

FREDERICK QUINN

*Human
Rights
and You*



A GUIDE FOR THE STATES
OF THE FORMER SOVIET UNION
AND CENTRAL EUROPE

Human Rights and You

Basic United Nations, Organization for Security
and Cooperation in Europe and Council of Europe
Human Rights Documents

for
judges, prosecutors, police officials,
attorneys, human rights organizations,
citizens, and the media of the
Newly Independent States
and Central Europe

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INTRODUCTION

Swift change is taking place in the newly independent states extending across Eurasia. Nowhere is this more evident than in evolving human rights standards throughout the region. Once-authoritarian states are gradually becoming pluralistic democracies, with new constitutions and legal structures providing citizens' rights and equal protection under the law. Independent judiciaries are emerging, as are procurators now responsible to the state rather than to a political party. Independent lawyers, law firms, bar associations and law schools are coming into being. Media are freer than ever before to critically report on political and economic life.

The emergence of this new democratic infrastructure coincides with the spread throughout the region of international human rights law and norms on such issues as discrimination against minorities, racial prejudice, the equality of women, the place of children before the law and what constitutes free speech. These new international norms coincide as well with a changing role for the judiciary, prosecutors, police officers and attorneys—based on international standards for these professions. The wider rule of law community in such states includes both non-governmental organizations and the media, both of which can play a valuable advocacy role in calling government's attention to human rights violations and the need to improve national laws and conditions in which justice is administered.

A Citizens' Guide to Human Rights Standards

This work is for citizens of the newly independent states, asking the question "What are international human rights standards?" "What do the basic documents say?" It is intended as well for judges, prosecutors, police officers, lawyers, non-governmental organizations, law students, and the media who work professionally with these questions. The basic documents are contained in this volume, as are guidelines for filing a human rights petition with an international organization, realizing this is a step of last resort and that local resolution of human rights complaints is the preferred solution, if achievable.

The International Human Rights Documents

Documents excerpted for this volume include basic United Nations, Organization for Security and Cooperation in Europe (OSCE, formerly CSCE) and Council of Europe texts from the 1940s to the 1990s.

Included are major sections of the most important texts, but students or attorneys should consult the full documents, printed in the UN, OSCE and CSCE and Council of Europe publications cited in the bibliography. I have included the documents most frequently discussed in meetings with judges, prosecutors, and Ministry of Justice officials in many newly independent countries, and have bridged the excerpts with a brief summary of the remaining documents' contents. This is not intended as a replacement for the documents themselves, but as a way of introducing audiences to their subject matter.

Since the Helsinki Final Act (HFA) was signed in August 1975, several other CSCE documents have been adopted, principally in Copenhagen (1990), Paris (1990), Moscow (1991) and Helsinki (1992). In addition, the Report of the CSCE Meeting of Experts on National Minorities (Geneva, 1991) is excerpted in this volume. These CSCE documents represent international politically binding commitments on member states. Their content is often similar to obligations under customary international and treaty law.

The Czechoslovak "Velvet Revolution," Human Rights in Action

In 1977 the world witnessed a collision between international human rights norms and authoritarian political practices when a group of Czechoslovak human rights activists issued Charter 77. Many people regard it as an impressive statement about human freedom, which it is, but Charter 77 is also a closely reasoned legal analysis. Much of its initial argument is based on the International Covenant on Civil and Political Rights which entered into force on March 23, 1976, the International Covenant on Economic, Social and Cultural Rights, which entered into force on January 3, 1976, and the Helsinki Final Act, which became politically binding as of the date of its adoption on August 1, 1975. "From that date our citizens have the right, and our state the duty, to abide by" the international principles, the Charter began.

An advance copy of the Charter was given me by a Czech friend, Dalibor Plicka, an economist who had lost his university teaching job after the 1968 invasion, and who dropped by our apartment in Prague, on New Year's Day 1977 with a carbon-smudged copy of the Charter. (Local typewriters could make up to six copies of a document, each one increasingly more blurred than the last.) "We are going to try and engage our government in dialogue," he said, "No one knows where it will lead." It led to swift, massive repression. Many of the Charter's most active voices, like Vaclav Havel, were jailed. The human rights community cited

international standards, the local government charged them with treason and anti-state activity. During the difficult months ahead Havel and his followers issued several additions to the Charter. What is most striking in reading these documents two decades later is to see how closely-reasoned they are in following international legal norms, in appealing to the rule of law as the basis for running a government. For example, the Charter states:

“The human rights and freedoms underwritten by these covenants constitute important assets of civilized life for which many progressive movements have striven throughout history and whose codification could greatly contribute to the development of a humane society.

We accordingly welcome the Czechoslovak Socialist Republic’s accession to those agreements.

Their publication, however, serves as an urgent reminder of the extent to which basic human rights in our country exist, regrettably, on paper only.”

The Charter contains an enumeration of provisions in the two international Covenants on freedom of association, equal protection of the law, privacy of family, home, and correspondence, rights to travel to and from the country, prison conditions, and other human rights norms. It concludes:

“Responsibility for the maintenance of civic rights in our country naturally devolves in the first place on the political and state authorities. Yet, not only on them: everyone bears his share of responsibility for the conditions that prevail and accordingly also for the observance of legally enshrined agreements, binding upon all citizens as well as upon governments. It is this sense of co-responsibility, our belief in the meaning of voluntary citizens’ involvement and the general need to give new and more effective expression that led us to the idea of creating Charter 77, whose inception we today publicly announce.”

Two decades later, many of the former Charter 77 dissidents are in responsible positions in the Czech government, and the country faces its share of human rights challenges, especially as they affect minorities like the Roma people. This shows how hard a job it is to promote international human rights norms and how their realization requires constant vigilance and action.

Human Rights: Their Gradually Expanding Meaning

The world of international Human Rights has changed greatly since the time of Charter 77. The inescapable conclusion in studying the works contained in this volume is that the meaning of human rights has expanded progressively through recent decades, as has the subject matter of the instruments. For example, the Copenhagen (1990) and Moscow (1991) CSCE documents have elaborate sections on the independence of the judiciary, and in 1985 the UN issued its Basic Principles on the Independence of the Judiciary, followed by comparable standards for Law Enforcement Officials (1979), Lawyers (1990) and Prosecutors (1990), subjects dealt with less extensively in earlier instruments. If the earlier period represented the definition decades, the present period may be called the implementation decades, the time in which international principles become part of, or replace, archaic domestic law and practice.

International Human Rights Laws and Standards, their Domestic Applicability

Many constitutions of the newly independent states state international laws, treaties, and accords have precedence over domestic laws and, if there is a conflict with domestic law, international standards will prevail. Typical of such provisions is Article 15.4 of the Constitution of the Russian Federation, 1993:

The commonly recognized principles and norms of the international law and international treaties of the Russian Federation shall be a component part of its legal system. If an international treaty of the Russian Federation stipulates other rules than those stipulated by law, the rules of the international treaty shall apply.

The legal status of these documents varies, but their moral importance is never in question, nor is their place as internationally accepted human rights norms, which most nations have accepted domestically as the standards by which modern democratic states are governed.

A way of picturing the interaction of UN, Council of Europe, and CSCE documents is to visualize an overlay of three interacting colors, each retaining its distinctiveness, while blending with the others. Taken collectively, they represent an encompassing statement of international human rights standards at this century's end.

A leading European jurist, Antonio La Pergola, President of the Venice Commission, former Chief Justice of the Italian Supreme Court and a member of the European Court of Justice, has explained the origins of the growing acceptance of international law over domestic law. "This widespread tradition of internationalism in European constitutional law,"

he writes, “goes back to that Indian summer of peace between the world wars.... It was only a transient season, true, before the aggressive mood of nationalism set in to sow the seeds of conflict. Who could deny, however, that the legalism of the *esprit de Genève* has with the help of hindsight been revisited and improved by the new *esprit de Strasbourg* after World War II?” La Pergola draws a parallel between today’s preponderance of international law over domestic law in Europe and the newly independent states of Eurasia with an earlier preponderance of national law over municipal law, as seen in Article 55 of the French constitution, Article 25 of the German constitution, Article 9 of the Austrian constitution, Article 10 of the Italian constitution and Article 96 of the Spanish constitution.¹

Various Human Rights Instruments, One Direction

Covenants, protocols and conventions are legally binding on states that have ratified or acceded to them. *Declarations, principles, guidelines, recommendations and acts*, like the CSCE accords, are not legally binding in the way the European Convention of Human Rights is a binding instrument. But they emerge from the common ground of post-World War II Europe, in which the nation states reaffirm and deepen their commitment to human dignity and democratic governance, rejecting totalitarian and violent behavior in civic life. Most represent politically binding commitments.

Human rights is understandably a contentious subject. There is always a gap between the ideal and the real. For many years, authoritarian governments argued international human rights norms stopped at the national frontier, and to advocate their further inland journey amounted to “interference in the internal affairs of a sovereign state.” Some states also argued “We are not ready for democracy as the west knows it yet. Economic rights and internal security come first, human rights come later.”

Such arguments miss the point. Most modern states are party to numerous international agreements relating directly to what happens internally in a given country. Many constitutions of newly independent states contain provisions similar to that of the Russian Federation’s constitution (Article 15.4) that both acknowledges the domestic applicability of international law and treaties and gives them precedence over local law. The CSCE Moscow Meeting on the Human Dimension, October 3, 1991, stated “the commitments undertaken in the field of the human dimension...are matters of direct and legitimate concern to all participating States and do not belong exclusively to the internal affairs of the States concerned.” A year earlier, the 1990 Charter of Paris for a New Europe CSCE document stated:

¹ Antonio La Pergola, “The European Constitutional Heritage,” Introductory Statement, UniDem Seminar, European Commission for Democracy through Law, Montpellier, France, November 22-23, 1996, Council of Europe Document CDL-UDM (96) 2, Strasbourg, France, November 7, 1996, p. 5.

We undertake to build, consolidate and strengthen democracy as the only system of government of our nations. In this endeavor, we will abide by the following:

Human rights and fundamental freedoms are the birthright of all human beings, are inalienable and are guaranteed by law. Their protection and promotion is the first responsibility of government. Respect for them is the first responsibility of government. Respect for them is an essential safeguard against an over-mighty State. Their observance and full exercise are the foundations of freedom, justice and peace.

As for the argument that political and economic development takes precedence over human rights, this is both legally and socially unsound. Once countries have become parties to international conventions and join international organizations, they have covenant obligations to implement the new laws and norms to which they have subscribed. Moreover, economic growth does not take place in a legal vacuum. In a growing number of countries, sound laws and an independent judiciary provide the platform on which economic growth takes place. If local citizens and international business firms know their rights will be respected, and an independent, fair, and honest mechanism to resolve disputes exists, a climate attracting individual entrepreneurship and corporate investment is created.

A Trend Toward Greater Protections

A unique feature of European constitutions is the prevalence of both individual and social rights. Sometimes these are called first and second generation rights. The first generation is traceable to the Enlightenment and to French and American constitutional thought. Discussing the growth of the idea of human rights in contemporary central and eastern Europe the well-known Polish constitutionalist, Hanna Suchocka, has written: "A characteristic feature of all post-communist countries is the exceptionally strong emphasis they place in their constitutions on the value of freedom and human dignity. More strongly stressed than in Western constitutions is the need to protect human dignity. In fact, human dignity has become the central point of reference when defining the rights and freedoms of the individual." This emphasis, no doubt, is a reaction to the previous regimes disregard for the words of the 1990 Copenhagen Document about "the supreme value of the human personality."

On the question of minority rights, Ms. Suchocka, who dealt with these questions as Prime Minister of Poland, has written "the problem of national minorities and the protection of their rights has become a

European constitutional issue only fairly recently. The constitutions of the nineteenth century did not really deal with that problem. The European Convention also lacks proper regulations in the area of minority rights. Reflecting the European tradition of protecting individual rights, the European Convention in Article 14 merely alludes to the principle of equality and bans discrimination. In this respect the constitutions of the post-communist countries differ markedly from traditional Western European ones.”²

The European significance of both individual and social rights is expressed in Judgment No. 25/81 of the Spanish Constitutional Court of July 14, 1981 which states: “In the first place...there are subjective rights, rights of individuals. At the same time, there are essential elements of the objective legal order of the national community, when that community takes shape as the framework of the common form of life which is human, just and peaceful.” Social or community rights emerge from the political ferment of nineteenth and twentieth century Europe, especially from social democrat, socialist, and Christian democratic movements.

In recent years, a third generation of rights, such as rights to a clean environment, have been added to many constitutions. The question jurists face becomes: to what extent are these rights justiciable? It is a given that human rights violations are actionable in court, and the content of most of the documents in this volume is about human rights. As for social rights, many constitutionalists see them as *aspirational* rights, rights toward which the society aspires, and should progressively devote its resources. They argue that, even if the rights cannot be fully enforced at present, they describe what a democratic society aspires to, and serve as a guide to legislators, members of the executive, and the judiciary in understanding what the constitutional drafters, on behalf of the people, believe are the legitimate components of a democratic society.

The trend in international human rights law in recent decades has been toward greater internal and international protection of individual human rights, as well as protection of minority groups. Access to due process and equal protection under the law, including remedies and corrective action, are also increasingly a feature of modern human rights instruments.

Admittedly, the enforcement of international human rights law and norms is incomplete and at times inadequate. Remedies are hard to come by. Corrective legislation and action take a long time to achieve. But the growth of local and international human rights organizations, most of them non-official, is unprecedented, as is media attention to human rights. For example, many law schools encourage their students to assist

² Hanna Suchocka, “Europe’s Constitutional Heritage and Social Differences,” UniDem Seminar, European Commission for Democracy through Law, Montpellier, France, November 22-23, 1996, Council of Europe Document CDL-UDM (96) 2, Strasbourg, France, November 14, 1996, p. 9, 12.

petitioners with human rights cases as part of the students' training and in an effort to build a modern legal culture in a given country.

Thus an international political climate is emerging where the protection of human rights has become a highly-visible, high priority in the life of nations. While gains are uneven, no responsible political or legal leader would advocate a return to despotism. The lack of resources is real, as is the lack of training for many public officials called upon to implement the new laws and standards. Still, the nature of the dialogue has changed greatly in recent decades as the quest for human rights has moved from the international to the local arena.

The OSCE Contribution

The CSCE process dates to the mid-1970s as a forum for East-West contact during the Cold War. (The "Conference" became the "Organization" for Security and Cooperation in Europe in December 1994 making a temporary body permanent and giving it greater stability and effectiveness.) The watershed event in CSCE's history was the August 1975 signing of the Helsinki Accords, opening eastern Europe to the free flow of information, freer travel, and acceptance of international human rights norms. In recent years, CSCE's more than fifty participating states were forced to rethink the organization's role. The Warsaw office — ODIHR, the Office of Democratic Institutions and Human Rights,— is responsible for human dimension issues, which includes the protection of human rights, free elections, protection of minorities, and support of Rule of Law and democratic institutions. The origin of these activities is the 1975 Helsinki Accords, Basket I (European security issues) and Basket III (humanitarian issues). Original negotiating drafts were placed in separate baskets and the name was retained. Human rights standards were further refined in CSCE meetings in Paris, Copenhagen, and Moscow and at a second Helsinki Summit in 1992. At each meeting definitions of human rights were expanded and accepted as binding commitments. Qualifications diminished; increasingly clearer standards were expounded, the map of Europe's human rights future became clearly laid out.

OSCE works through an annual meeting of heads of state or foreign ministers but day-to-day governance is through weekly meetings of the Permanent Council, a Vienna-based group, and the Secretary General, a senior diplomat with administrative responsibilities to run the organization.

ODIHR helps countries modernize judicial systems, trains ombudspersons, and monitors elections. The Warsaw office also supports OSCE field missions in Moldova, Latvia, Georgia, Tajikistan and elsewhere. These OSCE missions are like foresters tracking smoldering brush fires, registering the extent of political and ethnic discontent. Such preventative diplomacy missions exert a stabilizing influence in places like Estonia, Moldova, and Tajikistan, and transmit reports of problems,

such as conflict between factions over an election's outcome or minority unrest, to the Permanent Council in Vienna.

Each year OSCE holds several public policy issue seminars, which are organized by ODIHR on human dimension issues suggested by the Permanent Council. The gatherings are usually held in Warsaw, often at the old Warsaw Pact conference headquarters on the town's edge. Recent topics include work conditions for migrant workers, Roma (Gypsy) populations, free media, minorities, and human rights standards in various countries.

Usually many non-governmental organizations attend such events. NGOs, like the Quakers, Helsinki Watch, and Amnesty International, keep human rights issues in the forefront of a country's political agenda. Probing questions by NGOs permit difficult topics to be raised and the seminars are an important mechanism for interest groups to give human rights issues a public hearing. In short, citizens' groups in any given country have wide possibilities to engage in an international human rights dialogue. In addition to seminars, OSCE has a number of monitoring capabilities which include the periodic high level Implementation and Review Meetings allowing NGOs to table complaints. OSCE has broad possibilities to work as a conflict resolution and monitoring mechanism.

ODIHR in Warsaw

ODIHR's office was established originally as the Office of Free Elections, beginning work in April 1991. The office's original mandate was to assist new countries of central and eastern Europe in holding free elections. The early 1990s witnessed a postCommunist wave of parliamentary, presidential, and local elections, plus constitutional and other referenda. Countries asked basic questions about who should vote? How are elections conducted? Votes counted? Elections disputes resolved? ODIHR invited international experts from North America and Western Europe, and increasingly from Eastern Europe, to training seminars for election officials in the former Soviet Union and nearby countries. The office sent election observers to the former Yugoslavia, Poland, Bulgaria, Albania, Romania, Estonia, Georgia, Belarus and Lithuania. It reviewed draft electoral laws and provided international commentary on the electoral laws of many countries including Bulgaria, Albania, and countries of the former Yugoslavia. In the West, election law was long-established. Most basic questions of who can vote have been long-settled, but in the East, all this was new: who can vote, what is acceptable political speech, who controls the electoral process are central questions in the political life of new nations.

The office's elections role soon broadened in response to changing political demands. The number of CSCE member states increased with the breakup of the former Soviet Union and Yugoslavia. At the same time, states realized free elections alone cannot guarantee democracy. A

country must both demonstrate respect for human rights and cultivate a democratic infrastructure with independent legal institutions, free media, and respect for international human rights norms.

A Broader Role

CSCE's Council of Ministers, meeting in Prague in January 1992, expanded the Office of Free Elections into the Office for Democratic Institutions and Human Rights, making the office responsible for managing the "Human Dimension Mechanism," a means of addressing human rights concerns within OSCE participating states. Each participating CSCE state furnishes an official list of experts from which the office may draw for missions to report on human rights problems. This is done by activating the Human Dimension Mechanism, which requires the support of CSCE member states. During 1992 the Mechanism was activated three times. First, by the United Kingdom on behalf of the European Community in relation to Serbia; second, by the same parties regarding Bosnia-Herzegovina, and third, by Estonia for a mission on its own territory, protesting alleged Russian Federation interference in its domestic affairs.

The High Commissioner on National Minorities

In 1992 the CSCE created the office of the High Commissioner on National Minorities, the HCNM, whose mandate, as defined in the Helsinki Summit Declaration (23) states:

The High Commissioner will provide "early warning" and, as appropriate, "early action" at the earliest possible stage in regard to tensions involving national minority issues which have not yet developed beyond an early warning stage, but, in the judgment of the High Commissioner, have the potential to develop into a conflict within the CSCE area, affecting peace, stability or relations between participating States, requiring the attention of and action by the Council [of Ministers of Foreign Affairs] or the CSCE [Committee of Senior Officials].

The Commissioner is given considerable flexibility and independence of action, being able to "work in confidence and...act independently of all parties involved in the tensions." The Copenhagen Concluding Document of 1990 elaborated basic minority issue commitments in sections IV.30–40, commitments expanded the following year in the Moscow Concluding Document, the 1991 Meeting of Experts on National Minorities in Geneva and the 1992 Helsinki Summit Declaration, which details the High Commissioner's mandate. (These

documents are contained in the OSCE section of this volume.)

The High Commissioner does not deal with individual human rights complaints, nor does the office act in an advocacy role on behalf of specific minority groups. Instead, the High Commissioner is an independent interlocutor who seeks solutions acceptable to both a minority population and the government of the state in which they live. This office is given considerable flexibility. The High Commissioner can become engaged with a problem at his or her own initiative, since arguably all states have already given their consent to the HCNM's engagement by adopting the Helsinki '92 mandate. .

Since the office's inception in 1993, the High Commissioner has worked on resolving minority tensions in Albania (Greek minorities), Estonia, (the former Yugoslav Republic of) Macedonia, Hungary, Kazakhstan, Kyrgyzstan, Latvia, Moldova, Romania (Hungarian minorities), Slovakia (Hungarian minorities), Hungary (Slovak minority), and Ukraine. In several of these states, the problems of Russian minorities were the focus of the HCNM's attention. In addition to fact-finding the High Commissioner promotes dialogue, confidence-building, and cooperation between minority and majority populations, a long-term process in many cases.

The Medias' Role in Democratic Societies

No institution is more important to the development of democratic societies than free media. Free media can help keep governments transparent and honest, turning the cold light of public scrutiny on nepotism, corruption, secret deals, contracts awarded to friends or relatives of those in power, and other abuses of public trust at the local, regional and national level. At the same time, journalists can often be wrong, have incomplete or inaccurate information, represent their own political, social, or economic interests and be influenced improperly by powerful or affluent organizations and individuals representing special interests.

In recent years international organizations have paid considerable attention to media issues and their relationship to the modern democratic state. Two especially valuable publications are *Recommendations Adopted by the Committee of Ministers of the Council of Europe in the MediaField*, DH-MM (94) 2 and *European Ministerial Conferences on Mass Media Policy: Texts Adopted*, DH-MM (95) 4, both published by the Council of Europe's Directorate of Human Rights, Strasbourg, France.

The subject matter of these resolutions includes "the Right to Reply—the Position of the Individual in Relation to the Press" (74) 26, "On Access to Information Held by Public Authorities" (81) 19, "Strategies to Combat Smoking, Alcohol and Drug Dependence in Cooperation with Opinion Makers and the Media" (86) 14, "Measures to Combat Piracy in

the Field of Copyright” (88) 2 and “Principles on the Distribution of Videograms having a Violent, Brutal or Pornographic Content” (89) 7. An important recommendation of the Committee of Ministers (96) 10 is “On Guarantees of the Independence of Public Service Broadcasting,” September 11, 1996. The resolution reaffirms “the vital role of public service broadcasting as an essential factor of pluralistic communication which is accessible to everyone at both national and regional levels, through the provision of a basic comprehensive program service comprising information, education, culture and entertainment.” The recommendation outlines legal considerations in organizing and managing public service broadcasting organizations.

A Word of Caution

A word of caution is in order. While the intention of this volume is to assemble most of the major UN, CSCE and OSCE and Council of Europe human rights documents in a single work, their realization in a given country is first of all a local matter. It is difficult to appeal to an international agency, and even the most accessible, the European Commission on Human Rights, will only consider a case after all domestic possibilities for its resolution are exhausted. For example, less than ten percent of cases filed with the Commission are considered admissible in any given year; most applications are rejected because domestic laws were found adequate to cover the complaint.

Preparing a Human Rights Complaint for Filing

This volume contains broad guidelines for filing a human rights complaint. Each country will have different procedures but all will require careful preparation of a dispassionate, factual complaint and knowing local laws and procedural codes. Apart from an individual complaint before a governmental body, there are numerous steps a person or an organization can take to bring their situation to public attention. These can include class action suits, suits brought by a group of people against a government or another party, and international media coverage, and contact with friendly states sympathetic to human rights issues through their embassies or foreign ministries. States may engage in “quiet diplomacy” through unpublicized diplomatic contacts to resolve complaints or, in extreme cases, resort to public statements about a violation, or introduce sanctions, such as forbidding visas to the violating countries’ officials for travel. These measures, however, are infrequent; ultimately human rights violations must be solved in the local arena.

It is important to note that international human rights law applies first to states and not to individuals. Individuals must first resort to domestic law and then ascertain the country’s relationship with international organizations such as the United Nations, Organization for Security and

Cooperation in Europe and Council of Europe, asking if the country is a member of one or all of these organizations? Has it ratified their human rights instruments? Were these ratified with reservations limiting their applicability? Does the country have a constitutional article assuring the applicability of international law and treaty obligations over domestic law? Does the country's foreign policy seek to bring the country into the wider community of nations, with its attendant developmental aspects, such as a greater attraction for foreign investment because there is a stable rule of law climate? These are all factors to be weighed in pursuing a human rights claim.

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Frederick Quinn

Someone must have been telling lies about Joseph K., for without having done anything wrong he was arrested one fine morning.... "But what for?" he added. "We are not authorized to tell you that.... Proceedings have been instituted against you, and you will be informed of everything in due course. I am exceeding my instructions in speaking freely to you like this."... Who could these men be? What were they talking about? What authority could they represent? K. lived in a country with a legal constitution, there was universal peace, all the laws were in force; who dared to seize him in his own dwelling?

... "What are your papers to us?" cried the tall warder.... "We are humble subordinates who can scarcely find our way through a legal document and have nothing to do with your case except to stand guard over you for ten hours a day and draw our pay for it. That's all we are, but we're quite capable of grasping the fact that the high authorities we serve, before they would order such an arrest as this, must be quite well informed about the reasons for the arrest and the person of the prisoner. There can be no mistake about that. Our officials, so far as I know them, and I know only the lowest grades among them, never go hunting for crime in the populace, but, as the Law decrees, are drawn toward the guilty and must then send out us warders. That is the Law. How could there be a mistake in that?"

UNITED NATIONS

Out of the wreckage of World War II, the world's nations were determined to create an international system of laws and treaties to prevent the violent excesses of the recent past. Their primary instrument was the United Nations. Human rights provisions in the United Nations Charter of 1946 were not extensive, but laid the groundwork for a subsequent broadening and deepening of such standards. **Article 1(3)** of the Charter of the United Nations states one of the organization's purposes is:

To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.

Member state obligations are contained in **Article 55** and **56** of the Charter, particularly to promote human rights "without distinction as to race, sex, language, or religion." The Charter thus made human rights an international concern, rather than a strictly domestic one, and the subsequent half-century of human rights law's evolution and state and international practice has been the history of the internationalization of these concerns. Gradually the United Nations was provided with legal authority to codify these rights, including the rights of women, children, and minorities. By the century's end the international statement of rights was far more comprehensive and refined than in the UN's first decade. Human rights law and practice became as encompassing as other international law categories like civil aviation, law of the sea, intellectual property, or trade and commerce. Also, many experts argue that the Charter has become, over time, a part of customary international law.

THE INTERNATIONAL BILL OF HUMAN RIGHTS

Universal Declaration of Human Rights, 1948

After the Charter, the first comprehensive human rights instrument issued by the United Nations was The Universal Declaration of Human Rights, adopted and proclaimed by General Assembly resolution 217 A (III) of December 10, 1948. This document, together with the UN Charter, two International Covenants on Human Rights and the Optional Protocol to the Covenant on Civil and Political Rights, are known as The International Bill of Human Rights. The Universal Declaration is not a treaty, and, therefore, did not have by itself, binding force. Thus, the 1966 Covenants were necessary to give the rights

contained in the Universal Declaration of Human Rights force of law. The two Covenants and Optional Protocol were adopted by the General Assembly in 1966 and entered into force in 1976.

The Universal Declaration is one of the great documents of human liberty, holding place along side the Magna Carta, France's Declaration of the Rights of Man and the Citizen, and America's Declaration of Independence. Its preamble and thirty articles enumerate both civil and political rights, and economic, social, and cultural rights. The Preamble frames the document, noting "disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed the highest aspiration of the common people."

It is essential if humanity "is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law."

Rights are divided into human rights and social rights, a feature that will be adopted in many subsequent international documents. In the first category of rights are the right to life, liberty, and security of person; the prohibition of slavery, torture, and cruel, inhuman or degrading treatment, and such due process and equal protection provisions as the right not to be subject to arbitrary arrest, detention, or forced exile; rights to a fair criminal or civil trial, a presumption of innocence until proven guilty, and strictures against the application of ex post facto laws and penalties. Privacy and ownership of property rights are maintained, as are free speech, religion, assembly and freedom of movement.

Of particular note as a due process provision is **Article 8** "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."

Freedom of movement is assured in **Article 13** "1. Everyone has the right to freedom of movement and residence within the borders of each State. 2. Everyone has the right to leave any country, including his own, and to return to his country."

Freedom of religion is assured in **Article 18** "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 teaching, practice, worship and observance."

Freedom of expression is assured in **Article 19** “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.”

Citizen participation in government is laid out in **Article 21**, allowing a person “to take part in the government of his country directly or through freely chosen representatives.” Free and fair elections with universal suffrage and secret balloting are a means to express “the will of the people” which is “the basis of the authority of government.” (**Article 21.3**)

Articles 22-29 enumerate economic, social and cultural rights, including social security “in accordance with the...resources of each State” (**Article 22**), the right to work, a free choice of employment, a reasonable limitation of working hours, a standard of living “adequate for the health and well-being of himself and of his family,” (**Article 25**) education, participation in cultural life. And “Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.” (**Article 28**) As noted above, the Universal Declaration of Human Rights is not a treaty, but a declaration, and does not have, by itself, binding force. Therefore, the 1996 Covenants were necessary, to give rights in the UDHR force of law.

International Covenant on Economic, Social and Cultural Rights, 1966

This document, General Assembly resolution 2200 A (XXI) of December 16, 1966, entered into force on January 3, 1976 after ratification.

The list of economic, social, and cultural rights in this International Covenant is longer and more detailed than in the earlier Universal Declaration. Steps to realize many of these rights are enumerated, thus moving considerably beyond the earlier document’s provisions.

Among the rights recognized: the right to work, to the enjoyment of just and favorable work conditions, including fair wages “without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work.” (**Article 7 (a)(i)**)

To organize and join trade unions. This includes “The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations.” (**Article 8.1.(b)**)

The right to strike is affirmed “provided that it is exercised in conformity with the laws of the particular country.” (*Article 8.1 (d)*)

A comprehensive set of rights of families, women, and children is contained in *Article 10*:

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.
2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.
3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labor should be prohibited and punishable by law.

Article 11 calls for “the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.”

Article 12.1 recognizes “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”

Article 13 is about “the right of everyone to education,” including primary education “compulsory and available free to all.” (*2.a*) Secondary education “shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education.” (*2.b*)

Article 15 recognizes the right of everyone to participate in cultural life and “to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.” (*1.c*)

The Gradual Applicability of Economic, Social and Cultural Rights

A novel provision of this Covenant is that, unlike the Civil and Political Covenant, its applicability is gradual. Each State Party agrees “to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant.” (*Article 2 (1)*) However this gradualist approach does not allow indefinite postponement of the Covenant’s implementation. An interpretation of the article by a UN committee states “the full realization of the relevant rights may be achieved progressively” but “steps towards that goal must be taken within a reasonably short time after the Covenant’s entry into force for the States concerned.”³

International Covenant on Civil and Political Rights, 1966

This instrument was ratified by General Assembly resolution 2200 A (XXI) of December 16, 1966. It entered into force on March 23, 1976.

