopted the following resolution and Statute:

The General Assembly,

In view of its resolution 319 A (IV), of 3 December 1949,

1. *Adopts* the annex to the present resolution, being the Statute of the Office of the United Nations High Commissioner for Refugees;

2. *Calls upon* governments to co-operate with the United Nations High Commissioner for Refugees in the performance of his functions concerning refugees falling under the competence of his Office, especially by:

(*a*) Becoming parties to international conventions providing for the protection of refugees, and taking the necessary steps of implementation under such conventions;

(*b*) Entering into special agreements with the High Commissioner for the execution of measures calculated to improve the situation of refugees and to reduce the number requiring protection;

(*c*) Admitting refugees to their territories, not excluding those in the most destitute categories;

(*d*) Assisting the High Commissioner in his efforts to promote the voluntary repatriation of refugees;

(*e*) Promoting the assimilation of refugees, especially by facilitating their naturalization;

(*f*) Providing refugees with travel and other documents such as would normally be provided to other aliens by their national authorities, especially documents which would facilitate their resettlement;

(*g*) Permitting refugees to transfer their assets and especially those necessary for their resettlement;

(*h*) Providing the High Commissioner with information concerning the number and condition of refugees, and laws and regulations concerning them;

3. *Requests* the Secretary-General to transmit the present resolution, together with the annex attached thereto, also to States non-members of the United Nations, with a view to obtaining their co-operation in its implementation.

ANNEX

Chapter I

GENERAL PROVISIONS

1. The United Nations High Commissioner for Refugees, acting under the authority of the General Assembly, shall assume the function of providing international protection, under the auspices of the United Nations, to refugees who fall within the scope of the present Statute and of seeking permanent solutions for the problem of refugees by assisting governments and, subject to the approval of the governments concerned, private organizations to facilitate the voluntary repatriation of such refugees, or their assimilation within new national communities.

In the exercise of his functions, more particularly when difficulties arise, and for instance with regard to any controversy concerning the international status of these persons, the High Commissioner shall request the opinion of an advisory committee on refugees if it is created.

2. The work of the High Commissioner shall be of an entirely non-political character; it shall be humanitarian and social and shall relate, as a rule, to groups and categories of refugees.

3. The High Commissioner shall follow policy directives given him by the General Assembly or the Economic and Social Council.

4. The Economic and Social Council may decide, after hearing the views of the High Commissioner on the subject, to establish an advisory committee on refugees, which shall consist of representatives of States Members and States non-members of the United

Nations, to be selected by the Council on the basis of their demonstrated interest in and devotion to the solution of the refugee problem.

5. The General Assembly shall review, not later than at its eighth regular session, the arrangements for the Office of the High Commissioner with a view to determining whether the Office should be continued beyond 31 December 1953.

Chapter II

FUNCTIONS OF THE HIGH COMMISSIONER

6. The competence of the High Commissioner shall extend to:

A. (i) Any person who has been considered a refugee under the Arrangements of 12 May 1926 and 30 June 1928 or under the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 or the Constitution of the International Refugee Organization;

(ii) Any person who, as a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality or political opinion, is outside the country of his nationality and is unable or, owing to such fear or for reasons other than personal convenience, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear or for reasons other than personal convenience, is unwilling to return to it.

Decisions as to eligibility taken by the International Refugee Organization during the period of its activities shall not prevent the status of refugee being accorded to persons who fulfil the conditions of the present paragraph;

The competence of the High Commissioner shall cease to apply to any person defined in section A above if:

(*a*) He has voluntarily re-availed himself of the protection of the country of his nationality; or

(*b*) Having lost his nationality, he has voluntarily reacquired it; or

(*c*) He has acquired a new nationality, and enjoys the protection of the country of his new nationality; or

(*d*) He has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution; or

(*e*) He can no longer, because the circumstances in connexion with which he has been recognized as a refugee have ceased to exist, claim grounds other than those of personal convenience for continuing to refuse to avail himself of the protection of the country of his nationality. Reasons of a purely economic character may not be invoked; or

(*f*) Being a person who has no nationality, he can no longer, because the circumstances in connexion with which he has been recognized as a refugee have ceased to exist and he is able to return to the country of his former habitual residence, claim grounds other than those of personal convenience for continuing to refuse to return to that country;

B. Any other person who is outside the country of his nationality or, if he has no nationality, the country of his former habitual residence, because he has or had well-founded fear of persecution by reason of his race, religion, nationality or political opinion and is unable or, because of such fear, is unwilling to avail himself of the protection of the government of the country of his nationality, or, if he has no nationality, to return to the country of his former habitual residence.

7. Provided that the competence of the High Commissioner as defined in paragraph 6 above shall not extend to a person:

(*a*) Who is a national of more than one country unless he satisfies the provisions of the preceding paragraph in relation to each of the countries of which he is a national; or

(*b*) Who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country; or

(*c*) Who continues to receive from other organs or agencies of the United Nations protection or assistance; or

(*d*) In respect of whom there are serious reasons for considering that he has committed a crime covered by the provisions of treaties of extradition or a crime mentioned in article VI of the London Charter of the International Military Tribunal or by the provisions of article 14, paragraph 2, of the Universal Declaration of Human Rights.

8. The High Commissioner shall provide for the protection of refugees falling under the competence of his Office by:

(*a*) Promoting the conclusion and ratification of international conventions for the protection of refugees, supervising their application and proposing amendments thereto;

(*b*) Promoting through special agreements with governments the execution of any measures calculated to improve the situation of refugees and to reduce the number requiring protection;

(*c*) Assisting governmental and private efforts to promote voluntary repatriation or assimilation within new national communities;

(*d*) Promoting the admission of refugees, not excluding those in the most destitute categories, to the territories of States;

(*e*) Endeavouring to obtain permission for refugees to transfer their assets and especially those necessary for their resettlement;

(*f*) Obtaining from governments information concerning the number and conditions of refugees in their territories and the laws and regulations concerning them;

(*g*) Keeping in close touch with the governments and inter-governmental organizations concerned;

(*h*) Establishing contact in such manner as he may think best with private organizations dealing with refugee questions;

(*i*) Facilitating the co-ordination of the efforts of private organizations concerned with the welfare of refugees.

9. The High Commissioner shall engage in such additional activities, including repatriation and resettlement, as the General Assembly may determine, within the limits of the resources placed at his disposal.

10. The High Commissioner shall administer any funds, public or private, which he receives for assistance to refugees, and shall distribute them among the private and, as appropriate, public agencies which he deems best qualified to administer such assistance.

The High Commissioner may reject any offers which he does not consider appropriate or which cannot be utilized.

The High Commissioner shall not appeal to governments for funds or make a general appeal, without the prior approval of the General Assembly.

The High Commissioner shall include in his annual report a statement of his activities in this field.

11. The High Commissioner shall be entitled to present his views before the General Assembly, the Economic and Social Council and their subsidiary bodies.

The High Commissioner shall report annually to the General Assembly through the Economic and Social Council; his report shall be considered as a separate item on the agenda of the General Assembly.

12. The High Commissioner may invite the cooperation of the various specialized agencies.

Chapter III

ORGANIZATIONS AND FINANCES

13. The High Commissioner shall be elected by the General Assembly on the nomination of the Secretary-General. The terms of appointment of the High Commissioner shall be proposed by the Secretary-General and approved by the General Assembly. The High Commissioner shall be elected for a term of three years, from 1 January 1951.

14. The High Commissioner shall appoint, for the same term, a Deputy High Commissioner of a nationality other than his own.

15. (*a*) Within the limits of the budgetary appropriations provided, the staff of the Office of the High Commissioner shall be appointed by the High Commissioner and shall be responsible to him in the exercise of their functions.

(*b*) Such staff shall be chosen from persons devoted to the purposes of the Office of the High Commissioner.

(*c*) Their conditions of employment shall be those provided under the staff regulations adopted by the General Assembly and the rules promulgated thereunder by the Secretary-General.

(*d*) Provision may also be made to permit the employment of personnel without compensation.

16. The High Commissioner shall consult the governments of the countries of residence of refugees as to the need for appointing representatives therein. In any country recognizing such need, there may be appointed a representative approved by the government of that country. Subject to the foregoing, the same representative may serve in more than one country.

17. The High Commissioner and the Secretary-General shall make appropriate arrangements for liaison and consultation on matters of mutual interest.

18. The Secretary-General shall provide the High Commissioner with all necessary facilities within budgetary limitations.

19. The Office of the High Commissioner shall be located in Geneva, Switzerland.

20. The Office of the High Commissioner shall be financed under the budget of the United Nations. Unless the General Assembly subsequently decides otherwise, no expenditure, other than administrative expenditures relating to the functioning of the Office of the High Commissioner, shall be borne on the budget of the United Nations, and all other expenditures relating to the activities of the High Commissioner shall be financed by voluntary contributions.

21. The administration of the Office of the High Commissioner shall be subject to the Financial Regulations of the United Nations and to the financial rules promulgated thereunder by the Secretary-General.

22. Transactions relating to the High Commissioner's funds shall be subject to audit by the United Nations Board of Auditors, provided that the Board may accept audited accounts from the agencies to which funds have been allocated. Administrative arrangements for the custody of such funds and their allocation shall be agreed between the High Commissioner and the Secretary-General in accordance with the Financial Regulations of the United Nations and rules promulgated thereunder by the Secretary-General.

At its 325th meeting, held on 14 December 1950, the General Assembly elected by secret ballot Mr. G. J. van Heuven Goedhard (Netherlands) to the Office of United Nations High Commissioner for Refugees.

SECTION III

PROBLEMS OF ASSISTANCE TO REFUGEES

At its fifth session, the General Assembly adopted resolution 430 (V), which was similar to a resolution it had adopted at its fourth session in 1949 on the question of assistance to refugees. The text is as follows:

The General Assembly,

Having taken cognizance of the communication addressed to it by the General Council of the International Refugee Organization on 13 October 1950 in amplification of its memorandum of 20 October 1949 addressed to the fourth session of the General Assembly,

Having noted that the General Council of the International Refugee Organization has decided to continue operations until 30 September 1951,

1. *Decides* to address an urgent appeal to all States, whether or not Members of the United Nations, calling upon them to assist the International Refugee Organization in its efforts to resettle refugees remaining under its care, and particularly those in need of permanent custodial care;

2. *Decides*, in the absence of definite data, to postpone until its sixth session the examination of the problem of assistance raised by the above-mentioned communications, in the light of a further communication on the subject which the International Refugee Organization is invited to submit and of the observations which the High Commissioner will make in his report to the sixth session of the General Assembly.

Annex to Chapter X

A

DRAFT CONVENTION RELATING TO THE STATUS OF REFUGEES

PREAMBLE [1]

1. *Considering* that the Charter of the United Nations and the Universal Declaration of Human Rights establish the principle that human beings shall enjoy fundamental rights and freedoms without discrimination;

2. *Considering* that the United Nations has, on various occasions, and most recently in General Assembly resolution 319 A (IV), manifested its profound concern for refugees and endeavoured to assure refugees the widest possible exercise of these fundamental rights and freedoms;

3. *Considering* that, in the light of experience, the adoption of an international convention would appear to be one of the most effective ways of guaranteeing refugees the exercise of such rights;

4. *Considering* further that it is desirable to revise and consolidate previous international agreements relating to the protection of refugees, to extend the scope of such agreements to additional groups of refugees, and to increase the protection accorded by these instruments;

5. *Considering*, however, that the exercise of the right of asylum may place unduly heavy burdens on certain countries, and that a satisfactory solution of a problem of which the United Nations has recognized the international scope and nature cannot therefore be achieved without international co-operation;

6. *Considering* that the United Nations High Commissioner for Refugees will be called upon to supervise the application of this convention, and that the effective implementation of this convention depends on the full co-operation of States with the High Commissioner and on a wide measure of international co-operation.

7. *Expressing the hope*, finally, that this convention will be regarded as having a value as an example exceeding its contractual scope, and that without prejudice to any recommendations the General Assembly may be led to make in order to invite the High Contracting Parties to extend to other categories of persons the benefits of this convention, all nations will be guided by it in granting to persons who might come to be present in their territory in the capacity of refugees and who would not be covered by the following provisions, treatment affording the same rights and advantages.

.....

CHAPTER I

Article 1

DEFINITION OF THE TERM "REFUGEE" [2]

A. For the purposes of the present convention, the term "refugee" shall apply to any person who:

(1) Since 1 August 1914 has been considered a refugee under the Arrangements of 12 May 1926 and 30 June 1928 or under the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 or the Constitution of the International Refugee Organization;

Decisions as to eligibility taken by the International Refugee Organization during the period of its activities shall not prevent the status of refugee being accorded to persons who fulfil the conditions of paragraph 2 of the present article;

(2) As a result of events occurring before 1 January 1951, and owing to well-founded fear of being persecuted for reasons of race, religion, nationality or political opinion, is outside the country of his nationality and is unable or, owing to such fear or for reasons other than personal convenience, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear or for reasons other than personal convenience, is unwilling to return to it;

In the case of a person who has more than one nationality, the above term "the country of his nationality" shall mean any of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national.

B. The present convention shall cease to apply to any person falling under the terms of section *A* if:

[1] Text adopted by the Economic and Social Council in resolution 319 B (XI), see pp. 504 *et seq.*

[2] Text adopted by the General Assembly in resolution 429 (V), see pp. 505–506.

(1) He has voluntarily re-availed himself of the protection of the country of his nationality; or

(2) Having lost his nationality, he has voluntarily reacquired it; or

(3) He has acquired a new nationality, and enjoys the protection of the country of his new nationality; or

(4) He has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution; or

(5) He can no longer, because the circumstances in connexion with which he has been recognized as a refugee have ceased to exist, claim grounds other than those of personal convenience for continuing to refuse to avail himself of the protection of the country of his nationality. Reasons of a purely economic character may not be invoked; or

(6) Being a person who has no nationality, he can no longer, because the circumstances in connexion with which he has been recognized as a refugee have ceased to exist and he is able to return to the country of his former habitual residence, claim grounds other than those of personal convenience for continuing to refuse to return to that country.

C. The present convention shall not apply to persons who are at present receiving from other organs or agencies of the United Nations protection or assistance.

D. The present convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country.

E. The provisions of the present convention shall not apply to any person with respect to whom there are serious reasons for considering that (*a*) he has committed a crime specified in article VI of the London Charter of the International Military Tribunal; or (*b*) he falls under the provisions of article 14, paragraph 2, of the Universal Declaration of Human Rights.

F. The Contracting States may agree to add to the definition of the term "refugee" contained in the present article persons in other categories, including such as may be recommended by the General Assembly.

Article 2 [1]

GENERAL OBLIGATIONS

Every refugee has duties to the country in which he finds himself, which require in particular that he conform to its laws and regulations as well as to measures taken for the maintenance of public order.

Article 3

NON-DISCRIMINATION

No contracting State shall discriminate against a refugee within its territory on account of his race, religion, or country of origin, or because he is a refugee.

[1] The text of articles 2 to 10 and the annexes were prepared by the *ad hoc* Committee on Refugees and Statelessness at its second session, see p. 505.

Article 3 (A)

Nothing in this convention shall be deemed to impair any rights and benefits granted by a Contracting State to refugees prior to or apart from this convention.

Article 3 (B)

For the purpose of this convention:

(*a*) The term "In the same circumstances" implies that the refugee must satisfy the same requirements, including the same length and conditions of sojourn or residence, which are prescribed for the national of a foreign State for the enjoyment of the right in question,

(*b*) In those cases in which the refugee enjoys the "same treatment accorded to nationals" the refugee must satisfy the conditions required of a national for the enjoyment of the right in question.

Article 4

EXEMPTION FROM RECIPROCITY

1. Except where this convention contains more favourable provisions a Contracting State shall accord to refugees the same treatment as is accorded to aliens generally.

2. Where aliens enjoy rights and benefits subject to reciprocity, a Contracting State shall continue to accord these rights and benefits, without regard to reciprocity, to a refugee who was already entitled to enjoy them at the date on which this convention comes into force in relation to that State.

As regards other refugees a Contracting State shall accord the same rights and benefits to them, without regard to reciprocity, when they shall have been resident in its territory for a certain period.