The enumeration of civil and political rights contained in this Covenant is more elaborate than in the earlier Universal Declaration. For example, states may not deny membership of ethnic, religious or linguistic minorities, “in community with other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.” (*Article 27*) This article is the genesis of the United Nations’ 1992 Declaration on the Rights of Persons Belonging to National or Ethnic Religious and Linguistic Minorities.

Article 1 states “1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. 2. All people may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.”

In addition to being a statement of rights, the Covenant instructs member states to undertake “the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant,

³ Report of the Committee on Economic, Social and Cultural Rights, Fifth Session, UN Doc. E/199/23. E/C.12/1990/8 at 83 (1991). Quoted in Thomas Buergenthal, *International Human Rights in a Nutshell*, second edition, West Publishing Co., St. Paul, Minn., 1995, p. 55.

to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.”(**Article 2.2**)

Each States Party undertakes “To ensure 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.” (**Article 2.3 (a)**)

Article 3 states “The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.”

Although **Article 4** deals with public emergencies, **Article 5** states “Nothing in the present 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 the present Covenant.”

Discussion of the death penalty is contained in **Article 6**:

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.
2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court.
3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from the obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.
4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.
5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

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6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

Personal liberty and due process provisions are extensive. **Article 9.1** states “Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law.”

At the time of arrest the person “shall be informed...of the reasons for his arrest and shall be promptly informed of any charges against him.” (**Article 9.2**)

The person “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. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial.” (**Article 9.3**)

Additionally, anyone “deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.” (**Article 9.4**)

Further “Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.” (**Article 9.5**)

Finally “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.” (**Article 10.1**) “Accused persons should be segregated from convicted persons and should be subject to separate treatment appropriate to their status as unconvicted persons. (**Article 10.2 (a)**) Accused juveniles should be separated from adults and their cases be resolved as speedily as possible.” (**Article 10.2 (b)**)

The Civil and Political Covenant extends beyond the Universal declaration in guaranteeing that “No one shall be imprisoned merely on the ground of inability to fulfill a contractual obligation.” (**Article 11**)

Article 14 concerns judicial proceedings and due process. “All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.”

An important provision is “Everyone charged with a criminal offense shall have the right to be presumed innocent until proved guilty according to law.” (**Article 14.2**)

Additional guarantees include “everyone shall be entitled to the following minimum guarantees, in full equality: (a) “To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him,” (b) “To have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing,” (c) “To be tried without undue delay,” (d) “To be tried in his presence, and 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 case if he does not have sufficient means to pay for it,” (e) “To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him,” (f) “To have the free assistance of an interpreter if he cannot understand or speak the language used in court,” and (g) “Not to be compelled to testify against himself or to confess guilt.” (**Article 14.3 (a-g)**)

Two additional provisions provide compensation for those unjustly convicted of a criminal offense, when that conviction is reversed “or he has been pardoned on the ground that a new or newly discovered fact shows conclusively there has been a miscarriage of justice.” (**Article 14.6**) And “No one shall be liable to be tried or punished again for an offense for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.” (**Article 14.7**)

Article 15.1 prohibits ex post facto criminal charges. “Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offense was committed.”

Article 16 states “Everyone shall have the right to recognition everywhere as a person before the law.”

Article 17 states “1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honor and reputation. 2. Everyone has the right to the protection of the law against such interference or attacks.”

Article 18 states “1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or

in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions."

Article 19 states "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 exercise of the rights provided for in paragraph 2 of this Article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For respect of the rights or reputations of others;
 - (b) For the protection of national security or of public order (*ordre public*), or of public health or morals."

Article 20 states "1. Any propaganda for war shall be prohibited by law.

2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law."

Article 21 states "The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others."

Article 22 states “1. Everyone shall have the right to free association with others, including the right to form and join trade unions for the protection of his interests. 2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.”

Article 23 states “1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State. 2. The rights of men and women of marriageable age to marry and to found a family shall be recognized. 3. No marriage shall be entered into without the free and full consent of the intending spouses. 4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.”

Article 24 states “1. Every child shall have, without any discrimination as to race, color, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State. 2. Every child shall be registered immediately after birth and shall have a name. 3. Every child has the right to acquire a nationality.”

Article 25 allows every citizen “(a) To take part in the conduct of public affairs, directly or through freely chosen representatives; (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; (c) To have access, on general terms of equality, to public service in his country.”

Article 26 states “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

Article 27 states “In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such 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.”

A novel feature of the Civil and Political Covenant is establishment of an 18-member Human Rights Committee with an active role in State Party compliance with treaty obligations. There is an increasingly detailed reporting system, the possibility of using an inter-state complaint mechanism, and—with adoption of the Optional Protocol—a right of individual petition to the Committee. Committee reports contain elaborate guidelines, the purpose of which is to spotlight potential human rights violations by States. Eventually serious compliance problems work their way before the UN General Assembly through the Committee’s Annual Report, which also attracts international media attention as well.

Optional Protocol to the International Covenant on Civil and Political Rights, 1966

Although the Optional Protocol was passed by General Assembly resolution 2200 A (XXI) of December 16, 1966, it did not enter into force until it secured the requisite number of ratification signatures by member states, making the effective date March 23, 1976.

The Protocol’s key provision is State Parties “recognize the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant.” (*Article 1*)

Article 2 states “individuals who claim that any of their rights enumerated in the Covenant have been violated and who have exhausted all available domestic remedies may submit a written communication to the Committee for consideration.”

Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, 1989

This instrument was adopted by General Assembly resolution 44/128 of December 15 1989. Its purpose is abolition of the death penalty; the main provisions are in *Article 1*.

“1. No one within the jurisdiction of a State Party to the present Protocol shall be executed.” And “2. Each State Party shall take all necessary measures to abolish the death penalty within its jurisdiction.”

PREVENTION OF DISCRIMINATION

International Convention on the Elimination of All Forms of Racial Discrimination, 1965

Ratified by General Assembly Resolution 2106 A (XX), December 21, 1965;
entered into force January 4, 1969

Racial discrimination is defined as “any distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.” (**Article 1**) This definition has been interpreted by the International Court of Justice as being an authoritative definition of the UN Charter’s non-discrimination clause.

State Parties agree to “undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms.” (**Article 2.1**)

States “shall declare an offense punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another color or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof.” (**Article 4 (a)**)

Everyone “without distinction as to race, color, or national or ethnic origin” (**Article 5**) is entitled (a) “to equality before the law,” including “equal treatment before the tribunals and all organs administering justice” plus the right (b) “to security of person and protection by the State against violence or bodily harm whether inflicted by government officials or by any individual group or institution.” Political rights including voting, standing for election to public office, taking part in government (c) “as well as in the conduct of public affairs at any level and to have equal access to public service.”

Other civil rights, more extensive than those contained in the Universal Declaration and the two Covenants, are enumerated in (d):

- i. The right to freedom of movement and residence within the border of the State;
- ii. The right to leave any country, including one’s own, and to return to one’s country;
- iii. The right to nationality;

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- iv. The right to marriage and choice of spouse;
 - v. The right to own property alone as well as in association with others;
 - vi. The right to inherit;
 - vii. The right to freedom of thought, conscience and religion;
 - viii. The right to freedom of opinion and expression;
 - ix. The right to freedom of peaceful assembly and association;

Economic, social and cultural rights are enumerated in (e):

- i. The rights to work, to free choice of employment, to just and favorable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favorable remuneration;
- ii. The right to form and join trade unions;
- iii. The right to housing;
- iv. The right to public health, medical care, social security and social services;
- v. The right to education and training;
- vi. The right to equal participation in cultural activities;

(f) The right of access to any place or service intended for use by the general public, such as transport, hotels, restaurants, cafés, theatres and parks.

Additionally, **Article 6** calls for “effective protection and remedies, through the competent tribunals and other State institutions, against any acts of racial discrimination.”

Article 8 creates a Committee on the Elimination of Racial Discrimination with reporting and dispute resolution mechanisms.

Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, 1981

General Assembly resolution 36/55 of November 25, 1981

Article 1 states “Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have a religion or whatever belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.”

Intolerance and discrimination based on religion or belief means “any distinction, exclusion, restriction or preference based on religion or belief and having as its purpose or as its effect nullification or impairment of the

recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis.” (**Article 2.2**)

States are enjoined to positively “take effective measures to prevent and eliminate discrimination on the grounds of religion or belief” (**Article 4.1**) and “make all efforts to enact or rescind legislation where necessary to prohibit any such discrimination.” (**Article 4.2**)

A detailed enumeration of freedoms is contained in **Article 6**, including the right:

- (a). To worship or assemble in connection with a religion or belief, and to establish and maintain places for these purposes;
- (b). To establish and maintain appropriate charitable or humanitarian institutions;
- (c). To make, acquire and use to an adequate extent the necessary articles and materials related to the rites or customs of a religion or belief;
- (d). To write, issue and disseminate relevant publications in these areas;
- (e). To teach a religion or belief in places suitable for these purposes;
- (f). To solicit and receive voluntary financial and other contributions from individuals and institutions;
- (g). To train, appoint, elect or designate by succession appropriate leaders called for by the requirements and standards of any religion or belief;
- (h). To observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one’s religion or belief;
- (i). To establish and maintain communications with individuals and communities in matters of religion and belief at the national and international levels.

Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 1992

General Assembly Resolution 47/135 of December 18, 1992

Minority rights are enumerated in **Article 2**:

1. Persons belonging to national or ethnic, religious and linguistic minorities (hereinafter referred to as persons belonging to minorities) have the right to enjoy their own culture, to profess and practice their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination.
2. Persons belonging to minorities have the right to participate

effectively in cultural, religious, social, economic and public life.

3. Persons belonging to minorities have the right to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation.
4. Persons belonging to minorities have the right to establish and maintain their own associations.
5. Persons belonging to minorities have the right to establish and maintain, without any discrimination, free and peaceful contacts with other members of their group and with persons belonging to other minorities, as well as contacts across frontiers with citizens of other States to whom they are related by national or ethnic, religious or linguistic ties.

Article 4 stipulates “1. States shall take measures where required to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law.”

Section 2 declares “States shall take measures to create favorable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs, except where specific practices are in violation of national law and contrary to international standards.”

Section 3 says States should take appropriate measures for persons belonging to national minorities to have instruction in their mother tongue. Section 4 urges States to provide education in the history, traditions, language and culture of minorities existing within their territories. Section 5 urges States to take appropriate measures “so that persons belonging to minorities may participate fully in the economic progress and development in their country.”

RIGHTS OF WOMEN

Convention on the Elimination of All Forms of Discrimination against Women, 1979

Ratified by General Assembly resolution 34/180 of December 18, 1979

The detailed preamble to this article notes the long history of United Nations opposition to all forms of discrimination against women, principally

in the Charter of the United Nations and the Universal Declaration of Human Rights. It also notes that, despite numerous international conventions, extensive discrimination against women continues to exist. Not only does this violate principles of equity but it ignores the great contribution of women to the welfare of the family and to the development of society, so far not fully recognized. The document notes “a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women.”

Discrimination against women is defined as “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, social, cultural, civil or any other field.” (**Article 1**)

State Parties are required, not only to condemn discrimination against women, but “to embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle.” (**Article 2 (a)**)

State Parties are required further “To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.” (**Article 2 (f)**)

In addition to other measures, **Article 6** states “State Parties shall take appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.”

Additional articles elaborate on the place of women, without discrimination, in political and international life, education, employment, health care, economic and social life. Women’s equality before the law is affirmed, as is equality in the important sphere of marriage and family life.

Several of these articles merit elaboration, for they are far more comprehensive than any previous statements on this topic. For example on political life, **Article 7** enjoins State Parties to “take all appropriate measures” to ensure that women, on equal terms with men, have the right:

- (a). To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;
- (b). To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all

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- public functions at all levels of government;
- (c). To participate in non-governmental organizations and associations concerned with the public and political life of the county.

Central to provisions for women's equality is removing discrimination against women in the field of employment (**Article 11.1**) "in order to ensure, on a basis of equality of men and women, the same rights, in particular:

- (a) The right to work as an inalienable right of all human beings;
- (b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;
- (c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;
- (d) the right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;
- (e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;
- (f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, State Parties shall take appropriate measures:

- (a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;
- (b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;
- (c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;
- (d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.

The economic and social life provisions are crystalline ensuring (**Article 13**) on a basis of equality of men and women, the same rights, in particular:

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- (a) The right to family benefits;
 - (b) The right to bank loans, mortgages and other forms of financial credit;
 - (c) The right to participate in recreational activities, sports and all aspects of cultural life.

Article 14 contains significant provisions about the particular problems faced by rural women, whose role is central to the survival of their families, generally in non-monetized sectors of the economy. Such women have the right (14.2):

- (a) To participate in the elaboration and implementation of development planning at all levels;
- (b) To have access to adequate health care facilities, including information, counseling and services in family planning;
- (c) To benefit directly from social security programs;
- (d) To obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, inter alia, the benefit of all community and extension services, in order to increase their technical proficiency;
- (e) To organize self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self employment;
- (f) To participate in all community activities;
- (g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes;
- (h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

It becomes clear that eliminating discrimination against women is not only a matter of the correct writing of laws, but of effecting social and attitudinal change. Nowhere is this more evident than in **Article 16.1** which gives women and men:

- (a) The same right to enter into marriage;
- (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;
- (c) The same rights and responsibilities during marriage and at its dissolution;
- (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;

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- (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;
 - (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the child shall be paramount;
 - (g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;
 - (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

RIGHTS OF THE CHILD

Convention on the Rights of the Child, 1989

General Assembly resolution 44/25 of November 20, 1989; entered into force September 2, 1990

The Convention affirms in **Article 2** “State Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, color, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.”

Article 3.1 states “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”

Article 7.1 states “The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.”

Article 8.1 states “States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.”

Article 11.1 states “States Parties shall take measures to combat the illicit transfer and non-return of children abroad.”

Basic free expression provisions from other International Bill of Rights documents are elaborated in this Convention, as in **Article 13.1** “The child 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 the child’s choice.”

Article 14.1 states “State Parties shall respect the right of the child to freedom of thought, conscience and religion.”

Article 15.1 recognizes “the rights of the child to freedom of association and to freedom of peaceful assembly.”

Article 18.1 enjoins State Parties to “use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child.”

Article 34 calls for State Parties to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, State Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials.

SUPPRESSION OF THE TRAFFIC IN PERSONS, CONVENTION AGAINST TORTURE

Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others, 1949

General Assembly resolution 317 (IV) of December 2, 1949; entered into force on July 25, 1951

The antecedents of this Convention are among the oldest in the human rights tradition, dating to a 1904 international agreement for the Suppression of the White Slave Traffic and a 1921 International Convention for the Suppression of the Traffic in Women and Children.

The 1949 Convention's preamble states "prostitution and the accompanying evil of the traffic in persons for the purpose of prostitution are incompatible with the dignity and worth of the human person and endanger the welfare of the individual, the family and the community."

Article 1 states "The Parties to the present Convention agree to punish any person who, to gratify the passions of another:

1. Procures, entices or leads away, for purposes of prostitution, another person, even with the consent of that person;
2. Exploits the prostitution of another person, even with the consent of that person."

Article 8 states "The offenses referred to in articles 1 and 2 of the present Convention shall be regarded as extraditable offenses in any extradition treaty which has been or may hereafter be concluded between any of the Parties to this Convention."

Article 17 establishes a series of measures "to check the traffic in persons of either sex for the purpose of prostitution," in particular (3) "To take appropriate measures to ensure supervision of railway stations, airports, seaports and en route, and of other public places, in order to prevent international traffic in persons for the purpose of prostitution."

Article 19 establishes conditions for the repatriation of destitute victims of international traffic in persons for the purpose of prostitution, including making (1) "suitable provisions for their temporary care and maintenance" and, should they be unable to repay the cost of repatriation, that cost (2) "as far as the nearest frontier or port of embarkation or airport in the direction of the state of origin shall be borne by the State where they are in residence, and the cost of the remainder of the journey shall be borne by the State of origin."

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984

General Assembly resolution 39/46 of December 10, 1984; entered into force June 26, 1987

Torture is "any act by which severe pain of suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based

on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.” (*Article 1.1*)

Article 2.2 disallows the use of torture in times of war or national emergency in the following language “No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.”

Article 2.3 eliminates the “I was just obeying orders” defense by stating “An order from a superior officer or a public authority may not be invoked as a justification of torture.”

Article 10 mandates proper training for law enforcement personnel. (1) “Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.”

Article 13 states “Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.”

Article 14.1 states “Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependents shall be entitled to compensation.”

HUMAN RIGHTS IN THE ADMINISTRATION OF JUSTICE

The following documents are not international laws but codes of conduct and statements of principles for several administration of justice professions, including law enforcement officials, lawyers, prosecutors, and judges. They should be considered as a unit, their goal is to lay the foundations for a legal

culture. They should be supplemented by comparable domestic documents from professions, such as bar associations, judges' associations, etc., and from the statement of standards established by international professional associations of administration of justice professionals as well. The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985, is the prototype of modern victims' rights laws.

Code of Conduct for Law Enforcement Officials, 1979

General Assembly resolution 34/169 of December 17, 1979

Law enforcement officials includes "all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest or detention." The definition is extended to include military authorities, whether uniformed or not, or State security forces in countries where they exercise police powers. (*Article 1 (a) (b)*)

Article 2 notes "In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons."

Article 3 notes "Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty."

The following Commentary clarifies the article:

- (a) This provision emphasizes that the use of force by law enforcement officials should be exceptional; while it implies that law enforcement officials may be authorized to use force as is reasonably necessary under the circumstances for the prevention of crime or in effecting or assisting in the lawful arrest of offenders or suspected offenders, no force going beyond that may be used.
- (b) National law ordinarily restricts the use of force by law enforcement officials in accordance with a principle of proportionality. It is to be understood that such national principles of proportionality are to be respected in the interpretation of this provision. In no case should this provision be interpreted to authorize the use of force which is disproportionate to the legitimate objective to be achieved.
- (c) The use of firearms is considered an extreme measure. Every effort should be made to exclude the use of firearms, especially against children. In general, firearms should not be used except when a suspected offender offers armed resistance or otherwise jeopardizes the lives of others and less extreme measures are not sufficient to restrain or apprehend the suspected offender. In every instance in

which a firearm is discharged, a report should be made promptly to the competent authorities.

Article 5 states “No law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor may any law enforcement official invoke superior orders or exceptional circumstances such as a state of war or a threat of war, a threat to national security, internal political instability or any other public emergency as a justification of torture or other cruel, inhuman or degrading treatment or punishment.”

Article 6 mandates law enforcement officials to “ensure the full protection of the health of persons in their custody and, in particular, [they, ed.] shall take immediate action to secure medical attention whenever required.”

Article 7 states “Law enforcement officials shall not commit any act of corruption. They shall also rigorously oppose and combat all such acts.”

The Commentary is explicit:

1. Any act of corruption, in the same way as any other abuse of authority, is incompatible with the profession of law enforcement officials. The law must be enforced fully with respect to any law enforcement official who commits an act of corruption, as Governments cannot expect to enforce the law among their citizens if they cannot, or will not, enforce the law against their own agents and within their agencies.
2. While the definition of corruption must be subject to national law, it should be understood to encompass the commission or omission of an act in the performance of or in connection with one’s duties, in response to gifts, promises or incentives demanded or accepted, or the wrongful receipt of these once the act has been committed or omitted.
3. The expression “act of corruption” referred to above should be understood to encompass attempted corruption.

Article 8 states “Law enforcement officials shall respect the law and the present Code. They shall also, to the best of their capability, prevent and rigorously oppose any violations of them.

Law enforcement officials who have reason to believe that a violation of the present Code has occurred or is about to occur shall report the matter to their superior authorities and, where necessary, to other appropriate authorities or organs vested with reviewing or remedial power.”

The Commentary is explicit:

- (a) This Code shall be observed whenever it has been incorporated into national legislation and practice. If legislation or practice contains stricter provisions than those of the present Code, those stricter provisions shall be observed.
- (b) The article seeks to preserve the balance between the need for internal discipline of the agency on which public safety is largely dependent, on the one hand, and the need for dealing with violations of basic human rights, on the other. Law enforcement officials shall report violations within the chain of command and take other lawful action outside the chain of command only when no other remedies are available or effective. It is understood that law enforcement officials shall not suffer administrative or other penalties because they have reported that a violation of this Code has occurred or is about to occur.
- (c) The term “appropriate authorities or organs vested with reviewing or remedial power” refers to any authority or organ existing under national law, whether internal to the law enforcement agency or independent thereof, with statutory, customary or other power to review grievances and complaints arising out of violations within the purview of this Code.
- (d) In some countries, the mass media may be regarded as performing complaint review functions similar to those described in subparagraph (c) above. Law enforcement officials may, therefore, be justified if, as a last resort and in accordance with the laws and customs of their own countries and with the provisions of **Article 4** of the present Code, they bring violations to the attention of public opinion through mass media.
- (e) Law enforcement officials who comply with the provisions of this Code deserve the respect, the full support and the cooperation of the community and of the law enforcement agency in which they serve, as well as the law enforcement profession.

*Basic Principles on the Use of Force and Firearms
by Law Enforcement Officials, 1990*

Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, August 27-September 7, 1990

The principles state:

- 2. Governments and law enforcement agencies should develop a range of means as broad as possible and equip law enforcement officials with

various types of weapons and ammunition that would allow for a differentiated use of force and firearms. These should include the development of non-lethal incapacitating weapons for use in appropriate situations, with a view to increasingly restraining the application of means capable of causing death or injury to persons. For the same purpose, it should also be possible for law enforcement officials to be equipped with self-defensive equipment such as shields, helmets, bullet-proof vests and bullet-proof means of transportation, in order to decrease the need to use weapons of any kind.

3. The development and deployment of non-lethal incapacitating weapons should be carefully evaluated in order to minimize the risk of endangering uninvolved persons, and the use of such weapons should be carefully controlled.
4. Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.
5. Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall:
 - (a) Exercise restraint in such use and act in proportion to the seriousness of the offense and the legitimate objective to be achieved;
 - (b) Minimize damage and injury, and respect and preserve human life;
 - (c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment;
 - (d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment.
6. Where injury or death is caused by the use of force and firearms by law enforcement officials, they shall report the incident promptly to their superiors, in accordance with **Principle 22**.
A Special Provision states (**Principle 9**) "Law enforcement officials shall not use firearms against persons except in self-defense or defense of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life."

Law enforcement officials (*Principle 10*) “shall identify themselves as such and give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed, unless to do so would unduly place the law enforcement officials at risk or would create a risk of death or serious harm to other persons, or would be clearly inappropriate or pointless in the circumstances of the incident.”

The special provisions make a distinction between lawful and peaceful assemblies, allowed in accordance with the Universal Declaration of Human Rights, and unlawful but not-violent assemblies. In the latter case, (*Principle 14*) “law enforcement officials may use firearms only when less dangerous means are not practicable and only to the minimum extent necessary. Law enforcement officials shall not use firearms in such cases, except under the conditions stipulated in *Principle 9*.”

As for policing persons in custody or detention (*Principle 15*) “Law enforcement officials, in their relations with persons in custody or detention, shall not use force, except when strictly necessary for the maintenance of security and order within the institution, or when personal safety is threatened.”

Basic Principles on the Independence of the Judiciary, 1985

Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from August 26 to September 6, 1985, and endorsed by General Assembly resolutions 40/32 of November 29, 1985 and 40/146 of December 13, 1985

Independence of the Judiciary

1. The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.
2. The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.
3. The judiciary shall have jurisdiction over all issues of a judicial nature and shall have exclusive authority to decide whether an issue submitted for its decision is within its competence as defined by law.

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4. There shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision. This principle is without prejudice to judicial review or to mitigation or commutation by competent authorities of sentences imposed by the judiciary, in accordance with the law.
 5. Everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals.
 6. The principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected.
 7. It is the duty of each Member State to provide adequate resources to enable the judiciary to properly perform its functions.

Freedom of expression and association

8. In accordance with the Universal Declaration of Human Rights, members of the judiciary are like other citizens entitled to freedom of expression, belief, association and assembly; provided, however, that in exercising such rights, judges shall always conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary.
9. Judges shall be free to form and join associations of judges or other organizations to represent their interests, to promote their professional training and to protect their judicial independence.

Qualifications, selection and training

10. Persons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law. Any method of judicial selection shall safeguard against judicial appointments for improper motives. In the selection of judges, there shall be no discrimination against a person on the grounds of race, color, sex, religion, political or other opinion, national or social origin, property, birth or status, except that a requirement, that a candidate for judicial office must be a national of the country concerned, shall not be considered discriminatory.

Conditions of service and tenure

11. The term of office of judges, their independence, security, adequate remuneration, conditions of service, pensions and the age of retirement shall be adequately secured by law.
12. Judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such exists.
13. Promotion of judges, wherever such a system exists, should be based on objective factors, in particular ability, integrity and experience.
14. The assignment of cases to judges within the court to which they belong is an internal matter of judicial administration.

Professional secrecy and immunity

15. The judiciary shall be bound by professional secrecy with regard to their deliberations and to confidential information acquired in the course of their duties other than in public proceedings, and shall not be compelled to testify on such matters.
16. Without prejudice to any disciplinary procedure or to any right of appeal or to compensation from the State, in accordance with national law, judges should enjoy personal immunity from civil suits for monetary damages for improper acts or omissions in the exercise of their judicial functions.

Discipline, suspension and removal

17. A charge or complaint made against a judge in his/her judicial and professional capacity shall be processed expeditiously and fairly under an appropriate procedure. The judge shall have the right to a fair hearing. The examination of the matter at its initial stage shall be kept confidential, unless otherwise requested by the judge.
18. Judges shall be subject to suspension or removal only for reasons of incapacity or behavior that renders them unfit to discharge their duties.
19. All disciplinary, suspension or removal proceedings shall be determined in accordance with established standards of judicial conduct.

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20. Decisions in disciplinary, suspension or removal proceedings shall be subject to an independent review. This principle may not apply to the decisions of the highest court and those of the legislature in impeachment or similar proceedings.

Basic Principles on the Role of Lawyers, 1990

Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, August 27-September 7, 1990

The Basic Principles on the Role of Lawyers, set forth below, which have been formulated to assist Member States in their task of promoting and ensuring the proper role of lawyers, should be respected and taken into account by Governments within the framework of their national legislation and practice and should be brought to the attention of lawyers as well as other persons, such as judges, prosecutors, members of the executive and legislature, and the public in general. These principles shall also apply, as appropriate, to persons who exercise the functions of lawyers without having the formal status of lawyers.

Access to lawyers and legal services

1. All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings.
2. Governments shall ensure that efficient procedures and responsive mechanisms for effective and equal access to lawyers are provided for all persons within their territory and subject to their jurisdiction, without distinction of any kind, such as discrimination based on race, color, ethnic origin, sex, language, religion, political or other opinion, national or social origin, property, birth, economic or other status.
3. Governments shall ensure the provision of sufficient funding and other resources for legal services to the poor and, as necessary, to other disadvantaged persons. Professional associations of lawyers shall cooperate in the organization and provision of services, facilities and other resources.
4. Governments and professional associations of lawyers shall promote programs to inform the public about their rights and duties under the law and the important role of lawyers in protecting their fundamental freedoms. Special attention should be given to assisting the poor and other disadvantaged persons so as to enable them to assert their rights and where necessary call upon the assistance of lawyers.

Special safeguards in criminal justice matters

5. Governments shall ensure that all persons are immediately informed by the competent authority of their right to be assisted by a lawyer of their own choice upon arrest or detention or when charged with a criminal offense.
6. Any persons who do not have a lawyer shall, in all cases which the interests of justice so require, be entitled to have a lawyer of experience and competence commensurate with the nature of the offense assigned to them in order too provide effective legal assistance, without payment by them if they lack sufficient means to pay for such services.
7. Governments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest and detention.
8. All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within hearing, of law enforcement officials.

A section on training urges “lawyers have appropriate education and training and be made aware of the ideals and ethical duties of the lawyer and of human rights and fundamental freedoms recognized by national and international law.” (*Principle 9*)

A section on duties and responsibilities states:

12. Lawyers shall at all times maintain the honor and dignity of their profession as essential agents of the administration of justice.
13. The duties of lawyers towards their clients shall include:
 - (a) Advising clients as to their legal rights and obligations, and as to the working of the legal system in so far as it is relevant to the legal rights and obligations of the clients;
 - (b) Assisting clients in every appropriate way, and taking legal action to protect their interests;
 - (c) Assisting clients before courts, tribunals or administrative authorities, where appropriate.

14. Lawyers, in protecting the rights of their clients and in promoting the cause of justice, shall seek to uphold human rights and freedoms recognized by national and international law and shall at all times act freely and diligently in accordance with the law and recognized standards and ethics of the legal profession.

15. Lawyers shall always loyally respect the interests of their clients.

Guarantees for the functioning of lawyers

16. Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

17. Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.

18. Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.

19. No court or administrative authority before whom the right to counsel is recognized shall refuse to recognize the right of a lawyer to appear before it for his or her client unless that lawyer has been disqualified in accordance with national law and practice and in conformity with these principles.

20. Lawyers shall enjoy civil and penal immunity for relevant statements made in good faith in written or oral pleadings or in their professional appearances before a court, tribunal or other legal or administrative authority.

21. It is the duty of the competent authorities to ensure lawyers access to appropriate information, files and documents in their possession or control in sufficient time to enable lawyers to provide effective legal assistance to their clients. Such access should be provided at the earliest appropriate time.

22. Governments shall recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential.

Freedom of expression and association

23. Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization. In exercising these rights, lawyers shall always conduct themselves in accordance with the law and recognized standards and ethics of the legal profession.

Professional associations of lawyers

24. Lawyers shall be entitled to form and join self-governing professional associations to represent their interests, promote their continuing education and training and protect their professional integrity. The executive body of the professional associations shall be elected by its members and shall exercise its functions without external interference.

Disciplinary proceedings

26. Codes of professional conduct for lawyers shall be established by the legal profession through its appropriate organs, or by legislation, in accordance with national law and custom and recognized international standards and norms.

27. Charges or complaints made against lawyers in their professional capacity shall be processed expeditiously and fairly under appropriate procedures. Lawyers shall have the right to a fair hearing, including the right to be assisted by a lawyer of their choice.

28. Disciplinary proceedings against lawyers shall be brought before an impartial disciplinary committee established by the legal profession, before an independent statutory authority, or before a court, and shall be subject to an independent judicial review.

Guidelines on the Role of Prosecutors, 1990

Adopted by the Eighth United National Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, August 27-September 7, 1990

Qualifications, selection and training

1. Persons selected as prosecutors shall be individuals of integrity and ability, with appropriate training and qualifications.
2. States should ensure that:
 - (a) Selection criteria for prosecutors embody safeguards against appointments based on partiality or prejudice, excluding any discrimination against a person on the grounds of race, color, sex, language, religion, political or other opinion, national, social or ethnic origin, property, birth, economic or other status, except that it shall not be considered discriminatory to require a candidate for prosecutorial office to be a national of the country concerned;
 - (b) Prosecutors have appropriate education and training and should be made aware of the ideals and ethical duties of their office, of the constitutional and statutory protections for the rights of the suspect and the victim, and of the human rights and fundamental freedoms recognized by national and international law.

Status and conditions of service

Provisions call for prosecutors to (3) “at all times maintain the honor and dignity of their profession.” States should ensure their ability to function without (4) “intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, penal or other liability.” They and their families should be offered physical protection (5) “when their personal safety is threatened as a result of the discharge of prosecutorial functions.” Reasonable conditions of service shall be maintained, including (6) “adequate remuneration and, where applicable, tenure, pension and age of retirement” to be set out in published rules and regulations.

Freedom of expression and association

(The language of this section is similar to that in the Guidelines for Lawyers.)

Role in criminal proceedings

10. The office of prosecutors shall be strictly separated from judicial functions.

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11. Prosecutors shall perform an active role in criminal proceedings, including institution of prosecution and, where authorized by law or consistent with local practice, in the investigation of crime, supervision over the legality of these investigations, supervision of the execution of court decisions and the exercise of other functions as representatives of the public interest.
 12. Prosecutors shall, in accordance with the law, perform their duties fairly, consistently and expeditiously, and respect and protect human dignity and uphold human rights, thus contributing to ensuring due process and the smooth functioning of the criminal justice system.
 13. In the performance of their duties, prosecutors shall:
 - (a) Carry out their functions impartially and avoid all political, social, religious, racial, cultural, sexual or any other kind of discrimination;
 - (b) Protect the public interest, act with objectivity, take proper account of the position of the suspect and the victim, and pay attention to all relevant circumstances, irrespective of whether they are to the advantage or disadvantage of the suspect;
 - (c) Keep matters in their possession confidential, unless the performance of duty or the needs of justice require otherwise;
 - (d) Consider the views and concerns of victims when their personal interests are affected and ensure that victims are informed of their rights in accordance with the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.
 14. Prosecutors shall not initiate or continue prosecution, or shall make every effort to stay proceedings, when an impartial investigation shows the charge to be unfounded.
 15. Prosecutors shall give due attention to the prosecution of crimes committed by public officials, particularly corruption, abuse of power, grave violations of human rights and other crimes recognized by international law and, where authorized by law or consistent with local practice, the investigation of such offenses.
 16. When prosecutors come into possession of evidence against suspects that they know or believe on reasonable grounds was obtained through recourse to unlawful methods, which constitute a grave violation of the suspect's human rights, especially involving torture or cruel, inhuman or degrading treatment or punishment, or other abuses of human rights, they shall refuse to use such evidence against anyone

other than those who used such methods, or inform the Court accordingly, and shall take all necessary steps to ensure that those responsible for using such methods are brought to justice.

Discretionary functions

17. In countries where prosecutors are vested with discretionary functions, the law or published rules or regulations shall provide guidelines to enhance fairness and consistency of approach in taking decisions in the prosecution process, including institution or waiver of prosecution.

Alternatives to prosecution

18. In accordance with national law, prosecutors shall give due consideration to waiving prosecution, discontinuing proceedings conditionally or unconditionally, or diverting criminal cases from the formal justice system, with respect for the rights of suspect(s) and the victim(s). For this purpose, States should fully explore the possibility of adopting diversion schemes not only to alleviate excessive court loads, but also to avoid the stigmatization of pre-trial detention, indictment and conviction, as well as the possible adverse effects of imprisonment.

19. In countries where prosecutors are vested with discretionary functions as to the decision whether or not to prosecute a juvenile, special considerations shall be given to the nature and gravity of the offense, protection of society and the personality and background of the juvenile. In making that decision, prosecutors shall particularly consider available alternatives to prosecution under the relevant juvenile justice laws and procedures. Prosecutors shall use their best efforts to take prosecutory action against juveniles only to the extent strictly necessary.

Relations with other government agencies or institutions

20. In order to ensure the fairness and effectiveness of prosecution, prosecutors shall strive to cooperate with the police, the courts, the legal profession, public defenders and other government agencies or institutions.

Disciplinary proceedings

21. Disciplinary offenses of prosecutors shall be based on law and lawful regulations. Complaints against prosecutors which allege that they acted in a manner clearly out of the range of professional standards

shall be processed expeditiously and fairly under appropriate procedures. Prosecutors shall have the right to a fair hearing. The decision shall be subject to independent review.

22. Disciplinary proceedings against prosecutors shall guarantee an objective evaluation and decision. They shall be determined in accordance with the law, the code of professional conduct and other established standards and ethics and in light of the present Guidelines.

Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985

Adopted by General Assembly resolution 40/34 of November 29, 1985

A. VICTIMS OF CRIME

1. Victims means “persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.”
2. A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The term “victim” also includes, where appropriate, the immediate family or dependents of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.

Access to justice and fair treatment

4. Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered.
5. Judicial and administrative mechanisms should be established and strengthened where necessary to enable victims to obtain redress through formal and informal procedures that are expeditious, fair, inexpensive and accessible. Victims should be informed of their rights in seeking redress through such mechanisms.

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6. The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by:
 - (a) Informing victims of their role and the scope, timing and progress of the proceedings and the disposition of their cases, especially where serious crimes are involved and where they have requested such information;
 - (b) Allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system;
 - (c) Providing proper assistance to victims throughout the legal process;
 - (d) Taking measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;
 - (e) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims.
 7. Informal mechanisms for the resolution of disputes, including mediation, arbitration and customary justice or indigenous practices, should be utilized where appropriate to facilitate conciliation and redress for victims.

Restitution

8. Offenders or third parties responsible for their behavior should, where appropriate, make fair restitution to victims, their families or dependents. Such restitution should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of victimization, the provision of services and the restoration of rights.
9. Governments should review their practices, regulations and laws to consider restitution as an available sentencing option in criminal cases, in addition to other criminal sanctions.
10. In cases of substantial harm to the environment, restitution, if ordered, should include, as far as possible, restoration of the environment, reconstruction of the infrastructure, replacement of community facilities and reimbursement of the expenses of relocation, whenever such harm results in the dislocation of a community.
11. Where public officials or other agents acting in an official or quasi-official capacity have violated national criminal laws, the victims

should receive restitution from the State whose officials or agents were responsible for the harm inflicted. In cases where the Government under whose authority the victimizing act or omission occurred is no longer in existence, the State or Government successor in title should provide restitution to the victims.

Compensation

12. When compensation is not fully available from the offender or other sources, States should endeavor to provide financial compensation to:
 - (a) Victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes;
 - (b) The family, in particular dependents of persons who have died or become physically or mentally incapacitated as a result of such victimization.
13. The establishment, strengthening and expansion of national funds for compensation to victims should be encouraged. Where appropriate, other funds may also be established for this purpose, including in those cases where the State of which the victim is a national is not in a position to compensate the victim for the harm.

Assistance

14. Victims should receive the necessary material, medical, psychological and social assistance through governmental, voluntary, community-based and indigenous means.
15. Victims should be informed of the availability of health and social services and other relevant assistance and be readily afforded access to them.
16. Police, justice, health, social service and other personnel concerned should receive training to sensitize them to the needs of victims, and guidelines to ensure proper and prompt aid.

B. VICTIMS OF ABUSE OF POWER

18. *Victims* means “persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that do not yet constitute violations of national criminal laws but of internationally recognized norms relating to human rights.”

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19. States should consider incorporating into the national law norms proscribing abuses of power and providing remedies to victims of such abuses. In particular, such remedies should include restitution and/or compensation, and necessary material, medical, psychological and social assistance and support.

WAR CRIMES, CRIMES AGAINST HUMANITY,
INCLUDING GENOCIDE, THE PROTECTION OF
CIVILIAN PERSONS IN TIME OF WAR

*Convention on the Prevention and Punishment
of the Crime of Genocide, 1948*

Ratified by General Assembly resolution 260 A (III) of December 9, 1948; entered into force on January 12, 1951

Genocide is defined in **Article II** as “any of the following acts committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such” including:

- (a) Killing members of the group
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

The following acts shall be punishable:

- (a) Genocide;
- (b) Conspiracy to commit genocide;
- (c) Direct and public incitement to commit genocide;
- (d) Attempt to commit genocide;
- (e) Complicity in genocide.

Article IV states that persons committing genocide or any of the other acts enumerated in Article III “shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals.”

Article V requires Contracting Parties to undertake to enact “in accordance with their respective Constitutions, the necessary legislation to give effect to the provisions of the present Convention.”

Article VI states “persons charged with genocide or any of the other acts enumerated in Article III shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction.”

Article VII notes that genocide and other acts enumerated in Article III “shall not be considered as political crimes for the purpose of extradition” and the Contracting Parties “pledge themselves in such cases to grant extradition in accordance with their laws and treaties in force.”

Article VIII allows Contracting Parties to “call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide or any of the other acts enumerated in Article III.”

Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 1949

This document, completed on August 12, 1949, came into force on October 21, 1950

Article 3 states:

In case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

1. Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, color, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

- (a) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- (b) Taking of hostages;
- (c) Outrages upon personal dignity, in particular humiliating and degrading treatment;
- (d) The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted

court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

Article 11

The High Contracting Parties may at any time agree to entrust to an organization which offers all guarantees of impartiality and efficacy the duties incumbent on the Protecting Powers by virtue of the present Convention.

Article 27

Protected persons are entitled, in all circumstances, to respect for their persons, their honor, their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity.

Women shall be especially protected against any attack on their honor, in particular against rape, enforced prostitution, or any form of indecent assault.

Without prejudice to the provisions relating to the state of their health, age and sex, all protected persons shall be treated with the same consideration by the Party to the conflict in whose power they are, without any adverse distinction based, in particular, on race, religion, or political opinion.

However, the Parties to the conflict may take such measures of control and security in regard to protected persons as may be necessary as a result of war.

Part III on the Status and Treatment of Protected Persons contains numerous provisions for the Occupying Power to follow in observing international human rights standards. There are over 50 such provisions including prohibitions against coercion, collective punishment and torture, (**Articles 31,32,33**); against taking hostages, (**Article 34**); “Protected persons...who have lost their gainful employment, shall be granted the opportunity to find paid employment.” (**Article 39**)

Section III on Occupied Territories notes “The Occupying Power may not alter the status of public officials or judges in the occupied territories, or in any way apply sanctions to or take any measures of coercion or

discrimination against them, should they abstain from fulfilling their functions for reasons of conscience,” (**Article 54**); “The Occupying Power shall permit ministers of religion to give spiritual assistance to the members of their religious communities.” (**Article 58**)

Articles 66 to 75 deal with penal issues, including the conduct of trials, due process provisions, including rights of the detained, the right to a fair trial, (**Article 71**); the right to present evidence and call witnesses for the defense, (**Article 72**); the right to appeal, (**Article 73**); the right to have representatives attend the trial of any protected person, (**Article 74**); the right to petition against a death sentence. (**Article 75**)

Additional articles allow access to the Protected Persons by representatives of religious organizations, relief societies, or international humanitarian organizations.

Article 142

Subject to the measures which the Detaining Powers may consider essential to ensure their security or to meet any other reasonable need, the representatives of religious organizations, relief societies, or any other organizations assisting the protected persons shall receive from these Powers, for themselves or their duly accredited agents, facilities for visiting the protected persons, for distributing relief supplies and materials from any source, intended for educational, recreational or religious purposes, or for assisting them in organizing their leisure time within the places of internment. Such societies or organizations may be constituted in the territory of the Detaining Power or in any other country, or they may have an international character....The special position of the International Committee of the Red Cross in this field shall be recognized and respected at all times.

Article 143

Representatives or delegates of the Protecting Powers shall have permission to go to all places where protected persons are, particularly to places of internment, detention and work.

They shall have access to all premises occupied by protected persons and shall be able to interview the latter without witnesses, personally or through an interpreter.

Such visits may not be prohibited except for reasons of imperative military necessity, and then only as an exceptional and temporary measure. Their duration and frequency shall not be restricted.

Such representatives and delegates shall have full liberty to select the places they wish to visit. The Detaining or Occupying Power, the Protecting Power and when occasion arises the Power of origin of the persons to be visited, may agree that compatriots of the internees shall be permitted to participate in the visits.

GLOBAL HUMAN RIGHTS STANDARDS

World Conference on Human Rights, The Vienna Declaration and Program of Action, 1993

The World Conference on Human Rights,

Considering that the promotion and protection of human rights is a matter of priority for the international community, and that the Conference affords a unique opportunity to carry out a comprehensive analysis of the international human rights system and of the machinery for the protection of human rights, in order to enhance and thus promote a fuller observance of those rights, in a just and balanced manner,

Recognizing and affirming that all human rights derive from the dignity and worth inherent in the human person, and that the human person is the central subject of human rights and fundamental freedoms, and consequently should be the principal beneficiary and should participate actively in the realization of these rights and freedoms...

Solemnly adopts the Vienna Declaration and Program of Action.

I

1. The World Conference on Human Rights reaffirms the solemn commitment of all States to fulfill their obligations to promote universal respect for, and observance and protection of, all human rights and fundamental freedoms for all in accordance with the Charter of the United Nations, other instruments relating to human rights, and international law. The universal nature of these rights and freedoms is beyond question....

Human rights and fundamental freedoms are the birthright of all human beings; their protection and promotion is the first responsibility of Governments.

2. All peoples have the right of self-determination. By virtue of that right they freely determine their political status, and freely pursue their economic, social and cultural development.

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8. Democracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing. Democracy is based on the freely expressed will of the people to determine their own political, economic, social and cultural systems and their full participation in all aspects of their lives.

In the context of the above, the promotion and protection of human rights and fundamental freedoms at the national and international levels should be universal and conducted without conditions attached....

15. Respect for human rights and for fundamental freedoms without distinction of any kind is a fundamental rule of international human rights law. The speedy and comprehensive elimination of all forms of racism and racial discrimination, xenophobia and related intolerance is a priority task for the international community. Governments should take effective measures to prevent and combat them. Groups, institutions, intergovernmental and non-governmental organizations and individuals are urged to intensify their efforts in cooperating and coordinating their activities against these evils.

17. The acts, methods and practices of terrorism in all its forms and manifestations as well as linkage in some countries to drug trafficking are activities aimed at the destruction of human rights, fundamental freedoms and democracy, threatening territorial integrity, security of States and destabilizing legitimately constituted Governments. The international community should take the necessary steps to enhance cooperation to prevent and combat terrorism.

18. The human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights. The full and equal participation of women in political, civil, economic, social and cultural life, at the national, regional and international levels, and the eradication of all forms of discrimination on the grounds of sex are priority objectives of the international community.

Gender-based violence and all forms of sexual harassment and exploitation, including those resulting from cultural prejudice and international trafficking, are incompatible with the dignity and worth of the human person, and must be eliminated....

The human rights of women should form an integral part of the United Nations human rights activities, including the promotion of all human rights instruments relating to women.

19. Considering the importance of the promotion and protection of the rights of persons belonging to minorities and the contribution of such

promotion and protection to the political and social stability of the States in which such persons live,

The World Conference on Human Rights reaffirms the obligations of States to ensure that persons belonging to minorities may exercise fully and effectively all human rights and fundamental freedoms without any discrimination and in full equality before the law in accordance with the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.

21.In all actions concerning children, non-discrimination and the best interest of the child should be primary considerations and the views of the child given due weight. National and international mechanisms and programs should be strengthened for the defense and protection of children, in particular, the girl-child, abandoned children, street children, economically and sexually exploited children, including through child pornography, child prostitution and sale of organs, children victims of diseases including acquired immunodeficiency syndrome, refugee and displaced children, children in detention, children in armed conflict, as well as children victims of famine and drought and other emergencies.
23. The World Conference on Human Rights reaffirms that everyone, without distinction of any kind, is entitled to the right to seek and to enjoy in other countries asylum from persecution, as well as the right to return to one's own country....
24. Great importance must be given to the promotion and protection of the human rights of persons belonging to groups which have been rendered vulnerable, including migrant workers, the elimination of all forms of discrimination against them, and the strengthening and more effective implementation of existing human rights instruments.
27. Every State should provide an effective framework of remedies to redress human rights grievances or violations. The administration of justice, including law enforcement and prosecutorial agencies and, especially, an independent judiciary and legal profession in full conformity with applicable standards contained in international human rights instruments, are essential to the full and non-discriminatory realization of human rights and indispensable to the processes of democracy....
28. The World Conference on Human Rights expresses its dismay at massive violations of human rights especially in the form of genocide, "ethnic cleansing" and systematic rape of women in war situations, creating mass exodus of refugees and displaced persons. While strongly

condemning such abhorrent practices it reiterates the call that perpetrators of such crimes be punished and such practices immediately stopped.

38. The World Conference on Human Rights recognizes the important role of non-governmental organizations in the promotion of all human rights and in humanitarian activities at national, regional and international levels....In this respect, the World Conference on Human Rights emphasizes the importance of continued dialogue and cooperation between Governments and non-governmental organizations. Non-governmental organizations and their members genuinely involved in the field of human rights should enjoy the rights and freedoms recognized in the Universal Declaration of Human Rights, and the protection of national law.
39. Underlining the importance of objective, responsible and impartial information about human rights and humanitarian issues, the World Conference on Human Rights encourages the increased involvement of the media, for whom freedom and protection should be guaranteed within the framework of national law.

B. Equality, dignity and tolerance

1. Racism, racial discrimination, xenophobia and other forms of intolerance

19. The World Conference on Human Rights considers the elimination of racism and racial discrimination, in particular in their institutionalized forms...as a primary objective for the international community and a world-wide promotion program in the field of human rights....
20. The World Conference on Human Rights urges all Governments to take immediate measures and to develop strong policies to prevent and combat all forms and manifestations of racism, xenophobia or related intolerance, where necessary by enactment of appropriate legislation, including penal measures, and by the establishment of national institutions to combat such phenomena.
22. The World Conference on Human Rights calls upon all Governments to take all appropriate measures in compliance with their international obligations and with due regard to their respective legal systems to counter intolerance and related violence based on religion or belief, including practices of discrimination against women and including the desecration of religious sites, recognizing that every individual has the right to freedom of thought, conscience, expression and religion. The Conference also invites all States to put into

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

23. The World Conference on Human Rights stresses that all persons who perpetrate or authorize criminal acts associated with ethnic cleansing are individually responsible and accountable for such human rights violations, and that the international community should exert every effort to bring those legally responsible for such violations to justice.

2. Persons belonging to national or ethnic,
religious and linguistic minorities

26. The World Conference on Human Rights urges States and the international community to promote and protect the rights of persons belonging to national or ethnic, religious and linguistic minorities in accordance with the Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities.

27. Measures to be taken, where appropriate, should include facilitation of their full participation in all aspects of the political, economic, social, religious and cultural life of society and in the economic progress and development in their country.

3. The equal status and human rights of women

38. In particular, the World Conference on Human Rights stresses the importance of working towards the elimination of violence against women in public and private life, the elimination of all forms of sexual harassment, exploitation and trafficking in women, the elimination of gender bias in the administration of justice and the eradication of any conflicts which may arise between the rights of women and the harmful effects of certain traditional or customary practices, cultural prejudices and religious extremism....Violations of the human rights of women in situations of armed conflict are violations of the fundamental principles of international human rights and humanitarian law. All violations of this kind, including in particular murder, systematic rape, sexual slavery, and forced pregnancy, require a particularly effective response.

4. The rights of the child

48. The World Conference on Human Rights urges all States, with the support of international cooperation, to address the acute problem of children under especially difficult circumstances. Exploitation and abuse of children should be actively combated, including by addressing

their root causes. Effective measures are required against female infanticide, harmful child labor, sale of children and organs, child prostitution, child pornography, as well as other forms of sexual abuse.

49. The World Conference on Human Rights supports all measures by the United Nations and its specialized agencies to ensure the effective protection and promotion of human rights of the girl child. The World Conference on Human Rights urges States to repeal existing laws and regulations and remove customs and practices which discriminate against and cause harm to the girl child.

5. Freedom from torture

55. The World Conference on Human Rights emphasizes that one of the most atrocious violations against human dignity is the act of torture, the result of which destroys the dignity and impairs the capability of victims to continue their lives and their activities.
56. The World Conference on Human Rights reaffirms that under human rights law and international humanitarian law, freedom from torture is a right which must be protected under all circumstances, including in times of internal or international disturbance or armed conflicts.
60. States should abrogate legislation leading to impunity for those responsible for grave violations of human rights, such as torture and prosecute such violations, thereby providing a firm basis for the rule of law.

Enforced disappearances

62. The World Conference on Human Rights, welcoming the adoption by the General Assembly of the Declaration on the Protection of All Persons from Enforced Disappearance, calls upon all States to take effective legislative, administrative, judicial or other measures to prevent, terminate and punish acts of enforced disappearances. The World Conference on Human Rights reaffirms that it is the duty of all States, under any circumstances, to make investigations whenever there is reason to believe that an enforced disappearance has taken place on a territory under their jurisdiction and, if allegations are confirmed, to prosecute its perpetrators.

6. The rights of disabled persons

63. The World Conference on Human Rights reaffirms that all human rights and fundamental freedoms are universal and thus unreservedly

include persons with disabilities. Every person is born equal and has the same rights to life and welfare, education and work, living independently and active participation in all aspects of society. Any direct discrimination or other negative discriminatory treatment of a disabled person is therefore a violation of his or her rights. The World Conference on Human Rights calls on Governments, where necessary, to adopt or adjust to assure access to these and other rights for disabled persons.

64. The place of disabled persons is everywhere. Persons with disabilities should be guaranteed equal opportunity through the elimination of all socially determined barriers, be they physical, financial, social or psychological, which exclude or restrict full participation in society.

ORGANIZATION FOR SECURITY AND COOPERATION IN EUROPE

Final Act of the Conference on Security and Cooperation in Europe (Helsinki Final Act), 1975

Helsinki, August 1, 1975

The States participating in the Conference on Security and Cooperation in Europe issued a declaration on principles guiding relations between participating states, including: *I. Sovereign equality, respect for their rights inherent in sovereignty; II. Refraining from the threat or use of force, III. Inviolability of frontiers, IV. Territorial integrity of States, V. Peaceful settlement of disputes, VI. Non-intervention in internal affairs, VII. Respect for human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief, VIII. Equal rights and self-determination of peoples, IX. Cooperation among States, X. Fulfillment in good faith of obligations under international law.*

In a section on Human Contacts the participating States “make it their aim to facilitate freer movement and contacts, individually and collectively, whether privately or officially, among persons, institutions and organizations of the participating States, and to contribute to the solution of the humanitarian problems that arise in that connection.” These include a. Contacts and regular meetings on the basis of family ties, b. Reunification of families, c. Marriage between citizens of different States, d. Travel for personal or professional reasons, e. Improvement of conditions for tourism on an individual or collective basis, f. Meetings among young people, g. Sport, h. Expansion of contacts.

In a section on Information the participating States “Make it their aim to facilitate the freer and wider dissemination of information of all kinds, to encourage cooperation in the field of information and the exchange of information with other countries, and to improve the conditions under which journalists from one participating State exercise their profession in another participating State.” There follow sections on the improvement of the circulation or access to, and exchange of oral information, printed information and filmed and broadcast information. This section includes cooperation in the field of information and improvement of working conditions for journalists.

Subsequent sections deal with cooperation and exchanges in the field of culture and in the field of education.

Provisions are included for unilateral, bilateral, and multilateral follow-up conferences.

*Document of the Copenhagen Meeting
of the Conference on the Human Dimension
of the CSCE, 1990*
Copenhagen, June 29, 1990

The participating States welcome with great satisfaction the fundamental political changes that have occurred in Europe since the first Meeting of the Conference on the Human Dimension of the CSCE in Paris in 1989. They note that the CSCE process has contributed significantly to bringing about these changes and that these developments in turn have greatly advanced the implementation of the provisions of the Final Act and of other CSCE documents.

They recognize that pluralistic democracy and the rule of law are essential for ensuring respect for all human rights and fundamental freedoms, the development of human contacts and the resolution of other issues of a related humanitarian character. They therefore welcome the commitment expressed by all participating States to the ideals of democracy and political pluralism as well as their common determination to build democratic societies based on free elections and the rule of law....

In order to strengthen respect for, and enjoyment of, human rights and fundamental freedoms, to develop human contacts and to resolve issues of a related humanitarian character, the participating States agree on the following:

I.

1. The participating States express their conviction that the protection and promotion of human rights and fundamental freedoms is one of the basic purposes of government, and reaffirm that the recognition of these rights and freedoms constitutes the foundation of freedom, justice and peace.
2. They are determined to support and advance those principles of justice which form the basis of the rule of law. They consider that the rule of law does not mean merely a formal legality which assures regularity and consistency in the achievement and enforcement of democratic order, but justice based on the recognition and full acceptance of the supreme value of the human personality and

guaranteed by institutions providing a framework for its fullest expression.

3. They reaffirm that democracy is an inherent element of the rule of law. They recognize the importance of pluralism with regard to political organizations.
4. They confirm that they will respect each other's right freely to choose and develop, in accordance with international human rights standards, their political, social, economic and cultural systems. In exercising this right, they will ensure that their laws, regulations, practices and policies conform with their obligations under international law and are brought into harmony with the provisions of the Declaration on Principles and other CSCE commitments.
5. They solemnly declare that among those elements of justice which are essential to the full expression of the inherent dignity and of the equal and inalienable rights of all human beings are the following:
 - 5.1 – free elections that will be held at reasonable intervals by secret ballot or by equivalent free voting procedure, under conditions which will ensure in practice the free expression of the opinion of the electors in their choice of their representatives;
 - 5.2 – a form of government that is representative in character, in which the executive is accountable to the elected legislature or the electorate;
 - 5.3 – the duty of the government and public authorities to comply with the constitution and to act in a manner consistent with law;
 - 5.4 – a clear separation between State and political parties; in particular, political parties will not be merged with the State;
 - 5.5 – the activity of the government and the administration as well as that of the judiciary will be exercised in accordance with the system established by law;
 - 5.6 – military forces and the police will be under control of, and accountable to, the civil authorities;
 - 5.7 – human rights and fundamental freedoms will be guaranteed by law and in accordance with their obligations under international law;
 - 5.8 – legislation, adopted at the end of a public procedure, and regulations will be published, that being the condition for their applicability. Those texts will be accessible to everyone;
 - 5.9 – all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law will prohibit any discrimination and guarantee to all

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- persons equal and effective protection against discrimination on any ground;
- 5.10 – everyone will have an effective means of redress against administrative decisions, so as to guarantee respect for fundamental rights and ensure legal integrity;
 - 5.11 – administrative decisions against a person must be fully justifiable and must as a rule indicate the usual remedies available;
 - 5.12 – the independence of judges and the impartial operation of the public judicial service will be ensured;
 - 5.13 – the independence of legal practitioners will be recognized and protected, in particular as regards conditions for recruitment and practice;
 - 5.14 – the rules relating to criminal procedure will contain a clear definition of powers in relation to prosecution and the measures preceding and accompanying prosecution;
 - 5.15 – any person arrested or detained on a criminal charge will have the right, so that the lawfulness of his arrest or detention can be decided, to be brought promptly before a judge or other officer authorized by law to exercise this function;
 - 5.16 – in the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone will be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law;
 - 5.17 – any person prosecuted will have the right to defend himself in person or through prompt legal assistance of his own choosing or, if he does not have sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
 - 5.18 – no one will be charged with, tried for or convicted of any criminal offense unless the offense is provided for by a law which defines the elements of the offense with clarity and precision;
 - 5.19 – everyone will be presumed innocent until proved guilty according to law;
 - 5.20 – considering the important contribution of international instruments in the field of human rights to the rule of law at a national level, the participating States reaffirm that they will consider acceding to the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and other relevant international instruments, if they have not yet done so;
 - 5.21 – in order to supplement domestic remedies and better to ensure that the participating States respect the international obligations they have undertaken, the participating States will consider acceding to a regional or global international convention concerning the protection of human rights, such as the European

Convention of Human Rights or the Optional Protocol to the International Covenant on Civil and Political Rights, which provide for procedures of individual recourse to international bodies.

6. The participating States declare that the will of the people, freely and fairly expressed through periodic and genuine elections, is the basis of the authority and legitimacy of all government. The participating States will accordingly respect the right of their citizens to take part in the governing of their country, either directly or through representatives freely chosen by them, through fair electoral processes. They recognize their responsibility to defend and protect in accordance with their laws, their international human rights obligations and international commitments, the democratic order freely established through the will of the people against the activities of persons, groups or organizations that engage in or refuse to renounce terrorism or violence aimed at the overthrow of that order or of that of another participating State.
7. To ensure that the will of the people serves as the basis of the authority of government, that participating State will:
 - 7.1 – hold free elections at reasonable intervals, as established by law;
 - 7.2 – permit all seats in at least one chamber of the national legislature to be freely contested in a popular vote;
 - 7.3 – guarantee universal suffrage to adult citizens;
 - 7.4 – ensure that votes are cast by secret ballot or by equivalent free voting procedure, and that they are counted and reported honestly with the official results made public;
 - 7.5 – respect the right of citizens to seek political or public office, individually or as representatives of political parties or organizations, without discrimination;
 - 7.6 – respect the right of individuals and groups to establish, in full freedom, their own political parties and organizations with the necessary legal guarantees to enable them to compete with each other on a basis of equal treatment before the law and by the authorities;
 - 7.7 – ensure that law and public policy work to permit political campaigning to be conducted in a fair and free atmosphere in which neither administrative action, violence nor intimidation bars the parties and the candidates from freely presenting their views and qualifications, or prevents the voters from learning and discussing them or from casting their vote free of fear of retribution;
 - 7.8 – provide that no legal or administrative obstacle stands in the way of unimpeded access to the media on a non-discriminatory basis

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- for all political groupings and individuals wishing to participate in the electoral process;
- 7.9 – ensure that candidates who obtain the necessary number of votes required by law are duly installed in office and are permitted to remain in office until their term expires or is otherwise brought to an end in a manner that is regulated by law in conformity with democratic parliamentary and constitutional procedures.
8. The participating States consider that the presence of observers both foreign and domestic, can enhance the electoral process for States in which elections are taking place. They therefore invite observers from any other CSCE participating States and any appropriate private institutions and organizations who may wish to do so to observe the course of their national election proceedings, to the extent permitted by law. They will also endeavor to facilitate similar access for election proceedings held below the national level. Such observers will undertake not to interfere in the electoral proceedings.