3. The provisions of paragraph 2 apply equally to the rights and benefits referred to in articles 8, 13, 14 and 16 of this convention as well as to rights and benefits other than those specified in this convention.

Article 5

EXEMPTION FROM EXCEPTIONAL MEASURES

1. With regard to exceptional measures which may be taken against the person, property or interests of nationals of a foreign State, the Contracting States shall not apply such measures to a refugee who is formally a national of the said State, solely on account of such nationality.

2. Nothing in this article shall prevent a Contracting State, in time of war or national emergency, from taking provisionally measures essential to the national security in the case of any person, pending a determination that the particular person is in fact a refugee and that such measures are still necessary in his case in the interests of national security.

Article 6

CONTINUITY OF RESIDENCE

The Contracting States agree that:

1. Where a refugee has been forcibly displaced during the Second World War and removed to the

territory of a Contracting State, and is residing there, the period of such enforced sojourn shall be considered to have been lawful residence within that territory.

2. Where a refugee has been forcibly displaced during the Second World War from the territory of a Contracting State and has subsequently returned there, the period of residence before and after such enforced displacement shall be regarded as one uninterrupted period for any purposes for which uninterrupted residence is required.

CHAPTER II

Article 7

PERSONAL STATUS

1. The personal status of a refugee shall be governed by the law of the country of his domicile or, if he has no domicile, by the law of the country of his residence.

2. Rights dependent on personal status, more particularly rights attaching to marriage, previously acquired by a refugee, shall be respected by a Contracting State, subject to compliance, if this be necessary, with the formalities prescribed by the law of the country of his domicile or, if he has no domicile, by the law of the country of his residence.

Article 8

MOVEABLE AND IMMOVEABLE PROPERTY

The Contracting States shall accord to a refugee treatment as favourable as possible and, in any event, not less favourable than that accorded generally to aliens in the same circumstances, as regards the acquisition of moveable and immoveable property and other rights pertaining thereto, and to leases and other contracts relating to moveable and immoveable property.

Article 9

ARTISTIC RIGHTS AND INDUSTRIAL PROPERTY

In respect of the protection of industrial property, such as inventions, industrial designs or models, trade marks, trade names, and of rights in literary, scientific and artistic works, a refugee shall be accorded in the country in which he is resident the same protection as is accorded to nationals of that country. In the territory of any other Contracting State, he shall be accorded the same protection as is accorded in that territory to nationals of the country in which he is resident.

Article 10

RIGHT OF ASSOCIATION

As regards non-profit-making associations and trade unions, the Contracting States shall accord to refugees lawfully in their territory the most favourable treatment accorded to nationals of a foreign country, in the same circumstances.

Article 11

ACCESS TO COURTS

1. A refugee shall have free access to the courts of law on the territory of the Contracting States.

2. In the country in which he has his habitual residence, a refugee shall enjoy in this respect the same rights and privileges as a national. He shall, on the same conditions as a national, enjoy the benefit of legal assistance and be exempt from *cautio judicatum solvi*.

3. In countries other than that in which he has his habitual residence, a refugee shall be accorded, in these matters, the treatment granted to a national of the country of his habitual residence.

CHAPTER III

Article 12

WAGE-EARNING EMPLOYMENT

1. The Contracting State shall accord to refugees lawfully living in their territory the most favourable treatment accorded to nationals of a foreign country in the same circumstances, as regards the right to engage in wage-earning employment.

2. In any case, restrictive measures imposed on aliens or the employment of aliens for the protection of the national labour market shall not be applied to a refugee who was already exempt from them at the date of entry into force of this convention for the Contracting State concerned, or who fulfils one of the following conditions:

(*a*) He has completed three years' residence in the country;

(*b*) He has a spouse possessing the nationality of the country of residence;

(*c*) He has one or more children possessing the nationality of the country of residence.

3. The Contracting States shall give sympathetic consideration to assimilating the rights of all refugees in this regard to those of nationals, and in particular those refugees who have entered their territory pursuant to programmes of labour recruitment or under immigration schemes.

Article 13

SELF-EMPLOYMENT

The Contracting State shall accord to a refugee lawfully in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded generally to aliens in the same circumstances, as regards the right to engage in agriculture, industry, handicrafts and commerce and to establish commercial and industrial companies.

Article 14

LIBERAL PROFESSIONS

1. The Contracting States shall accord to refugees lawfully in their territory who hold diplomas recog-

nized by the competent authorities of the country of residence, and who are desirous of practising a liberal profession, treatment as favourable as possible and, in any event, not less favourable than that accorded generally to aliens in the same circumstances.

2. The Contracting States shall use their best endeavours consistently with their laws and constitutions to secure the settlement of such refugees in their colonies, protectorates or in Trust Territories under their administration.

CHAPTER IV

Article 15

RATIONING

Where a rationing system exists, which applies to the population at large and regulates the general distribution of products in short supply, refugees shall be treated on the same footing as nationals.

Article 16

HOUSING

As regards housing, the Contracting States, in so far as the matter is regulated by laws or regulations or is subject to the control of public authorities, shall accord to refugees lawfully in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded generally to aliens in the same circumstances.

Article 17

PUBLIC EDUCATION

1. The Contracting States shall accord to refugees the same treatment as is accorded to nationals with respect to elementary education.

2. The Contracting States shall accord to refugees the most favourable treatment accorded to nationals of a foreign country with respect to education other than elementary education and, in particular, as regards access to studies, the remission of fees and charges and the award of scholarships.

Article 18

PUBLIC RELIEF

The Contracting States shall accord to refugees lawfully in their territory the same treatment with respect to public relief and assistance as is accorded to their nationals.

Article 19

LABOUR LEGISLATION AND SOCIAL SECURITY

1. The Contracting States shall accord to refugees lawfully in their territory the same treatment as is accorded to nationals in respect of the following matters:

(*a*) In so far as such matters are governed by laws or regulations or are subject to the control of administrative authorities; remuneration, including family allowances where these form part of remuneration, hours of work, overtime arrangements, holidays with pay, restrictions on home work, minimum age for employment, apprenticeship and training, women's work and the work of young persons and the enjoyment of the benefits of collective bargaining;

(*b*) Social security (legal provisions in respect of employment injury, maternity, sickness, disability, old age, death, unemployment, family responsibilities and any other contigency which, according to national laws or regulations, is covered by a social security scheme), subject to the following limitations:

(i) There may be appropriate arrangements for the maintenance of acquired rights and rights in course of acquisition;

(ii) National laws or regulations of the country of residence may prescribe special arrangements concerning benefits or portions of benefits which are payable wholly out of public funds, and concerning allowances paid to persons who do not fulfil the contribution conditions prescribed for the award of a normal pension.

2. The right to compensation for the death of a refugee resulting from employment injury or from occupational disease shall not be affected by the fact that the residence of the beneficiary is outside the territory of the Contracting State.

3. The Contracting States whose nationals enjoy the benefits of agreements for the maintenance of acquired rights and rights in the process of acquisition in regard to social security, shall extend the benefits of such agreements to refugees subject only to the conditions which apply to their nationals.

4. The Contracting States will give sympathetic consideration to extending to individual refugees so far as possible the benefits of similar agreements which may have been concluded by such Contracting States with the country of the individual's nationality or former nationality.

CHAPTER V

Article 20

ADMINISTRATIVE ASSISTANCE

1. The Contracting States in whose territory the exercise of a right by aliens would normally require the assistance of the authorities of his country of nationality shall arrange that such assistance be afforded to refugees by an authority or authorities, national or international.

2. The authority or authorities mentioned in paragraph 1 shall deliver or cause to be delivered to refugees such documents or certifications as would normally be delivered to other aliens by their national authorities.

3. Documents or certifications so delivered shall stand in the stead of and be accorded the same validity as would be accorded to similar instruments delivered to aliens by their national authorities.

4. Subject to such exceptional treatment as may be granted to indigent refugees, fees may be charged for

the services mentioned herein, but such fees shall be moderate and commensurate with those charged to nationals for similar services.

5. The provisions of this article shall be without prejudice to articles 22 and 23.

Article 21

FREEDOM OF MOVEMENT

The Contracting States shall accord to refugees lawfully in their territory the right to choose their place of residence and to travel freely within their territory, subject to any regulations applicable to aliens generally in the same circumstances.

Article 22

IDENTITY PAPERS

The Contracting States shall issue identity papers to any refugee in their territory who does not possess a valid travel document issued pursuant to article 23.

Article 23

TRAVEL DOCUMENTS

1. The Contracting States shall issue, on request, to a refugee lawfully resident in their territory, a travel document for the purpose of travel outside their territory; and the provisions of the schedule to this convention shall apply with respect to such document. The Contracting States may issue such a travel document to any other refugee in their territory who is not in possession of such a document, and shall give sympathetic consideration to refugees in their territory who are unable to obtain a travel document from the country of their lawful residence.

2. Travel documents issued to refugees under previous international agreements by parties thereto shall be recognized and treated by the Contracting States in the same way as if they had been issued pursuant to this article.

Article 24

FISCAL CHARGES

1. The Contracting States shall not impose upon refugees in their territory duties, charges or taxes, of any description whatsoever, other or higher than those which are or may be levied on their nationals in similar situations.

2. Nothing in the above paragraph shall prevent the application to refugees of the laws and regulations concerning charges in respect of the issue to aliens of administrative documents including identity papers.

3. The Contracting States reserve the right to impose upon refugees a special duty, of a moderate amount, payable either on identity cards, or residence permits or on travel documents. Revenue accruing from this duty shall be wholly applied to charities for the relief of refugees.

Article 25

TRANSFER OF ASSETS

1. A Contracting State shall, in conformity with its laws and regulations, permit a refugee to transfer assets which he has brought with him into its territory, to another country where he has been admitted for the purposes of resettlement.

2. The Contracting State shall give sympathetic consideration to the application of a refugee for permission to transfer assets wherever they may be and which are necessary for his resettlement to another country where he has been admitted.

Article 26

REFUGEES NOT LAWFULLY ADMITTED

1. The Contracting States shall not impose penalties, on account of his illegal entry or presence, on a refugee who enters or who is present in their territory without authorization, and who presents himself without delay to the authorities and shows good cause for his illegal entry or presence.

2. The Contracting States shall not apply to such refugees restrictions of movement other than those which are necessary and such restrictions shall only be applied until his status in the country is regularized or he obtains admission into another country. The Contracting States shall allow such refugee a reasonable period and all the necessary facilities to obtain admission into another country.

Article 27

EXPULSION OF REFUGEES LAWFULLY ADMITTED

1. The Contracting States shall not expel a refugee lawfully in their territory save on grounds of national security or public order.

2. The expulsion of such refugee shall be only in pursuance of a decision reached in accordance with due process of law. The refugee shall have the right to submit evidence to clear himself and to appeal to and be represented before competent authority.

3. The Contracting States shall allow such refugees a reasonable period within which to seek legal admission into another country. The Contracting States reserve the right to apply during that period such internal measures as they may deem necessary.

Article 28

PROHIBITION OF EXPULSION TO TERRITORIES WHERE THE LIFE OR FREEDOM OF A REFUGEE IS THREATENED

No Contracting State shall expel or return a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality or political opinion.

Article 29

NATURALIZATION

The Contracting States shall as far as possible facilitate the assimilation and naturalization of refugees. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings.

CHAPTER VI

Article 30

CO-OPERATION OF THE NATIONAL AUTHORITIES WITH THE UNITED NATIONS

1. The Contracting States undertake to co-operate with the United Nations High Commissioner's Office for Refugees, or other agencies charged by the United Nations with the international protection of refugees, in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of this convention.

2. In order to enable the High Commissioner's Office or other appropriate agency of the United Nations to make reports to the competent organs of the United Nations, the Contracting States undertake to provide them in the appropriate form with any data, statistics and information requested concerning

(*a*) The conditions of refugees,

(*b*) The implementation of this convention, and

(*c*) All regulations, laws, decrees, etc., made by them concerning refugees.

Article 31

MEASURES OF IMPLEMENTATION OF THE CONVENTION

Each of the Contracting States shall, within a reasonable time and in accordance with its constitution, adopt legislative or other measures to give effect to the provisions of this convention, if such measures are not already in effect.

Article 32

RELATION TO PREVIOUS CONVENTIONS

1. Without prejudice to article 23, paragraph 2, of this convention, this convention replaces the Arrangements of 5 July 1922, 31 May 1924, 12 May 1926, 30 June 1928 and 30 July 1935, the conventions of 28 October 1933 and 10 February 1938, and the Agreement of 15 October 1946, as between all parties to this convention.

2. As between two States parties to a previous instrument mentioned in paragraph 1 of this article, one of which is not party to this convention, the previous agreement shall continue in force.

3. Each of the above-mentioned instruments shall be deemed to be terminated when all the States parties thereto shall have become parties to this convention.

CHAPTER VII

Article 33

SETTLEMENT OF DISPUTES

If any dispute shall arise between parties to this convention relating to its interpretation or application, and if such dispute cannot be settled by other means, the dispute shall, at the request of any one of the parties to the dispute, be referred to the International Court of Justice.

Article 34

SIGNATURE, RATIFICATION AND ACCESSION

1. This convention shall be open until —— [one year after the Convention is opened for signature] for signature on behalf of any Member State of the United Nations and on behalf of any non-member State to which an invitation has been addressed by the Economic and Social Council.

2. It shall be ratified and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The States mentioned in the first paragraph which have not signed the Convention by the —— [date indicated in the first paragraph] may accede to it.

Accession shall be effected by deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 35

COLONIAL CLAUSE

1. Any State may, at the time of signature, ratification or accession or at any time thereafter, declare by notification addressed to the Secretary-General of the United Nations that the present convention shall extend to all or any of the territories for the international relations of which it is responsible. This convention shall extend to the territory or territories named in the notification as from the thirtieth day after the day of receipt by the Secretary-General of the United Nations of this notification.

2. Each State undertakes with respect to those territories to which the Convention is not extended at the time of signature, ratification or accession to take as soon as possible the necessary steps in order to extend the application of this convention to such territories, subject, where necessary for constitutional reasons, to the consent of the governments of such territories.

3. The Secretary-General of the United Nations shall communicate the present convention to the States referred to in article 36 for transmission to the responsible authorities of:

(*a*) Any Non-Self-Governing Territory administered by them;

(*b*) Any Trust Territory administered by them;

(*c*) Any other non-metropolitan territory for the international relations of which they are responsible.

Article 36

RESERVATIONS

1. At the time of signature, ratification or accession, Contracting States may make reservations to articles of the Convention other than articles 1, 3, 11 (1), 28 and Chapters VI and VII.

2. The Contracting State making reservations in accordance with paragraph 1 of this article may at any time withdraw these reservations by a communication to that effect addressed to the Secretary-General. The Secretary-General shall bring such communication to the attention of the other Contracting States.

Article 37

ENTRY INTO FORCE

This convention shall come into force on the ninetieth day following the day of deposit of the second instrument of ratification or accession.

For each State ratifying or acceding to the Convention after the deposit of the second instrument of ratification or accession, the Convention shall enter into force on the ninetieth day following the date of deposit by such State of its instrument of ratification or accession.

Article 38

DENUNCIATION

1. Any Contracting State may denounce this convention at any time by a written notification addressed to the Secretary-General of the United Nations.

2. Such denunciation shall take effect for the Contracting State concerned one year from the date upon which it is received by the Secretary-General of the United Nations.

3. Any Contracting State which has made a declaration under article 35, paragraph 1, may at any time thereafter, by a written notification to the Secretary-General of the United Nations, declare that the Convention shall cease to extend to such territory one year after the date of receipt of the notification by the Secretary-General.

Article 39

REVISION

Any Contracting State may request revision of this convention at any time by a written notification addressed to the Secretary-General of the United Nations.

The Economic and Social Council shall recommend the steps, if any to be taken in respect of such request.

Article 40

NOTIFICATION BY THE SECRETARY-GENERAL

The Secretary-General of the United Nations shall inform all Members of the United Nations and non-members States referred to in article 34:

(*a*) Of signatures, ratifications and accessions received in accordance with article 34;

(*b*) Of the date on which this convention will come into force in accordance with article 37;

(*c*) Of reservations made in accordance with article 36;

(*d*) Of denunciations received in accordance with article 38;

(*e*) Of requests for revision received in accordance with article 39.