II

9. The participating States reaffirm that:
- 9.1 – everyone will have the right to freedom of expression including the right to communication. This right will include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. The exercise of this right may be subject only to such restrictions as are prescribed by law and are consistent with international standards. In particular, no limitation will be imposed on access to, and use of, means of reproducing documents of any kind, while respecting, however, rights relating to intellectual property, including copyright;
- 9.2 – everyone will have the right of peaceful assembly and demonstration. Any restrictions which may be placed on the exercise of these rights will be prescribed by law and consistent with international standards;
- 9.3 – the right of association will be guaranteed. The right to form and — subject to the general right of a trade union to determine its own membership — freely join a trade union will be guaranteed, subject to limitations prescribed by law and consistent with international standards;
- 9.4 – everyone will have the right to freedom of thought, conscience and religion. This right includes freedom to change one's religion or belief and to manifest one's religion or belief, either alone or

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- in community with others, in public or in private, through worship, teaching, practice and observance. The exercise of these rights may be subject only to such restrictions as are prescribed by law and are consistent with international standards;
- 9.5 – they will respect the right of everyone to leave any country, including his own, and to return to his country, consistent with a State’s international obligations and CSCE commitments. Restrictions on this right will have the character of very rare exceptions, will be considered necessary only if they respond to specific public need, pursue a legitimate aim and are proportionate to that aim, and will not be abused or applied in an arbitrary manner;
- 9.6 – everyone has the right peacefully to enjoy his property either on his own or in common with others. No one may be deprived of his property except in the public interest and subject to the conditions provided for by law and consistent with international commitments and obligations.
10. In reaffirming their commitment to ensure effectively the rights of the individual to know and act upon human rights and fundamental freedoms, and to contribute actively, individually or in association with others, to their promotion, the participating States express their commitment to:
- 10.1 – respect the right of everyone, individually or in association with others, to seek, receive and impart freely views and information on human rights and fundamental freedoms, including the rights to disseminate and publish such views and information;
- 10.2 – respect the rights of everyone, individually or in association with others, to study and discuss the observance of human rights and fundamental freedoms and to develop and discuss ideas for improved protection of human rights and better means for ensuring compliance with international human rights standards;
- 10.3 – ensure that individuals are permitted to exercise the right to association, including the right to form, join and participate effectively in non-governmental organizations which seek the promotion and protection of human rights and fundamental freedoms, including trade unions and human rights monitoring groups;
- 10.4 – allow members of such groups and organizations to have unhindered access to and communication with similar bodies within and outside their countries and with international organizations, to engage in exchanges, contacts and cooperation

with such groups and organizations and to solicit, receive and utilize for the purpose of promoting and protecting human rights and fundamental freedoms, voluntary financial contributions from national and international sources as provided for by law.

11. The participating States further affirm that, where violations of human rights and fundamental freedoms are alleged to have occurred, the effective remedies available include:
 - 11.1 – the right of the individual to seek and receive adequate legal assistance;
 - 11.2 – the right of the individual to seek and receive assistance from others in defending human rights and fundamental freedoms, and to assist others in defending human rights and fundamental freedoms;
 - 11.3 – the right of individuals or groups acting on their behalf to communicate with international bodies with competence to receive and consider information concerning allegations of human rights abuses.

12. The participating States, wishing to ensure greater transparency in the implementation of the commitments undertaken in the Vienna Concluding Document under the heading of the human dimension of the CSCE, decide to accept as a confidence-building measure the presence of observers sent by participating States and representatives of non-governmental organizations and other interested persons at proceedings before courts as provided for in national legislation and international law and international commitments.

13. The participating States decide to accord particular attention to the recognition of the rights of the child, his civil rights and his individual freedoms, his economic, social and cultural rights, and his right to special protection against all forms of violence and exploitation. They will consider according to the Convention on the Rights of the Child, if they have not yet done so, which was opened for signature by States on January 26, 1990. They will recognize in their domestic legislation the rights of the child as affirmed in the international agreements to which they are parties.

14. The participating States agree to encourage the creation, within their countries, of conditions for the training of students and trainees from other participating States, including persons taking vocational and technical courses. They also agree to promote travel by young people from their countries for the purpose of obtaining education in other

participating States and to that end to encourage the conclusion, where appropriate, of bilateral and multilateral agreements between their relevant governmental institutions, organizations and educational establishments.

15. The participating States will act in such a way as to facilitate the transfer of sentenced persons and encourage those participating States which are not Parties to the Convention on the Transfer of Sentenced Persons, signed at Strasbourg on November 21, 1983, to consider acceding to the Convention.

16. The participating States:

- 16.1 – reaffirm their commitment to prohibit torture and other cruel, inhuman or degrading treatment or punishment, to take effective legislative, administrative, judicial and other measures to prevent and punish such practices, to protect individuals from any psychiatric or other medical practices that violate human rights and fundamental freedoms and to take effective measures to prevent and punish such practices;
- 16.2 – intend, as a matter of urgency, to consider acceding to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, if they have not yet done so, and recognizing the competences of the Committee against Torture under Articles 21 and 22 of the Convention and withdrawing reservations regarding the competence of the Committee under Article 20;
- 16.3 – stress that no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture;
- 16.4 – will ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment;
- 16.5 – will keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under their jurisdiction, with the view of preventing any case of torture;
- 16.6 – will take up with priority for consideration and for appropriate action, in accordance with the agreed measures and procedures

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- for the effective implementation of the commitments relating to the human dimension of the CSCE, any cases of torture and other inhuman and degrading treatment or punishment made known to them through official channels or coming from any other reliable source of information;
- 16.7 – will act upon the understanding that preserving and guaranteeing the life and security of any individual subjected to any form of torture and other inhuman or degrading treatment or punishment will be the sole criterion in determining the urgency and priorities to be accorded in taking appropriate remedial action; and, therefore, the consideration of any cases of torture and other inhuman or degrading treatment or punishment within the framework of any other international body or mechanism may not be invoked as a reason for refraining from consideration and appropriate action in accordance with the agreed measures and procedures for the effective implementation of the commitments relating to the human dimension of the CSCE.

17. The participating States:

- 17.1 – recall the commitments undertaken in the Vienna Concluding Document to keep the question of capital punishment under consideration and to cooperate within relevant international organizations;
- 17.2 – recall, in this context, the adoption by the General Assembly of the United Nations, on December 15, 1989, of the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty;
- 17.3 – note the restriction and safeguards regarding the use of the death penalty which have been adopted by the international community, in particular Article 6 of the International Covenant on Civil and Political Rights;
- 17.4 – note the provisions of the Sixth Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty;
- 17.5 – note recent measures taken by a number of participating States towards the abolition of capital punishment;
- 17.6 – note the activities of several non-governmental organizations on the question of the death penalty;
- 17.7 – will exchange information within the framework of the Conference on the Human Dimension on the question of the abolition of the death penalty and keep that question under consideration;

17.8 – will make available to the public information regarding the use of the death penalty;

18. The participating States:

18.1 – note that the United Nations Commission on Human Rights has recognized the right of everyone to have conscientious objections to military service;

18.2 – note recent measures taken by a number of participating States to permit exemption from compulsory military service on the basis of conscientious objections;

18.3 – note the activities of several non-governmental organizations on the question of conscientious objections to compulsory military service;

18.4 – agree to consider introducing, where this has not yet been done, various forms of alternative service, which are compatible with the reasons for conscientious objection, such forms of alternative service being in principle of a non-combatant or civilian nature, in the public interest and of a non-punitive nature;

18.5 – will make available to the public information on this issue;

18.6 – will keep under consideration, within the framework of the Conference on the Human Dimension, the relevant questions related to the exemption from compulsory military service, where it exists, of individuals on the basis of conscientious objections to armed service, and will exchange information on these questions.

19. The participating States affirm that freer movement and contacts among their citizens are important in the context of the protection and promotion of human rights and fundamental freedoms. They will ensure that their policies concerning entry into their territories are fully consistent with the aims set out in the relevant provisions of the Final Act, the Madrid Concluding Document and the Vienna Concluding Document. While reaffirming their determination not to recede from the commitments contained in the CSCE documents, they undertake to implement fully and improve present commitments in the field of human contacts, including on a bilateral and multilateral basis. In this context they will:

19.1 – strive to implement the procedures for entry into their territories, including the issuing of visas and passport and customs control, in good faith and without unjustified delay. Where necessary, they will shorten the waiting time for visa decisions, as well as simplify practices and reduce administrative requirements for visa applications;

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- 19.2 – ensure, in dealing with visa applications, that these are processed as expeditiously as possible in order, inter alia, to take due account of important family, personal or professional considerations, especially in cases of an urgent, humanitarian nature;
- 19.3 – endeavor, where necessary to reduce fees charged in connection with visa applications to the lowest possible level.
20. The participating States concerned will consult and, where appropriate, cooperate in dealing with problems that might emerge as a result of the increased movement of persons.
22. The participating States reaffirm that the protection and promotion of the rights of migrant workers have their human dimension. In this context they:
- 22.1 – agree that the protection and promotion of the rights of migrant workers are the concern of all participating States and that as such they should be addressed within the CSCE process;
- 22.2 – reaffirm their commitment to implement fully in their domestic legislation the rights of migrant workers provided for in international agreements to which they are parties;
- 22.3 – consider that, in future international instruments concerning the rights of migrant workers, they should take into account the fact that this issue is of importance for all of them;
- 22.4 – express their readiness to examine, at future CSCE meetings, the relevant aspects of the further promotion of the rights of migrant workers and their families.
23. The participating States reaffirm their conviction expressed in the Vienna Concluding Document that the promotion of economic, social and cultural rights as well as of civil and political rights is of paramount importance for human dignity and for the attainment of the legitimate aspirations of every individual. They also reaffirm their commitment taken in the Document of the Bonn Conference on Economic Cooperation in Europe to the promotion of social justice and the improvement of living and working conditions. In the context of continuing their efforts with a view to achieving progressively the full realization of economic, social and cultural rights by all appropriate means, they will pay special attention to problems in the areas of employment, housing, social security, health, education and culture.
24. The participating States will ensure that the exercise of all the human rights and fundamental freedoms set out above will not be subject to any restrictions except those which are provided by law and are

consistent with their obligations under international law, in particular the International Covenant on Civil and Political Rights, and with their international commitments, in particular the Universal Declaration of Human Rights. These restrictions have the character of exceptions. The participating States will ensure that these restrictions are not abused and are not applied in an arbitrary manner, but in such a way that the effective exercise of these rights is ensured.

Any restriction on rights and freedoms must, in a democratic society, relate to one of the objectives of the applicable law and be strictly proportionate to the aim of that law.

25. The participating States confirm that the derogations from obligations related to human rights and fundamental freedoms during a state of public emergency must remain strictly within the limits provided for by international law, in particular the relevant international instruments by which they are bound, especially with respect to rights from which there can be no derogation. They also reaffirm that:
- 25.1 – measures derogating from such obligations must be taken in strict conformity with the procedural requirements laid down in those instruments;
 - 25.2 – the imposition of a state of public emergency must be proclaimed officially, publicly, and in accordance with the provisions laid down by law;
 - 25.3 – measures derogating from obligations will be limited to the extent strictly required by the exigencies of the situation;
 - 25.4 – such measures will not discriminate solely on the grounds of race, color, sex, language, religion, social origin or belonging to a minority.

III.

26. The participating States recognize that vigorous democracy depends on the existence as an integral part of national life of democratic values and practices as well as an extensive range of democratic institutions. They will therefore encourage, facilitate and, where appropriate, support practical cooperative endeavors and the sharing of information, ideas and expertise among themselves and by direct contacts and cooperation between individuals, groups and organizations in areas including the following:
- constitutional law, reform and development,
 - electoral legislation, administration and observation,
 - establishment and management of courts and legal systems,
 - the development of an impartial and effective public service where

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- recruitment and advancement are based on a merit system,
 - law enforcement,
 - local government and decentralizations,
 - access to information and protection of privacy,
 - developing political parties and their role in pluralistic societies,
 - free and independent trade unions,
 - cooperative movements,
 - developing other forms of free associations and public interest groups,
 - journalism, independent media, and intellectual and cultural life,
 - the teaching of democratic values, institutions and practices in educational institutions and the fostering of an atmosphere of free enquiry.

Such endeavors may cover the range of cooperation encompassed in the human dimension of the CSCE, including training, exchange of information, books and instructional materials, cooperative programs and projects, academic and professional exchanges and conferences, scholarships, research grants, provision of expertise and advice, business and scientific contacts and programs.

27. The participating States will also facilitate the establishment and strengthening of independent national institutions in the area of human rights and the rule of law, which may also serve as focal points for coordination and collaboration between such institutions in the participating States. They propose that cooperation be encouraged between parliamentarians from participating States, including through existing inter-Parliamentary associations and, inter alia, joint commissions, television debates involving parliamentarians, meetings and round-table discussions. They will also encourage existing institutions, such as organizations within the United Nations system and the Council of Europe, to continue and expand the work they have begun in this area.

IV.

30. The participating states recognize that the questions relating to national minorities can only be satisfactorily resolved in a democratic political framework based on the rule of law, with a functioning independent judiciary. This framework guarantees full respect for human rights and fundamental freedoms, equal rights and status for all citizens, the free expression of all their legitimate interests and aspirations, political pluralism, social tolerance and the implementation of legal rules that place effective restraints on the abuse of governmental power.

They also recognize the important role of non-governmental organizations, including political parties, trade unions, human rights organizations and religious groups, in the promotion of tolerance, cultural diversity and the resolution of questions relating to national minorities.

They further reaffirm that respect for the rights of persons belonging to national minorities as part of universally recognized human rights is an essential factor for peace, justice, stability and democracy in the participating States.

31. Persons belonging to national minorities have the right to exercise fully and effectively their human rights and fundamental freedoms without any discrimination and in full equality before the law.

The participating States will adopt, where necessary, special measures for the purpose of ensuring to persons belonging to national minorities full equality with the other citizens in the exercise and enjoyment of human rights and fundamental freedoms.

32. To belong to a national minority is a matter of a person's individual choice and no disadvantage may arise from the exercise of such choice.

Persons belonging to national minorities have the right freely to express, preserve and develop their ethnic, cultural, linguistic or religious identity and to maintain and develop their culture in all its aspects, free of any attempts at assimilation against their will. In particular, they have the right:

- 32.1 – to use freely their mother tongue in private as well as public;
- 32.2 – to establish and maintain their own educational, cultural and religious institutions, organizations or associations, which can seek voluntarily financial or other contributions as well as public assistance, in conformity with national legislation;
- 32.3 – to profess and practice their religion, including the acquisition, possession and use of religious materials, and to conduct religious educational activities in their mother tongue;
- 32.4 – to establish and maintain unimpeded contacts among themselves within their country as well as contacts across frontiers with citizens of other States with whom they share a common ethnic or national origin, cultural heritage or religious beliefs;
- 32.5 – to disseminate, have access to and exchange information in their mother tongue;
- 32.6 – to establish and maintain organizations or associations within their country and to participate in international non-governmental organizations.

Persons belonging to national minorities can exercise and enjoy their rights individually as well as in community with other members of their group. No disadvantage may arise for a person belonging to a national minority on account of the exercise or non-exercise of any such rights.

33. The participating States will protect the ethnic, cultural, linguistic and religious identity of national minorities on their territory and create conditions for the promotion of that identity. They will take the necessary measures to that effect after due consultations, including contacts with organizations or associations of such minorities, in accordance with the decision-making procedures of each State.

Any such measures will be in conformity with the principles of equality and non-discrimination with respect to the other citizens of the participating State concerned.

34. The participating States will endeavor to ensure that persons belonging to national minorities, notwithstanding the need to learn the official language or languages of the State concerned, have adequate opportunities for instruction of their mother tongue or in their mother tongue, as well as, wherever possible and necessary, for its use before public authorities, in conformity with applicable national legislation. In the context of the teaching of history and culture in educational establishments, they will also take account of the history and culture of national minorities.

35. The participating States will respect the right of persons belonging to national minorities to effective participation in public affairs, including participation in the affairs relating to the protection and promotion of the identity of such minorities. The participating States note the efforts undertaken to protect and create conditions for the promotion of the ethnic, cultural, linguistic and religious identity of certain national minorities by establishing, as one of the possible means to achieve these aims, appropriate local or autonomous administrations corresponding to the specific historical and territorial circumstances of such minorities and in accordance with the policies of the State concerned.

36. The participating States recognize the particular importance of increasing constructive cooperation among themselves on questions relating to national minorities. Such cooperation seeks to promote mutual understanding and confidence, friendly and good-neighborly relations, international peace, security and justice.

Every participating State will promote a climate of mutual respect, understanding, cooperation and solidarity among all persons living on

its territory, without distinction as to ethnic or national origin or religion, and will encourage the solutions of problems through dialogue based on the principles of the rule of law.

37. None of these commitments may be interpreted as implying any right to engage in any activity or perform any action in contravention of the purposes and principles of the Charter of the United Nations, other obligations under international law or the provisions of the Final Act, including the principle of territorial integrity of States.
38. The participating States, in their efforts to protect and promote the rights of persons belonging to national minorities, will fully respect their undertakings under existing human rights conventions and other relevant international instruments and consider adhering to the relevant conventions, if they have not yet done so, including those providing for a right of complaint by individuals.
39. The participating States will cooperate closely in the competent international organizations to which they belong, including the United Nations and, as appropriate, the Council of Europe, bearing in mind their on-going work with respect to questions relating to national minorities.
40. The participating States clearly and unequivocally condemn totalitarianism, racial and ethnic hatred, anti-semitism, xenophobia and discrimination against anyone as well as persecution on religious and ideological grounds. In this context, they also recognize the particular problems of Roma (gypsies).

They declare their firm intention to intensify the efforts to combat these phenomena in all their forms and therefore will:

- 40.1 – take effective measures, including the adoption, in conformity with their constitutional systems and their international obligations, of such laws as may be necessary, to provide protection against any acts that constitute incitement to violence against persons or groups based on national, racial, ethnic or religious discrimination, hostility or hatred, including anti-semitism;
- 40.2 – commit themselves to take appropriate and proportionate means to protect persons or groups who may be subject to threats or acts of discrimination, hostility or violence as a result of their racial, cultural, linguistic or religious identity, and to protect their property;
- 40.3 – take effective measures, in conformity with their constitutional systems, at the national, regional and local levels to promote

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- understanding and tolerance, particularly in the fields of education, culture and information;
- 40.4 – endeavor to ensure that the objectives of education include special attention to the problem of racial prejudice and hatred and to the development of respect for different civilizations and cultures;
 - 40.5 – recognize the right of the individual to effective remedies and endeavor to recognize, in conformity with national legislation, the right of interested persons and groups to initiate and support complaints against acts of discrimination, including racist and xenophobic acts;
 - 40.6 – consider adhering, if they have not yet done so, to the international instruments which address the problem of discrimination and ensure full compliance with the obligations therein, including those relating to the submission of periodic reports;
 - 40.7 – consider, also, accepting those international mechanisms which allow States and individuals to bring communications relating to discrimination before international bodies.

*Charter of Paris for a New Europe —
CSCE Summit, 1990*

Paris, November 21, 1990

We, the Heads of State or Government participating in the Conference on Security and Cooperation in Europe, have assembled in Paris at a time of profound change and historic expectations. The era of confrontation and division of Europe has ended. We declare that henceforth our relations will be founded on respect and cooperation.

Human rights, democracy and rule of law

We undertake to build, consolidate and strengthen democracy as the only system of government of our nations. In this endeavor, we will abide by the following:

Human rights and fundamental freedoms are the birthright of all human beings, are inalienable and are guaranteed by law. Their protection and promotion is the first responsibility of government. Respect for them is an essential safeguard against an over-mighty State. Their observation and full exercise are the foundation of freedom, justice and peace.

Democratic government is based on the will of the people, expressed regularly through free and fair elections. Democracy has as its foundation respect for the human person and the rule of law. Democracy is the best

safeguard of freedom of expression, tolerance of all groups of society and equality of opportunity for each person.

Democracy, with its representative and pluralist character, entails accountability to the electorate, the obligation of public authorities to comply with the law and justice administered impartially. No one will be above the law.

We affirm that, without discrimination, every individual has the right to:

- freedom of thought, conscience and religion or belief,
- freedom of expression,
- freedom of association and peaceful assembly,
- freedom of movement;

no one will be:

- subject to arbitrary arrest or detention,
- subject to torture or cruel, inhuman or degrading treatment or punishment;

everyone also has the right:

- to know and act upon his rights,
- to participate in free and fair elections,
- to a fair and public trial if charged with an offense,
- to own property alone or in association and to exercise individual enterprise,
- to enjoy his economic, social and cultural rights.

We affirm that the ethnic, cultural, linguistic and religious identity of national minorities will be protected and that persons belonging to national minorities have the right freely to express, preserve and develop that identity without any discrimination and in full equality before the law.

We will ensure that everyone will enjoy recourse to effective remedies, national or international, against any violation of his rights.

Full respect for these precepts is the bedrock on which we will seek to construct the new Europe.

Our States will cooperate and support each other with the aim of making democratic gains irreversible.

Economic liberty and responsibility

Economic liberty, social justice and environmental responsibility are indispensable for prosperity.

The free will of the individual, exercised in democracy and protected by the rule of law, forms the necessary basis for successful economic and social development. We will promote economic activity which respects and upholds human dignity.

Freedom and political pluralism are necessary elements in our common objective of developing market economies towards sustainable economic growth, prosperity, social justice, expanding employment and efficient use of economic resources. The success of the transition to market economy by countries making efforts to this effect is important and in the interest of us all. It will enable us to share a higher level of prosperity which is our common objective. We will cooperate to this end.

Preservation of the environment is a shared responsibility of all our nations. While supporting national and regional efforts in this field, we must also look to the pressing need for joint action on a wider scale.

GUIDELINES FOR THE FUTURE

Human Dimension

Determined to foster the rich contribution of national minorities to the life of our societies, we undertake further to improve their situation. We reaffirm our deep conviction that friendly relations among our peoples, as well as peace, justice, stability and democracy, require that the ethnic, cultural, linguistic and religious identity of national minorities be protected and conditions for the promotion of that identity be created. We declare that questions related to national minorities can only be satisfactorily resolved in a democratic political framework. We further acknowledge that the rights of persons belonging to national minorities must be fully respected as part of universal human rights....

We express our determination to combat all forms of racial and ethnic hatred, anti-semitism, xenophobia and discrimination against anyone as well as persecution on religious and ideological grounds.

In accordance with our CSCE commitments, we stress that free movement and contacts among our citizens as well as the free flow of

information and ideas are crucial for the maintenance and development of free societies and flourishing cultures. We welcome increased tourism and visits among our countries.

Migrant Workers

We recognize that the issues of migrant workers and their families legally residing in host countries have economic, cultural and social aspects as well as their human dimension. We reaffirm that the protection and promotion of their rights, as well as the implementation of relevant international obligations, is our common concern.

Non-governmental Organizations

We recall the major role that non-governmental organizations, religious and other groups and individuals have played in the achievement of the objectives of the CSCE and will further facilitate their activities for the implementation of the CSCE commitments by the participating States. These organizations, groups and individuals must be involved in an appropriate way in the activities and new structures of the CSCE in order to fulfill their important tasks.

Report of the CSCE Meeting of Experts on National Minorities, Geneva, 1991

Geneva, July 19, 1991

The participating States will create conditions for persons belonging to national minorities to have equal opportunity to be effectively involved in the public life, economic activities, and building of their societies.

In accordance with Paragraph 31 of the Copenhagen Document, the participating States will take the necessary measures to prevent discrimination against individuals, particularly in respect of employment, housing and education, on the grounds of belonging or not belonging to a national minority. In that context, they will make provision, if they have not yet done so, for effective recourse to redress for individuals who have experienced discriminatory treatment on the grounds of their belonging or not belonging to a national minority, including by making available to individual victims of discrimination a broad array of administrative and judicial remedies.

The participating States are convinced that the preservation of the values and of the cultural heritage of national minorities requires the involvement of persons belonging to such minorities and that tolerance

and respect for different cultures are of paramount importance in this regard. Accordingly, they confirm the importance of refraining from hindering the production of cultural materials concerning national minorities, including by persons belonging to them.

The participating States affirm that persons belonging to a national minority will enjoy the same rights and have the same duties of citizenship as the rest of the population.

The participating States reconfirm the importance of adopting, where necessary, special measures for the purpose of ensuring to persons belonging to national minorities full equality with other citizens in the exercise and enjoyment of human rights and fundamental freedoms. They further recall the need to take the necessary measures to protect the ethnic, cultural, linguistic and religious identity of national minorities on their territory and create conditions for the promotion of that identity; any such measures will be in conformity with the principles of equality and non-discrimination with respect to the other citizens of the participating states concerned.

They recognize that such measures, which take into account, inter alia, historical and territorial circumstances of national minorities, are particularly important in areas where democratic institutions are being consolidated and national minorities issues are of special concern.

Aware of the diversity and varying constitutional systems among them, which make no single approach necessarily generally applicable, the participating States note with interest that positive results have been obtained by some of them in an appropriate democratic manner by, inter alia:

- advisory and decision-making bodies in which minorities are represented, in particular with regard to education, culture and religion;
- elected bodies and assemblies of national minority affairs;
- local and autonomous administration, as well as autonomy on a territorial basis, including the exercise of consultative, legislative and executive bodies chosen through free and periodic elections;
- self administration by a national minority of aspects concerning its identity in situations where autonomy on a territorial basis does not apply;
- decentralized or local forms of government;
- bilateral and multilateral agreements and other arrangements regarding national minorities;
- for persons belonging to national minorities, provision of adequate

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- types and levels of education in their mother tongue with due regard to the number, geographic settlement patterns and cultural traditions of national minorities;
- funding the teaching of minority languages to the general public, as well as the inclusion of minority languages in teacher-training institutions, in particular in regions inhabited by persons belonging to national minorities;
 - in cases where instruction in a particular subject is not provided in their territory in the minority language at all levels, taking the necessary measures to find means of recognizing diplomas issued abroad for a course of study completed in that language;
 - creation of government research agencies to review legislation and disseminate information related to equal rights and non-discrimination;
 - provision of financial and technical assistance to persons belonging to national minorities who so wish to exercise their right to establish and maintain their own educational, cultural and religious institutions, organizations and associations;
 - governmental assistance for addressing local difficulties relating to discriminatory practices (e.g. a citizens' relations service);
 - encouragement of grassroots community relations efforts between minority communities, between majority and minority communities, and between neighboring communities sharing borders, aimed at helping to prevent local tensions from arising and address conflicts peacefully should they arise; and
 - encouragement of the establishment of permanent mixed commissions, either inter-state or regional, to facilitate continuing dialogue between the border regions concerned.

The participating States are of the view that these or other approaches, individually or in combination, could be helpful in improving the situation of national minorities on their territories.

V.

The participating States respect the right of persons belonging to national minorities to exercise and enjoy their rights alone or in community with others, to establish and maintain organizations and associations within their country, and to participate in international non-governmental organizations.

The participating States reaffirm, and will not hinder the exercise of, the right of persons belonging to national minorities to establish and maintain their own educational, cultural and religious institutions, organizations and associations.

In this regard, they recognize the major and vital role that individuals, non-governmental organizations, and religious and other groups play in fostering cross-cultural understanding and improving relations at all levels of society, as well as across international frontiers.

They believe that the first-hand observations of such organizations and individuals can be of a great value in promoting the implementation of CSCE commitments relating to persons belonging to national minorities. They therefore will encourage and not hinder the work of such organizations, groups and individuals and welcome their contributions in this area.

VI.

The participating States, concerned by the proliferation of acts of racial, ethnic and religious hatred, anti-semitism, xenophobia and discrimination, stress their determination to condemn, on a continuing basis, such acts against anyone.

In this context, they reaffirm their recognition of the particular problems of Roma (gypsies). They are ready to undertake effective measures in order to achieve full equality of opportunity between persons belonging to Roma ordinarily resident in their State and the rest of the resident population. They will also encourage research and studies regarding Roma and the particular problems they face.

They will take effective measures to promote tolerance, understanding, equality of opportunity and good relations between individuals of different origins within their country.

Further, the participating States will take effective measures, including the adoption, in conformity with their constitutional law and their international obligations, if they have not already done so, of laws that would prohibit acts that constitute incitement to violence based on national, racial, ethnic or religious discrimination, hostility or hatred, including anti-semitism, and policies to enforce such laws.

Moreover, in order to heighten public awareness of prejudice and hatred, to improve enforcement of laws against hate-related crime and otherwise to further efforts to address hatred and prejudice in society, they will make efforts to collect, publish on a regular basis, and make available to the public, data about crimes on their respective territories that are based on prejudice as to race, ethnic identity or religion, including the guidelines used for the collection of such data. These data should not contain any personal information.

They will consult and exchange views and information at the international level, including at future meetings of the CSCE, on crimes that manifest evidence of prejudice and hate.

VII.

Convinced that the protection of the rights of persons belonging to national minorities necessitates the free flow of information and exchange of ideas, the participating states emphasize the importance of communication between persons belonging to national minorities without interference by public authorities and regardless of frontiers. The exercise of such rights may be subject only to such restrictions as are prescribed by law and are consistent with international standards. They reaffirm that no one belonging to a national minority, simply by virtue of belonging to such a minority, will be subject to penal or administrative sanctions for having contacts within or outside his/her own country.

In access to the media, they will not discriminate against anyone based on ethnic, cultural, linguistic or religious grounds. They will make information available that will assist the electronic mass media in taking into account in their programs, the ethnic, cultural, linguistic and religious identity of national minorities.

They reaffirm that establishment and maintenance of unimpeded contacts among persons belonging to a national minority, as well as contacts across frontiers by persons belonging to a national minority with persons with whom they share a common ethnic or national origin, cultural heritage or religious belief, contributes to mutual understanding and promotes good neighborly relations.

They therefore encourage transfrontier cooperation arrangements on a national, regional and local level, inter alia, on local border crossings, the preservation of and visits to cultural and historical monuments and sites, tourism, the improvement of traffic, the economy, youth exchange, the protection of the environment and the establishment of regional commissions.

Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, 1991

Moscow, October 3, 1991

The participating States emphasize that issues relating to human rights, fundamental freedoms, democracy and the rule of law are of international concern, as respect for these rights and freedoms constitutes one of the

foundations of the international order. They categorically and irrevocably declare that the commitments undertaken in the field of the human dimension of the CSCE are matters of direct and legitimate concern to all participating States and do not belong exclusively to the internal affairs of the State concerned. They express their determination to fulfill all of their human dimension commitments and to resolve by peaceful means any related issue, individually and collectively, on the basis of mutual respect and cooperation. In this context they recognize that the active involvement of persons, groups, organizations and institutions is essential to ensure continuing progress in this direction.