IN FAITH WHEREOF the undersigned, duly authorized, have signed this convention on behalf of their respective Governments, and of which the Chinese, English, French, Russian and Spanish official texts are equally authentic.

Done at —— this —— day of —— in a single copy, which shall remain deposited in the archives of the United Nations, and certified true copies of which shall be delivered to all the Members of the United Nations and to the non-members States referred to in article 34.

ANNEX

Paragraph 1

1. The travel document referred to in article 23 of this convention shall be similar to the specimen annexed hereto.

2. The document shall be made out in at least two languages, one of which shall be English or French.

Paragraph 2

Subject to the regulations obtaining in the country of issue, children may be included in the document of an adult refugee.

Paragraph 3

Without prejudice to the provisions of article 24, paragraph 3, of this convention, the fees charged for issue of the document shall not exceed the lowest scale of charges for national passports.

Paragraph 4

Save in special or exceptional cases, the document shall be made valid for the largest possible number of countries.

Paragraph 5

The document shall have a validity of either one or two years, at the discretion of the issuing authority.

Paragraph 6

1. The renewal or extension of the validity of the document is a matter for the authority which issued it, so long as the holder has not established lawful residence in another territory and resides lawfully in the territory of the said authority. The issue of a new document is, under the same conditions, a matter for the authority which issued the former document.

2. Diplomatic or consular authorities, specially authorized for the purpose, shall be empowered to extend, for a period not exceeding six months, the validity of travel documents issued by their governments.

3. The Contracting States shall give sympathetic consideration to renewing or extending the validity of travel documents or issuing new documents to refugees no longer lawfully resident in their territory who are unable to obtain a travel document from the country of their lawful residence.

Paragraph 7

The Contracting States shall recognize the validity of the documents issued in accordance with the provisions of article 23 of this convention.

Paragraph 8

The competent authorities of the country to which the refugee desires to proceed shall, if they are prepared to admit him and if a visa is required, affix a visa on the document of which he is the holder.

Paragraph 9

The Contracting States undertake to issue transit visas to refugees who have obtained visas for a territory of final destination.

Paragraph 10

The fees for the issue of exit, entry or transit visas shall not exceed the lowest scale of charges for visas on foreign passports.

Paragraph 11

When a refugee has lawfully taken up residence in the territory of another Contracting State, the power to issue a new document will be in the competent authority of that territory, to which the refugee shall be entitled to apply.

Paragraph 12

The authority issuing a new document shall withdraw the old document.

Paragraph 13

1. The document shall entitle the holder to leave the country where it has been issued and, during the period of validity of the document, to return thereto without a visa from the authorities of that country, subject only to those regulations which apply to returning resident aliens bearing duly visaed passports or re-entry permits. Where a visa is required of a returning national a visa may be required of a returning refugee but shall be issued to him on request and without delay.

2. The Contracting States reserve the right, in exceptional cases, or in cases where the refugee's stay is authorized for a specific period, when issuing the document, to limit the period during which the refugee may return to a period of not less than three months.

Paragraph 14

Subject only to the terms of paragraph 13, the provisions of this schedule in no way affect the laws and regulations governing the conditions of admission to, transit through, residence and establishment in, and departure from, the territories of the Contracting States.

Paragraph 15

Neither the issue of the document nor the entries made thereon determine or affect the status of the holder, particularly as regards nationality.

Paragraph 16

The issue of the document does not in any way entitle the holder to the protection of the diplomatic or consular authorities of the country of issue, and does not confer on these authorities a right of protection.

ANNEX

Specimen Travel Document

The document will be in booklet form (approximately 15 × 10 centimetres).

It is recommended that it be so printed that any erasure or alteration by chemical or other means can be readily detected, and that the words "Convention of——" be printed in continuous repetition on each page, in the language of the issuing country.

[Cover of booklet]

TRAVEL DOCUMENT

(Convention of ——)

No. .....

(1)

TRAVEL DOCUMENT

(Convention of ——)

This document expires on ..... unless its validity is extended or renewed.

Name: .....

Forename(s): .....

Accompanied by ..... child (children).

1. This document is issued solely with a view to providing the holder with a travel document which can serve in lieu of a national passport. It is without prejudice to and in no way affects the holder's nationality.

2. The holder is authorized to return to ..... [state here the country whose authorities are issuing the document] on or before ....., unless some later date is hereafter specified. [The period during which the holder is allowed to return must not be less than three months.]

3. Should the holder take up residence in a country other than that which issued the present document, he must, if he wishes to travel again, apply to the competent authorities of his country of residence for a new document.

(This document contains ... pages, exclusive of cover.)

(2)

Place and date of birth: .....

Occupation: .....

Present residence: .....

Maiden name and forename(s) of wife: .....

Name and forename(s) of husband: .....

DESCRIPTION

Height: .....

Hair: .....

Colour of eyes: .....

Nose: .....

Shape of face: .....

Complexion: .....

Special peculiarities: .....

CHILDREN ACCOMPANYING HOLDER

Name	*Forename(s)*	*Place and date of birth*	*Sex*
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....

Strike out whichever does not apply.

(This document contains ... pages, exclusive of cover.)

(3)

[Photograph of holder and stamp of issuing authority]

[Finger-prints of holder (if required)]

Signature of holder: .....

(This document contains ... pages, exclusive of cover.)

(4)

1. This document is valid for the following countries:

.....

.....

.....

2. Document or documents on the basis of which the present document is issued:

.....

.....

.....

Issued at .....

Date.....

Signature and stamp of authority issuing the document:

Fee paid:

(This document contains ... pages, exclusive of cover.)

(5)

EXTENSION OR RENEWAL OF VALIDITY

Fee paid: From .....

To .....

Done at ..... Date.....

Signature and stamp of authority extending or renewing the validity of the document:

EXTENSION OR RENEWAL OF VALIDITY

Fee paid: From .....

To .....

Done at ..... Date.....

Signature and stamp of authority extending or renewing the validity of the document:

(This document contains ... pages, exclusive of cover.)

(6)

EXTENSION OR RENEWAL OF VALIDITY

Fee paid: From .....

To .....

Done at ..... Date.....

Signature and stamp of authority extending or renewing the validity of the document:

EXTENSION OR RENEWAL OF VALIDITY

Fee paid: From .....

To .....

Done at ..... Date.....

Signature and stamp of authority extending or renewing the validity of the document:

(This document contains ... pages, exclusive of cover.)

(7–32)

VISAS

The name of the holder of the document must be repeated in each visa.

(This document contains ... pages, exclusive of cover.)

B

DRAFT PROTOCOL RELATING TO THE STATUS OF STATELESS PERSONS

The Contracting States,

Considering that the Convention relating to the Status of Refugees dated —— deals only with refugees, whether stateless or not, who are the special concern of the United Nations, as evinced in numerous resolutions of the General Assembly, and

Considering, moreover, that there are many stateless persons not covered by the said convention who do not enjoy any national protection and, pending a more special solution of the problem of such persons, it appears desirable to improve the status of these persons,

NOW THEREFORE UNDERTAKE to apply, *mutatis mutandis*, the provisions of articles 2 to 4, 6 to 11, 12 paragraph 1, 13, 14 paragraph 1, 15 to 23, 24 paragraphs 1 and 2, 27, 29 and 31 of the Convention relating to the Status of Refugees, to stateless persons to whom that convention does not apply.

This protocol shall not apply to persons referred to in paragraph 5 of part B of Article I of said convention.

The standard final clauses follow.

CHAPTER XI

MEASURES FOR THE PEACEFUL SOLUTION OF THE PROBLEM OF PRISONERS OF WAR

The repatriation of prisoners of war was included in the agenda of the fifth session of the General Assembly at the request of the delegations of Australia, United Kingdom and United States of America (documents A/1327, A/1339 and A/1339/Add.1). It was discussed primarily in the Third Committee.[1] By a decision of this committee, memoranda received from the Federal Republic of Germany, Italy and Japan were placed before it (documents A/C.3/552, 553 and 554). A draft resolution submitted by the delegation of Australia, the United Kingdom and the United States of America proposed the establishment of a small *ad hoc* body to be appointed by the Secretary-General to study the question impartially. Several amendments were put forward to this draft, which was also twice revised by the sponsors, incorporating many of these amendments. The second revision was adopted by the Third Committee with an amendment submitted by France. The draft resolution as adopted by the Third Committee became resolution 427 (V) of the General Assembly,[2] reading as follows:

The General Assembly,

Mindful that one of the principal purposes of the United Nations is to achieve international co-operation in solving international problems of a humanitarian character and in promoting and encouraging respect for human rights and fundamental freedoms for all,

Considering that the General Assembly may recommend measures for the peaceful adjustment of any situation, regardless of origin, which it deems likely to impair the general welfare or friendly relations among nations,

Believing that all prisoners having originally come within the control of the allied Powers as a consequence of the Second World War should either have been repatriated long since or have been otherwise accounted for,

Recalling that this is required both by recognized standards of international conduct and the Geneva Convention of 1949[3] for the protection of war victims, and by specific agreements between the allied Powers,

1. *Expresses its concern* at the information presented to it tending to show that large numbers of prisoners taken in the course of the Second World War have neither been repatriated nor otherwise accounted for;

2. *Calls upon* all governments still having control of such persons to act in conformity with the recognized standards of international conduct and with the above-mentioned international agreements and conventions which require that, upon the cessation of active hostilities, all prisoners should, with the least possible delay, be given an unrestricted opportunity of repatriation and, to that end, to publish and transmit to the Secretary-General before 30 April 1951:

(*a*) The names of such prisoners still held by them, the reasons for which they are still detained and the places in which they are detained;

(*b*) The names of prisoners who have died while under their control, as well as the date and cause of death, and the manner and place of burial in each case;

3. *Requests* the Secretary-General to establish an *ad hoc* commission composed of three qualified and impartial persons chosen by the International Red Cross or, failing that, by the Secretary-General himself, with a view to settling the question of the prisoners of war in a purely humanitarian spirit and on terms acceptable to all the governments concerned. The Commission shall convene at a suitable date after 30 April 1951 to examine and evaluate, in the light of the information made available to the fifth session of the General Assembly, the information furnished by governments in accordance with the terms of the preceding paragraph. In the event that the Commission considers that this information is inadequate or affords reasonable ground for believing that prisoners coming within the custody or control of any foreign government as a consequence of military operations of the Second World War have not been repatriated or otherwise accounted for, the General Assembly:

(*a*) Requests the Commission to seek from the governments or authorities concerned full information regarding such prisoners;

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[1] See documents A/C.3/SR.338-340 and 342, 344, 345.

[2] See document A/SR.325.

[3] See Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949, International Committee of the Red Cross, Geneva, 1949; extracts from this convention were published in the *Yearbook on Human Rights for 1949*, pp. 299 *et seq.*

(*b*) Requests the Commission to assist all governments and authorities who so desire in arranging for and facilitating the repatriation of such prisoners;

(*c*) Authorizes the Commission to use the good offices of any qualified and impartial person or organization whom it considers might contribute to the repatriation or accounting for of such prisoners;

(*d*) Urges all governments and authorities concerned to co-operate fully with the Commission, to supply all necessary information and to grant right of access to their respective countries and to areas in which such prisoners are detained;

(*e*) Requests the Secretary-General to furnish the Commission with the staff and facilities necessary for the effective accomplishment of its task;

4. *Urgently requests* all the governments to make the greatest possible efforts, based in particular on the documentation to be provided, to search for prisoners of war whose absence has been reported and who might be in their territories;

5. *Directs* the Commission to report as sooon as practicable the results of its work to the Secretary-General for transmission to the Members of the United Nations.

CHAPTER XII

SPECIFIC QUESTIONS

SECTION I

YEARBOOK ON HUMAN RIGHTS

On 17 February 1950, the Economic and Social Council adopted resolution 275 C requesting the Commission on Human Rights to consider further the form which the *Yearbook on Human Rights* might take in future years and to examine this question in the light of the discussion at the tenth session of the Council. The same resolution contains a decision concerning texts of basic laws in Non-Self-Governing and Trust Territories which is published in chapter XIII of this *Yearbook*.[1]

At its 143rd meeting, the Commission on Human Rights referred the question of the *Yearbook on Human Rights* to an *ad hoc* committee composed of the representatives of Australia (Chairman and Rapporteur), Belgium, Chile, China, France and the United Kingdom. This Committee held two meetings and submitted a report containing a draft resolution and certain observations. At its 179th meeting the Commission unanimously recommended to the Economic and Social Council the adoption of the draft resolution submitted by the *ad hoc* committee. Subject to certain changes this draft resolution was adopted by the Economic and Social Council and became resolution 303 H (XI) which reads as follows:

H

The Economic and Social Council,

Having requested the Secretary-General, in its resolution 2/9 [section 4, paragraph (*a*)] of 21 June 1946 to make arrangements for the compilation and publication of a yearbook on law and usage relating to human rights;

Having considered the reports of the fifth and sixth sessions of the Commission on Human Rights relating to the question of the yearbook;

Having considered the *Yearbooks on Human Rights* for 1946, 1947 and 1948 compiled and published by the Secretary-General;

Requests the Secretary-General to continue annually the compilation and publication of the *Yearbook on Human Rights* which, beginning as soon as possible but not later than with the Yearbook for 1951, shall be compiled on the following general lines:

(*a*) Each volume of the Yearbook shall contain a compilation concerning the application, and so far as necessary, the evolution in as many countries as possible of one of the rights or of a group of closely related rights set forth in the Universal Declaration of Human Rights. This compilation shall be prepared from information supplied by governments and may include digests of this information prepared by the Secretary-General and shall be documented by reference to legislative enactments and other authoritative sources;

(*b*) For this purpose, the Secretary-General shall draw up a plan for the consideration of the Commission on Human Rights indicating, for a number of years ahead, which right or group of rights should be treated in each year;

(*c*) The Yearbook shall continue to record international and national developments concerning human rights which have taken place during the year, and for this purpose shall contain:

(i) A report on the work of the United Nations in the field of human rights;

(ii) Relevant texts or summaries of international instruments in this field, including decisions of international courts and arbitral tribunals;

(iii) Texts or summaries of or sufficient references to constitutional and statutory provisions which constitute important developments in the field of human rights during the year;

(iv) Summaries of or sufficient references to decisions of national courts where these decisions constitute important developments in the field of human rights;

(*d*) The Yearbook shall also include texts or summaries of or sufficient references to basic laws on human rights in respect of Non-Self-Governing and Trust Territories, together with other relevant texts in respect of such territories in the same manner as indicated in paragraph (*c*) above;

(*e*) The Yearbook shall include adequate references to the sources of any texts or summaries which appear in it. It shall be produced in a form which is easy to handle and at a moderate price, and the reproduction of constitutional or statutory texts shall be confined within the limits imposed by these requirements; and

Invites governments to supply to the Secretary-General, either directly or through correspondents appointed for this purpose at the request of the Com-

[1] See p. 525.

mission on Human Rights, relevant information on the points noted above.

Paragraphs (*c*)-(*d*) of this resolution govern the contents of the Yearbook on Human Rights for 1950. As regards paragraphs (*a*) and (*b*), the Secretary-General has prepared a plan indicating which right or group of rights should be treated in each of the following years; this plan will be published in 1951 as a United Nations document for the consideration of the Commission on Human Rights.[1]

SECTION II

THE CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE

The Convention on the Prevention and Punishment of the Crime of Genocide adopted by the General Assembly on 9 December 1948, comes into force on the ninetieth day following the date of deposit of the twentieth instrument of ratification or accession, in accordance with Article XIII. On 31 December 1950, the following States had ratified or acceded to the Convention: Australia, Bulgaria, Cambodia, Ceylon, Costa Rica, Czechoslovakia, Ecuador, El Salvador, Ethiopia, France, Guatemala, Haiti, Iceland, Israel, Jordan, Korea, Laos, Liberia, Monaco, Norway, Panama, Philippines, Poland, Romania, Saudi Arabia, Turkey, Viet Nam, Yugoslavia. The twentieth State to ratify the Convention did so on 14 October 1950.[2]

SECTION III

RIGHTS OF THE CHILD

The Social Commission, at its fourth session, requested the Secretary-General to prepare a draft of the preamble and principles of a declaration of the rights of the child. This was before the Commission at its sixth session (document E/CN.5/199).