The participating States express their collective determination to further safeguard human rights and fundamental freedoms and to consolidate democratic advances in their territories. They also recognize a compelling need to increase CSCE's effectiveness in addressing human rights concerns that arise in their territories at this time of profound change in Europe.

(The following section describes ways to strengthen and expand the human dimension mechanism by preparing a resource list of experts who may be called upon to address or contribute to the resolution of questions relating to the human dimension of the CSCE through providing fact-finding, mediation, or advisory services, ed.)

(18) The participating States recall their commitment to the rule of law in the Document of the Copenhagen Meeting and affirm their dedication to supporting and advancing those principles of justice which form the basis of the rule of law. In particular, they again reaffirm that democracy is an inherent element in the rule of law and that pluralism is important in regard to political organizations.

(18.1) – Legislation will be formulated and adopted as a result of an open process reflecting the will of the people, either directly or through their elected representatives.

(18.2) – Everyone will have an effective means of redress against administrative decision, so as to guarantee respect for fundamental rights and ensure legal integrity.

(18.3) – To the same end, there will be effective means of redress against administrative regulations for individuals affected thereby.

(18.4) – The participating States will endeavor to provide for judicial review of such regulations and decisions.

(19) The participating States:

(19.1) – will respect the internationally recognized standards that relate

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- to the independence of judges and legal practitioners and the impartial operation of the public judicial service including, inter alia, the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights;
- (19.2) – will, in implementing the relevant standards and commitments, ensure that the independence of the judiciary is guaranteed and enshrined in the constitution or the law of the country and is respected in practice, paying particular attention to the Basic Principles on the Independence of the Judiciary, which, inter alia, provide for:
- (i) prohibiting improper influence on judges;
 - (ii) preventing revision of judicial decisions by administrative authorities, except for the rights of the competent authorities to mitigate or commute sentences imposed by judges, in conformity with the law;
 - (iii) protecting the judiciary’s freedom of expression and association, subject only to such restrictions as are consistent with its functions;
 - (iv) ensuring that judges are properly qualified, trained and selected on a nondiscriminatory basis;
 - (v) guaranteeing tenure and appropriate conditions of service, including on the matter of promoting judges, where applicable;
 - (vi) respecting conditions of immunity;
 - (vii) ensuring that the disciplining, suspension and removal of judges are determined according to law.
- (20) For the promotion of the independence of the judiciary, the participating States will:
- (20.1) – recognize the important function national and international associations of judges and lawyers can perform in strengthening respect for the independence of their members and in providing education and training on the role of the judiciary and the legal profession in society;
 - (20.2) – promote and facilitate dialogue, exchanges and cooperation among national associations and other groups interested in ensuring respect for the independence of the judiciary and the protection of lawyers;
 - (20.3) – cooperate among themselves through, inter alia, dialogue, contacts and exchanges in order to identify where problem areas exist concerning the protection of the independence of judges and legal practitioners and to develop ways and means to address and resolve such problems;

(20.4) – cooperate on an ongoing basis in such areas as the education and training of judges and legal practitioners, as well as the preparation and enactment of legislation intended to strengthen respect for their independence and the impartial operation of the public judicial service.

(21) The participating States will:

(21.1) – take all necessary measures to ensure that law enforcement personnel, when enforcing public order, will act in the public interest, respond to a specific need and pursue a legitimate aim, as well as use ways and means commensurate with the circumstances, which will not exceed the needs of enforcement;

(21.2) – ensure that law enforcement acts are subject to judicial control, that law enforcement personnel are held accountable for such acts, and that due compensation may be sought, according to domestic law, by the victims of the acts found to be in violation of the above commitments.

(22) The participating States will take appropriate measures to ensure that education and information regarding the prohibition of excess force by law enforcement personnel as well as relevant international and domestic codes of conduct are included in the training of such personnel.

(23) The participating States will treat all persons deprived of their liberty with humanity and with respect for the inherent dignity of the human person and will respect the internationally recognized standards that relate to the administration of justice and the human rights of detainees.

(23.1) – The participating States will ensure that:

- (i) no one will be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law;
- (ii) anyone who is arrested will be informed promptly in a language which he understands of the reason for his arrest, and will be informed of any charges against him;
- (iii) any person who has been deprived of his liberty will be promptly informed about his rights according to domestic law;
- (iv) any person arrested or detained will have the right to be brought promptly before a judge or other officer

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- authorized by law to determine the lawfulness of his arrest or detention, and will be released without delay if it is unlawful;
- (v) anyone charged with a criminal offense will have the right 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;
 - (vi) any person arrested or detained will have the right, without undue delay, to notify or to require the competent authority to notify appropriate persons of his choice of his arrest, detention, imprisonment and whereabouts; any restriction in the exercise of this right will be prescribed by law and in accordance with international standards;
 - (vii) effective measures will be adopted, if this has not already been done, to provide that law enforcement bodies do not take undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him to confess, or otherwise incriminate himself, or to force him to testify against any other person;
 - (ix) a detained person or his counsel will have the right to make a request or complaint regarding his treatment, in particular when torture or other cruel, inhuman or degrading treatment has been applied, to the authorities responsible for the administration of the place of detention and to higher authorities, and when necessary, to appropriate authorities vested with reviewing or remedial power;
 - (x) such request or complaint will be promptly dealt with and replied to without undue delay; if the request is rejected or in case of inordinate delay, the complainant will be entitled to bring it before a juridical or other authority; neither the detained or imprisoned person nor any complainant will suffer prejudice for making a request or complaint.
 - (xi) anyone who has been the victim of an unlawful arrest or detention will have a legally enforceable right to seek compensation.

(23.2) – The participating States will:

- (i) endeavor to take measures, as necessary, to improve the conditions of individuals in detention or imprisonment;

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- (ii) pay particular attention to the question of alternatives to imprisonment.
- (24) The participating States reconfirm the right to the protection of private and family life, correspondence and electronic communications. In order to avoid any improper or arbitrary intrusion by the State in the realm of the individual, which would be harmful to any democratic society, the exercise of this right will be subject only to such restrictions as are prescribed by law and are consistent with internationally recognized human rights standards. In particular, the participating States will ensure that searches and seizures of persons and private premises and property will take place only in accordance with standards that are judicially enforceable.
- (25) The participating States will:
- (25.1) – ensure that their military and paramilitary forces, internal security and intelligence services, and the police are subject to the effective direction and control of the appropriate civil authorities;
 - (25.2) – maintain and, where necessary, strengthen executive control over the use of military and paramilitary forces as well as the activities of the internal security and intelligence services and the police;
 - (25.3) – take appropriate steps to create, wherever they do not already exist, and maintain effective arrangements for legislative supervision of all such forces, services and activities.
- (26) The participating States reaffirm the right to freedom of expression, including the right to communication and the right of the media to collect, report and disseminate information, news and opinions. Any restriction in the exercise of this right will be prescribed by law and in accordance with international standards. They further recognize that independent media are essential to a free and open society and accountable systems of government and are of particular importance in safeguarding human rights and fundamental freedoms.
- (26.1) – They consider that the print and broadcast media in their territory should enjoy unrestricted access to foreign news and information services. The public will enjoy similar freedom to receive and impart information and ideas without interference by public authority regardless of frontiers, including through foreign publications and foreign broadcasts. Any restriction in the exercise of this right will be prescribed by law and in accordance with international standards.

(26.2) – The participating States will not discriminate against independent media with respect to affording access to information, material and facilities.

(27) The participating States:

(27.1) – express their intention to cooperate in the field of constitutional, administrative, commercial, civil and social welfare laws and other relevant areas, in order to develop, particularly in states where they do not yet exist, legal systems based on respect for human rights, the rule of law and democracy.

(27.2) – to this end, envisage the continuation and enhancement of bilateral and multilateral legal and administrative cooperation, inter alia, in the following fields:

- (i) development of an efficient administrative system;
- (ii) assistance in formulating law and regulations;
- (iii) training of administrative and legal staff;
- (iv) exchange of legal works and periodicals.

(28) The participating States consider it important to protect human rights and fundamental freedoms during a state of public emergency, to take into account the relevant provisions of the Document of the Copenhagen Meeting, and to observe the international conventions to which they are parties.

(28.1) – The participating States reaffirm that a state of public emergency is justified only by the most exceptional and grave circumstances, consistent with the State's international obligations and CSCE commitments. A state of public emergency may not be used to subvert the democratic constitutional order, nor aim at the destruction of internationally recognized human rights and fundamental freedoms. If recourse to force cannot be avoided, its use must be reasonable and limited as far as possible.

(28.2) – A state of public emergency may be proclaimed only by a constitutionally lawful body, duly empowered to do so. In cases where the decision to impose a state of public emergency may be lawfully taken by the executive authorities, that decision should be subject to approval in the shortest possible time or to control by the legislature.

(28.3) – The decision to impose a state of public emergency will be proclaimed officially, publicly, and in accordance with provisions laid down by law. The decision will, where possible, lay down territorial limits of a state of public emergency. The State concerned will make available to its citizens information, without

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- delay, about which measures have been taken. The state of public emergency will be lifted as soon as possible and will not remain in force longer than strictly required by the exigencies of the situation.
- (28.4) – A de facto imposition or continuation of a state of public emergency not in accordance with provisions laid down by law is not permissible.
- (28.5) – The participating States will endeavor to ensure that the normal functioning of the legislative bodies will be guaranteed to the highest possible extent during a state of public emergency.
- (28.6) – The participating States confirm that any derogation from obligations relating to human rights and fundamental freedoms during a state of public emergency must remain strictly within the limits provided for by international law, in particular the relevant international instruments by which they are bound, especially with respect to rights from which there can be no derogation.
- (28.7) – The participating States will endeavor to refrain from making derogations from those obligations from which, according to international conventions to which they are parties, derogation is possible under a state of public emergency. Measures derogating from such obligations must be taken in strict conformity with the procedural requirements laid down in those instruments. Such measures will neither go further nor remain in force longer than strictly required by the exigencies of the situation; they are by nature exceptional and should be interpreted and applied with restraint. Such measures will not discriminate solely on the grounds of race, color, sex, language, religion, social origin or of belonging to a minority.
- (28.8) – The participating States will endeavor to ensure that the legal guarantees necessary to uphold the rule of law will remain in force during a state of public emergency. They will endeavor to provide in their law for control over the regulations related to the state of public emergency, as well as the implementation of such regulations.
- (28.9) – The participating States will endeavor to maintain freedom of expression and freedom of information, consistent with their international obligations and commitments, with a view to enabling public discussion on the observance of human rights and fundamental freedoms as well as on the lifting of the state of public emergency. They will, in conformity with international standards regarding the freedom of expression, take no measures aimed at barring journalists from the legitimate exercise of their profession other than those strictly required by the exigencies of the situation.

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- (28.10)– When a state of public emergency is declared or lifted in a participating State, the State concerned will immediately inform the CSCE Institution of this decision, as well as of any derogation made from the State’s international human rights obligations. The Institution will inform the other participating States without delay. (The Council will take the decision on the institution.)
- (30) The participating States suggest that the appropriate CSCE fora consider expanding the functions of the Office for Free Elections to enable it to assist in strengthening democratic institutions within the participating States.
- (31) The participating States acknowledge the extensive experience and expertise of the Council of Europe in the field of human rights. They welcome its contribution to strengthening democracy in Europe, including its readiness to make its experience available to the CSCE.
- (32) The participating States reaffirm their enduring commitment to the principles and provisions of the Final Act, the Vienna Concluding Document, and other relevant CSCE documents in which they undertook, inter alia, to respect human rights and fundamental freedoms and to ensure that they are guaranteed for all without distinction of any kind.
- (33) The participating States will remove all legal and other restrictions with respect to travel within their territories for their own nationals and foreigners, and with respect to residence for those entitled to permanent residence, except those restrictions which may be necessary and officially declared for military, safety, ecological or other legitimate government interests, in accordance with national laws, consistent with CSCE commitments and international human rights obligations. The participating States undertake to keep such restrictions to a minimum.
- (34) The participating States will adopt, where appropriate, all feasible measures to protect journalists engaged in dangerous professional missions, particularly in cases of armed conflict, and will cooperate to that effect. These measures will include tracing missing journalists, ascertaining their fate, providing appropriate assistance and facilitating their return to their families.
- (36) The participating States recall their commitment in the Vienna Concluding Document to keep the question of capital punishment

under consideration and reaffirm their undertakings in the Document of the Copenhagen Meeting to exchange information on the question of the abolition of the death penalty and to make available to the public information regarding the use of the death penalty.

(36.1) They note:

- (i) that the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty entered into force on July 11, 1991;
- (ii) that a number of participating States have recently taken steps towards the abolition of capital punishment;
- (iii) the activities of several non-governmental organizations concerning the question of the death penalty.

(38) The participating States recognize the need to ensure that the rights of migrant workers and their families lawfully residing in the participating States are respected and underline their right to express freely their ethnic, cultural, religious and linguistic characteristics. The exercise of such rights may be subject to such restrictions as are prescribed by law and are consistent with international standards.

(38.1) – They condemn all acts of discrimination on the grounds of race, color and ethnic origin, intolerance and xenophobia against migrant workers. They will, in conformity with domestic law and international obligations, take effective measures to promote tolerance, understanding, equality of opportunity and respect for the fundamental human rights of migrant workers and adopt, if they have not already done so, measures that would prohibit acts that constitute incitement to violence based on national, racial, ethnic or religious discrimination, hostility and hatred.

(38.2) – They will adopt appropriate measures that would enable migrant workers to participate in the life of the society of the participating States;

(38.3) – They note that issues which concern the human dimension of migrant workers residing on their territory could, as any other issue of the human dimension, be raised under the human dimension mechanism.

(39) The participating States will:

(39.1) – increase their preparedness and cooperate fully to enable humanitarian relief operations to be undertaken speedily and effectively;

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- (39.2) – take all necessary steps to facilitate speedy and unhindered access to the affected areas for such relief operations;
- (39.3) – make the necessary arrangements for those relief operations to be carried out.
- (40) The participating States recognize that the full and true equality between men and women is a fundamental aspect of a just and democratic society and the welfare of all its members requires equal opportunity for full and equal participating of men and women. In this context they will:
- (40.1) – ensure that all CSCE commitments relating to the protection and promotion of human rights and fundamental freedoms are applied fully and without discrimination with regard to sex;
- (40.2) – comply with the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), if they are parties, and, if they have not already done so, consider ratifying or acceding to this Convention; States that have ratified or acceded to this Convention with reservations will consider withdrawing them.
- (40.4) – affirm that it is their goal to achieve not only de jure but de facto equality of opportunity between men and women and to promote effective measures to that end;
- (40.5) – establish or strengthen national machinery, as appropriate, for the advancement of women in order to ensure that programs and policies are assessed for their impact on women;
- (40.6) – encourage measures effectively to ensure full economic opportunity for women, including non-discriminatory employment policies and practices, equal access to education and training, and measures to facilitate combining employment with family responsibilities for female and male workers; and will seek to ensure that any structural adjustment policies or programs do not have an adversely discriminatory effect on women;
- (40.7) – seek to eliminate all forms of violence against women, and all forms of traffic in women including by ensuring adequate legal prohibitions against such acts and other appropriate measures;
- (40.8) – encourage and promote equal opportunity for full participation by women in all aspects of political and public life, in decision-making processes and in international cooperation in general;
- (40.9) – recognize the vital role women and women’s organizations play in national and international efforts to promote and enhance women’s rights by providing, inter alia, direct services and support to women and encouraging a meaningful partnership between governments and those organizations for the purpose of advancing equality for women;

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- (40.10)– recognize the rich contribution of women to all aspects of political, cultural, social and economic life and promote a broad understanding of these contributions, including those made in the informal and unpaid sectors;
- (40.11)– take measures to encourage that information regarding women and women’s rights under international and domestic law is easily accessible;
- (40.12)– develop educational policies, consistent with their constitutional systems, to support the participation of women in all areas of study and work, including non-traditional areas, and encourage and promote a greater understanding of issues relating to equality between men and women.
- (41) The participating States decide:
- (41.1) – to ensure protection of the human rights of persons with disabilities;
- (41.2) – to take steps to ensure the equal opportunity of such persons to participate fully in the life of their society;
- (41.5) – to encourage favorable conditions for the access of persons with disabilities to public buildings and services, housing, transport, and cultural and recreational activities.
- (42) The participating States:
- (42.1) – affirm that human rights education is fundamental and that it is therefore essential that their citizens are educated on human rights and fundamental freedoms and the commitment to respect such rights and freedoms in domestic legislation and international instruments to which they may be parties;
- (42.5) – will encourage organizations and educational establishments to cooperate in drawing up and exchanging human rights programs at the national as well as the international level;
- (43) The participating States will recognize as NGOs those which declare themselves as such, according to existing national procedures, and will facilitate the ability of such organizations to conduct their activities freely on their territories; to that effect they will:
- (43.1) – endeavor to seek ways of further strengthening modalities for contacts and exchanges of views between NGOs and relevant national authorities and governmental institutions;
- (43.2) – endeavor to facilitate visits to their countries by NGOs from within any of the participating States in order to observe human dimension conditions;

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- (43.3) – welcome NGO activities, including inter alia, observing compliance with CSCE commitments in the field of the human dimension;
- (43. 4)– allow NGOs, in view of their important function within the human dimension of the CSCE, to convey their views to their own governments and the governments of all the other participating States during the future work of the CSCE on the human dimension.

Concluding Document of Helsinki — The Challenge of Change, the Fourth Follow-Up Meeting, 1992

Helsinki, July 10, 1992

I. THE HELSINKI SUMMIT DECLARATION

Promises and Problems of Change

- (1) We, the Heads of State or Government of the States participating in the Conference on Security and Cooperation in Europe, have returned to the birthplace of the Helsinki process, to give new impetus to our common endeavor.
- (6) We welcome the commitment of all participating States to our shared values. Respect for human rights and fundamental freedoms, including the rights of persons belonging to national minorities, democracy, the rule of law, economic liberty, social justice and environmental responsibility are our common aims. They are immutable. Adherence to our commitments provides the basis for participation and cooperation in the CSCE and a cornerstone for further development of our societies.
- (7) We reaffirm the validity of the guiding principles and common values of the Helsinki Final Act and the Charter of Paris, embodying the responsibilities of States towards each other and of governments towards their people. They are the collective conscience of our community. We recognize our accountability to each other for complying with them. We underline the democratic rights of citizens to demand from their governments respect for these values and standards.
- (8) We emphasize that the commitments undertaken in the field of the human dimension of the CSCE are matters of direct and legitimate concern to all participating States and do not belong exclusively to the internal affairs of the State concerned. The protection and promotion of the human rights and fundamental freedoms and the strengthening of democratic institutions continue to be a vital basis for our comprehensive security.

(12) This is a time of promise but also a time of instability and insecurity. Economic decline, social tension, aggressive nationalism, intolerance, xenophobia and ethnic conflicts threaten stability in the CSCE area. Gross violations of CSCE commitments in the field of human rights and fundamental freedoms, including those related to national minorities, pose a special threat to the peaceful development of society, in particular in new democracies.

There is still much work to be done in building democratic, pluralistic societies, where diversity is fully protected and respected in practice. Consequently, we reject racial, ethnic and religious discrimination in any form. Freedom and tolerance must be taught and practiced.

Helsinki Decisions

(In order to strengthen CSCE institutions and structures, meetings of heads of State or Government were agreed to every two years. Review Conferences will precede the meetings to prepare a decision-oriented document to be adopted at the meeting. The CSCE Council was designated the central decision-making and governing body of the CSCE. Between meetings of the Council a Committee of Senior Officials (CSO) is responsible for the overview, management, and coordination of the organization and will act as the Council's agent in taking appropriate decisions. A series of implementation reviews were established to review the implementation of CSCE commitments by member states.)

High Commissioner of National Minorities

(23) The Council will appoint a High Commissioner on National Minorities. The High Commissioner provides "early warning" and, as appropriate, "early action", at the earliest possible stage in regard to tensions involving national minority issues that have the potential to develop into a conflict within the CSCE area, affecting peace, stability, or relations between participating States. The High Commissioner will draw upon the facilities of the Office for Democratic Institutions and Human Rights (ODIHR) in Warsaw.

Mandate

(2) The High Commissioner will act under the aegis of the CSO and will thus be an instrument of conflict prevention at the earliest possible stage.

(3) The High Commissioner will provide "early warning" and, as appropriate "early action" at the earliest possible stage in regard to tensions involving

national minority issues which have not yet developed beyond an early warning stage, but, in the judgment of the High Commissioner, have the potential to develop into a conflict within the CSCE area, affecting peace, stability or relations between participating States, requiring the attention of and action by the Council or the CSO.

- (4) Within the mandate, based on CSCE principles and commitments, the High Commissioner will work in confidence and will act independently of all parties directly involved in the tensions.
- (5) The High Commissioner will consider national minority issues occurring in the State of which the High Commissioner is a national or a resident, or involving a national minority to which the High Commissioner belongs, only if all parties directly involved agree, including the State concerned.
 - (a) The High Commissioner will not consider national minority issues in situations involving organized acts of terrorism.
 - (b) Nor will the High Commissioner consider violations of CSCE commitments with regard to an individual person belonging to a national minority.
- (6) In considering a situation, the High Commissioner will take fully into account the availability of democratic means and international instruments to respond to it, and their utilization by the parties involved.
- (7) When a particular national minority issue has been brought to the attention of the CSO, the involvement of the High Commissioner will require a request and a specific mandate from the CSO.

Early Warning

- (11) The High Commissioner will:
 - (a) collect and receive information regarding national minority issues from sources described below. (23-25)
 - (b) assess at the earliest possible stage the role of the parties directly concerned, the nature of the tensions and recent developments therein and, where possible, the potential consequences for peace and stability within the CSCE area;
 - (c) to this end, be able to pay a visit, in accordance with paragraph (17) and Supplement paragraphs (27-30), to any participating State and communicate in person, subject to the provisions of

paragraph (25), with parties directly concerned to obtain first-hand information about the situation of national minorities.

- (12) The High Commissioner may during a visit to a participating State, while obtaining first-hand information from all parties directly involved, discuss the question with the parties, and where appropriate promote dialogue, confidence and cooperation.

Provision of Early Warning

- (13) If, on the basis of exchanges of communications and contacts with relevant parties, the High Commissioner concludes that there is a prima facie risk of potential conflict (as set out in Paragraph (3)) he/she may issue an early warning, which will be communicated promptly by the Chairman-in-Office to the CSO.
- (14) The Chairman-in-Office will include this early warning in the agenda for the next meeting of the CSO. If a State believes that such an early warning merits prompt consultation, it may initiate the procedure set out in Annex 2 of the Summary of the Conclusions of the Berlin Meeting of the Council (“Emergency Mechanism”).
- (15) The High Commissioner will explain to the CSO the reasons for issuing the early warning.

Early Action

- (16) The High Commissioner may recommend that he/she be authorized to enter into further contact and closer consultations with the parties concerned with a view to possible solutions, according to a mandate to be decided by the CSO. The CSO may decide accordingly.

Accountability

- (17) The High Commissioner will consult the Chairman-in-Office prior to a departure for a participating State to address a tension involving national minorities. The Chairman-in-Office will consult, in confidence, the participating State(s) concerned and may consult more widely.
- (18) After a visit to a participating State, the High Commissioner will provide strictly confidential reports to the Chairman-in-Office in

the findings and progress of the High Commissioner's involvement in a particular question.

- (19) After termination of the involvement of the High Commissioner in a particular issue, the High Commissioner will report to the Chairman-in-Office on the findings, results and conclusions. Within a period of one month the High Commissioner will report to the Chairman-in-Office on the findings, results and conclusions. Within a period of one month, the Chairman-in-Office will consult in confidence, on the findings, results and conclusions with the participating State(s) concerned and may consult more widely. Thereafter the report, together with possible comments, will be transmitted to the CSO.
- (20) Should the High Commissioner conclude that the situation is escalating into a conflict, or if the High Commissioner deems that the scope for action by the High Commissioner is exhausted, the High Commissioner shall, through the Chairman-in-Office, so inform the CSO.
- (21) Should the CSO become involved in a particular issue, the High Commissioner will provide information and, on request, advice to the CSO, or to any other institution or organization which the CSO may invite, in accordance with the provisions of Chapter III of this document, to take action with regard to the tensions or conflict.
- (22) The High Commissioner, if so requested by the CSO and with due regard to the requirement of confidentiality in his/her mandate, will provide information about his/her activities at CSCE implementation meetings on Human Dimension issues.

Sources of Information about National Minority Issues

- (23) The High Commissioner may:
 - (a) collect and receive information regarding the situation of national minorities and the role of parties involved therein from any source, including the media and non-governmental organizations with the exception referred to in Paragraph (25);
 - (b) receive specific reports from parties directly involved regarding developments concerning national minority issues. These may include reports on violations of CSCE commitments with respect to national minorities as well as other violations in the context of national minority issues.

Parties Directly Concerned

- (26) Parties directly concerned in tensions who can provide specific reports to the High Commissioner and with whom the High Commissioner will seek to communicate in person during a visit to a participating State are the following:
- (a) governments of participating States, including, if appropriate, regional and local authorities in areas in which national minorities reside;
 - (b) representatives of associations, non-governmental organizations, religious and other groups of national minorities directly concerned and in the area of tension, which are authorized by the persons belonging to those national minorities to represent them.

VI. THE HUMAN DIMENSION

- (2) The participating States express their strong determination to ensure full respect for human rights and fundamental freedoms, to abide by the rule of law, to promote the principles of democracy and, in this regard, to build, strengthen and protect democratic institutions, as well as to promote tolerance throughout society. To these ends, they will broaden the operational framework of the CSCE, including by further enhancing the ODIHR, so that information, ideas, and concerns can be exchanged in a more concrete and meaningful way, including as an early warning of tension and potential conflict. In doing so, they will focus their attention on topics in the Human Dimension of particular importance. They will therefore keep the strengthening of the Human Dimension under constant consideration, especially in a time of change.

(The next section establishes the ODIHR as the main institution for realizing Human Dimension initiatives, including serving as a venue for bilateral meetings, being a channel of information on the Human Dimension Mechanism, and conducting seminars and other activities aimed at building democratic institutions.)

Enhanced Commitments and Cooperation in the Human Dimension

The participating States:

- (23) Reaffirm in the strongest terms their determination to implement in a prompt and faithful manner all their CSCE commitments, including those contained in the Vienna Concluding Document,

the Copenhagen Document and the Geneva Report, regarding questions relating to national minorities and rights of persons belonging to them;

- (24) Will intensify in this context their efforts to ensure free exercise by persons belonging to national minorities, individually or in community with others, of their human rights and fundamental freedoms, including the right to participate fully, in accordance with the democratic decision-making procedures of each State, in the political, economic, social and cultural life of their countries including through democratic participation in decision-making and consultative bodies at the national, regional and local level, inter alia, through political parties and associations;
- (25) Will continue through unilateral, bilateral and multilateral efforts to explore further avenues for more effective implementation of their relevant CSCE commitments, including those related to the protection and the creation of conditions for the promotion of the ethnic, cultural, linguistic and religious identity of national minorities;
- (26) Will address national minority issues in a constructive manner, by peaceful means and through dialogue among all parties concerned on the basis of CSCE principles and commitments;
- (27) Will refrain from resettling and condemn all attempts, by threat or use of force, to resettle persons with the aim of changing the ethnic composition of areas within their territories.

Indigenous Populations

The participating States:

- (29) Noting that persons belonging to indigenous populations may have special problems in exercising their rights, agree that their CSCE commitments regarding human rights and fundamental freedoms apply fully and without discrimination to such persons.

Tolerance and Non-discrimination

The participating States:

- (30) Express their concern over recent and flagrant manifestations of intolerance, discrimination, aggressive nationalism, xenophobia,

anti-semitism and racism and stress the vital role of tolerance, understanding and cooperation in the achievement and preservation of stable democratic societies;

- (32) Will consider adhering to the International Convention on the Elimination of All Forms of Racial Discrimination, if they have not already done so;
- (33) Will consider taking appropriate measures within their constitutional framework and in conformity with their international obligations to assure to everyone on their territory protection against discrimination on racial, ethnic and religious grounds, as well as to protect all individuals, including foreigners, against acts of violence, including on any of these grounds. Moreover, they will make full use of their domestic legal processes, including enforcement of existing laws in this regard;
- (34) Will consider developing programs to create the conditions for promoting non-discrimination and cross-cultural understanding which will focus on human rights education, grass-roots action, cross-cultural training and research;
- (35) Reaffirm, in this context, the need to develop appropriate programs addressing problems of their respective nationals belonging to Roma and other groups traditionally identified as Gypsies and to create conditions for them to have equal opportunities to participate fully in the life of society, and will consider how to cooperate to this end.

Migrant Workers

The Participating States:

- (36) Restate that human rights and fundamental freedoms are universal, that they are also enjoyed by migrant workers wherever they live and stress the importance of implementing all CSCE commitments on migrant workers and their families lawfully residing in the participating States;
- (37) Will encourage the creation of conditions to foster greater harmony in relations between migrant workers and the rest of society of the participating State in which they lawfully reside. To this end, they will seek to offer, inter alia, measures to facilitate the familiarization of migrant workers and their families with the languages and social life of the respective participating State in which they lawfully reside so as to enable them to participate in the life of the society of the host country;

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- (38) Will, in accordance with their domestic policies, laws and international obligations seek, as appropriate, to create the conditions for promoting equality of opportunity in respect of working conditions, education, social security and health services, housing, access to trade unions as well as cultural rights for lawfully residing and working migrant workers.

Refugee and Displaced Persons

The participating States:

- (39) Express their concern over the problem of refugees and displaced persons;
- (40) Emphasize the importance of preventing situations that may result in mass flows of refugees and displaced persons and stress the need to identify and address the root causes of displacement and involuntary migration;
- (41) Recognize the need for international cooperation in dealing with mass flows of refugees and displaced persons;
- (42) Recognize that displacement is often a result of violations of CSCE commitments, including those relating to the Human Dimension;
- (43) Reaffirm the importance of existing internal standards and instruments related to the protection of and assistance to refugees and will consider acceding to the Convention relating to the Status of Refugees and the Protocol, if they have not already done so;
- (44) Recognize the importance of the United Nations High Commissioner for Refugees and the International Committee of the Red Cross, as well as of non-governmental organizations involved in relief work, for the protection of and assistance to refugees and displaced persons;
- (45) Welcome and support unilateral, bilateral and multilateral efforts to ensure protection of and assistance to refugees and displaced persons with the aim of finding durable solutions.