The Commission established a committee composed of the representatives of Australia, Brazil, France, Iraq and Yugoslavia to consider the note by the Secretary-General and prepare a draft declaration. The text drawn up by the Committee was amended by the Commission and submitted to the Economic and Social Council, which was asked, after consulting the Commission on Human Rights, to transmit the Declaration to the General Assembly. The text of the resolution adopted by the Social Commission, and of the draft Declaration, reads as follows:

The Social Commission,

Having adopted the draft Declaration of the Rights of the Child, in which the Declaration of Geneva, the comments expressed by the members of the Commission, as well as the suggestions from Member Governments, specialized agencies and non-governmental organizations are taken into account,

Bearing in mind the close relationship between this draft Declaration and the Universal Declaration of Human Rights,

Transmits this draft Declaration to the Economic and Social Council with the request that, after consultation with the Commission on Human Rights, it be submitted to the General Assembly,

Recommends that the Economic and Social Council adopt the following resolution:

"*The Economic and Social Council*

"*Noting* the close relationship between the draft Declaration of the Rights of the Child and the Universal Declaration of Human Rights;

"*Requests* the Commission on Human Rights to inform the Council at its thirteenth session of its observations on the draft Declaration of the Rights of the Child, with a view to its approval by the General Assembly."

Draft United Nations Declaration of the Rights of the Child

1. *Whereas* the United Nations have, in the Charter and in the Universal Declaration of Human Rights, reaffirmed their faith in fundamental human rights, and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom,

2. *Whereas* the United Nations have declared that everyone is entitled to all the rights and freedoms set forth in the Universal Declaration of Human Rights, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

3. *Whereas* Member States have in the Universal Declaration of Human Rights proclaimed their recognition of the fundamental rights of persons,

4. *Whereas*, as has specifically been stated since 1924 in the Geneva Declaration of the Rights of the Child, mankind owes to the child the best it has to give,

5. *Whereas* the child needs special safeguards by reason of his physical and mental immaturity and his particular legal status,

NOW THEREFORE

6. *The General Assembly recognizes and proclaims the essential rights of the child* to the end that he may have a happy childhood and be enabled to grow up to enjoy for his own good and for the good of society, the fundamental rights and freedoms, particularly those specified in the Universal Declaration of Human Rights, and calls upon men and women as individuals as well as

[1] It became document E/CN.4/522, of 9 March 1951.

[2] This Convention came into force on 12 January 1951.

through their local authorities and national governments to recognize and strive for the observance of those rights through the application of the following principles.

Principles

1. The child shall be given the means necessary to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity.

2. The child shall be entitled from his birth to a name and a nationality.

3. The child shall enjoy the benefits of social security. He shall be entitled even from before birth to grow and develop in health. He shall have the right to adequate nutrition, housing, recreation and free medical services.

4. The child shall be given opportunity to grow up in economic security, in the care of his own parents whenever possible, and in a family atmosphere of affection and understanding favourable to the full and harmonious development of his personality.

5. The child shall be given an education which will bestow upon him general culture and enable him to develop his abilities and individual judgment and to become a useful member of society. Such education shall be free.

6. The child shall in all circumstances be amongst the first to receive protection and relief.

7. The child shall be protected against all forms of neglect, cruelty and exploitation. He shall in no case be caused to engage in any occupation or employment which would prejudice his health or education or interfere with his development.

8. The child shall be protected against any practice which may foster racial or national discrimination or hatred. He shall be brought up in the consciousness that he will achieve his fullest development and derive greatest satisfaction through devoting his energy and talents to the service of his fellow men, in a spirit of universal brotherhood and peace.

9. The child who is physically, mentally or socially handicapped shall be given the special treatment, education and care required by his particular condition.

10. The child shall enjoy all the rights set forth above, irrespective of any consideration of race, colour, sex, language, caste, religion, political or other opinion, national or social origin, property, birth, legitimacy or other status.

The General Assembly calls upon all Governments and peoples to make known the above principles and explain them to parents, educators, doctors, social workers and all others who deal directly with children, and to children themselves.

The Economic and Social Council considered this recommendation at its eleventh session and requested the Commission on Human Rights to consider the draft declaration in relation to the Universal Declaration of Human Rights. The text of the Council's resolution (309 C (XI)) reads as follows:

The Economic and Social Council,

Desiring that a resolution on the rights of the child be presented as soon as possible for consideration by the General Assembly,

Noting the close relationship between the draft Declaration on the Rights of the Child and the Universal Declaration of Human Rights,

Requests the Commission on Human Rights to consider the draft Declaration on the Rights of the Child, as prepared by the Social Commission, at the same time as the Universal Declaration of Human Rights, taking into account the relevant summary records of the Council and to communicate to the Council at its thirteenth session its observations on the principle and contents of this document.

SECTION IV

WELFARE OF THE AGED

The Social Commission discussed the question of the welfare of the aged at its sixth session, but on a proposal from the United States delegation deferred any decision on the advisability of drafting a declaration of old-age rights until the documentation on the subject had been completed. The text of the resolution adopted by the Social Commission reads as follows:

The Social Commission,

Recalling resolution 213 (III) of 4 December 1948 by which the General Assembly communicated to the Economic and Social Council a draft declaration of old-age rights in order that the Council might make a study thereon and report to the General Assembly at one of its future sessions; and

Recalling resolution 198 (VIII) of 2 March 1949, by which the Economic and Social Council requested the Social Commission to report on the subject to a future session of the Council;

Recommends for the consideration of the Economic and Social Council the following draft resolution:

"*The Economic and Social Council,*

"*Having noted* the summarized documentation prepared by the Secretary-General on basic features of legislative and other measures for the benefit of aged persons, the effect of such measures on their standard of living, together with the report of the Social Commission;

"*Requests* the Secretary-General, in consultation with the interested governments and specialized agencies,

to initiate an integrated work programme of research, studies and action for promoting the welfare of aged persons, taking into consideration any views expressed by the Commission on Human Rights and discussions of this subject at the sixth session of the Social Commission;

"*Defers* any decision on the advisability of drafting a declaration of old-age rights until completion of the necessary preparatory studies and reports."

The Commission on Human Rights also included this item in the agenda of its sixth session but had not time to consider it.

At its eleventh session, the Economic and Social Council endorsed the decision of the Social Commission in resolution 309 D (XI).

SECTION V

RIGHT OF ASYLUM

The Commission on Human Rights had on its agenda for its sixth session the question of the right of asylum. At its 199th meeting it deferred consideration of this item along with several others until its seventh session (document E/1681, paragraph 80).

SECTION VI

SUPPRESSION OF THE TRAFFIC IN WOMEN AND CHILDREN

At its fourth session, the General Assembly on 2 December 1949 approved a Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others. On 31 December 1950, the following States had signed the Convention:

Signed	*Signed*
Brazil	Liberia
Denmark	Luxembourg
Ecuador	Pakistan
India	Philippines
	Yugoslavia

Ratified and/or acceded

Israel
Norway
Union of South Africa
Yugoslavia

At its sixth session, the Social Commission's action in this field concerned the possible establishment of a bureau in the Far East for combating traffic in persons and, in the following resolution, the Secretary-General was asked to take preparatory steps with a view to calling a conference in the Far East to ascertain the present state of affairs in that area and what remedial action would best be suited to existing conditions:

The Social Commission,

Noting the report of the Secretary-General on the establishment of a bureau in the Far East to combat the traffic in persons (E/CN.5/206),

Bearing in mind the prime importance of the close co-operation of the governments in the region, in dealing with this question,

Requests the Secretary-General:

(1) To consult governments in the region with a view to the calling of a conference to examine this problem; the conference to be attended by governmental experts and representatives of interested non-governmental agencies and its costs to be borne by the participants,

(2) To make available an expert consultant in this field to governments of the Far East requesting these services under terms of General Assembly resolution 58 (I): the duties of such a consultant to include (*a*) assisting in preparations for the above-mentioned conference, and (*b*) obtaining information needed in determining the nature and extent of the problem,

Requests further that the Secretary-General study the feasibility under General Assembly resolution 58 (I) of making advisers in this field available in other areas of the world, and report to a future session of the Commission.

SECTION VII

PLIGHT OF SURVIVORS OF CONCENTRATION CAMPS

The Commission on the Status of Women adopted at the fourth session a resolution covering the situation of women who were subjected to so-called scientific experiments in the Nazi concentration camps.[1] At its eleventh session, the Economic and Social Council adopted resolution 305 (XI) on the plight of survivors of concentration camps. This resolution calls for a study of the problem by the Secretary-General and extends the Commission's interpretation of it to include both male and female victims. The text of resolution 305 (XI) is as follows:

The Economic and Social Council,

Taking note of the report of the fourth session of the Commission on the Status of Women referring to the tragic fate of survivors of concentration camps who, under the Nazi regime, were the victims of so-called scientific experiments;

Requests the Secretary-General to consider as soon as possible, with the competent authorities and institutions, means for alleviating the plight of such victims, both male and female, and to inform the Economic and Social Council of the action taken.

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[1] See the text of this resolution on pp. 485–486 above.

CHAPTER XIII

QUESTIONS OF HUMAN RIGHTS IN CERTAIN TERRITORIES

At its tenth session, in resolution 275 C (X) the Economic and Social Council decided that, in all issues of the *Yearbook on Human Rights*, texts of basic laws on human rights in respect of Non-Self-Governing and Trust Territories should be included in the same manner as in the case of self-governing territories. Accordingly, the *Yearbook on Human Rights for 1949* recorded provisions on human rights in basic laws in respect to such territories. At its eleventh session, in the process of revising the general lines along which the *Yearbook on Human Rights* was to be prepared, starting not later than with the 1951 issue, the Council enlarged the scope of its decision regarding texts on human rights in Non-Self-Governing and Trust Territories in the following terms (resolution 303 H (XI)):

"...

"(*d*) The Yearbook shall also include texts or summaries of or sufficient references to basic laws on human rights in respect of Non-Self-Governing and Trust Territories, together with other relevant texts in respect of such territories in the same manner as indicated in paragraph (*c*) above; ..."

Accordingly, Part II of this *Yearbook* contains, in addition to provisions on human rights in basic laws, information on other relevant texts applicable in Non-Self-Governing and Trust Territories.

SECTION I

TRUST TERRITORIES

A. *Annual Reports on Trust Territories*

In the course of its sixth session (1st to 81st meetings, 19 January to 4 April 1950) held at Geneva, and its seventh session (1st to 30th meetings, 1 June to 21 July 1950), held at Lake Success, New York, the Trusteeship Council considered the annual reports of ten trust territories, six in Africa, four in the Pacific area. These were: Tanganyika, Ruanda-Urundi, Cameroons under British and French Administration, Togoland under British and French Administration, Western Samoa, New Guinea, Nauru and the Trust Territory of the Pacific Islands. The Council adopted certain conclusions and recommendations, some of which related to questions of human rights, and of which the following are relevant instances:[1]

[1]The following paragraphs are based directly on the report of the Trusteeship Council to the General Assembly (A/1306).

Tanganyika

Political Advancement. The Council noted that four African members were serving on a newly established Committee on Constitutional Development, and recommended that the measures envisaged by the Administering Authority for consultation with the people of the Territory should be so carried out as to obtain the views of African political associations, tribal councils, trade unions and other representative groups in order that firm foundations for future political progress might be built upon the common desires and understanding of all the inhabitants of the territory. The Council noted the absence of an electoral law in the territory, and recommended that the Committee should consider the possibility of introducing such a law, providing for as wide a franchise as practicable. It recommended also that the Committee should consider measures which would increase African representation on the Executive and Legislative Councils of the territory and expressed the hope that the findings and conclusions of the Committee would be made known to the Council as soon as possible. The Council noted the growing participation of women in political affairs, and recommended to the Administering Authority that this advance should be actively encouraged and that the Constitutional Development Committee should take into account this aspect of political development.

The Council noted with satisfaction the appointment of a fourth African non-official member to the Legislative Council and the plan of the Administering Authority to increase to eight the number of African representatives on it. The Council expressed the hope that this plan would be carried out as soon as possible, and recommended the desirability of selecting the non-official members of the Legislative Council on an electoral basis rather than by appointment. It noted with approval the efforts of the Administering Authority to introduce representatives nominated by the people into the Native Administrative Councils and hoped that continued efforts would be made in this direction.

The Council recommended to the Administering Authority the abolition of the corporal punishment of whipping in the territory and the adoption of measures to this effect as soon as possible.

Economic Advancement. The Council considered that, in the economic development of the territory, measures should be taken to increase the participation of the inhabitants in the development of the territory, particularly as regards the exploitation of minerals and

other natural resources and the production of basic raw materials and consumer goods.

Social Advancement. The Council noted that the Newspaper Ordinance provided that any person wishing to establish a newspaper might, if so required by the Governor in Council, be called upon to execute a bond up to a maximum of 3,000 shillings, and expressed the hope that the Administering Authority would constantly bear in mind the necessity for ensuring that this provision did not operate as a restraint upon the freedom of the Press and the desirability of modifying it as soon as practicable.

The Council recommended that the Administering Authority take steps to eliminate all discriminatory laws and practices, and reiterated its previous resolution (50 (IV)) on this question. The Council noted that the wage level in the territory was low, and recommended that the Administering Authority endeavour to establish wage rates in the territory which would not only enable workers to meet the costs of everyday living, but also progressively raise their standard of living.

On the matter of medical and health services, the Council noted with approval that the budgetary appropriation for medical purposes had tripled since pre-war years, but was concerned that, nevertheless, medical facilities left much room for improvement. It expressed the desire to be kept informed on the development of medical policy and its implementation, and maintained its previous recommendation concerning the medical and health services.

Educational Advancement. The Council noted with concern the need for greater educational facilities in the territory; noted with appreciation the efforts being made and the steps taken by the Administering Authority to overcome these deficiencies within the limited financial resources available; and noted with satisfaction the steps taken by the Administering Authority towards the implementation of the resolutions of the Council concerning mass education, the prevention of relapse into illiteracy and the development of indigenous languages and culture. It reiterated its previous suggestions, and recommended that the Administering Authority should continue its efforts in the field of education by the adoption of more vigorous measures.

The Council, noting that the segregation of European, Asian and African children in different schools might perpetuate feelings of racial discrimination and superiority, endorsed the suggestion of the Visiting Mission that the Administering Authority consider the possibility of establishing in urban centres a system of interracial primary and secondary education whenever teaching is given in a common language.

Ruanda-Urundi

Political Advancement. The Council commended the Administering Authority for having appointed two local chiefs as permanent members of the Council of the Vice-Government-General, their two alternates also being Africans, and was gratified to note that the Administering Authority viewed with favour an increase in the near future in the number of Africans on this Council, and expressed the hope that this Council, at present advisory, would be given some legislative powers.

The Council noted that the Administering Authority was studying the possibility of establishing various African councils which would to some extent exercise legislative powers, and it invited the Administering Authority to give the Council, as soon as was practicable, full information regarding these plans, to the implementation of which it attached great importance.

Economic Advancement. The Council regarded as a matter of prime importance that uninhabited and uncultivated lands be reserved, as a rule, for the indigenous population and urged the Administering Authority to maintain its restrictions on the settlement of agricultural lands by non-indigenous persons.

Social Advancement. The Council noted that the immigration law of Ruanda-Urundi prohibits the admission as immigrants of persons who are unable to read and write a European language, and recommended that the Administrative Authority study the possibility of replacing this provision by a measure free from any discriminatory character. The Council, recalling paragraphs 4 and 5 of resolution 323 (IV) of the General Assembly and its own resolution 49 (IV) on social discrimination, recommended that the Administering Authority should continue to review all legislation involving social discrimination, particularly the laws on residence, alcoholic beverages, fire-arms and the penitentiary system.