International Humanitarian Law

The participating States:

- (47) Recall that international humanitarian law is based upon the inherent dignity of the human person;

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- (48) Will in all circumstances respect and ensure respect for international humanitarian law including the protection of the civilian population;
 - (49) Recall that those who violate international humanitarian law are held personally accountable;
 - (50) Acknowledge the essential role of the International Committee of the Red Cross in promoting the implementation and development of international humanitarian law, including the Geneva Conventions and their relevant Protocols.

Democracy at a Local and Regional Level

The participating States:

- (53) Will endeavor, in order to strengthen democratic participation and institution building and in developing cooperation among them, to share their respective experience on the functioning of democracy at a local and regional level, and welcome against this background the Council of Europe information and education network in this field;

Nationality

The participating States:

- (55) Recognize that everyone has the right to a nationality and that no one should be deprived of his/her nationality arbitrarily;
- (56) Underline that all aspects of nationality will be governed by process of law. They will, as appropriate, take measures, consistent with their constitutional framework not to increase statelessness;
- (57) Will continue within the CSCE the discussion on these issues.

Capital Punishment

The participating States:

- (58) Confirm their commitments in the Copenhagen and Moscow Documents concerning the question of capital punishment.

COUNCIL OF EUROPE

Convention for the Protection of Human Rights and Fundamental Freedoms, 1950, plus protocols

Rome, November 4, 1950; entered into force on September 3, 1953

Section I

Article 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 defense 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.

Article 3

1. No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Article 4

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labor.
3. For purpose of this article the term "forced or compulsory labor" 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;

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- 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.

Article 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 fulfillment 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 offense or when it is reasonably considered necessary to prevent his committing an offense or fleeing after having done so.
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.

Article 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 offense shall be presumed innocent until proved guilty according to law.
3. Everyone charged with a criminal offense 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 defense; (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.

Article 7

1. No one shall be held guilty of any criminal offense on account of any act or omission which did not constitute a criminal offense 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 offense was committed.

Article 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.

Article 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 in 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.

Article 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.

Article 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 prevention 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.

Article 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.

Article 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.

Article 14

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Article 15 allows derogation from these commitments in times of war or other public emergency. The Secretary General of the Council of Europe must be kept fully informed of the measures which have been taken and the reasons for them.

Section II

Article 19, establishes the European Commission of Human Rights and the European Court of Human Rights, described elsewhere.

Section III

Article 26 notes “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 after the date on which the final decision was taken.”

Article 27 says the Commission shall not deal with any petition submitted anonymously, or which has already been examined by the Commission or has already been submitted to another international investigation, or settlement, or which the Commission believes constitutes an abuse of the right of petition.

Articles 20-37, describe the Commission's functioning. (Discussed below.)

Section IV

Articles 38-56, describe the Court's functioning. (Discussed below.)

Protocols

Protocol 1 (1952, entered into force in 1954) deals with rights to property, education, and free elections. *Article 1* states "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law." *Article 2* states "No person shall be denied the right to education." *Article 3* calls for "free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature."

Protocol 2 (1963, entered into force in 1970) gives the European Court of Human Rights competence to give advisory opinions.

Protocol 4 (1963, entered into force in 1968) states in *Article 1* "No one shall be deprived of his liberty merely on the ground of inability to fulfill a contractual obligation." *Article 2* allows everyone "1. the liberty of movement and freedom to choose his residence" and 2. "the liberty to leave any country, including his own." *Article 3.1.* states that "no one shall be expelled by means either of an individual or of a collective measure, from the territory of the State of which he is a national" and *Article 4* states "Collective expulsion of aliens is prohibited."

Protocol 6 (1983, entered into force in 1985) concerns abolition of the death penalty. It notes a "general tendency in favor of abolition of the death penalty" and in *Article 1* states "The death penalty shall be abolished. No one shall be condemned to such penalty or executed."

Article 2 states "A State may make provision in its law for the death penalty in respect of acts committed in time of war or of imminent threat of war; such penalty shall be applied only in the instances laid down in the law and in accordance with its provisions. The State shall communicate to the Secretary General of the Council of Europe the relevant provisions of that law."

Protocol 7 (1984, entered into force in 1988) states in *Article 1* "An alien lawfully resident in the territory of a State shall not be expelled therefrom

except in pursuance of a decision reached in accordance with law and shall be allowed:

- (a) to submit reasons against his expulsion;
- (b) to have his case reviewed; and
- (c) to be represented for these purposes before the competent authority or a person or persons designated by that authority.”

Article 2.1 states “Everyone convicted of a criminal offense by a tribunal shall have the right to have his conviction or sentence reviewed by a higher tribunal. The exercise of this right, including the grounds on which it may be exercised, shall be governed by law.”

Article 4 states “1. No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for which he has already been fully acquitted or convicted in accordance with the law and penal procedure of that State.”

Article 5 states “Spouses shall enjoy equality of rights and responsibilities of a private law character between them, and in their relations with their children, as to marriage, during marriage and in the event of its dissolution. This article shall not prevent States from taking such measures as are necessary in the interests of the children.”

European Social Charter, 1961, plus protocols and revised charter

The Charter was signed at Turin, Italy, on October 18, 1961, and entered into force on February 26, 1965

It notes that member States have established political rights and freedoms in the European Convention for the Protection of Human Rights and now are establishing a set of social rights. The Charter states:

“Considering that the enjoyment of social rights should be secured without discrimination on grounds of race, color, sex, religion, political opinion, national extraction or social origin” the governments agree that:

1. Everyone shall have the opportunity to earn his living in an occupation freely entered upon.
2. All workers have the right to just conditions of work.
3. All workers have the right to safe and healthy working conditions.

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4. All workers have the right to a fair remuneration sufficient for a decent standard of living for themselves and their families.
 5. All workers and employers have the right to freedom of association in national or international organizations for the protection of their economic and social interests.
 6. All workers and employers have the right to bargain collectively.
 7. Children and young persons have the right to a special protection against the physical and moral hazards to which they are exposed.
 8. Employed women, in case of maternity, and other employed women as appropriate, have the right to a special protection in their work.
 9. Everyone has the right to appropriate facilities for vocational guidance with a view to helping him choose an occupation suited to his personal aptitude and interests.
 10. Everyone has the right to appropriate facilities for vocational training.
 11. Everyone has the right to benefit from any measures enabling him to enjoy the highest possible standard of health attainable.
 12. All workers and their dependents have the right to social security.
 13. Anyone without adequate resources has the right to social and medical assistance.
 14. Everyone has the right to benefit from social welfare services.
 15. Disabled persons have the right to vocational training, rehabilitation and resettlement, whatever the origin and nature of their disability.
 16. The family as a fundamental unit of society has the right to appropriate social, legal and economic protection to ensure its full development.
 17. Mothers and children, irrespective of marital status and family relations, have the right to appropriate social and economic protection.
 18. The nationals of any one of the Contracting Parties have the right to engage in any gainful occupation in the territory of any one of the others on a footing of equality with the nationals of the latter, subject to restrictions based on cogent economic or social reasons.

19. Migrant workers who are nationals of a Contracting Party and their families have the right to protection and assistance in the territory of any other Contracting Party.

An Additional Protocol to the European Social Charter signed in Strasbourg on May 5, 1988 and entered into force in 1992 contains: Right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex; Right to information and consultation (for workers); Right to take part in the determination and improvement of the working conditions and working environment; Right of elderly persons to social protection.

Contracting Parties are required to submit reports on the application of the Charter. This international supervision procedure was amended by a Protocol adopted in 1991 and has already been partially implemented following a decision by the Committee of Ministers asking the supervisory bodies to apply it as far as possible before entry into force.

The Additional Protocol providing for a system of collective complaints, adopted by the Committee of Ministers in 1995, will enter into force after ratification by five member States of the Council of Europe. Its aim is to increase the efficiency of the supervisory machinery of the Social Charter, by providing that in addition to the current procedure of examination of governmental reports, collective complaints alleging violations of the Charter may be dealt with.

The European Social Charter has been revised in order to update and extend its scope to new categories of rights. The revised Charter, adopted by the Committee of Ministers in 1996, will enter into force after three ratifications. The main innovations include:

- strengthening equality between women and men,
- the right of disabled persons to individual social integration, personal independence and participation in the life of the community,
- strengthening the right of children and young persons to social, legal and economic protection,
- the right to protection in cases of dismissal,
- the right to dignity at work,
- the right of workers with family responsibilities to equal opportunities and equal treatment,
- the right to protection against poverty and social exclusion,
- the right to adequate housing,
- a widening ban on discrimination.

Resolution of the Parliamentary Assembly on the Declaration on the Police, 1979

Resolution 690 (1979) of the Parliamentary Assembly on the Declaration on the Police was adopted by the Parliamentary Assembly on May 8, 1979

This important statement should be read in conjunction with UN Code of Conduct for Law Enforcement Officials, 1979, and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, 1990.

This Assembly document states (Appendix A):

1. A police officer shall fulfill the duties the law imposes upon him by protecting his fellow citizens and the community against violent, predatory and other harmful acts, as defined by law.
2. A police officer shall act with integrity, impartiality and dignity. In particular he shall refrain from and vigorously oppose all acts of corruption.
3. Summary executions, torture and other forms of inhuman or degrading treatment or punishment remain prohibited in all circumstances. A police officer is under obligation to disobey or disregard any order or instruction involving such measures.
4. A police officer shall carry out orders properly issued by his hierarchical superior, but he shall refrain from carrying out any order he knows, or ought to know, is unlawful.
5. A police officer must oppose violations of the law. If immediate or irreparable and serious harm should result from permitting the violation to take place he shall take immediate action, to the best of his ability.
6. If no immediate or irreparable and serious harm is threatened, he must endeavor to avert the consequences of this violation, or its repetition, by reporting the matter to his superiors. If no results are obtained in that way he may report to higher authority.
7. No criminal or disciplinary action shall be taken against a police officer who has refused to carry out an unlawful order.
8. A police officer shall not cooperate in the tracing, arresting, guarding or conveying of persons who, while not being suspected of having committed an illegal act, are searched for, detained or prosecuted because of their race, religion or political belief.

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9. A police officer shall be personally liable for his own acts and for acts of commission or omission he has ordered and which are unlawful.
 10. There shall be a clear chain of command. It should always be possible to determine which superior may be ultimately responsible for acts or omissions of a police officer.

Additional articles state (12) “police may never use more force than is reasonable.” (13) Police should “receive clear and precise instructions” on the use of arms. (14) Police should assist persons in custody in obtaining needed medical attention.

Section B. on the status of police calls for proper professional training, material conditions allowing police to properly perform their duties, fair remuneration, the choice of whether to set up and join professional organizations, and (Article 11) “The rights of a police officer before courts or tribunals shall be the same as those of any other citizen.”

*Recommendation of the Committee of Ministers
to Member States Concerning Custody Pending
Trial, 1980*

Adopted by the Committee of Ministers on June 27, 1980

I. General principles

1. Being presumed innocent until proved guilty, no person charged with an offense shall be placed in custody pending trial unless the circumstances make it strictly necessary. Custody pending trial shall therefore be regarded as an exceptional measure and it shall never be compulsory nor be used for punitive reasons.

II. Principles applicable to decisions on custody pending trial

2. A person charged with an offense and deprived of his liberty shall be brought promptly before a judge or other person authorized by law to exercise judicial power.
When the person concerned is brought before the judicial authority, the decision concerning custody shall be taken without delay.
3. Custody pending trial may be ordered only if there is reasonable suspicion that the person concerned has committed the alleged offense, and if there are substantial reasons for believing that one or more of the following grounds exist:

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- danger of his absconding,
 - danger of his interfering with the course of justice,
 - danger of his committing a serious offense.

5. In considering whether custody should be ordered, the judicial authority shall have regard to the circumstances of the individual case, and in particular to such of the following factors as may be relevant:
- the nature and seriousness of the alleged offense,
 - the strength of the evidence of the person concerned having committed the offense,
 - the penalty likely to be incurred in the event of conviction,
 - the character, antecedents and personal and social circumstances of the person concerned, and in particular his community ties,
 - the conduct of the person concerned, especially how he has fulfilled any obligations which may have been imposed on him in the course of previous criminal proceedings.

10. The person concerned shall be entitled to be legally represented before the judicial authority on any occasion when the question of custody pending trial arises or is likely to arise.
- If custody pending trial is ordered he shall as soon as practicable be granted legal aid if his means are insufficient.

III. Principles applicable to alternative measures

15. When examining whether custody pending trial can be avoided, the judicial authority shall consider all available alternative measures, which may include the following:
- a promise of the person concerned to appear before the judicial authority as and when required and not to interfere with the course of justice,
 - a requirement to reside at a specified address (e.g. the home, a bail hostel, a specialized institution for young offenders, etc.) under conditions laid down by the judicial authority,
 - a restriction on leaving or entering a specified place or district without authorization,
 - an order to report periodically to certain authorities (e.g. court, police, etc.),
 - surrender of passport or their identification papers,
 - provision of bail or other forms of security by the person concerned, having regard to his means,
 - provision of surety,

– supervision and assistance by an agency nominated by the judicial authority.

Such measures shall be notified in writing and shall be clearly explained to the person concerned, who shall also be warned that he might be taken into custody if he fails to comply with them.

Declaration on Freedom of Expression and Information, 1982

This declaration was adopted by the Committee of Ministers on April 29, 1982

It states (4) “that the freedom of expression and information is necessary for the social, economic, cultural and political development of every human being, and constitutes a condition for the harmonious progress of social and cultural groups, nations and the international community.”

It states (5) “the continued development of information and communication technology should serve to further the right, regardless of frontiers, to express, to seek, to receive and to impart information, whatever their source.”

(6) “States have the duty to guard against infringements of the freedom of expression and information and should adopt policies designed to foster as much as possible a variety of media and a plurality of information sources, thereby allowing a plurality of ideas and opinions.”

The following objectives are set forth for states to follow in the field of information and mass media (II):

- (a) protection of the right of everyone, regardless of frontiers, to express himself, to seek and receive information and ideas, whatever their source, as well as to impart them under the conditions set out in Article 10 of the European Convention on Human Rights;
- (b) absence of censorship or any arbitrary controls or constraints on participants in the information process, on media content or on the transmission and dissemination of information;
- (c) the pursuit of an open information policy in the public sector, including access to information, in order to enhance the individual’s understanding of, and his ability to discuss freely, political, social, economic and cultural matters;
- (d) the existence of a wide variety of independent and autonomous media, permitting the reflection of diversity of ideas and opinions;

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- (e) the availability and access on reasonable terms to adequate facilities for the domestic and international transmission and dissemination of information and ideas;
 - (f) the promotion of international cooperation and assistance, through public and private channels, with a view to fostering the free flow of information and improving communication infrastructures and expertise.

Participants **(III)** resolve to intensify cooperation in order:

- (a) to defend the right of everyone to the exercise of the freedom of expression and information; (b) to promote, through teaching and education, the effective exercise of the freedom of expression and information; (c) to promote the free flow of information (d) to share experience in the media field and (e) to use new information and communication techniques...to broaden the scope of freedom of expression and information.

Recommendation of the Committee of Ministers to Member States on the European Prison Rules, 1987

This Recommendation, No. R (87) 3, was adopted by the Committee of Ministers on February 12, 1987

Part I

The basic principles

1. The deprivation of liberty shall be effected in material and moral conditions which ensure respect for human dignity and are in conformity with these rules.
2. The rules shall be applied impartially. There shall be no discrimination on grounds of race, color, sex, language, religion, political or other opinion, national or social origin, birth, economic or other status. The religious beliefs and moral precepts of the group to which a prisoner belongs shall be respected.
3. The purpose of the treatment of persons in custody shall be such as to sustain their health and self-respect and, so far as the length of sentence permits, to develop their sense of responsibility and encourage those attitudes and skills that will assist them to return to society with the best chance of leading law-abiding and self-supporting lives after their release.

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4. There shall be regular inspections of penal institutions and services by qualified and experienced inspectors appointed by a competent authority. Their task shall be, in particular, to monitor whether and to what extent these institutions are administered in accordance with existing laws and regulations, the objectives of the prison services and the requirements of these rules.
 5. The protection of the individual rights of prisoners with special regard to the legality of the execution of detention measures shall be secured by means of a control carried out, according to national rules, by a judicial authority or other duly constituted body authorized to visit the prisoners and not belonging to the prison administration.

Part II

The management of prison

The allocation and classification of prisoners

- 11.1 In allocating prisoners to different institutions or regimes, due account shall be taken of their judicial and legal situation (untried or convicted prisoner, first offender or habitual offender, short sentence or long sentence), of the special requirements of their treatment, of their medical needs, their sex and age.
 - 11.2 Males and females shall in principle be detained separately, although they may participate together in organized activities as part of an established treatment program.
 - 11.3 In principle, untried prisoners shall be detained separately from convicted prisoners unless they consent to being accommodated or involved together in organized activities beneficial to them.
 - 11.4 Young prisoners shall be detained under conditions which as far as possible protect them from harmful influences and which take account of their needs peculiar to their age.
12. The purpose of classification or re-classification of prisoners shall be:
- a. to separate from others those prisoners who, by reasons of their criminal records or their personality, are likely to benefit from that or who may exercise a bad influence.

Accommodation

- 14.1 Prisoners shall normally be lodged during the night in individual cells except in cases where it is considered that there are

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- advantages in sharing accommodation with other prisoners.
- 14.2 Where accommodation is shared it shall be occupied by prisoners suitable to associate with others in those conditions. There shall be supervision by night, in keeping with the nature of the institution.
15. The accommodation provided for prisoners, and in particular all sleeping accommodation, shall meet the requirements of health and hygiene, due regard being paid to climactic conditions and especially the cubic content of air, a reasonable amount of space, lighting, heat and ventilation.
16. In all places where prisoners are required to live or work:
- a. the windows shall be large enough to enable all prisoners, inter alia, to read or work by natural light in normal conditions. They shall be so constructed that they can allow the entrance of fresh air except where there is an adequate air conditioning system. Moreover, the windows shall, with due regards to security requirements, present in their size, location and construction as normal an appearance as possible;
 - b. artificial light shall satisfy recognized technical standards.
17. The sanitary installations and arrangements for access shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in clean and decent conditions.
18. Adequate bathing and showering installations shall be provided so that every prisoner may be enabled and required to have a bath or shower, at a temperature suitable to the climate, as frequently as necessary for general hygiene according to season and geographic region, but at least once a week. Wherever possible there should be free access at all reasonable times.
19. All parts of an institution shall be properly maintained and kept clean at all times.

(Additional sections deal with personal hygiene, clothing and bedding, food, medical services, discipline and punishment, instruments of restraint, information to, and complaints by, prisoners, contact with the outside world, religious and moral assistance, retention of prisoners' property, notification of death, illness, transfer, etc. and removal of prisoners.)

Recommendation of the Committee of Ministers to Member States Regarding Conscientious Objection to Compulsory Military Service, 1987

This Recommendation, No. R (87) 8, was adopted by the Committee of Ministers on April 9, 1987

It notes “in some member states where conscientious objection to compulsory military service is not yet recognized, specific measures have been taken with a view to improving the situation of individuals concerned.”

It recommends “that the governments of member states, in so far as they have not already done so, bring their national law and practice into line” with the following basic principle:

1. Anyone liable to conscription for military service, who, for compelling reasons of conscience, refuses to be involved in the use of arms, shall have the right to be released from the obligation to perform such service, on the conditions set out hereafter. Such persons may be liable to perform alternative service.

Under alternative service (C.9) “in addition to civilian service, the state may also provide for unarmed military service, assigning to it only those conscientious objectors whose objections are restricted to the personal use of arms.” (10) “Alternative service shall not be of a punitive nature. Its duration shall, in comparison to that of military service, remain within reasonable limits.” (11) “Conscientious objectors performing alternative service shall not have less social and financial rights than persons performing military service. Legislative provisions or regulations or regulations which relate to the taking into account of military service for employment, career or pension purposes shall apply to alternative service.”

European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 1987

This Convention was passed on November 26, 1987 and entered into force on February 1, 1987

It provides a non-judicial mechanism of a preventative character with a view to strengthening, if necessary, the protection of persons deprived of their liberty against torture and inhuman or degrading treatment or punishment.

The Committee set up under the 1987 Convention, which is composed of persons of a variety of backgrounds, is entitled to visit any place where such persons are held by a public authority in order to examine their treatment.

Under the 1987 Convention, the Committee has unlimited access to any place of detention, including the right to move inside such places without restriction. It may interview in private persons deprived of their liberty and communicate freely with any person whom it believes can supply relevant information.

The information gathered by the Committee in relation to a visit, its report and its consultations with the State concerned are confidential, unless the State requests that it be made public.

Cooperation with the competent national authorities is one of the guiding principles recognized by the Convention. Nevertheless, if a country fails to cooperate or refuses to improve the situation in the light of the Committee's recommendations, the Committee may decide to make a public statement.

Declaration on Equality of Women and Men, 1988

Adopted by the Committee of Ministers on November 16, 1988, 83rd Session

The Council of Europe member states,

1. Recalling that equality of women and men is a principle of human rights, upheld as a fundamental right in many international instruments to which they have subscribed and secured by national constitutions and laws:
2. Mindful of their undertaking, by virtue of the Statute of the Council of Europe, to observe such fundamental rights:
3. Convinced that the betterment and progress of humanity absolutely depend on due consideration of the aspirations, interests and talents of both sexes:
4. Observing that in present-day society inequalities between women and men persist *de jure* and *de facto*:
5. Aware that sex-related discrimination in the political, economic, social, educational, cultural, and any other fields constitutes impediments to the recognition, enjoyment and exercise of human rights and fundamental freedoms:

6. Convinced that resolute overall policies should be pursued for the effective achievement of equality between women and men, such policies to involve the authorities, groups and individuals:

I.

Reaffirm their commitment to the principle of equality of women and men, as a *sine qua non* of democracy and an imperative of social justice:

II.

Condemn all forms of sexism, as they have the effect of perpetuating the idea of superiority or inferiority of one of the sexes, and justifying the preponderance or dominance of one over the other:

III.

Deplore the under-utilization of human resources by the community resulting from the persistence of sexist attitudes and behavior patterns:

IV.

Welcome past and present activities aimed at the achievement of equal rights and opportunities for women and men at worldwide, regional and national levels:

V.

Assert their resolve and understanding:

- a. to pursue and develop policies aimed at achieving real equality between women and men in all walks of life;
- b. to continue work in the Council of Europe to further the effective achievement of equality between women and men;
- c. to promote awareness of the imperatives of democracy and human rights in respect of equality of women and men:

VI.

Declare that the strategies to be applied for this purpose must enable women and men to receive equal treatment under the law and equal opportunities to exercise their rights and develop their individual gifts and talents. These strategies should provide for suitable measures — including temporary special measures aimed at accelerating *de facto* equality between women and men — relating to the following in particular:

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- a. protection of individual rights;
 - b. participation in political, economic, social and cultural life;
 - c. access to all levels of the civil service;
 - d. access to education and freedom of choice in education and initial and further vocational training;
 - e. rights of couples;
 - f. eradication of violence in the family and in society;
 - g. rights and duties with regard to children;
 - h. access to all professions, occupational advancement, and remuneration;
 - i. promotion of economic independence;
 - j. access to information;

VII.

Stress the importance for the achievement of the above-mentioned strategies of informing and educating people in a suitable way, and making them realize the injustices and adverse effects of inequalities of rights, treatment and opportunities, together with the need for unrelenting vigilance in order to prevent or remedy any act or form of discrimination founded on sex:

VIII.

Invite the member states not yet having done so to be parties:

- a. to Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms and to the European Social Charter and its additional Protocol;
- b. to the United Nations Convention on the Elimination of All Forms of Discrimination against Women:

and to apply the Nairobi Forward-looking Strategies for the Advancement of Women adopted by the World Conference to Review and Appraise the Achievements of the United Nations Decade for Women: Equality, Development and Peace (Nairobi, Kenya, 15-26 July 1985).

Declaration and Plan of Action on Combating Racism, Xenophobia, Anti-semitism and Intolerance

Adopted by the first summit of chiefs of state and government, October 9, 1993

We, Heads of State and Government of the Council of Europe member states,

Convinced that the diversity of traditions and cultures has for centuries been one of Europe's riches and that the principle of tolerance is the guarantee of the maintenance in Europe of an open society respecting the cultural diversity to which we are attached;

Convinced that to bring about a democratic and pluralist society respecting the equal dignity of all human beings remains one of the prime objectives of European construction;

Alarmed by the present resurgence of racism, xenophobia and anti-semitism, the development of a climate of intolerance, the increase in acts of violence, notably against migrants and people of immigrant origin, and degrading treatment and discriminatory practices accompanying them;

Equally alarmed by the development of aggressive nationalism and ethnocentrism which constitute new expressions of xenophobia;

Concerned at the deterioration of the economic situation, which threatens the cohesion of European societies by generating forms of exclusion likely to foster social tensions and manifestations of xenophobia;

Convinced that these manifestations of intolerance threaten democratic societies and their fundamental values and undermine the foundations of European construction;

Reaffirming the values of solidarity which must inspire all members of society in order to reduce marginalization and social exclusion;

- Condemn in the strongest possible terms racism in all its forms, xenophobia, anti-semitism and intolerance and all forms of religious discrimination;
- Encourage member States to continue efforts already undertaken to eliminate these phenomena, and commit ourselves to strengthening national laws and international instruments and taking appropriate measures at national and European levels;
- Undertake to combat all ideologies, policies and practices constituting an incitement to racial hatred, violence and discrimination, as well as any action or language likely to strengthen fears and tensions between groups from different racial, ethnic, national, religious or social backgrounds;
- Launch an urgent appeal to European peoples, groups and citizens, and young people in particular, that they resolutely engage in combating all forms of intolerance and that they actively participate in the construction of a European society based on common values, characterized by democracy, tolerance and solidarity.

(A five-point Plan of Action follows, including a European Youth Campaign, inviting member States to reinforce legislative guarantees against all forms of discrimination, establish a committee of governmental experts to review member States' legislation and prepare policy recommendations for member States, promote educational programs on human rights and cultural diversity, and request media professionals to report and comment on acts of racism and intolerance factually and responsibly.)

Recommendation of the Committee of Ministers to Member States on the Independence, Efficiency and Role of Judges, 1994

Adopted by the Committee of Ministers on October 13, 1994

Principle I

General principles on the independence of judges

1. All necessary measures should be taken to respect, protect and promote the independence of judges.
2. In particular, the following measures should be taken;
 - a. The independence of judges should be guaranteed pursuant to the provisions of the Convention and constitutional principles, for example by inserting specific provisions in the constitutions or other legislation or incorporating the provisions of this recommendation in internal law. Subject to the legal traditions of each state, such rules may provide, for instance, the following:
 - i. decisions of judges should not be the subject of any revision outside any appeals procedures as provided by law;
 - ii. the terms of office of judges and their remuneration should be guaranteed by law;
 - iii. no organ other than the courts themselves should decide on its own competence, as defined by law;
 - iv. with the exception of decisions on amnesty, pardon...the government or the administration should not be able to take any decision which invalidates judicial decisions retroactively.
 - b. The executive and legislative powers should ensure that judges are independent and that steps are not taken which could endanger the independence of judges.
 - c. All decisions concerning the professional career of judges should be based on objective criteria, and the selection and career of judges

should be based on merit, having regard to qualifications, integrity, ability and efficiency. The authority making the decision on the selection and career of judges should be independent of the government and the administration. In order to safeguard its independence, rules should ensure that, for instance, its members are selected by the judiciary and that the authority decides itself on its procedural rules.

However, where the constitutional or legal provisions and traditions allow judges to be appointed by the government, there should be guarantees to ensure that the procedures to appoint judges are transparent and independent in practice and that the decisions will not be influenced by any reasons other than those related to the objective criteria mentioned above. The guarantees could be, for example, one or more of the following:

- i. a special independent and competent body to give the government advice which it follows in practice; or,
 - ii. the right for an individual to appeal against a decision to an independent authority; or,
 - iii. the authority which makes the decision safeguards against undue or improper influences.
- d. In the decision-making process, judges should be independent and be able to act without any restriction, improper influence, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason. The law should provide for sanctions against persons seeking to influence judges in any such manner. Judges should have unfettered freedom to decide cases impartially, in accordance with their interpretation of the facts, and in pursuance of the prevailing rules of the law. Judges should not be obliged to report on the merits of their cases to anyone outside the judiciary.
 - e. The distribution of cases should not be influenced by the wishes of any party to a case or any person concerned with the results of the case. Such distribution may, for instance, be made by drawing of lots or a system for automatic distribution according to alphabetic order or some similar system.
 - f. A case should not be withdrawn from a particular judge without valid reasons, such as cases of serious illness or conflict of interest. Any such reasons and the procedures for such withdrawal should be provided for by law and may not be influenced by any interest of the government or administration. A decision to withdraw a case from a judge should be taken by an authority which enjoys the same judicial independence as judges.

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3. Judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office.

Principle II
The Authority of Judges

1. All persons connected with a case, including state bodies or their representatives, should be subject to the authority of the judge.
2. Judges should have sufficient powers and be able to exercise them in order to carry out their duties and maintain their authority and the dignity of the court.

Principle III
Proper Working Conditions

1. Proper conditions should be provided to enable judges to work efficiently and, in particular, by:
 - a. recruiting a sufficient number of judges and providing for appropriate training such as practical training in courts and, where possible, with other authorities and bodies, before appointment and during their career. Such training should be free of charge to the judge and should in particular concern recent legislation and case law. Where appropriate, the training should include study visits to European and foreign authorities as well as courts;
 - b. ensuring that the status and remuneration of judges is commensurate with the dignity of their profession and burden of responsibilities;
 - c. providing a clear career structure in order to recruit and retain able judges;
 - d. providing adequate support staff and equipment, in particular office automation and data processing facilities, to ensure that judges can act efficiently and without undue delay;
 - e. taking appropriate measures to assign non-judicial tasks to other persons, in conformity with Recommendation No. R(86) 12 concerning measures to prevent and reduce the excessive workload in the courts.
2. All necessary measures should be taken to ensure the safety of judges, such as ensuring the presence of security guards on court premises or providing police protection for judges who may become or are victims of serious threats.

**Principle IV
Associations**

Judges should be free to form associations which, either alone or with another body, have the task of safeguarding their independence and protecting their interests.