The Council commended the Administering Authority for its efforts to enable recruited workers to be accompanied by their families. With regard to wages, the Council noted that the existing scale of wages in the territory was low in comparison with prices, and recommended that the Administering Authority consider this problem with a view to raising the real wages in the territory.

It commended the Administrative Authority for its decision to suppress all obligatory payments in kind or labour.

The Council, recalling paragraph 2 of resolution 323 (IV) of the General Assembly on abolition of whipping in Ruanda-Urundi, recommended that the Administering Authority consider the abolition of whipping with a view to adopting as soon as possible the necessary measures to that effect, and the substitution of other forms of penalties more in keeping with the letter and spirit of the Charter and the Universal Declaration of Human Rights. In respect to solitary confinement, the Council also recommended that it be applied only to serious and exceptional cases, and that its duration be limited as much as possible.

Educational Advancement. The Council expressed its satisfaction at the progress made by the Administering Authority in the educational field, particularly during the year 1948, and expressed the hope that improvement in this field would continue to be pursued with vigour. It noted also that all primary schools in the territory were in fact run by religious missions, and recommended that the Administering Authority consider establishing official secular schools, without prejudice to the help given to religious institutions engaged in educational activities.

Cameroons under British Administration

Political Advancement. The Council recommended that the Administering Authority take all possible steps to increase the number of administrators and technical officers to advise the indigenous inhabitants in order to train them progressively to assume increasing responsibilities in the administration. On the subject of local government, the Council recommended that the Administering Authority should introduce basic reforms in the system of Native Administration, in order to accelerate the development of local government units along democratic and progressive lines. On the question of suffrage, the Council reiterated its recommendation adopted at its fourth session and further recommended that modern democratic processes, particularly an elective system, should be introduced in the territory as soon as practicable.

Economic Advancement. The Council noted with satisfaction the formation by the Administration of small committees composed of indigenous inhabitants to consult with the Cameroons Development Corporation on a local level, and expressed the hope that a committee of a similar nature be set up at a higher level as soon as possible to enable the management of the Cameroons Development Corporation to be in closer contact with the indigenous inhabitants. On the subject of the Bakweri land problem, the Council noted with approval the measures taken by the Administering Authority that declared lands formerly alienated to be Native lands, developing them for the common benefit of the inhabitants of the Trust Territory by the Cameroons Development Corporation; it made some other recommendations relating to the increasing participation of the indigenous inhabitants and the improvement of their material conditions.

Social Advancement. The Council noted that the wage rates in the Territory were low in comparison with the cost of consumer goods, and recommended that the Administering Authority consider and adopt measures to ensure that essential consumer goods be made available at prices within the range of the average wage earner. The Council also urged the Administering Authority to intensify its efforts to increase real wages and to raise the standard of living of the indigenous inhabitants of the territory.

The Council recommended to the Administering Authority the abolition of whipping in the territory and the adoption of measures to this effect as soon as possible.

The Council noted that persons desirous of publishing a newspaper in the territory were required under the Newspaper Ordinance to establish a bond of £250 to ensure that any claim for libel would be met; it recommended that the Administering Authority ensure that this provision did not operate as a restraint upon the freedom of the press and bear in mind the desirability of modifying this provision as soon as practicable.

The Council noted with concern the inadequacy of medical and health facilities in the territory, and reiterated its recommendation adopted at its fourth session, recommending that the Administering Authority take immediate steps to improve and expand the medical services in order to provide fully for the medical and health needs of the population.

Educational Advancement. The Council noted with approval the expansion in the financial appropriations for education, the progress in vocational training and the number of pupils preparing to become teachers; nevertheless, it noted the general inadequacy of the educational facilities of the territory, especially in the north, and reiterated its recommendations adopted at its fourth session, recommending that the Administering Authority make a vigorous effort in the immediate future to overcome these deficiencies. While noting with approval the work being accomplished in the field of primary and secondary education by the voluntary agencies, the Council considered that the Administering Authority should give further attention to the desirability of establishing more government schools. The Council noted with approval the willingness of and the efforts made by the Administering Authority to maintain in the territory instruction in the local languages.

Cameroons under French Administration

Political Advancement. The Council noted with approval the practice of the Administering Authority in regard to traditional indigenous institutions, which, although accorded due respect, were not permitted to hinder the development of more modern and progressive forms of government.

Economic Advancement. The Council commended the Administering Authority for the establishment of producing, processing, marketing and consumer co-operatives among the indigenous inhabitants as a means of bringing about their more effective participation in the economy of the territory, and expressed the hope that the Administering Authority would foster as rapidly as possible the participation of the inhabitants in positions of increasing responsibility in these organizations. On the matter of procedure open to indigenous inhabitants for recognition of their land rights, the Council

requested the Administering Authority to recruit a sufficient number of surveyors in order to accelerate such procedures, and in connexion with the granting of land concessions for agricultural purposes, requested the Administering Authority, as a matter of principle, to give preference to settlement projects undertaken by indigenous inhabitants themselves.

Social Advancement. The Council, noting the observation of the Visiting Mission that the African population showed great confidence in the medical services in the Territory, but noting also the shortcomings that still existed and the requests contained in several petitions for the further extension of the medical and public-health facilities, expressed the hope that the Administering Authority would do its utmost to increase the number of African medical personnel and make efforts to bring adequate medical care within reach of all.

On the question of wages and standard of living, the Council reiterated its recommendation adopted at its fourth session, expressing the hope that the results of the study of standards of living ordered in the territory in 1949 would be laid down before the Council next year. It also reiterated its recommendation that the Administering Authority should consider the possibility of increasing real wages and improving the standard of living.

The Council commended the Administering Authority for the positive measures taken towards the elimination of discriminatory practices by individuals, and urged it to continue its efforts to eliminate all forms of racial discrimination in the territory.

The Council, noting the petitions complaining that forced labour still existed in the territory, and the assurances of the Administering Authority that such practices were not condoned by it, suggested that the administrative officers concerned guard against any practices which might be construed by the people as meaning that forced labour had not been eradicated from the territory.

Education. The Council commended the Administering Authority for the progress achieved in the educational field, recommending at the same time that it intensify its efforts to develop secondary education, teacher and technical training in the Territory.

Togoland under British Administration

Political Advancement. The Council noted with satisfaction the selection of a representative of Southern Togoland to the Gold Coast Legislative Council, urging the Administering Authority to assure that the representation of the Territory on such legislative and consultative bodies in the Gold Coast was proportionate to the Territory's population or interest and to continue to develop as rapidly as possible local and sectional representative organs in the territory.

The Council noted with satisfaction the assurance of the representative of the United Kingdom that full weight would be given to the wishes of all the people of Togoland under British administration before any decisions regarding proposed regional arrangements for the territory were taken.

The Council noted with satisfaction that a beginning had been proposed in the introduction of methods of suffrage on all levels of government, and while appreciating the difficulty of introducing at once a modern system of suffrage, recommended that all necessary educative measures be undertaken to prepare the population for the adoption of universal suffrage with the least possible delay.

Social Advancement. The Council, having noted the decrease in the imposition of sentences of corporal punishment, and having noted the statement of the Administering Authority that its policy "aims at the gradual reduction of the use of corporal punishment, with the object of abolition as soon as may be practicable", regretted that the Administering Authority had not yet seen its way clear to the complete and immediate elimination of corporal punishment, and reiterated its previous recommendation "that the Administering Authority immediately abolish this practice".

Educational Advancement. The Council noted the progress achieved in education, and expressed the hope that the Administering Authority would give every possible encouragement to continued expansion of teacher-training facilities and to increasing opportunities of secondary and higher education. It noted that the mangement of schools was largely left to the religious missions, considered that the Administering Authority had a primary responsibility in the matter of education and urged it to take more vigorous initiative for the expansion of education and teacher-training in the territory. The Council commended the Administering Authority for the notable progress made in the field of adult education.

Togoland under French Administration

Political Advancement. The Council took note of various political movements destined to increase the degree of inititative and responsibility by the indigenous inhabitants in the conduct of local affairs; such were the re-definition made by the Representative Assembly of the status of the indigenous *chefferie*, of the replacement made by the Representative Assembly of the Councils of Notables by elected district councils, and the increase in the number of electors in the territory.

The Council noted with approval the experiment made within the Territory with a court composed of indigenous inhabitants, and the proposal to extend this plan to other parts of the territory.

Economic Advancement. The Council expressed the hope that the Administering Authority would press forward with its plans to encourage the formation of agricultural co-operatives, and that the indigenous inhabitants would be given real opportunity for responsible participation therein as a means of providing further experience for them in the management of their own economic affairs.

Social Advancement. The Council took note that the status of women in the territory was inferior to that of men, and expressed the hope that a continuous campaign of education would enable the status of women to be raised. It noted with regret that the labour code, under consideration by the French National Assembly, had not yet become law, and expressed the hope that this legislation would be enacted soon and that its provisions would fully safeguard the rights and interests of labour. In determining a scale of minimum wages, the Council considered that labourers should be ensured a decent standard of living and protected in respect of illness and accidents arising from employment. It also thought that labour unions should take part in studies of such questions as illness and old age.

Educational Advancement. The Council commended the advances made by the Administering Authority in educational development, while recognizing the great need for further development and recommending that the Administering Authority afford broader, more complete and widespread education to the inhabitants of the territory, particularly in the northern areas. The Council also noted the limited number of girls attending schools, and recommended that the Administering Authority continue its efforts to enrol more girls in schools.

The Council took note that the Administering Authority had initiated a programme of adult education, not only for illiterates, but also to enable persons to continue their education after leaving school, and recommended that the Administering Authority increase its efforts in this respect and pursue a vigorous programme to reduce illiteracy. The Council noted with approval the steps taken to preserve indigenous cultures and also that part of the instruction in primary schools was now given in the vernacular; it expressed the hope that the Administering Authority would continue to give increasing attention to this matter.

Western Samoa

Political Advancement. The Council noted with satisfaction the election by secret ballot of the additional Samoan member of the Legislative Assembly and expressed the hope that further reforms would be introduced with a view to bringing about, in due course, a system of universal suffrage in such elections.

The Council took note of the differentiation in status and in legal and social rights between Samoans and Europeans and the possible undesirable tensions which might result therefrom, and recommended that the Administering Authority intensify its efforts to solve this problem.

Social Advancement. Taking note of the relatively high incidence of tuberculosis and urging the Administering Authority to intensify the measures already indicated for the control of this disease, the Council commended the Administering Authority for the progress made in the field of public health. It recommended that the efforts to recruit doctors and other medical personnel be intensified.

The Council recommended that the Administering Authority, taking into account local conditions, should as soon as possible introduce elementary social legislation, including labour legislation.

The Council commended the Administering Authority on its efforts towards the elimination of differentiation between the rights of men and women, and recommended that it continue to take all measures to ensure that the women of Samoa should have ample opportunities to participate in the political life of the territory.

New Guinea

Political Advancement. The Council considered the absence from the territory of democratic elective processes, and recommended to the Administering Authority that a beginning be made in the introduction of methods of suffrage designed ultimately to bring about the establishment of a modern electoral system based on universal suffrage.

The Council drew the attention of the Administering Authority to the desirability of training increasing numbers of indigenous inhabitants to assume increasingly responsible positions and thus to participate to a greater extent in the administration of the territory. It also noted with satisfaction the intention of the Administering Authority to bring into force legislation recognizing traditional indigenous jurisdictions and at the same time bringing them under the effective control of the administration.

Social Advancement. The Council noted the assurance of the Administering Authority that it would conduct a cost-of-living survey in some of the larger towns; it urged the Administering Authority to continue its study as to the possibility of increasing the minimum wage for indigenous workers, and urged also that the Administering Authority speed up as much as possible the processes for the ratification and application to the territory of international conventions, particularly those affecting labour and other social questions, to which the Administering Authority was a party.

The Council noted with satisfaction the increase in medical and health services, but recognized that they were still inadequate, and drew the attention of the Administering Authority to the needs, recommending further steps to extend the services.

Educational Advancement. The Council recommended that the Administering Authority, in reviewing the educational programme for the indigenous inhabitants, place appropriate emphasis on the preparation of the inhabitants for the responsibilities of representative government and eventual independence.

Nauru

The Council commended the Administering Authority for its intention to reconstitute the Council of Chiefs and invited it to transfer that organ into a real organ of self-government. It noted with interest that the experiment of appointing the head chief as Native Affairs Officer had proved successful, that it was the intention of the Administering Authority that he should continue to occupy this position, and expressed the hope that the success of this experiment would lead to the granting of increased administrative responsibilities to other indigenous inhabitants.

The Council, considering that it was desirable that judicial authority be independent from executive authority, invited the Administering Authority to study the judicial organization with a view to ensuring to the judiciary all the independence compatible with the circumstances.

Economic Advancement. The Council noted with appreciation the increased participation by Nauruans in the economic development of the territory, particularly through the Nauruan Co-operative Society, and expressed the hope that the Administering Authority would continue to provide every facility to this co-operative enterprise to enable it to strengthen and expand its services.

Social Advancement. Taking into consideration, with regard to its previous recommendation for a review of existing legislation with the object of removing discriminatory provisions, that the Administering Authority had directed a legal officer to undertake this review, the Council requested that the Administrative Authority inform it, when it examined the next annual report, of the progress of this review and the steps taken as a result thereof.

The Council urged the Administering Authority to continue to study the cost of living and take such steps as might prove necessary to maintain and, where possible, to raise the standard of living of the inhabitants. It also recommended that the Administering Authority take steps to increase the wages and assure to the Chinese, Gilbertese and Nauruan workers the most favourable system of holidays.

Recalling that during its fifth session it adopted a recommendation in which it noted that Chinese workers were brought to Nauru without their families, the Council considered that this practice might have serious consequences, and recommended that the Administering Authority endeavour to find some humane solution to this problem. Noting that the Administering Authority had not yet been able to find such a solution, the Council urged it to take steps to comply with its previous recommendation.

Educational Advancement. Considering that political progress cannot be achieved without education, the Council urged the Administering Authority to take appropriate measures to increase the educational facilities in the territory in order to ensure the fulfilment of the objectives of the Trusteeship System.

Pacific Islands

In connexion with its functions in respect of *strategic areas under Trusteeship*, the Council, at its seventh session, examined the report of the Government of the United States of America on the administration of the Trust Territory of the Pacific Islands. At its 27th meeting, the Council adopted a separate report (S/1628) to the Security Council. With respect to these areas, the Council took the following decisions.

Political Advancement. It noted that the Administering Authority was studying the question of the application to the Trust Territory of international treaties, agreements and conventions, including International Labour Organisation conventions and recommendations, and expressed the hope that the results of this study would soon be made available to it.

It commended the Administering Authority for its progressive development of regional and local organs of self-government, and recommended that the Administering Authority press forward with its long-range plans to establish a territory-wide legislative body and that it proceed progressively to democratize the municipalities.

Economic Advancement. The Council, taking note of the explanation given by the Administering Authority as to the desirability of utilizing the head tax at the present time, as well as the assurances of the Administering Authority that it fully appreciated the desirability of introducing, as soon as practicable, taxes based on ability to pay, reiterated its recommendation that the Administering Authority consider the ultimate abolition of the head tax and its replacement by a more progressive system of taxation. The Council, taking note of the existence of systems of customary tributes (payments in cash or in kind) to indigenous chiefs or headmen, expressed the hope that the Administering Authority would take such steps as might be possible, so as to ensure that these customs were not abused.

Social Advancement. The Council, noting with satisfaction the election of two women to the Palau Congress, expressed the hope that the Administering Authority would encourage increasing participation by the women of the territory in the discussion and management of island affairs.

B. *Petitions*

By resolution 321 (IV), the General Assembly recommended to the Council that it should take such measures as might be deemed appropriate, with a view to facilitating and accelerating the examination and disposal of petitions, and should direct its visiting missions to report fully on the steps taken towards the realization of the objectives set forth in Article 76 b of the Charter under the heading of political, economic, social and educational advancement and, in particular, on the steps taken towards self-government or independence. In implementation of the first part of the above-mentioned resolution, the Council, at the 14th and 25th meetings of its sixth session, amended rule 90 of its rules of procedure in order to give the *ad hoc* Committee on Petitions additional powers.

The *ad hoc* Committee on Petitions, appointed by the Council at the 14th meeting of its sixth session, received and examined, during the Council's sixth and seventh sessions a number of petitions concerning: (1) Western Samoa; (2) Tanganyika; (3) Tanganyika and Ruanda-Urundi; (4) Ruanda-Urundi; (5) Cameroons under British administration; (6) Cameroons under French administration; (7) Cameroons under British administration and Cameroons under French administration; (8) New Guinea; (9) Togoland under British administration; (10) Togoland under French administration; (11) Togoland under British administration and Togoland under French administration. Most of these petitions related in some ways to human rights.

C. *Visiting Missions*

Trust Territories in West Africa

At its fifth session, the Trusteeship Council sent a visiting mission to the Trust Territories in West Africa, to observe the development of political, economic, social and educational conditions in those territories. In its reports (document A/1306, chapter IV, and T/798), the mission made certain observations and conclusions, some of which related to human rights.

With respect to *Cameroons under British administration* the Visiting Mission expressed the opinion that perhaps the most formidable problem lying in the path of progress towards self-government appeared to be that of creating an adequate basis of political organization among the broad mass of the population. The mission took note of the method employed with that end in view by the Administering Authority, making some observations on its chances of success. The mission examined certain proposals for reform in respect of Native administration in the southern section of the territory, and examined the problem in the northern section. Recognizing the need to develop wider representation in political affairs, the mission considered the efforts made by the Administering Authority as worthy of commendation.

As a matter equally worthy of commendation, the mission observed everywhere it went that complete freedom of speech was permitted.

In respect of general economic conditions, the mission found that living standards on the whole appeared to be low.

In considering the social development, the mission looked into certain aspects of marriage customs (polygamy) in the territory, and reached the conclusion that it would be a mistake to look at this custom on the basis of western standards, as it was a long-established tribal custom with a strong economic and social basis. It did not appear advisable to the mission for the Administrative Authority to prohibit polygamy as long as the mass of the people remained attached to the custom; evolution through education should bring about the desired change without causing an upheaval. The mission suggested that the right of women and girls to refuse to take part in any forced union and to release themselves from any such unions should be proclaimed and protected, and that the wives of polygamists should be allowed to withdraw from their marriages when it appeared that they no longer wished to accept their position as additional wives.

In its observations on educational development, the mission was of the opinion that popular demand for education was far outstripping the rate at which facilities could be provided. The mission considered that the educational needs of the territory had been adequately stated in the recommendations made by the Council at its fourth session.

With respect to the *Cameroons under French administration*, the Visiting Mission was of the opinion that the Representative Assembly, in spite of its limited powers, was an excellent school in self-government, bringing together Africans drawn from the most varied spheres to study problems from the standpoint of the territory as a whole. The mission also observed that the time was rapidly approaching when a sufficient number of the territory's nationals would have reached the stage of maturity required to enable the country to be given a broadly independent legislative assembly elected by a single college on an electoral basis and thus gradually approach universal suffrage.

In respect of certain problems relating to the system of justice, the mission suggested that the Administering Authority, having acknowledged these difficulties, would do well to accord them its consideration in the hope of arriving at an improved system of justice in the territory. The mission also suggested that, if certain complaints concerning brutal and abusive treatment by the police were substantiated, steps should be taken to alleviate these grievances. A considerable development of political activity in the territory during the last three years was noted by the mission; it was also of the opinion that the extent of freedom of speech in the territory was a matter worthy of commendation. The mission was of the opinion that the progress of the

co-operative movement was an important factor in the development of the territory.

The mission observed that, although forced or compulsory labour was forbidden by law, a number of complaints were heard alleging that forced labour had in fact never ceased to exist. The Administration, however, vigorously denied the existence of forced labour. Complaints were received by the mission regarding the inadequacy of wages; the mission remarked the absence of adequate studies of living standards on which an objective appreciation could be made, and suggested that the Council give attention to this matter. The mission noted that many petitions called for the promulgation of a labour code as an urgent measure, and that such a code had been drafted for promulgation in 1950.

On the matter of education, the mission was able to confirm that the Administering Authority deserved the congratulations of the Council for having introduced free education on its own initiative. It also suggested that the satisfaction of demands for further educational facilities were worthy of the highest consideration.

With respect to *Togoland under British administration*, the Visiting Mission noted that freedom of speech was encountered everywhere it went. On the subject of education, the mission recalled the observations made by the Council at its fourth session; the mission was of the opinion that the views expressed by the Council were confirmed as a result of its visit. The Council had, on that occasion, urged the Administering Authority to make an earnest effort further to develop, through educational channels, the various indigenous cultures of the population, as well as to increase the budgetary allocations for educational requirements and other cultural needs. The mission was of the opinion that the experiment in mass education deserved the warmest commendation.

With respect to *Togoland under French administration*, the Visiting Mission noted that the Representative Assembly of the territory had no power of initiating legislation or of discussing political matters, and reiterated the recommendation adopted at the fourth session of the Council that the Administering Authority, irrespective of the present or future relationship of the territory to the French Union, progressively extend the powers of the Representative Assembly, particularly in the field of legislation.

The mission stated that it found freedom of speech everywhere it went. It noted also that there was much interest on the part of Africans in educational development. Satisfaction was expressed with the advances made in this field by the Administering Authority. The need for further development, however, was recognized and was stressed in petitions and statements to the Visiting Mission. The mission considered that requests for the further extension and development of education were worthy of the most sympathetic consideration by the Administering Authority. Various petitions stressing the desirability of employing the vernacular as well as French as the medium of instruction were addressed to the mission, which was of the opinion that the question was a matter for the Council to discuss.

The Trusteeship Council, at the 29th meeting of its seventh session, adopted resolution 298 (VII) and, *inter alia*, drew attention to the fact that at its sixth and seventh sessions, in formulating its own conclusions and recommendations on the annual reports and the petitions relating to the Trust Territories concerned, the observations and conclusions of the mission had been taken into account.

Pacific Islands

At its sixth session, the Trusteeship Council sent a Visiting Mission to the Trust Territories in the Pacific to observe the development of political, economic, social and educational conditions in those territories. The mission, in its report (T/789), made certain observations and conclusions, some of which related to questions of human rights.

The mission observed that although the United States Congress had not yet formalized the status of the indigenous inhabitants, they were unofficially described as "citizens of the Trust Territory" and were accorded this status as nearly as possible without formal Congressional action. The mission was informed that the legal status would be defined in an organic act for the territory which was then under consideration.

Regarding the growth of democratic institutions, and while taking into consideration that the traditional or hereditary chiefs were still found on the islands, the mission felt that the patterns applied by the Administering Authority gave the people immediate experience in self-government, and also provided a means whereby normal evolution to more democratic forms of government was possible in areas where hereditary considerations still existed.

The mission also thought that the standard of living of the inhabitants and the health programme, with a few particular exceptions where some observations were made, deserved its approval. A similar statement could be made about education, for the Administering Authority aimed to create a system which would benefit many and assure the progressive development of each community.

Among the petitions submitted to the mission was one that particularly referred to human rights. The petitioners requested that Japanese nationals, married to indigenous inhabitants, be permitted to return to their families in the territory, provided they renounced their Japanese citizenship (document T/789, pp. 46–47). The mission recommended to the Trusteeship Council that the Administering Authority be invited to furnish a report (including the number of cases involved) on this matter, in order to enable the Council to consider a reply to the petitioners.

D. *Action taken by the General Assembly*

At its fourth session, the General Assembly adopted various resolutions related to the advancement of human rights in the Trust Territories (see *Yearbook on Human Rights for 1949*, Chapter XII, section I, C, p. 399). At the 73rd meeting of its sixth session, the Council considered the above-mentioned resolutions, and adopted resolution 127 (VI). This resolution, after noting the recommendations of the General Assembly, recommended to the Administering Authorities concerned the abolition of corporal punishment in all territories where it still existed; requested the Secretary-General to bring to the attention of the International Labour Organisation the General Assembly's interest in the problems of migrant labour and penal sanctions for breach of labour contracts by the indigenous inhabitants; requested the expert advice of the ILO on these problems and decided to defer further action until such expert advice could be obtained; urged all Administering Authorities to take the necessary measures to ensure that no discriminatory laws or practices contrary to the Charter or Trusteeship Agreements existed in any Trust Territory, and called upon the administering authorities concerned to include in their next annual reports all data needed to enable the Council to make further recommendations on this subject; and decided to bring to the attention of all administering authorities the aforesaid resolutions adopted by the General Assembly and urged them to take such steps as might be necessary to give effect to them.

At the 74th meeting of its sixth session, the Council again considered the aforesaid resolutions and decided to include, in accordance with recommendations made in those resolutions, special sections in its future annual reports to the General Assembly on the implementation of the recommendations of the General Assembly and information on the application of the recommendations of the Trusteeship Council (resolution 128 (VI)).

Following the request of the Trusteeship Council for expert advice on the problems of migrant labour and penal sanctions for breach of labour contracts by indigenous inhabitants of Trust Territories, the Governing Body of the International Labour Office, at its 112th session (June 1950), took note of the resolution of the General Assembly and of the Council, and also took note of the arrangements made by the Director-General concerning the International Labour Office's activities in regard to these matters. In regard to penal sanctions, the Director-General proposed to approach the Member States concerned to secure details of their current law and practice, together with indications of the difficulties preventing the ratification of the Penal Sanctions (Indigenous Workers) Convention, 1939. As regards migrant labour, the Director-General proposed to carry further the International Labour Office studies of the matter in the course of a mission by International Labour Office officials to various territories in Africa and to lay a report on the subject before the International Labour Office Committee of Experts on Social Policy in Non-metropolitan Territories in the course of 1951. It was stated that the Council would be kept fully informed of future developments in these fields (document T/712).

At its fifth session, the General Assembly adopted various resolutions relating to the advancement of human rights in the Trust Territories. These resolutions read as follows:

Resolution 422 (V)

The General Assembly

Requests the Commission on Human Rights to include the following article in the International Covenant on Human Rights:

"*Art.* ——. The provisions of the present Covenant shall extend to or be applicable equally to a signatory metropolitan State and to all the territories, be they Non-Self-Governing, Trust or Colonial Territories, which are being administered or governed by such metropolitan State."

Resolution 436 (V)

The General Assembly,

Considering that it is necessary that both the General Assembly and the Trusteeship Council should have at their disposal information on the implementation of the recommendations approved by both bodies in matters relating to Chapters XII and XIII of the Charter,

Requests the Secretary-General:

(*a*) To prepare a list, classified by subjects, of such resolutions, including in each case the text of the operative part of the document;

(*b*) To report to the sixth session of the General Assembly on the measures taken by the Administering Authorities to implement such resolutions, using as a source the reports of the Trusteeship Council;

(*c*) If there has been no action on the part of an Administering Authority in respect of any particular resolution, to set forth the reasons given concerning that matter.

Resolution 437 (V)

The General Assembly,

Considering that the promotion of educational advancement of the inhabitants of Trust Territories is essential for their progressive development as early as possible towards self-government or independence,

Recognizing that, while notable progress has already been achieved in the educational development of the Trust Territories, considerable efforts are still required in this field,

Considering that the establishment, in so far as is practicable, of comprehensive and long-range plans to achieve such educational development is desirable,

1. *Recommends* that the Trusteeship Council continue to devote particular attention, in consultation with the Administering Authorities and the specialized agencies, to long-range programmes of educational development in the Trust Territories, with a view to enabling the inhabitants of those territories to take over the responsibilities of complete self-government at the earliest possible date;

2. *Requests* that the Trusteeship Council include in its annual reports to the General Assembly its observations on the various long-range educational programmes undertaken in the Trust Territories, and the progress made in respect thereof.

Resolution 440 (V)

The General Assembly,

Recalling its resolution 323 (IV) endorsing the recommendation of the Trusteeship Council for the immediate abolition of corporal punishment in the Trust Territories,

Noting the several statements contained in the report of the Trusteeship Council to the present session of the General Assembly to the effect that such punishment is still being applied,

Recommends that measures be taken immediately to bring about the complete abolition of corporal punishment in all Trust Territories where it still exists, and requests the Administering Authorities of those Territories to report on this matter to the General Assembly at its next regular session."

E. *Action taken by the Economic and Social Council*

At its tenth session, the Economic and Social Council adopted certain resolutions relating to the advancement of human rights in the Trust Territories as follows.

Following the recommendations of the Commission on Human Rights contained in the report of its fifth session (E/1371) relating to the Provisional Questionnaire of the Trusteeship Council, the Economic and Social Council adopted resolution 275 D (X) reading as follows:

The Economic and Social Council:

Recommends to the Trusteeship Council:

1. To take into consideration the Universal Declaration of Human Rights, approved by the General Assembly on 10 December 1948 and proclaimed as a common standard of achievement for all peoples and all nations in the revision of its provisional questionnaire, particularly in the light of the additional questions suggested by the Commission on Human Rights and contained in documents E/CN.4/174 and E/CN.4/329 in so far as they are not already covered by the provisional questionnaire; and

2. To consider urging the Administering Authorities to continue to secure, through progressive measures and appropriate procedures, the effective recognition and observance of the rights and freedoms set forth in the said Declaration, among the peoples of the Trust Territories under their administration."

At its tenth session also, the Economic and Social Council discussed the recommendations made by the Commission on Human Rights, by which it should request the Trusteeship Council to authorize the Sub-Commission on Prevention of Discrimination and Protection of Minorities to participate in visits to Trust Territories arranged by the Trusteeship Council, with a view to the preparation of measures to extend the full enjoyment of human rights and fundamental freedoms to the non-self-governing populations (document E/1371).

Several objections were raised while the Economic and Social Council discussed this recommendation. It was said that the administering authorities could not accept constant multiplication of controls which might make them suspect in the eyes of the indigenous populations of the territories they administered. It was also said that, if one organ of the United Nations were authorized to participate in a visiting mission, this might lead to other requests and to an increase in the size of these missions. It was also argued that the individuals sent on missions to territories with a special status had to be chosen carefully, due regard being paid to their qualifications.

By resolution 275 E (X), the Economic and Social Council decided to request the Trusteeship Council to consider the advisability of keeping informed of such violations of the full enjoyment of human rights and fundamental freedoms as might come to the notice of the Trusteeship Council. This resolution was before the Trusteeship Council at its seventh session; the Trusteeship Council adopted a resolution (T/695) recalling the actions taken at its second and third sessions, and at the fifth and eight sessions of the Economic and Social Council, under the provisions of Article 91 of the Charter, to establish common arrangements in matters of common concern, and it considered that the arrangements thus set up provided adequate channels for keeping the Economic and Social Council informed of matters in the field of human rights.

SECTION II
NON-SELF-GOVERNING TERRITORIES

A. *Information submitted under Article 73 e of the Charter*

Under Article 73 e of the Charter, Members of the United Nations which have or assume responsibilities

for the administration of territories whose peoples have not yet attained a full measure of self-government have undertaken to transmit regularly to the Secretary-General for information purposes, subject to such limitations as security and constitutional considerations may require, statistical and other information of a technical nature relating to economic, social and educational conditions in the territories.

The General Assembly, in resolution 218 (III), paragraph 4 (*c*), invited the Secretary-General to prepare annual summaries of any material which Member States might have voluntarily transmitted under the optional category of the Standard Form. The optional category of the Standard Form contains, as main headings: *A.* Geography; *B.* History; *C.* People; *D.* Government; and *E.* Human Rights.

During 1948 and 1949, a number of Members responsible for the administration of Non-Self-Governing Territories submitted information concerning human rights.[1]

In 1950, the following Members voluntarily transmitted information under the optional category of the Standard Form: Australia, Denmark, Netherlands, New Zealand and the United States of America. In the field of human rights, it can be said that no additional information was submitted to that previously recorded in the 1948 and 1949 Yearbooks (A/1295).