**Principle V
Judicial Responsibilities**

1. In proceedings, judges have the duty to protect the rights and freedoms of all persons.
2. Judges have the duty and should be given the power to exercise their judicial responsibilities to ensure that the law is properly applied and cases are dealt with fairly, efficiently and speedily.
3. Judges should in particular have the following responsibilities:
 - a. to act independently in all cases and free from any outside influence;
 - b. to conduct cases in an impartial manner in accordance with their assessment of the facts and their understanding of the law, to ensure that a fair hearing is given to all parties and that the procedural rights of the parties are respected pursuant to the provisions of the Convention;
 - c. to withdraw from a case or decline to act where there are valid reasons, and not otherwise. Such reasons should be defined by law and may, for instance, relate to serious health problems, conflicts of interest or the interests of justice;
 - d. where necessary, to explain in an impartial manner procedural matters to parties;
 - e. where appropriate, to encourage the parties to reach a friendly settlement;
 - f. except where the law or established practice otherwise provides, to give clear and complete reasons for their judgments, using language which is readily understandable;
 - g. to undergo any necessary training in order to carry out their duties in an efficient and proper manner.

**Principle VI
Failure to carry out responsibilities and disciplinary offenses**

1. When judges fail to carry out their duties in an efficient and proper manner or in the event of disciplinary offenses, all necessary measures

which do not prejudice judicial independence should be taken.

Depending on the constitutional principles and the legal provisions and traditions of each state, such measures may include, for instance:

- b. moving the judge to other judicial tasks within the court;
 - c. economic sanctions such as a reduction in salary for a temporary period;
 - d. suspension.
2. Appointed judges may not be permanently removed from office without valid reasons until mandatory retirement. Such reasons, which should be defined in precise terms by the law, could apply in countries where the judge is elected for a certain period, or may relate to incapacity to perform judicial functions, commission of criminal offenses or serious infringements of disciplinary rules.
 3. Where measures under paragraphs 1 and 2 of this article need to be taken, states should consider setting up, by law, a special competent body which has as its task to apply all disciplinary sanctions and measures, where they are not dealt with by a court, and whose decisions shall be controlled by a superior judicial organ, or which is a superior judicial organ itself. The law should provide for appropriate procedures to ensure that judges in question are given at least all the due process requirements of the Convention, for instance that the case should be heard within a reasonable time and that they should have a right to answer any charges.

*Recommendation of the Parliamentary Assembly
on Achieving Real Progress in Women's Rights
as from 1995*

Adopted by the Assembly on April 27, 1995

1. The Assembly considers that human rights of both women and men are universal and indivisible, and that it is the duty of all states to ensure their respect and enjoyment, irrespective of socio-cultural and religious traditions or economic and political systems. In this context the Assembly affirms that the principle of equality between men and women, or parity democracy, is an integral part of the values the Council of Europe stands for.
2. The concept of parity democracy recognizes the need for equality in terms of participation and representation of men and women in all areas of society, based on the principle of partnership and sharing of rights and responsibilities.

3. The Assembly is convinced that *de jure* and *de facto* equality between men and women is crucial for the very functioning of a democratic society. The question of parity democracy is especially important in the new member states, where rapid political and economic reforms have had a negative impact on the situation of women in some cases.

4. The Assembly is disappointed to have to state that the principle of parity, or even of equality, between men and women is still not included in the constitutions of all Council of Europe member states. What is more, even member states which have enshrined the principle of equality in their constitutions often lack concrete legislation backing up this provision; legislation that is badly needed to make parity democracy truly achievable.

6. Therefore, the Assembly recommends that the Committee of Ministers:

- i. include the principle of equality of rights between men and women in the additional protocol to the European Convention on Human Rights as soon as possible, as recommended in Assembly recommendation 1229 (1994);
- ii. adopt specific policies and promote action programs to engage the governments of member states to address the problems of women both in traditional areas of responsibility and in new ones, in particular concerning violence against women, the increasing number of destitute women which is tending to make poverty a predominantly female phenomenon, and the traffic in women;
- iii. speedily adopt the draft protocol to the European Social Charter providing for a system of collective complaints;
- iv. ensure that the principle of equality of rights between men and women is included in the constitutions of member states;
- v. become active to eliminate all discrepancies that currently exist in the legislation of member states as regards the treatment of women as individuals rather than in the context of their family or their relation to their husbands;
- vi. encourage member states to create at national level appropriate institutional bodies to ensure the real achievement of equality between men and women, such as equality commissions, offices of the plenipotentiary for women's affairs, offices of equal status, offices of the "ombud type," or ministers for women's rights with responsibility for abolishing direct and indirect discrimination between the sexes and for promoting the access of women to positions of parity;

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- vii. ask member states to adopt specific antidiscriminatory legislation providing appropriate sanctions in which case the equality of women and men is not respected, especially in professional life;
 - viii. request that member states incorporate sexual discrimination, as exemplified by the refusal to allow women to teach or become judges, the obligation to wear the veil or other discriminatory clothing, or forcible marriage, in the criteria of political or religious persecution used to justify the request for asylum on the part of women;
 - ix. invite all member states who have not yet signed and ratified the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) to do so before the year 2000, and all member states parties to the convention which have made reservations to make their national legislation compatible with the convention and withdraw the reservation as soon as possible;
 - x. ask all member states to support the adoption of the draft additional protocol to the CEDAW Convention, empowering that convention's supervisory body to examine individual and group complaints.

Framework Convention for the Protection of National Minorities, 1995

An Explanatory Report states the purpose of this Convention, opened for signature in Strasbourg in 1994

The framework Convention is the first legally binding multilateral instrument devoted to the protection of national minorities in general. Its aim is to specify the legal principles which States undertake to respect in order to ensure the protection of national minorities. The Council of Europe has thereby given effect to the...call by [by the Vienna Declaration of the Heads of State and Governments of the Member States of the Council of Europe]...for the political commitments adopted by the Conference on Security and Cooperation in Europe (CSCE) to be transformed, to the greatest extent, into legal obligations.

(Explanatory Report, para. 10, id., at 13.)

The Framework Convention states:

The member States of the Council of Europe and the other States, signatories to the present framework Convention,

Considering that the aim of the Council of Europe is to achieve greater unity between its members for the purpose of safeguarding and realizing the ideals and principles which are their common heritage;

Being resolved to protect within their respective territories the existence of national minorities;

Considering that the upheavals of European history have shown that the protection of national minorities is essential to stability, democratic security and peace in this continent;

Considering that a pluralist and genuinely democratic society should not only respect the ethnic, cultural, linguistic and religious identity of each person belonging to a national minority, but also create appropriate conditions enabling them to express, preserve and develop this identity;

Being determined to implement the principles set out in the framework Convention through national legislation and appropriate governmental policies,

Have agreed as follows:

Section I

Article 1

The protection of national minorities and of the rights and freedoms of persons belonging to those minorities forms an integral part of the international protection of human rights, and as such falls within the scope of international cooperation.

Article 2

The provisions of this framework Convention shall be applied in good faith, in a spirit of understanding and tolerance and in conformity with the principles of good neighborliness, friendly relations and cooperation between States.

Article 3

1. Every person belonging to a national minority shall have the right freely to choose to be treated or not be treated as such and no disadvantage shall result from the choice or from the exercise of the rights which are connected to that choice.

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2. Persons belonging to national minorities may exercise the rights and enjoy the freedoms flowing from the principles enshrined in the present framework Convention individually as well as in community with others.

Section II

Article 4

1. The Parties undertake to guarantee to persons belonging to national minorities the right of equality before the law and of equal protection of the law. In this respect, any discrimination based on belonging to a national minority shall be prohibited.
2. The Parties undertake to adopt, where necessary, adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority. In this respect, they shall take due account of the specific conditions of the persons belonging to national minorities.

Article 5

1. The Parties undertake to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage.
2. Without prejudice to measures taken in pursuance of their general integration policy, the Parties shall refrain from policies or practices aimed at assimilation of persons belonging to national minorities against their will and shall protect these persons from any action aimed at such assimilation.

Article 7

The Parties shall ensure respect for the right of every person belonging to a national minority to freedom of peaceful assembly, freedom of association, freedom of expression, and freedom of thought, conscience and religion.

Article 8

The Parties undertake to recognize that every person belonging to a national minority has the right to manifest his or her religion or belief and to establish religious institutions, organizations and associations.

Article 9

1. The Parties undertake to recognize that the right to freedom of expression of every person belonging to a national minority includes freedom to hold opinions and to receive and impart information and ideas in the minority language, without interference by public authorities and regardless of frontiers. The Parties shall ensure, within the framework of their legal systems, that persons belonging to a national minority are not discriminated against in their access to the media.
3. The Parties shall not hinder the creation and the use of printed media by persons belonging to national minorities. In the legal framework of sound radio and television broadcasting, they shall ensure, as far as possible, and taking into account the provisions of Paragraph 1, that persons belonging to national minorities are granted the possibility of creating and using their own media.

Article 10

1. The Parties undertake to recognize that every person belonging to a national minority has the right to use freely and without interference his or her minority language, in private and in public, orally and in writing.
2. In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if those persons so request and where such a request corresponds to a real need, the Parties shall endeavor to ensure, as far as possible, the conditions which would make it possible to use the minority language in relations between those persons and the administrative authorities.
3. The Parties undertake to guarantee the right of every person belonging to a national minority to be informed promptly, in a language which he or she understands, of the reasons for his or her arrest, and of the nature and cause of any accusation against him or her, and to defend himself or herself in this language, if necessary with the free assistance of an interpreter.

Article 11

1. The Parties undertake to recognize that every person belonging to a national minority has the right to use his or her surname (patronym) and first names in the minority language and the right to official

recognition of them, according to modalities provided for in the legal system.

2. The Parties undertake to recognize that every person belonging to a national minority has the right to display in his or her minority language signs, inscriptions and other information of a private nature visible to the public.
3. In areas traditionally inhabited by substantial numbers of persons belonging to a national minority, the Parties shall endeavor, in the framework of their legal system, including, where appropriate, agreements with other States, and taking into account their specific conditions, to display traditional local names, street names and other topographical indications intended for the public also in the minority language when there is a sufficient demand for such indications.

Article 12

1. The Parties shall, where appropriate, take measures in the fields of education and research to foster knowledge of the culture, history, language and religion of their national minorities and of the majority.
2. In this context the Parties shall inter alia provide adequate opportunities for teacher training and access to textbooks, and facilitate contacts among students and teachers of different communities.
3. The Parties undertake to promote equal opportunities for access to education at all levels for persons belonging to national minorities.

Article 16

The Parties shall refrain from measures which alter the proportions of the population in areas inhabited by persons belonging to national minorities and are aimed at restricting the rights and freedoms flowing from the principles enshrined in the present framework Convention.

Article 17

1. The Parties undertake not to interfere with the right of persons belonging to national minorities to establish and maintain free and peaceful contacts across frontiers with persons lawfully staying in other States, in particular those with whom they share an ethnic, cultural, linguistic or religious identity, or a common cultural heritage.

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2. The Parties undertake not to interfere with the rights of persons belonging to national minorities to participate in the activities of non-governmental organizations, both at the national and international levels.

Section III

Article 20

In the exercise of the rights and freedoms flowing from the principles enshrined in the present framework Convention, any person belonging to a national minority shall respect the national legislation and rights of others, in particular those of persons belonging to the majority or to other national minorities.

Declaration and Recommendation on the Protection of Journalists in Situations of Conflict and Tension, 1996

Adopted by the Committee of Ministers on May 3, 1996, 98th Session

1. The Committee of Ministers of the Council of Europe condemns the growing number of killings, disappearances and other attacks on journalists and considers these to be also attacks on the free and unhindered exercise of journalism.
2. The Committee of Ministers appeals to all states, in particular to all member states of the Council of Europe, to recognize that the right of individuals and the general public to be informed about all matters of public interest and to be able to evaluate the actions of public authorities and other parties involved is especially important in situations of conflict and tension.
3. The Committee of Ministers solemnly reaffirms that all journalists working in situations of conflict and tension are, without qualification, entitled to the full protection offered by applicable international humanitarian law, the European Convention on Human Rights and other international human rights instruments.
4. The Committee of Ministers reaffirms the commitments of governments of member states to respect these existing guarantees for the protection of journalists.
6. The Committee of Ministers shall consider, together with the Secretary General, ways of strengthening, in general, existing

arrangements within the Council of Europe for receiving information, and taking action on, infringements of rights and freedoms of journalists in situations of conflict and tension.

7. The Committee of Ministers considers in this context that, in urgent cases, the Secretary General could take speedily all appropriate action on receipt of reports on infringements of rights and freedoms of journalists in member states in situations of conflict and tension and calls on the member states to cooperate with the Secretary General in this regard.

(The Declaration was adopted at the same time as Recommendation No. R (96) 4 of May 3, 1996 containing explicit provisions about the physical protection of journalists, the rights and working conditions of journalists in situations of conflict and tension and the investigation of instances of attacks on the physical safety of journalists. Notable in these provisions is Principle 8 which states “Member states shall instruct their military and police forces to give necessary and reasonable protection and assistance to journalists when they so require, and treat them as civilians” and “Member states shall not use the protection of journalists as a pretext for restricting their rights.”)

THREE INTERACTING HUMAN RIGHTS SYSTEMS, UN, OSCE, COUNCIL OF EUROPE

Often the question is asked: among the many international human rights charters, covenants, declarations, treaties and accords, which ones are most important? Which must a country obey? The answer, as suggested in the following pages, is that countries have binding legal obligations in becoming members of the Council of Europe and United Nations and binding political commitments in joining the OSCE. There is not a hierarchy of rights, nor priorities among rights. Participation in the international community of nations involves accepting a range of human rights standards and commitments to enforce them locally. The standards may be seen as a three-fold process; first, there is the content of the documents themselves, which defines the content of modern human rights law and practice; second, there are the legally binding instruments, the European Convention being the principle one, which are employed by individuals through local courts and judicial systems. These European Convention human rights standards are actionable in both local courts and, once domestic possibilities have been exhausted, through the Strasbourg mechanisms outlined in this volume. Finally, there are the international political commitments contained in the OSCE accords. While the OSCE accords do not include an individual complaint process, nor an adjudicative process as such, they are used each year at the implementation meetings, by individual OSCE missions, and by elections observers. Also, they provide benchmarks by which jurists, journalists, educators, parliamentarians, and international missions evaluate rule of law standards in a country.

A historical perspective is useful in seeing the half-century evolution of modern human rights instruments. The two great human rights documents to emerge following the end of World War II were the United Nations' Universal Declaration of Human Rights and the European Convention on Human Rights, representing the two trunks of the tree from which all other human rights accords have grown. (The Universal Declaration of Human Rights, together with the UN Charter, two International Covenants on Human Rights and the Optional Protocol to the Covenant on Civil and Political Rights are called the International Bill of Human Rights). The European Convention is the more comprehensive of the two sets of documents. Its provisions are binding law on any country that becomes a party to the Convention. Donna Gomien, former Senior Researcher, Norwegian Institute of Human Rights, writes:

“The European Convention was the first international human rights instrument to aspire to protect a broad range of civil and political rights both by taking the form of a treaty legally binding on its High Contracting Parties and by establishing a system of supervision over the implementation of the rights at the domestic level. Its most revolutionary contribution perhaps lies in its inclusion of a provision (*Article 25*) under which a High Contracting Party may accept the supervision of the European Commission of Human Rights in instances where an individual, rather than a State, initiates the process. One measure of the Convention’s success is the acceptance by all the High Contracting Parties of this right of individual petition.”⁴

Human rights became a paramount concern to Europeans in the post-World War II era for two reasons. First was the war itself. Many of the drafters of the Convention were active in the resistance, some had been in prison, and all had known family members affected by the war. Robertson and Merrills, two leading British human rights authorities, have written:

“They were aware that the first steps toward dictatorship are the gradual suppression of individual rights— infringement of the freedom of the press, prohibition of public meetings, and trials behind closed doors, for example — and that once this process has started it becomes increasingly difficult to stop. It is vital, therefore, to lay down in advance the rights and freedoms that must be respected in a democratic society and to create institutions to see that they are observed. If any member State should then start on the path which leads to dictatorship, the alarm can be sounded and international machinery put in motion to restore the rule of law.”⁵

Each decade has seen a subsequent growth and elaboration of human rights instruments. For example, the United Nations has accepted several additional covenants comprising the International Bill of Human Rights, as noted above, plus the important Covenant on Economic, Social and Cultural Rights, the Convention on the Prevention and Punishment of the Crime of Genocide, and the Convention on the Elimination of All Forms of Discrimination Against Women. The Optional Protocol to the

⁴ Donna Gomien, *Short Guide to the European Convention on Human Rights*, Council of Europe Press, Strasbourg, 1993, p. 14.

⁵ A.H. Robertson and J.G. Merrills, *Human Rights in Europe, a Study of the European Convention on Human Rights*, third edition, Manchester University Press, Manchester, 1993, p.3.

International Covenant on Civil and Political Rights of 1996 allows for individual petition to the 18-member Human Rights Committee when all domestic remedies are exhausted; and the Second Optional Protocol of 1989 to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty is another illustration of the growing breadth and depth of international human rights concerns.

As for the Council of Europe, the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms was supplemented by the European Social Charter of 1961, plus protocols, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of 1987, and the Framework Convention for the Protection of National Minorities of 1995.

Around these basic documents a number of other treaties evolved on subjects like Freedom of Expression, Equality of Women and Men, Rights of the Child, the Role of Lawyers, Prosecutors and Judges. Some documents addressed multiple subjects, such as the comprehensive United Nations World Conference on Human Rights, the Vienna Declaration and Program of Action of 1993 and the Council of Europe's Declaration and Plan of Action on combating racism, xenophobia, anti-semitism and intolerance of 1993. Gradually the content of international human rights focus became shaper, deeper, and more precise with each succeeding decade.

The CSCE Accords

The growth in human rights subject matter is nowhere more dramatically displayed than in the evolution of the CSCE accords from Helsinki in 1975 to Copenhagen in 1990, Paris in 1990, Moscow in 1991 and Helsinki again in 1992. These accords do not have the force of law the way the European Convention is a black letter law document. They represent politically binding agreements among the participating nations. From the 1975 Helsinki document that reflected political realities of the sharply divided Europe of that era until the Paris and Copenhagen documents of 1990, which represent a considerable advancement in the subject matter of human rights, the CSCE accords encompass the content of modern human rights concerns. For example, the comprehensive provisions of the 1991 Document on the Moscow Meeting of the Conference on the Human Dimension of the CSCE would have been inconceivable at the time the Helsinki document was drafted. The Moscow document states:

“The participating States emphasize that issues relating to human rights, fundamental freedoms, democracy and the rule of law are of international concern, as respect

for these rights and freedoms constitutes one of the foundations of the international order. They categorically and irrevocably declare that the commitments undertaken in the field of the human dimension of the CSCE are matters of direct and legitimate concern to the participating States and do not belong exclusively to the internal affairs of the State concerned.”

Arie Bloed, a leading Dutch authority on public international law and the OSCE, has written:

“One of the most complicated aspects of the CSCE process is the legal characterization of its concluding documents. In legal doctrine the view generally adhered to is that the Final Act of Helsinki and the CSCE documents do not have the character of treaties.... The intention of the parties, as expressed at the end of the Conference in Helsinki in 1975, clearly points out to the fact that the Final Act has to be considered as a political, not as a legal document. This observation should not, however, be taken to imply that the CSCE documents are not binding.... Violation of politically, but not legally binding agreements, is as inadmissible as violation of norms of international law. In this respect there is no difference between politically and legally binding rules.”⁶

Seen across the spectrum of recent years, the trend toward greater individual and collective human rights is a universal one, spreading in both public international and customary law, and in local law and practice. Reverses in human rights practice often come at times in which states of emergency are declared and a few state leaders will argue that “development comes first, human rights comes later,” or the threat of warfare is used to limit human rights. Some states are slow to implement international human rights norms but even then most state constitutions contain widespread human rights provisions and these, like other countries, are bound by UN covenants, the European Convention or the OSCE Accords.

Richard B. Bilder, a member of the Advisory Council of the International Human Rights Law Group, has written:

⁶*From Helsinki to Vienna: Basic Documents of the Helsinki Process*, Arie Bloed (ed.), Martinus Nijhoff Publishers, Dordrecht, The Netherlands, 1990, p. 11.

“It is clear that the concept of international human rights has taken firm root and acquired its own dynamic. Even if governments would prefer not to treat international human rights seriously, ordinary people in countries throughout the world clearly do take them seriously. Even when governments employ international human rights concepts hypocritically for selfish political purposes, their actions serve to reinforce human rights principles and establish important precedents.”⁷

It is important to note that in international human rights law the central relationship is between the state and the individual; thus these human rights documents should not be considered as government-to-government accords, but statements of individual rights, for which the state bears responsibility in enforcement. This marks a departure from historical antecedents. Today individual persons, citizens and non-citizens, have internationally guaranteed rights as individuals and not as nationals of a particular state.

A commentary on modern human rights law states:

“The effectiveness of international law in general depends either upon the willingness of states to surrender some of their sovereign powers to wider international control, or on reciprocity, the understanding that each party will act in a certain way because the other will. International human rights law is largely based on a system of multilateral treaties that establish objective standards for state conduct, rather than reciprocal rights and obligations. And these treaties place duties on the states in relation to individuals within their jurisdiction rather than to the other State Parties. Perhaps because of their characteristics, most international human rights instruments are entitled charters, or covenants, rather than treaties or conventions.”⁸

This brief survey of the evolution of human rights law will be useful in determining the intention of the drafters of various international instruments. The next question is one of ascertaining their applicability in

⁷ Richard B. Bilder “An Overview of International Human Rights Law” in *Guide to International Human Rights Practice*, Hurst Hannum, (ed.), second edition, University of Pennsylvania Press, Philadelphia, 1992, p. 16.

⁸ Donna Gomien, David Harris, and Leo Zwaak, *Law and Practice of the European Convention on Human Rights and the European Social Charter*, Council of Europe Publishing, Strasbourg, 1996, p. 20.

Conventions, Treaties, and Accords, Which have Priority?

Covenants, Conventions, Treaties, Protocols

In the language of public international law, a *Covenant* is a signed agreement, convention, or promise between two or more parties by which the parties pledge themselves to a course of action and to refrain from other courses of action.

A *Convention* is an agreement or compact between or among states, usually representing an agreement or arrangement preliminary to a formal treaty. A *Treaty* is a compact made between two or more independent nations and must, if possible, be so construed as to give full force and effect to all its constituent parts. A *Protocol* is a brief addition to an earlier *Covenant* or *Treaty*. *Covenants, Conventions, Treaties* and *Protocols* are legal documents, requiring specific standards of behavior from states that ratify them. Ratification processes are often not complete upon mere signature, but may require additional steps, such as passage by a state's legislative body.

Accords, Acts, Declarations, Recommendations, Principles, etc.

An *Accord*, as defined above, is a politically binding agreement among nations, but is different from a legal document, chiefly in that its application is through diplomatic rather than juridical means. An *Act* is an expression of will or purpose, expressing the idea of future performance, something done voluntarily by a country or person. *Declarations, Recommendations, Principles, Basic Principles, Guidelines,* and *Codes of Conduct* are not legally binding documents, but statements of intent, usually aimed at specific fields, such as the role of police, prosecutors, or judges. It is interesting to note that the content of such statements in one decade are often incorporated in the next decades' covenants, conventions and treaties as binding law.

a given country. If the country is a member of the United Nations, it will be a party to the United Nations human rights conventions. If the country is a member of, or applying for membership in, the Council of Europe, it is obligated to follow the human rights standards of the European Convention. Two other questions are: has the country ratified the various human rights instruments listed in this volume? Were they ratified with reservations narrowing their domestic applicability? A table of instruments and ratifications is included as an annex to this volume, but it does not note reservations, which should be ascertained locally. See pages 208-214.

CASE LAW

A steady growth in case loads has characterized both the European Commission and the European Court on Human Rights. In its early years, the Commission picked few and generally safe cases, seeking to build Europe-wide support for its activities. Up until 1991 some 19,000 cases had been presented to the Commission; less than 3,000 were returned to governments for comment, and, finally, only 1,000 were admitted, most of them being settled by friendly means or through a decision of the Committee of Ministers. Meanwhile, 345 applications were filed before the Court, which rendered 307 judgments. Monetary compensation was awarded to 143 petitioners and in two-thirds of the cases brought before it, the Court found the Convention had been violated. At the same time, the European Court's cases steadily increased; from 1959 to 1985 the Court, the world's longest standing international human rights court, heard approximately 100 cases, but heard the next 100 cases in the four year period, 1985 to 1989. Its caseload increased steadily thereafter. During the first six months of 1994 it delivered judgments in 24 cases. Italy holds the docket record (136 cases, in 82 of which the Court found violations by April 1995). Many of the cases revolved around a single issue, long delays in prosecutors bringing cases to trial. The United Kingdom had 73 cases, 35 involving violations; France, 62 cases, 29 involving violations; Austria, 55 cases, 27 violations; Sweden, 32 cases, 21 violations, and Belgium, 34 cases, 20 violations. Germany has participated in 28 cases with 11 violations, Denmark six cases, two violations, Norway, three cases, one violation.⁹

In 1996 12,143 communications were received; 2,236 of them — slightly more than 18% — concerned countries of central and eastern Europe. 4,758 of the applications were registered, 892 of them complaints of human rights violations in central and eastern European countries. The 1994-1996 figures indicate a steady rise in cases from these countries. The 1996 number of applications include Bulgaria 35, Czech Republic 77, Lithuania 41, Poland 458, Romania 118, Slovakia 80 and Slovenia 19.¹⁰

A special category of cases are the inter-state cases, less than 20 in the Court's history to date. Generally highly political in nature, they include Greek accusations against the United Kingdom for alleged mistreatment of prisoners in Cyprus, Ireland accusing the United Kingdom of similar behavior toward

⁹ Henry J. Steiner and Philip Alston, *International Human Rights in Context, Law, Politics, Morals*, Clarendon Press, Oxford, 1996, p. 598. A detailed guide of case disposition is contained in Donna Gomien, *Judgments of the European Court of Human Rights*, Reference Charts, Council of Europe, Strasbourg, 1995.

¹⁰ M. de Salvia, *Applications Lodged Against Central and Eastern European Countries with the Human Rights Protection Organs in Strasbourg*, Council of Europe publication H (97) 7, Strasbourg, 1997, p.3.

prisoners, and numerous cases against the Greek military regime in the 1970s. Prof. Ralph Beppard, Senior Lecturer in the Faculty of Law, Southampton University, writes: "The inter-state procedure was bound to be founded, for the greater part, on unfriendliness in the relations between states, and the cases, in the main, bear this out. Although the applications against Turkey and those against Greece were brought by states with little economic or cultural contact with the Respondent States, and were occasioned by the seriousness of the violations, they illustrate the weakness of the Commission within the arenas of large-scale politics and diplomacy. The application by *Ireland v. United Kingdom* seemed, to a great extent, to be politically motivated, while the *Cyprus v. Turkey* application was a direct result of hostilities between the two parties. However, one should not dismiss such inter-state applications as serving no purpose, since one of the objects of the Convention is to publicize atrocities and, accordingly, motive is not entirely relevant."¹¹

If the Convention is the skeleton, case law is the flesh that gives it life, and after nearly a half-century of existence a great number of cases are available as precedent. The decisions of the Commission and Court are published regularly in Strasbourg and are available in printed and electronic form from the Council of Europe. Details for obtaining such information are contained elsewhere in this volume. Gomien states: "The case law from these bodies adds to the substance of the Convention, giving it form and life beyond the instrument itself. Their interpretations of such ideas as the rule of law and democratic society form the foundation of the European human rights system, and provide strong guidelines for Eastern and Central European countries aspiring to become part of that system."¹²

The Court has a dual role, that of deciding cases brought to it and monitoring the domestic laws and practices of Contracting States. In this regard, it has gradually assumed the functions of an international constitutional tribunal. At the same time, the Court's essential case load involves unsatisfied complaints by individuals against states. Merrills states: "The issue here is what it means to have a particular right and how the balance is to be struck between such competing interests as, for example privacy and national security, or prompt trial and the limitation of public expenditure."¹³

Until now, cases have emanated primarily from Western Europe, but that will change as new members join the Council of Europe and subscribe to

¹¹ Ralph Beppard, *Human Rights and Europe*, third edition, Grotius Publications Limited, Cambridge, 1994, p.9.

¹² Gomien, 1993, p. 151.

¹³ J.G. Merrills, "The Development of International Law by the European Court of Human Rights" in Henry J. Steiner and Philip Alston, *International Human Rights in Context, Law, Politics, Morals*, Clarendon Press, Oxford, 1996, p. 599.

its legal institutions. Only a few leading cases can be referred to here, following the categories listed in the articles of the European Convention.

Article 1: States shall Secure Rights and Freedoms for “everyone within their jurisdiction”

While conventional international treaties apply primarily to citizens of a given country within that country’s boundaries, the language of **Article 1** of the European Convention is much more expansive, securing rights and freedoms to “everyone within their jurisdiction.” Subsequent case law has secured these rights, not only for citizens, but for aliens, stateless persons, children, the disabled, and those otherwise lacking legal capacity. Nationals from more than 80 countries have filed petitions before the Commission, more than three times the number of High Contracting Parties to the Convention. Thus countries must bring their domestic law into compatibility with the Convention. Moreover, **Article 64** prohibits general reservations; new states ratifying the Convention must then meet its obligations from the time the document enters in force in a given country.

Any consideration of **Article 1** must consider as well **Article 63** which allows a High Contracting Party to broaden the Convention’s coverage to “all or any of the territories for whose international relations it is responsible.” Jurisdiction, in short, is not territorially limited, but encompasses the idea of State jurisdiction over individuals through the activities of State organs or authorities.

Article 2: Right to Life

Article 2 concerns the right to life and should be considered together with Protocol 6 abolishing the death penalty. This article should not be interpreted as guaranteeing any certain quality of life or standard of rights for citizens, its primary purpose is to safeguard against any arbitrary deprivation of life by the State. Likewise, the controversial issue of abortion rights is not dealt with in this article. The Commission agreed that recognizing the unconditional right to life of a fetus would be contrary to the intent of the Convention in (Appl. No 8416/78). Elsewhere, it found States may conditionally restrict a woman’s rights to an abortion without violating the woman’s right to privacy, (*Briuggemann and Scheuten*, Comm. Rept. of 1977). The question of fetal rights is left undiscussed in this case. **Article 2** of the Convention does not state that life begins at conception.