B. *Action taken by the General Assembly*

The General Assembly, at its fifth session, approved various resolutions relating to Non-Self-Governing Territories. Resolution 446 (V) especially emphasized human rights and the principles of the Universal Declaration. The text is as follows:

The General Assembly,

Recalling the recommendation contained in resolution 327 (IV) adopted by the General Assembly on 2 December 1949,

Noting the provision contained in article 2 of the Universal Declaration of Human Rights that no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, Trust, Non-Self-Governing or under any other limitation of sovereignty,

Having regard to the mission which has been given by the General Assembly to the Commission on Human Rights with a view to the drafting of an International Covenant on Human Rights which will also be applicable to Non-Self-Governing Territories,

1. *Invites* the Members responsible for the administration of Non-Self-Governing Territories to include, in the information to be transmitted to the Secretary-General in 1951 under Article 73 e of the Charter, a summary of the extent to which the Universal Declaration of Human Rights is implemented in the Non-Self-Governing Territories under their administration;

2. *Requests* the Special Committee on Information transmitted under Article 73 e of the Charter to include in its report to the General Assembly at its sixth session such recommendations as it may deem desirable relating to the application in Non-Self-Governing Territories of the principles contained in the Universal Declaration of Human Rights.

SECTION III

OTHER TERRITORIES

A. *Former Italian Colonies*

In dealing with the question of the disposal of the former Italian colonies,[2] the General Assembly, at its fifth session, took various decisions directly concerning matters of human rights.

By resolution 388 (V), adopted on 15 December 1950, the General Assembly approved those economic and financial provisions that would apply to Libya before the transfer of power in that Territory would take place. Article III of these provisions states that "Italy shall continue to be liable for the payment of civil or military pensions earned as of the coming into force of the treaty of peace with Italy and owed by it at that date, including pension rights not yet matured". Paragraph 1 of article VI provides that "The property, rights and interests of Italian nationals, including Italian juridical persons, in Libya, shall, provided they have been lawfully acquired, be respected. They shall not be treated less favourably than the property, rights and interests of other foreign nations, including foreign juridical persons." By article VII of the resolution, it is provided that "Property, rights and interests in Libya which, as the result of the war, are still subject to measures of seizure, compulsory administration or sequestration, shall be restored to their owners, and, in cases submitted to the tribunal referred to in article X of the present resolution,[3] following decisions of that tribunal". Article VIII states that "The former Italian nationals belonging to Libya shall continue to enjoy all the rights in industrial, literary and artistic property in Italy to which they were entitled under the legislation in force at the time of the coming into force of the treaty of peace. Until Libya becomes a party to

[1] See *Yearbook on Human Rights for 1948*, pp. 525–526, and *Yearbook on Human Rights for 1949*, pp. 399 *et seq.* for the information relating to 1948 and 1949 respectively.

[2] *Cf. Yearbook on Human Rights for 1949*, pp. 286 and 401–402. Concerning the former Italian colony of Somaliland, see the Trusteeship Agreement approved by the General Assembly on 2 December 1950, on p. 366 of this *Yearbook*.

[3] Article X provides for a United Nations tribunal composed of three persons selected by the Secretary-General for their legal qualifications from the nationals of three different States not directly interested.

the relevant international convention or conventions, the rights in industrial, literary and artistic property which existed in Libya under Italian law shall remain in force for the period for which they would have remained in force under that law".

By resolution 390 (V), adopted on 2 December 1950, which concerns the future of Eritrea, the General Assembly recommended the inclusion of certain human rights and fundamental freedoms in the future Constitution of Eritrea, which shall constitute an autonomous unit federated with Ethiopia under the sovereignty of the Ethiopian Crown. These rights and freedoms, which are mainly contained in paragraphs 6 and 7 of the resolution, read as follows:

"6. A single nationality shall prevail throughout the Federation:

"(*a*) All inhabitants of Eritrea except persons possessing foreign nationality, shall be nationals of the Federation;

"(*b*) All inhabitants born in Eritrea and having at least one indigenous parent or grandparent shall also be nationals of the Federation. Such persons, if in possession of a foreign nationality, shall, within six months of the coming into force of the Eritrean Constitution, be free to opt to renounce the nationality of the Federation and retain such foreign nationality. In the event that they do not so opt, they shall thereupon lose such foreign nationality;

"(*c*) The qualifications of persons acquiring the nationality of the Federation under sub-paragraphs (*a*) and (*b*) above for exercising their rights as citizens of Eritrea shall be determined by the Constitution and laws of Eritrea;

"The rights and interests of foreign nationals resident in Eritrea shall be guaranteed in accordance with the provisions of paragraph 7.

"7. The federal Government, as well as Eritrea, shall ensure to residents in Eritrea, without distinction of nationality, race, sex, language or religion, the enjoyment of human rights and fundamental liberties, including the following:

"(*a*) The right to equality before the law. No discrimination shall be made against foreign enterprises in existence in Eritrea engaged in industrial, commercial, agricultural, artisan, educational or charitable activities, nor against banking institutions and insurance companies operating in Eritrea;

"(*b*) The right to life, liberty and security of person;

"(*c*) The right to own and dispose of property. No one shall be deprived of property, including contractual rights, without due process of law and without payment of just and effective compensation;

"(*d*) The right to freedom of opinion and expression and the right of adopting and practising any creed or religion;

"(*e*) The right to education;

"(*f*) The right to freedom of peaceful assembly and association;

"(*g*) The right to inviolability of correspondence and domicile, subject to the requirements of the law;

"(*h*) The right to exercise any profession subject to the requirements of the law;

"(*i*) No one shall be subject to arrest or detention without an order of a competent authority, except in case of flagrant and serious violation of the law in force. No one shall be deported except in accordance with the law;

"(*j*) The right to a fair and equitable trail, the right of petition to the Emperor and the right of appeal to the Emperor for commutation of death sentences;

"(*k*) Retroactivity of penal law shall be excluded;

"The respect for the rights and freedoms of others and the requirements of public order and the general welfare alone will justify any limitations to the above rights."

B. *City of Jerusalem*

In resolution 181 (II) of 29 November 1947, the General Assembly stated that the City of Jerusalem should be established as a *corpus separatum* under a special international regime, and should be administered by the United Nations.

In resolution 303 (IV) of 9 December 1949, the General Assembly re-stated its intention that Jerusalem should be placed under a permanent international regime, and requested the Trusteeship Council to complete the preparation of the Statute of Jerusalem, approve it and proceed immediately with its implementation.

At its eighty-first meeting, on 4 April 1950, the Council approved the Statute for the City of Jerusalem (T/592). Article 9 of the Statue is devoted to human rights and fundamental freedoms, and reads as follows:

"1. All persons are entitled to all the rights and freedoms set forth in this statute, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national, or social origin, property, birth or other status.

"2. All persons shall enjoy freedom of conscience and shall, subject only to the requirements of public order, public morals and public health, enjoy all other human rights and fundamental freedoms, including freedom of religion and worship, language, education, speech and Press, assembly and association, petition (including petition to the Trusteeship Council), migration and movement.

"Subject to the same requirements no measure shall be taken to obstruct or interfere with the activities of religious or charitable bodies of all faiths.

"3. All persons have the right to life, liberty and security of person.

"4. All persons are equal before the law and are entitled without any discrimination to equal protection of the law. All persons are entitled to equal protection against any discrimination in violation of this Statute and against any incitement to such discrimination.

"5. No person may be arrested, detained, convicted or punished, except according to due process of law.

"6. No person or property shall be subjected to search or seizure, except according to due process of law.

"7. All persons are entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of their rights and obligations and of any criminal charge against them.

"8. All persons charged with a penal offence have the right to be presumed innocent until proved guilty according to law in a public trial at which they have had all the guarantees necessary for their defence.

"No person shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

"9. No person shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. All persons have the right to the protection of the law against such interference or attacks.

"10. All persons have the right to freedom of thought, conscience and religion; this right includes freedom to change their religion or belief, and freedom, either alone or in community with others, either in public or in private, to manifest their religion or belief in teaching, practice, worship and observance.

"11. All persons have the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media.

"12. The legislation of the City shall neither place nor recognize any restriction upon the free use by any person of any language in private intercourse, in religious matters, in commerce, in the Press or in publications of any kind, or at public meetings.

"13. The family law and personal status of all persons and communities and their religious interests, including endowments, shall be respected.

"14. All persons, as members of society, have the right to social security and are entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of the City, of the economic, social and cultural rights indispensable for their dignity and the free development of their personalities.

"15. Without prejudice to the provisions of the preceding paragraphs, the Universal Declaration of Human Rights shall be accepted as a standard of achievement for the City.

"16. At such time as the proposed United Nations Covenant of Human Rights shall come into force the provisions of that covenant shall enter into force also in the City in accordance with the provisions of article 37 of this statute."

B. ADVISORY OPINIONS AND JUDGMENTS OF THE INTERNATIONAL COURT OF JUSTICE

HUMAN RIGHTS PROVISIONS IN PEACE TREATIES, IMPLEMENTATION OF—PRELIMINARY QUESTIONS—FINDING OF EXISTENCE OF DISPUTE BETWEEN PARTIES TO TREATY—OBLIGATION ON PARTIES TO TREATY TO APPOINT MEMBERS OF COMMISSION FOR SETTLING DISPUTE—QUESTION OF COMPETENCE OF SECRETARY-GENERAL OF UNITED NATIONS TO APPOINT MEMBERS OF COMMISSION FAILING APPOINTMENT BY ONE PARTY TO DISPUTE—JURISDICTION OF INTERNATIONAL COURT OF JUSTICE—PEACE TREATIES WITH BULGARIA, HUNGARY AND ROMANIA

ADVISORY OPINIONS ON INTERPRETATION OF PEACE TREATIES[1]

30 March and *18 July 1950*

The facts. Under the treaties of peace which Bulgaria, Hungary and Romania concluded with the Allied and Associated Powers, the former States undertook to secure the enjoyment of human rights and fundamental freedoms to all persons under their jurisdictions. These treaties of peace provided that, in the event of a dispute between the Contracting Parties concerning the interpretation or execution of the treaties, a treaty commission would, under certain circumstances, be established to give a binding decision. The Commission was to be composed of one representative of each party to the dispute and a third member selected by mutual agreement of the two parties, or, failing agreement, by the Secretary-General of the United Nations. Allegations having been made in the General Assembly of the United Nations by various Allied and Associated Powers that Bulgaria, Hungary and Romania had defaulted on their obligation to secure the enjoyment of human rights to persons under their jurisdiction, the General Assembly decided to submit the following questions to the International Court of Justice for an advisory opinion:

I. Do the diplomatic exchanges between Bulgaria, Hungary and Romania on the one hand and certain Allied and Associated Powers signatories to the treaties of peace on the other, concerning the implementation of article 2 of the treaties with Bulgaria and Hungary and article 3 of the treaty with Romania, disclose disputes subject to the provisions for the settlement of disputes contained in article 36 of the treaty of peace with Bulgaria, article 40 of the treaty of peace with Hungary, and article 38 of the treaty of peace with Romania?[2]

In the event of an affirmative reply to question I,

II. Are the Governments of Bulgaria, Hungary and Romania obliged to carry out the provisions of the articles referred to in question I, including the provisions for the appointment of their representatives to the treaty commissions?

In the event of an affirmative reply to question II and if within thirty days from the date when the Court delivers its opinion, the governments concerned have not notified the Secretary-General that they have appointed their representatives to the treaty commissions, and the Secretary-General has so advised the International Court of Justice,

III. If one party fails to appoint a representative to a treaty commission under the treaties of peace with Bulgaria, Hungary and Romania where that party is obligated to appoint a representative to the treaty commission, is the Secretary-General of the United Nations authorized to appoint the third member of

[1] Interpretation of Peace Treaties, Advisory opinion: *I.C.J. Reports 1950*, p. 65; Interpretation of Peace Treaties (second phase), Advisory opinion: *I.C.J. Reports 1950*, p. 221.

[2] Article 36 (1) of the treaty of peace with Bulgaria reads as follows:

"Except where another procedure is specifically provided under any article of the present treaty, any dispute concerning the interpretation or execution of the treaty, which is not settled by direct diplomatic negotiations, shall be referred to the three heads of mission acting under article 37, except that in this case the heads of mission will not be restricted by the time-limit provided in that article. Any such dispute not resolved by them within a period of two months shall, unless the parties to the dispute mutually agree upon another means of settlement, be referred at the request of either party to the dispute to a commission composed of one representative of each party and a third member selected by mutual agreement of the two parties from nationals of a third country. Should the two parties fail to agree within a period of one month upon the appointment of the third member, the Secretary-General of the United Nations may be requested by either party to make the appointment."

Article 40 of the treaty of peace with Hungary and article 38 of the treaty of peace with Romania have analogous texts.

the commission upon the request of the other party to a dispute according to the provisions of the respective treaties?

In the event of an affirmative reply to question III,

IV. Would a treaty commission composed of a representative of one party and a third member appointed by the Secretary-General of the United Nations constitute a Commission, within the meaning of the relevant Treaty articles, competent to make a definitive and binding decision in settlement of a dispute?

Held: that the diplomatic exchanges between Bulgaria, Hungary and Romania on the one hand and certain Allied and Associated Powers signatories to the treaties of peace on the other, concerning the implementation of article 2 of the treaties with Bulgaria and Hungary and article 3 of the treaty with Romania, disclose disputes subject to the provisions for the settlement of disputes contained in article 36 of the treaty of peace with Bulgaria, article 40 of the treaty of peace with Hungary, and article 38 of the treaty of peace with Romania.

Held: that the Governments of Bulgaria, Hungary and Romania are obligated to carry out the provisions of those articles referred to in Question I, which relate to the settlement of disputes, including the provisions for the appointment of their representatives to the Treaty Commissions.

On 30 March 1950, the Registrar of the Court notified the substance of the Court's answers to these two questions to the Secretary-General of the United Nations and to the Governments of all the signatories of the peace treaties. Having received information from the Secretary-General of the United Nations that none of the three Governments had notified him, within thirty days from the date of the delivery of the Court's advisory opinion concerning questions I and II, of the appointment of its representative to the treaty commissions, the Court was consequently called upon to answer question III of the General Assembly resolution.

Held: that, if one party fails to appoint a representative to a treaty commission under the peace treaties with Bulgaria, Hungary and Romania where that party is obligated to appoint a representative to the treaty commission, the Secretary-General of the United Nations is not authorized to appoint the third member of the Commission upon the request of the other party to a dispute.

Since the answer of the Court to this question was in the negative, it was relieved of the necessity to answer the fourth question posed by the General Assembly.

TERRITORY ADMINISTERED UNDER MANDATE SYSTEM OF LEAGUE OF NATIONS —ESTABLISHMENT OF TRUSTEESHIP SYSTEM BY UNITED NATIONS—OBLIGATION OF ADMINISTERING AUTHORITY—RIGHT OF PETITION BY INHABITANTS OF TERRITORY TO INTERNATIONAL AUTHORITY—STATUS OF SOUTH WEST AFRICA

ADVISORY OPINION ON THE INTERNATIONAL STATUS OF SOUTH WEST AFRICA[1]

11 July 1950

The facts. The General Assembly, having discussed at its first four sessions the status of the territory of South West Africa administered by the Union of South Africa under a mandate from the League of Nations, requested the International Court of Justice to give an advisory opinion on (*inter alia*) the following questions:

What is the international status of the Territory of South West Africa, and what are the international obligations of the Union of South Africa arising therefrom, in particular:

(*a*) Does the Union of South Africa continue to have international obligations under the mandate for South West Africa and, if so, what are those obligations?

Held: that South West Africa is still to be considered as a territory under the international mandate assumed by the Union of South Africa on 17 December 1920, and that the Union of South Africa continues to have the international obligations stated in Article 22 of the Covenant of the League of Nations and in the mandate for South West Africa, as well as the obligation to transmit petitions from the inhabitants of that territory, the supervisory functions, the degree of which should not exceed that which applied under the Mandates System, to be exercised by the United Nations, to which the annual reports and the petitions are to be submitted, and the reference to the Permanent Court of International Justice to be replaced by a reference to the International Court of Justice, in accordance with article 7 of the mandate and article 37 of the Statute of the Court.

The Court said:

"The authority which the Union Government exercises over the territory is based on the mandate. If the mandate lapsed, as the Union Government contends, the latter's authority would equally have lapsed. To

[1] International Status of South West Africa, Advisory opinion: *I.C.J. Reports 1950*, p. 128.

retain the rights derived from the mandate and to deny the obligations thereunder could not be justified.

"These international obligations, assumed by the Union of South Africa, were of two kinds. One kind was directly related to the administration of the territory, and corresponded to the sacred trust of civilization referred to in Article 22 of the Covenant. The other related to the machinery for implementation, and was closely linked to the supervision and control of the League. It corresponded to the 'securities for the performance of this trust' referred to in the same article.

"The first-mentioned group of obligations are defined in Article 22 of the Covenant and in articles 2 to 5 of the mandate. The Union undertook the general obligation to promote to the utmost the material and moral well-being and the social progress of the inhabitants. It assumed particular obligations relating to slave trade, forced labour, traffic in arms and ammunition, intoxicating spirits and beverages, military training and establishments, as well as obligations relating to freedom of conscience and free exercise of worship, including special obligations with regard to missionaries.

"These obligations represent the very essence of the sacred trust of civilization. Their *raison d'être* and original object remain. Since their fulfilment did not depend on the existence of the Legaue of Nations, they could not be brought to an end merely because this supervisory organ ceased to exist. Nor could the right of the population to have the territory administered in accordance with these rules depend thereon.

"This view is confirmed by Article 80, paragraph 1, of the Charter, which maintains the rights of States and peoples and the terms of existing international instruments until the territories in question are placed under the Trusteeship System. It is true that this provision only says that nothing in Chapter XII shall be construed to alter the rights of States or peoples or the terms of existing international instruments. But—as far as mandated territories are concerned, to which paragraph 2 of this article refers—this provision presupposes that the rights of States and peoples shall not lapse automatically on the dissolution of the League of Nations. It obviously was the intention to safeguard the rights of States and peoples under all circumstances and in all respects, until each territory should be placed under the Trusteeship System.

. . .

"The Court will now consider the above-mentioned second group of obligations. These obligations related to the machinery for implementation and were closely linked to the supervisory functions of the League of Nations—particularly the obligation of the Union of South Africa to submit to the supervision and control of the Council of the League and the obligation to render to it annual reports in accordance with Article 22 of the Covenant and article 6 of the mandate. Since the Council disappeared by the dissolution of the League, the question arises whether these supervisory functions are to be exercised by the new international organization created by the Charter, and whether the Union of South Africa is under an obligation to submit to a supervision by this new organ and to render annual reports to it.

"Some doubts might arise from the fact that the supervisory functions of the League with regard to mandated territories not placed under the new Trusteeship System were neither expressly transferred to the United Nations nor expressly assumed by that organization. Nevertheless, there seem to be decisive reasons for an affirmative answer to the above-mentioned question.

"The obligation incumbent upon a mandatory State to accept international supervision and to submit reports is an important part of the mandates system. When the authors of the Covenant created this system, they considered that the effective performance of the sacred trust of civilization by the mandatory Powers required that the administration of mandated territories should be subject to international supervision. The authors of the Charter had in mind the same necessity when they organized an international trusteeship system. The necessity for supervision continues to exist despite the disappearance of the supervisory organ under the mandates system. It cannot be admitted that the obligation to submit to supervision has disappeared merely because the supervisory organ has ceased to exist, when the United Nations has another international organ performing similar, though not identical, supervisory functions.

"These general considerations are confirmed by Article 80, paragraph 1, of the Charter, as this clause has been interpreted above. It purports to safeguard, not only the rights of States, but also the rights of the peoples of mandated territories until trusteeship agreements are concluded. The purpose must have been to provide a real protection for those rights; but no such rights of the peoples could be effectively safeguarded without international supervision and a duty to render reports to a supervisory organ.

"The Assembly of the League of Nations, in its resolution of 18 April 1946, gave expression to a corresponding view. It recognized, as mentioned above, that the League's functions with regard to the mandated territories would come to an end, but noted that Chapters XI, XII and XIII of the Charter of the United Nations embody principles corresponding to those declared in Article 22 of the Covenant. It further took note of the intentions of the mandatory States to continue to administer the territories in accordance with the obligations contained in the mandates until other arrangements should be agreed upon between the United Nations and the mandatory Powers. This resolution pre-supposes that the supervisory functions exercised by the League would be taken over by the United Nations.

"The competence of the General Assembly of the United Nations to exercise such supervision and to

receive and examine reports is derived from the provisions of Article 10 of the Charter, which authorizes the General Assembly to discuss any questions or any matters within the scope of the Charter and to make recommendations on these questions or matters to the Members of the United Nations. This competence was in fact exercised by the General Assembly in resolution 141 (II), of 1 November 1947, and in resolution 227 (III), of 26 November 1948, confirmed by resolution 337 (IV), of 6 December 1949.

"For the above reasons, the Court has arrived at the conclusion that the General Assembly of the United Nations is legally qualified to exercise the supervisory functions previously exercised by the League of Nations with regard to the administration of the territory, and that the Union of South Africa is under an obligation to submit to supervision and control of the General Assembly and to render annual reports to it.

"The right of petition was not mentioned by Article 22 of the Covenant or by the provisions of the mandate. But on 31 January 1923, the Council of the League of Nations adopted certain rules relating to this matter. Petitions to the League from communities or sections of the populations of mandated territories were to be transmitted by the mandatory governments, which were to attach to these petitions such comments as they might consider desirable. By this innovation the supervisory function of the Council was rendered more effective.

"The Court is of opinion that this right, which the inhabitants of South West Africa had thus acquired, is maintained by Article 80, paragraph 1, of the Charter, as this clause has been interpreted above. In view of the result at which the Court has arrived with respect to the exercise of the supervisory functions by the United Nations and the obligation of the Union Government to submit to such supervision, and having regard to the fact that the dispatch and examination of petitions form a part of that supervision, the Court is of the opinion that petitions are to be transmitted by that Government to the General Assembly of the United Nations, which is legally qualified to deal with them.

"It follows from what is said above that South West Africa is still to be considered as a territory held under the mandate of 17 December 1920. The degree of supervision to be exercised by the General Assembly should not therefore exceed that which applied under the mandates system, and should conform as far as possible to the procedure followed in this respect by the Council of the League of Nations. These observations are particularly applicable to annual reports and petitions."

RIGHT TO ASYLUM—DIPLOMATIC ASYLUM—ASYLUM FOR POLITICAL OFFENCES—DETERMINATION OF—ASSERTION OF UNILATERAL QUALIFICATION BY THE STATE GRANTING ASYLUM—GUARANTEES FOR THE FREE DEPARTURE OF THE REFUGEE—CONDITIONS REQUIRED FOR THE REQUESTING AND SAFE CONDUCT—BOLIVARIAN AGREEMENT OF 1911 ON EXTRADITION—CONVENTION ON ASYLUM SIGNED AT HAVANA IN 1928

COLOMBIAN-PERUVIAN ASYLUM CASE[1]

Judgment of 20 November 1950

The facts. After the suppression of a military rebellion which had broken out in Peru on 3 October 1948, the President of the Republic issued a decree outlawing the American People's Revolutionary Alliance, which was charged with having organized and directed the rebellion. The decree also enacted that the leaders of the Alliance would be brought to justice in the national courts as instigators of the rebellion. On 5 October a "note of denunciation" was addressed to the Minister for the Navy against one Haya de la Torre, the leader of the Alliance. An examining magistrate issued an order for the opening of judicial proceedings against Haya de la Torre and others in respect of the crime of military rebellion with which he had been charged in the denunciation, and on 25 October the magistrate ordered the arrest of the persons denunciated who had not yet been detained. Haya de la Torre was among these last-mentioned persons. But he did not report to the court. On 3 January 1949, after the declaration of a state of siege on 4 October had been renewed three times, Haya de la Torre sought asylum in the Colombian Embassy in Lima. On the next day, the Colombian Ambassador sent the following note to the Peruvian Minister for Foreign Affairs and Public Worship:

"I have the honour to inform Your Excellency, in accordance with what is provided in article 2, paragraph 2, of the Convention on Asylum[2] signed by our two countries in the city of Havana in the year 1928, that Señor Víctor Raúl Haya de la Torre has been given asylum at the seat of this mission as from 9 p.m. yesterday.

"In view of the foregoing, and in view of the desire

[1] Colombian-Peruvian Asylum Case, Judgment of 20 November 1950: *I.C.J. Reports 1950*, p. 266.

[2] This paragraph reads as follows: "Asylum may not be granted except in urgent cases and for the period of time strictly indispensable for the person who has sought asylum to ensure in some other way his safety."

of this Embassy that Señor Haya de la Torre should leave Peru as early as possible, I request Your Excellency to be good enough to give orders for the requisite safe-conduct to be issued, so that Señor Haya de la Torre may leave the country with the usual facilities attaching to the right of diplomatic asylum."

On 14 January, the Ambassador sent to the Minister a further note as follows:

"Pursuant to instructions received from the Chancellery of my country, I have the honour to inform Your Excellency that the Government of Colombia, in accordance with the right conferred upon it by article 2 of the Convention on Political Asylum signed by our two countries in the city of Montevideo on 26 December 1933, has qualified Señor Víctor Raúl de la Torre as a political refugee."

The Peruvian Government denied that Haya de la Torre was a political offender, argued that the requirement of urgency of article 2, paragraph 2, of the Havana Convention of 1928 was not met, and contended that therefore the Colombian Government was not entitled to grant him diplomatic asylum in its embassy in Lima. The Peruvian Government also contended that it was under no obligation to grant a safe-conduct for the departure of Haya de la Torre from the national territory.

Held: that, as the country granting asylum, Colombia was not entitled to qualify the nature of Haya de la Torre's offence by a unilateral and definitive decision binding on Peru, and that the grant of asylum was not made in conformity with article 2, paragraph 2, of the Convention on Asylum signed at Havana in 1928.

The Court held that the principles of international law do not recognize any rule of unilateral and definitive qualification by the State granting diplomatic asylum. It is not possible to deduce from the provisions of agreements concerning extradition any conclusion which would apply to the question under consideration. The Havana Convention on Asylum of 1928 lays down certain rules relating to diplomatic asylum, but does not contain any provision conferring on the State granting asylum a unilateral competence to qualify the offence with definitive and binding force for the territorial State. Nor can the right of unilateral and definitive qualification alleged by the Colombian Government to be inherent in the institution of asylum be regarded as recognized by implication in the Havana Convention. The Colombian argument that, by article 2 of the Montevideo Convention on Political Asylum of 1933, the Havana Convention of 1928 is interpreted in the sense that the qualification of a political offence appertains to the State granting asylum fails because Peru has not ratified the Montevideo Convention, which therefore cannot be invoked against that State. It cannot be contended that "American international law in general", which means regional or local custom peculiar to Latin-American States, supports the claim of Colombia. The Court could not find that the Colombian Government had proved the existence of such a custom; even if it could be supposed to exist between certain Latin-American States only, it could not be invoked against Peru, which repudiated it by refraining from ratifying the Montevideo Conventions of 1933 and 1939, which were the first to include a rule concerning the qualification of the offence in matters of diplomatic asylum.

The counter-claim of Peru alleging that Haya de la Torre was accused of common crimes before asylum was granted to him and that the grant of asylum was thus contrary to article 1, paragraph 1, of the Havana Convention of 1928, was dismissed since the Court considered that the Government of Peru has not proved that the acts of which the refugee was accused constituted common crimes. The Government of Peru has not established that military rebellion in itself constitutes a common crime.

The second argument of the counter-claim, however, alleging that the grant of asylum was not made in conformity with article 2, paragraph 2, of the Convention of Havana of 1928, was upheld by the Court. According to that article, the essential justification for asylum is the imminence or persistence of a danger for the person of the refugee. For three months Haya de la Torre had apparently been in hiding in the country, refusing to obey the summons to appear of the legal authorities, and it was only on 3 January 1949 that he sought refuge. It is inconceivable that the Havana Convention could have intended the term "urgent cases" to include the danger of regular prosecution to which the citizens of any country lay themselves open by attacking the institutions of that country; nor can it be admitted that, in referring to "the period of time strictly indispensable for the person who has sought asylum to ensure in some other way his safety", the Convention envisaged protection from the operation of regular legal proceedings. Though a prolonged state of siege was proclaimed in Peru, it has not been shown that the existence of a state of siege implied the subordination of justice to the executive authority, and that the suspension of certain constitutional guarantees entailed the abolition of judicial guarantees. The Peruvian decree of 4 November 1948 providing for courts martial contains no indication that might be taken to mean that its provisions would apply retroactively to offences committed prior to its publication, and in fact was not applied to the legal proceedings against Haya de la Torre. The Court did not admit that the States signatory to the Havana Convention intended to substitute for the practice of the Latin-American republics, in which considerations of courtesy, good-neighbourliness and political expediency have always held a prominent place, a legal system which would guarantee to their own nationals accused of political offences the privilege of evading national jurisdiction. In the case of Haya de la Torre there did not exist, on 3 January 1949, a danger constituting a case of urgency within the meaning of article 2, paragraph 2, of the Havana Convention.

INDEXES

INDEX OF CONSTITUTIONAL PROVISIONS

Explanatory note. This index contains references to the constitutional provisions concerning human rights in Part I of this issue of the *Yearbook*. The figures following the name of the State refer to the articles of the constitution. For references relating to the constitutions printed in earlier *Yearbooks*, the reader should consult the index of constitutional provisions in the *Yearbook on Human Rights for 1946* (pp. 431–450), in the *Yearbook on Human Rights for 1947* (pp. 567–581), in the *Yearbook on Human Rights for 1948* (pp. 527–535), and in the *Yearbook on Human Rights for 1949* (pp. 403–408).

Several constitutions printed in earlier *Yearbooks* have been replaced by new constitutions in 1950, and references to them are to be found in this index. Moreover, references are included to the Constitutions, adopted in 1950, of North-Rhine–Westphalia and Schleswig-Holstein, *Länder* established after the Second World War in the United Kingdom zone of Germany, as well as to the Constitutions of Cambodia and Laos, which became self-governing after having been Non-Self-Governing Territories. Since the Constitution of Viet Nam contains organizational provisions only, the index includes no references to it.

For the convenience of the reader, an alphabetical list of all the States included in the index is given below, with an indication of the first page on which the constitutional provisions of the State are to be found.

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INDEX OF LAWS, DECREES AND REGULATIONS, ETC.

reproduced, summarized, or referred to
in the *Yearbooks on Human Rights for 1946–1950*

This index is intended to help readers find any of the texts of the part "States—National Law" either reproduced or summarized separately, or summarized or referred to in a note on the development of human rights or in other notes in any of the *Yearbooks on Human Rights for 1946–1950.*

For constitutional provisions, the index of constitutional provisions in each of the above-mentioned *Yearbooks* should be consulted (see the explanatory note on p. 545 of this *Yearbook*, end of paragraph 1).

Each reference is followed by (T) if it is to a text or excerpts from a text; by (S) if it is to a summary of a text; and by (M) if mention is made only of the title and date of a legal instrument. The figure in bold print after each title indicates the *Yearbook* in which the text is to be found; the following figure indicates the number of the page on which the text begins in the *Yearbook* indicated.

A great number of legislative and other texts adopted in the forty-eight States of the United States of America are summarized or referred to in the progress notes and other material prepared by the United States Government. This material should be consulted in order to obtain a full picture of United States activity, since primary responsibility for the implementation of many of the rights listed in these *Yearbooks* rests with the constituent States, and not with the Federal Government. (See *Yearbooks for 1948*, pp. 240–249; *for 1949*, pp. 235–241; *for 1950*, pp. 323–337.) Enactments by the States are not included in this index, as far as they appear in the progress notes.

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Note: The following is an index of cases which received judicial consideration by national courts and which are summarized or referred to in this *Yearbook*. The three cases that received consideration in judgments or advisory opinions of the International Court of Justice (see pp. 538–542 of this *Yearbook*) are not included in this index. Cases of previous years to which reference is made in judicial decisions summarized in this *Yearbook* are printed in italics. The cases are arranged in the first part of this index according to countries, and in the second part according to the human rights and fundamental freedoms which were at issue.[1]

[1] For the cases included in the survey of decisions of the Supreme Court of Mexico see pp. 193–194. These cases do not lend themselves to the arrangement of this index.