Protocol No. 6 to the Convention calls for abolition of the death penalty, with a few narrow exceptions. Gomien notes: “In addition to the capital punishment exception of **Article 2 (1)**, **Article 2 (2)** provides for three

additional, albeit circumscribed, exceptions to the prohibition against the intentional deprivation of life. The first is in defense of any person from unlawful violence, the second is in effecting a lawful arrest or preventing the escape of a detainee, and the third is in quelling a riot or insurrection. The principle governing the exercise of State discretion in applying any of these exceptions is that any force must be ‘no more than [is] absolutely necessary.’”¹⁴

Capital punishment is allowed under severely restricted conditions through the second sentence of **Article 2 (1)**. A comparison with the UN Covenant on Civil and Political Rights is instructive. The UN document, in its **Article 6**, acknowledges the possibility of the death penalty, but seems to treat it as a transient phenomena on its way to disappearing. The death penalty is expressly prohibited for persons below the age of 18 and for pregnant women. Robertson and Merrills state: “**Article 2** of the Convention must now be read in conjunction with Protocol No. 6 which...prohibits the death penalty in time of peace. As a result of this modification, European arrangements were for a time more progressive than those of the Covenant, at least as regards parties to the Protocol. However, with the adoption in 1989 of a protocol to the Covenant which likewise outlaws the death penalty, the two systems are now broadly in line on this issue.”¹⁵

Article 3: Torture, Inhuman or Degrading Treatment or Punishment

The historical roots of **Article 3** are **Article 5** of the Universal Declaration of Human Rights, and its content is given wider scope in the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which entered into force in January 1987, and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which entered into force in February 1989. Given the World War II context from which the human rights accords arose, it is understandable that rights to be free from torture and inhuman and degrading treatment would hold a special place in the pantheon of rights enumerated in the international human rights instruments.

Article 3 of the Convention does not define torture, but a 1975 UN General Assembly Declaration states that “Torture constitutes an aggravated and deliberate form of cruel, inhuman and degrading treatment or punishment.” The Commission interprets “torture” to mean “inhuman treatment, which has a purpose such as the obtaining of

¹⁴ Gomien, 1993, p. 18.

¹⁵ Robertson and Merrills, 1993, p. 33.

information or confessions, or the infliction of punishment, and it is generally an aggravated form of inhuman treatment.”¹⁶

The Commission and the Court have employed two factors to interpret provisions of this article, the degree of severity of conduct and the extent of institutionalized practices. Under degrees of severity of conduct, the relevant cases are *Denmark, France, Norway, Sweden and the Netherlands v. Greece* (the 1969 “Greek case”) and *Ireland v. the United Kingdom* (1978). In these cases Torture constitutes “deliberate inhuman treatment causing very serious and cruel suffering.” Inhuman Treatment or Punishment is “the infliction of intense physical and mental suffering” and Degrading Treatment is “ill-treatment designed to arouse in victims feelings of fear, anguish and inferiority capable of humiliating and debasing them and possibly breaking their physical or moral resistance.”

Ireland’s complaint against the United Kingdom, filed in 1971, charged the latter with violations of **Article 3** of the Convention, resorting to torture and degrading treatment, while interrogating detainees in Northern Ireland. Relevant here is the fact that the United Kingdom, invoking **Article 15**, stated it was derogating from certain rights agreed to in the Convention. The Irish argued, and the Court affirmed, that **Article 3** rights could not be derogated. The heart of the Irish case was that various persons taken into custody by the British forces had been subject to torture and inhuman and degrading treatment in violation of **Article 3**, and that internment without trial, as was widely practiced by the British forces in Northern Ireland, was a violation of **Article 5**, guaranteeing the right to liberty and security of person. (Between August 1971 and June 1972 3,276 persons were processed by police at various holding centers; the Irish filing alleged 228 specific cases of police brutality.) Objections centered on five techniques used in interrogation, wall-standing (forcing detainees to remain for long periods of time with their fingers high above their heads against the wall and their legs spread apart and feet pushed back, forcing them to stand on their toes with their body weight mainly on their fingers), hooding (a dark colored bag was kept over detainees’ heads except when they were being interrogated), subjection to noise (keeping detainees in a room with a loud continuous hissing noise), sleep deprivation and deprivation of food and drink. By March 2, 1972 the British government had agreed “that the techniques...will not be used in future as an aid to interrogation.” Moreover, between 1971 to 1975 plaintiffs in domestic courts, alleging ill-treatment by security forces obtained compensation totaling £302,043 in settlement of 473 civil cases for wrongful arrest, false imprisonment, and assault and battery, leaving 1,193 civil cases outstanding.

¹⁶ Robertson and Merrills, 1993, p. 36.

The Court concluded that recourse to the five techniques amounted to a practice of inhuman and degrading treatment, which practice was in violation of **Article 5**.¹⁷ Gomien states: “Listing such factors as sex, age and state of health of the victim [the Court] noted (in *Ireland v. the United Kingdom*, ed.) that a given practice must reach a minimum level of severity in order to constitute a violation of the article. For example, the Court states that ‘degrading’ does not mean merely disagreeable or uncomfortable.”¹⁸

Extradition and Expulsion Cases

A special category of cases deserve comment, cases when an applicant claims they will be subject to treatment in violation of **Article 3** if they are expelled from the country in which they are residing to another country, often their country of origin. The cases are complicated because the European Convention does not guarantee a person a right to reside in a particular country, nor a right not to be expelled, although **Article 4** of Protocol 4 forbids the collective expulsion of aliens. Sometimes, however, the Commission will consider a case when the applicant pleads expulsion would subject that person to persecution and possible death. In one case, a Turkish applicant filed against the Federal Republic of Germany, arguing that, as a political activist, his extradition to Turkey would surely result in torture and persecution. The Commission accepted the case, but the applicant committed suicide before it was resolved, so the case was removed from the list.¹⁹

An important case under **Article 3** was (*Chahal v. United Kingdom*) (1996). Here the Court, sitting in Grand Chamber, ruled the order to evict to India a Sikh separatist for national security reasons violated, should it be implemented, the absolute prohibition of torture and of inhuman or degrading treatment. Chahal, resident in the United Kingdom since 1971, became active in support of an independent Sikh homeland after visiting the Punjab in 1984. In August 1990 the Home Secretary decided to deport him on national security grounds, claiming Chahal was assisting Punjab terrorists, charges which Chahal categorically denied. Since August 16, 1991 he was held in a British prison. He applied for political asylum, claiming he would be a victim of torture and persecution if deported to India, a petition the Home Secretary denied. The matter continued in dispute, with moves and counter-moves until 1996, when the Court found a violation of **Article 3** of the ECHR, fearing for the defendant’s safety if he was returned to India. The Court wrote:

¹⁷ Richard B. Lillich and Hurst Hannum, *International Human Rights, Problems of Law, Policy, and Practice*, third edition, Little, Brown and Company, New York, 1995, pp. 693-715.

¹⁸ Gomien, 1993, p. 19.

¹⁹ (No. 10308/83, Dec.5.83), D.R. 36 p. 209 (233-234)

“It was well-established in the case law of the Court that expulsion by a Contracting State might give rise to an issue under **Article 3** ECHR where substantial grounds had been shown for believing that an individual, if expelled, would face a real risk of being subjected to torture or inhuman or degrading treatment or punishment in the receiving country. The Court was well aware of the immense difficulties faced by States in modern times in protecting their communities from terrorist violence. However, even in these circumstances, the Convention prohibited in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the person in question.”²⁰

In the same case, the Court did not find Chahal’s detention violated **Article 5 (1)**, but found it violated **Article 5 (4)** because the United Kingdom, in detaining the defendant for six years, violated his rights. The Court stated: “It was possible to employ techniques which both accommodated legitimate security concerns about the nature and sources of intelligence information and yet accorded the individual a substantial measure of procedural justice.”

Article 4: Slavery and Forced Labor

Relatively few cases have been raised under this category to date. Under **Article 4(3) (c)** the Commission declined to accept several cases, excluding from the definition of forced or compulsory labor the requirement of conscientious objectors to perform military service. Gomien observes: “This provision does not oblige any High Contracting Party either to recognize conscientious objection or to exempt conscientious objectors from serving in alternative employment for periods of time equivalent to those served by military recruits.”²¹

Article 5: Liberty and Security of Person

This pivotal Article has its antecedents in **Article 3** of the Universal Declaration of Human Rights and has, in turn, influenced other human rights instruments, such as **Article 9** of the International Covenant on Civil and Political Rights. The focus of **Article 5** is on freedom from arbitrary arrest and detention, essentially the conditions of physical liberty.

²⁰ ECH-96-3-015, in *Bulletin on Constitutional Case Law*, Council of Europe, Strasbourg, 1996, pp. 453-454.

²¹ Gomien, 1993, p. 24.

The case law that has developed on this article rejects as restrictions on individual freedom such usual requirements as that aliens register, periodic curfews be established, or that vehicular traffic be subject to regulation. In one case (*Guzzardi v. Italy*) (1980) the Court held that a person confined to a portion of an island with severely limited social contacts could be considered to be deprived of his liberty. Guzzardi was a Mafia leader with a long criminal record who was arrested, charged, and placed in detention. (Italian law allows for up to two years in such detention). In January 1975 the Milan Regional Court ordered the defendant to reside on the small island of Asinara until he was returned to the mainland the following July, where he was convicted of terrorist offenses, and sentenced to 18 years in prison. A majority of the Court found that confinement on the island was a deprivation of Guzzardi's liberty and awarded him compensation of one million Italian lira.

Additionally, there is no provision for a person under **Article 5** to waive their rights, even if they surrender to the police. In the often-cited opinion (*DeWilde, Ooms and Versyp v. Belgium*) (1971) the Court held:

“The right to liberty is too important in a ‘democratic society’ within the meaning of the Convention for a person to lose the benefit of the protection of the Convention for the single reason that he gives himself up to be taken into detention.”

Although a state may detain someone after that person is convicted by a competent Court, continued detention is not acceptable where prison authorities arbitrarily lengthen a prisoner's time in jail administratively for allegedly committing a triable offense. (*Van Droogenbroeck v. Belgium*) (1982). Commenting on this case, specifically in that it invoked **Article 5 (1) (e)**, Robertson and Merrills write: “An unusual feature of the Vagrancy cases was that the applicants had initially reported voluntarily to the police. Relying on this, the government argued that their detention was in each case the result of a request and as such, could not be a violation of **Article 5**. The Court, however, had no hesitation in rejecting this argument. Pointing out that a person may give himself up to the police out of temporary distress or misery, but that this in no way denotes that he is properly to be regarded as a vagrant, the Court explained that in any event, the detention procedure which formed the subject of the complaint was mandatory rather than contractual.” It then said:

“Finally, and above all, the right to liberty is too important in a ‘democratic society’ within the meaning of the Convention for a person to lose the benefit of the

protection of the Convention for the single reason that he gives himself up to be taken into detention. Detention might violate **Article 5** even although the person concerned might have agreed to it. When the matter is one which concerns *ordre public* within the Council of Europe, a scrupulous supervision by the organs of the Convention of all measures capable of violating the rights and freedoms which it guarantees is necessary in every case.”²²

Several cases have been considered under **Article 5 (1) (c)** in efforts to combat terrorism. The Court held it was illegal to detain a person without bringing them before a court or without intending to bring them to trial in (*Lawless v. Ireland*) (1961) but issued a contrary opinion in (*Brogan v. United Kingdom*) (1988). Here the Court held detaining applicants was not illegal if they were held for further police investigations to develop a case where concrete suspicions were evident. The meaning of the word “promptly” was the focus of the Brogan case. Four applicants were held under the United Kingdom’s Prevention of Terrorism (Temporary Provisions) Act of 1984 and were held for four to five days each, questioned about terrorist incidents, but never charged. The Court acknowledged the special circumstances of the disturbed political-military climate in Northern Ireland, but still held that the periods of detention in police custody were longer than permitted by proper legal concepts of promptness, and thus their rights under **Article 5 (3)** had been violated. Robertson and Merrills note: “The decision in *Brogan* leaves no room for doubt that the word ‘promptly’ in **Article 5 (3)** will be interpreted strictly and with only a limited degree of flexibility to cater for special circumstances.”²³

Article 5 (1) (b) (d) (e) and (f) discuss civil cases of detention. This includes detention to ensure that an individual complies with “any obligation prescribed by law” but this provision does not mean detention to force compliance with a contractual obligation. **Article 1** of Protocol No. 4 forbids “deprivation of liberty merely on the ground of inability to fulfill a contractual obligation.”

Pretrial Detention

Article 5 (3) requires that any one held under provisions of **Article 5 (1) (c)** must be promptly brought before a judicial authority. The judge is required to hear the petitioner and the person being detained must be brought before the judge, who must review all relevant information before

²² Robertson and Merrills, 1993, p. 69.

²³ Robertson and Merrills, 1993, p. 76.

deciding whether or not the person should be detained. (*Schiesser v. Switzerland*) (1979). In (*Skoogström v. Sweden*) (1984) the Court declared that if a state official held the role of both prosecutor and investigator this did not meet the law's requirements.

Gomien concludes: "The Court has accepted as initial grounds for detention such factors as likelihood of flight from the jurisdiction (*Neumeister v. Austria*) (1968), (*Stögmüller v. Austria*) (1969), and (*Matznetter v. Austria*) (1969) and the risk of the committal of further offenses (*Matznetter*). However, the Court has made it clear that **Article 5 (3)** does not intend a State to detain an individual indefinitely. In the *Stögmüller* case, the Court noted that if the 'reasonable suspicion' criterion of **Article 5 (1) (c)** ceases to apply, continued detention becomes unlawful by the very terms of **Article 5 (1) (e)**. The Court further noted that even if a 'reasonable suspicion' continued to exist, this was not the sole determinative factor to justify continued detention in all cases. In the *Neumeister*, *Stögmüller*, and *Matznetter* cases, the Court held that the introduction of the possibility of bail minimized the danger of flight, thereby rendering continued detention on these grounds unacceptable. In the *Matznetter* case, however, the Court held that the risk of committal of further offenses remained as sufficient grounds for continued detention, although rejecting this argument in the cases of *Stögmüller* and *Ringeisen v. Austria* (1971).²⁴ Even this seemingly restricted application of **Article 5 (3)** has had an impact on the governments of Austria and Germany, causing them to review their law and practice. As a result, both countries modified their Codes of Criminal Procedure, limiting the time of remand in custody to six months except in special circumstances."²⁵

In (*Aksoy v. Turkey*) (1996) the Court found a violation of **Article 5 (3)** when it detained the defendant fourteen days, even if Turkey had filed a notice of derogation of **Article 5**, describing PKK terrorist activity as "a public emergency threatening the life of a nation." The Court found violations of **Article 3** when the individual, in good health, was discovered with injuries when released from police custody. Linking **Article 3** with **Article 13**, the Court found the defendant had been denied an effective remedy in law when state agents failed to investigate incidents of torture in a manner allowing those responsible to be identified and brought to justice. The Court wrote: "under Turkish law the Prosecutor was under a duty to carry out an investigation. However, despite the visible evidence that the applicant had been tortured, no investigation took place. Moreover, in the circumstances of the applicant's case, such an attitude from a State official under a duty to investigate criminal offenses was

²⁴ Gomien, 1993, p. 31.

²⁵ Robertson and Merrills, 1993, p. 79.

tantamount to undermining the effectiveness of any other remedies that may have existed.”²⁶

Parenthetically, the Court denied the claim of Aksoy’s representatives that he was killed as a direct result of his application to the Commission. Thus it concluded that no violation of **Article 25 (1)**, the right of individual petition, was established.

Habeas Corpus

Article 5 (4) allows an individual deprived of their liberty through arrest or detention to petition the courts in a speedy manner. An extensive body of jurisprudence has built up around this issue. The key question: is judicial review of the legality of the detention available? Most cases brought under this article argue that the failure of a country to provide systematic reviews of the legality of detention violates the meaning of the article. The Court found in (*DeJong, Baljet and Van den Brink v. Netherlands*) (1983) a six-to-eleven day delay was excessive for a first review of a detention decision.

The accused must be given access to files used by investigating authorities in their review of a decision to detain the accused on remand (*Lamy v. Belgium*) (1989).

Right to Compensation

Article 5 (5) provides compensation for “everyone who has been the victim of arrest or detention in contravention of the provisions of” **Article 5**. Gomien writes: “In order for the Commission or Court to find a violation of **Article 5 (5)**, it must first find a violation of one or more of the rights protected by the preceding paragraphs of the article. It is important to note that the right to compensation under this provision is a right an individual claims from national authorities, as he does any of the other rights delineated in Section 1 of the convention.”²⁷ At the same time, **Article 50** permits the Court to “afford just satisfaction to certain individuals filing complaints. The Court has concluded the two Articles are not exclusive one of the other and that it is permissible to invoke either or both in claiming compensation for false arrests.”²⁸

In summary, the six categories under which a person’s liberty can be deprived in **Article 5 (1)** constitute exceptions to the established rights to personal

²⁶ ECH-96-3-017 in *Bulletin of Case Law*, Strasbourg, 1996, pp. 456-457.

²⁷ Gomien, 1993, p 34.

²⁸ Gomien, 1993, p.34.

liberty and security. There is a lack of legal symmetry to their enumeration and they contain no stricture against “arbitrary” arrest and the whole category of what constitutes justifiable or unjustifiable restrictions is left undiscussed. A recent commentary states: “In practice, such areas as discipline in prison or by the military, child and age care, camps for refugees or war prisoners, and other strict regimes may raise issues under **Article 5 (1)**. Sometimes they have to be seen as not covered by any of the categories, and thus prohibited. But in most countries the law prohibits one person from detaining another in homes, or hospitals for children, psychiatric patients and other handicapped groups. Many borderline cases arise in such environments. However, the recognized categories under **Article 5 (1)** are flexible on some points. Therefore detention in forms other than prisons or similar institutions may well be covered, if the law provides for it.”²⁹

Article 6: The Right to a Fair Hearing

(Should be considered with **Article 13** and Protocol No. 7, articles 2 and 4.)

This is a broadly cast Article, containing several provisions not falling easily within other sections of the Convention. Additionally, it is often invoked by applicants raising objections not only about the violation of a specific right but about the procedural application of the law or their treatment by judicial authorities. It follows then that the jurisprudence accumulated under this Article is somewhat amorphous.

The presumption of innocence and the right to a fair trial are key provisions of this Article which is much more detailed than similar provisions in the Universal Declaration. **Article 6**'s first paragraph opens with a general statement of right which closely resembles the Declaration's **Article 10**. As might be expected, this Article, like **Article 5**, has provoked much case law. Many litigants cast a broad net by invoking numerous due process provisions of this Article.

A recent commentary notes: “One important principle at issue in cases alleging a violation of the right of access to court is that the state cannot restrict or eliminate judicial review in certain fields or for certain classes of individuals. Some of the important cases challenging state practices in this area have been brought by prisoners. In the Golder case, a prisoner who wished to bring a civil action for defamation against a prison guard who had falsely accused him of instigating a prison riot had had his letters to both a solicitor and the European Commission of Human Rights censored and withheld by the prison authorities. The European Court of

²⁹ Gomien, Harris, and Zwaak, 1996, p.142.

Human Rights found a violation both of his right to correspondence under **Article 8** and his right to access under **Article 6 (1)**.³⁰

An important case about due process of law and assuring access to courts is (*Airey v. Ireland*) (1979). Here the Court held that, under **Article 6 (1)**, refusing to grant legal aid to a penniless woman attempting to obtain a judicial separation from an abusive husband violated her right of access to the courts. A commentary on the case notes: the Court held “that the Convention had been violated because the prohibitive cost of obtaining a judicial separation in Ireland meant that the applicant had been deprived of an effective right of access to a court. Although there was no formal barrier, Mrs. Airey lacked the means to engage a lawyer and there was no legal aid available. In the Court’s view this was enough to infringe her rights under **Article 6 (1)**.”³¹

While **Article 6** does not allow for a right to appeal a criminal conviction, Protocol No. 7, Article 2 provides such a right.

Article 6 (1): “Civil Rights and Obligations”

In the Commission’s view, the term “civil rights and obligations” “cannot be construed as a mere reference to the domestic law of the High Contracting Party concerned, but, on the contrary, relates to an autonomous concept which must be interpreted independently of the rights existing in the law of the High Contracting Parties.”³²

Both the Commission and Court give a broad interpretation to the concept of “civil rights and obligations.” In (*Ringeisen v. Austria*) (1971), the Court held these terms to be autonomous. Hence, the distinction between private and public law matters is inconsequential. Ringeisen appealed to an Austrian Regional Land Commission, an administrative tribunal, to transfer farmland for building purposes. The legal question was did the proceedings before an administrative body, instead of a court, constitute a setting where the idea of a “civil right” and standards of a fair trial should apply? The Court concluded such proceedings were covered by **Article 6 (1)**. It argued that the nature of the tribunal did not matter, nor did the character of the legislation, the basic issue, the Court found, was that if Ringeisen had correctly completed the terms of purchase in the land contract, he was meeting his obligations under Austrian law. Therefore the Regional Commission was simply applying Austrian Administrative law and its decision “was to be decisive for the relations in civil law” in the sale.

³⁰ Golder judgment of February 21, 1975, Series A. No. 18, in Gomien, Harris, and Zwaak, 1996, p. 159.

³¹ Robertson and Merrills, 1993, p. 87.

³² Application 1931/63, cited in Robertson and Merrills, 1993, p. 88.

It is important to note there is no stricture that a dispute must be heard by a body which meets the **Article 6 (1)** criteria at every stage. **Article 6 (1)** states “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.” The Commission and Court accept the position that, while such specialized administrative tribunals do not always provide the requisite due process guarantees, the Convention is not violated provided they are subject to a judicial body which can take full jurisdiction of the case and render an independent, impartial, and fair verdict.³³

In (*Doorson v. the Netherlands*) (1996) Doorson was arrested in April 1988 on several drug possession charges. Six drug users who preferred to remain anonymous for fear of reprisals identified him to police, as did two other witnesses, one of whom never appeared at the trial, the other of whom withdrew his earlier statement. Doorson’s counsel appealed to the Court under **Article 6 (1)** and **6 (3)**, citing his inability to question the witnesses. The Court disagreed, arguing that a fair trial is one in which defense interests must be balanced with those of the state, in particular to protect its witnesses against possible reprisals and allowed the witnesses to remain anonymous.³⁴

Criminal Charges

A leading case on due process in a criminal charge is (*Barberá, Messegué and Jabaro*) (1988). The trio were arrested in Barcelona in 1980 shortly after a Catalan business representative had been assassinated by a terrorist group. Although the suspects signed a statement acknowledging their role in the killings, they later repudiated the confession, arguing they had been forced to sign the document after being ill-treated. After a one day hearing in Madrid two years later, two of the defendants were convicted of murder, the other of a lesser charge. In their appeal to the Commission, and later the Court in Strasbourg, they complained they were denied a fair trial. The Court concluded **Article 6 (1)** had been violated for several reasons, evidence of a key witness was on file but the defense was never given an opportunity to examine the witness, the conditions under which the confessions were obtained were flawed, there were reports of evidence, including documents and weapons, entered at the trial but never produced by the prosecution for defense examination, two trial judges were substituted at the last moment, suggesting they had not familiarized themselves with the 1,600 page case before the one day trial was held, plus numerous other procedural flaws.³⁵

³³ Robertson and Merrills, 1993, p.91.

³⁴ ECH-96-1-005, in *Bulletin on European Case Law*, Council of Europe, Strasbourg, 1996, pp. 134-135.

³⁵ Robertson and Merrills, 1993, pp. 94-95. The case is Series A, No. 146.

Both the Commission and the Court give broad interpretation as to what constitutes a criminal charge. For example, in (*Eckle v. Federal Republic of Germany*) (1982) the Court said a criminal charge is an “official notification given to an individual by competent authority of an allegation that he has committed a criminal offense.” In (*Foti and Others v. Italy*) (1982) the Court broadened the concept to include “other measures which carry the implication of such an allegation and which likewise substantially affect the situation of the suspect.”³⁶

The Equality of Arms Principle

Procedural equality, or equality of arms, applies equally to civil and criminal cases, but is raised more often in criminal cases where the question of whether or not the accused has been placed at a disadvantage in relation to the prosecution is raised. Equality of arms issues are raised both in relation to the treatment of witnesses and to the whole institutional framework in which the trial is held. Gomien writes: “The most important of the unarticulated principles of **Article 6** is the ‘equality of arms’- the idea that each party to a proceeding should have equal opportunity to present his case, and that neither should enjoy any substantial advantage over his opponent.

The issue of equality of arms has arisen in numerous cases, such as (*Neumeister v. Austria*) (1968). Here the Court said both parties in a criminal proceeding must be represented at all points when a case is under examination. In (*Bonisch v. Austria*) (1985) the Court held that expert witnesses for both sides must be heard, and in (*Feldbrugge v. Netherlands*) (1986), it concluded each party must be given the opportunity to oppose the arguments of the other.”³⁷

Article 6 (1): Independent and Impartial Tribunal Established by Law

Independence and impartiality are central to any concept of a fair judicial system, and the case law that has developed around this concept has interpreted it to mean courts must be both independent of the executive branch and of the parties to the case. The Court has looked at the manner in which members are named to such bodies, and the length of their appointments. A difficult issue for the Court to weigh is the presence of civil service employees on administrative tribunals. On the one hand, their expertise in a given subject, such as labor law or social security regulations, is invaluable; on the other, their presence risks challenges that the tribunal will be unduly balanced in favor of the State. Much of

³⁶ Gomien, 1993, p.39.

³⁷ Gomien, 1993, p. 41-42.

the case law on impartiality has centered on the role of judges who have performed dual functions, such as being both trial judge and previously being a prosecutor in a case. For example, in *Piersack* the President of the Belgian Assize Court had once been a Senior Public Prosecutor in a case which was now before his Court. The European Court, accepting the Commission's earlier finding, concluded **Article 6 (1)** had been violated, saying "what is at stake is the confidence which the courts in a democratic society must inspire in the public and above all, as far as criminal proceedings are concerned, in the accused."³⁸

Gomien writes: "Not only must courts themselves be empowered to determine the outcome of cases, but the State may not arbitrarily transfer jurisdiction between courts and administrative tribunals of various kinds. The principle underlying the independence and impartiality clause is separation of powers, but neither the Convention itself nor the Convention organs dictate the means by which this requirement should be met. However, it is clear from the case law that members of the executive branch should not be charged with prosecution of the law....In the case of (*DeCubber v. Belgium*) (1984), it was not acceptable for the investigating judge and the trial judge to be the same person, and in the (*Piersack v. Belgium*) case (1982) the same result obtained when the president of the tribunal had earlier been the public prosecutor on the case being adjudicated."³⁹

Article 6 (1): The "Reasonable Time" Standard

Three factors have emerged as the test of whether or not judgment is delivered within a reasonable time, the complexity of the case, the manner in which judicial authorities have dealt with it, and the applicant's own conduct in the case. What constitutes a "reasonable time" standard differs in criminal and civil cases; in criminal cases the time begins when a competent authority notified an individual they have committed a criminal offense. (*Deewer v. Belgium*) (1980). "The Court has rejected governmental arguments that inadequate staffing or general administrative inconvenience are sufficient justifications for failure to meet the 'reasonable time' standard (*DeCubber v. Belgium*) (1984) and (*Guincho v. Portugal*) (1984)."⁴⁰ However, in another case the Court held in (*Pretto and Others v. Italy*) (1983) six years of procedure at the local level and six years of review in Strasbourg was still within the "reasonable time" standard.

In several civil divorce cases the Court held **Article 6** was violated when a case took nine years (*Bock v. Federal Republic of Germany*) (1989), when it

³⁸ Series A, No. 154, quoted in Robertson and Merrills, 1993, p. 99.

³⁹ Gomien, 1993, p. 42.

⁴⁰ Gomien, 1993, p. 43.

took over seven years to move a case from one level to another of the French court system (*H v. France*) (1989) and when it took over six years to reach a final determination and establish damages in a Portuguese case (*Neves e Silva v. Portugal*) (1989).

Public Hearings and the Pronouncement of Judgment

Article 6 (1) provides “a fair and public hearing” for everyone and that “judgment shall be pronounced publicly.” The Court’s position is:

“The public character of proceedings before the judicial bodies referred to in **Article 6 (1)** para 1 protects litigants against the administration of justice in secret with no public scrutiny; it is also one of the means whereby confidence in the courts, superior and inferior can be maintained. By rendering the administration of justice visible, publicity contributes to the achievement of the aim of **Article 6 (1)** para 1, namely a fair trial, the guarantee of which is one of the fundamental principles of any democratic society.”⁴¹

Several **Article 6** issues were touched in (*John Murray v. United Kingdom*) (1996). Murray was arrested on January 7, 1990, in the house where a provisional Irish Republican Army informer had been held captive. Murray was denied access to an attorney for 48 hours, the argument being it would interfere with police operations against terrorism. Murray kept silent during twelve police interviews and this was held against him at trial. The Court, however, found that his insistence in maintaining silence throughout the proceedings did not amount to a criminal offense or to contempt of court under Northern Irish legislation.⁴² Additionally, the Court found the denial of access to legal counsel to the defendant for 48 hours when he was detained by police was a breach of **Article 6 (1)**.

Article 6 (2): The Presumption of Innocence

The important idea of the presumption of innocence is found in **Article 6.(2)**. The focus on presumption of innocence begins with the domestic court; did local judges act in such a way that the presumption of innocence was evident in the proceeding from the beginning? It is the prosecutor’s role to prove guilt, and the accused must be allowed the right of offer evidence in rebuttal. A key early case was (*Minelli v. Switzerland*) (1983). Here the petitioner claimed that the assessment of court costs and compensation in a case against him which had expired under the statute of limitations

⁴¹ Pretto case, Series A, No. 71, para 21, in Robertson and Merrills, 1993, p. 102.

⁴² ECH-96-1-001, in *Bulletin on Constitutional Case Law*, Council of Europe, Strasbourg, 1996, pp. 130-131.

violated presumption of innocence as established in **Article 6 (2)**. In agreeing, the Court wrote: “Without the accused’s having previously been proved guilty according to law and, notably, without his having had the opportunity of exercising his rights of defense, a judicial decision concerning him reflects an opinion that he is guilty.”

Five years later, in (*Barberá, Messegué and Jabaro v. Spain*) (1988) the Court set standards for compliance with the Article: “When carrying out their duties, the members of a court should not start with the preconceived idea that the accused has committed the offense charged; the burden of proof is on the prosecution, and any doubt should benefit the accused. It also follows that it is for the prosecution to inform the accused of the case that will be made against him, so that he may prepare and present his defense accordingly, and to adduce evidence sufficient to convict him.”⁴³

Many presumption of innocence cases treat the question of pre-trial publicity. Here the applicant must show that their conviction was adversely affected by the publicity, which may be difficult if the accused has contributed to raising the publicity level, as in the case of a terrorist gang or publicity-seeking defendant.

A recent commentary notes: “The guarantee of the presumption of innocence is one of the fundamental principles of **Article 6**. It cannot dictate the impossible: that no innocent person shall ever be found guilty. But in return everyone—even the guilty—has the right to be presumed innocent until final judgment. The right to be presumed innocent has several dimensions and effects, some relative, some absolute. The most obvious and well known application is the principle *in dubio pro reo*: the accused is entitled to the benefit of the doubt. This means that the burden of proof is primarily on the prosecution, and that even if the Court itself has a duty to investigate the facts, as is the case in some systems, any doubts about the evidence must favor the defense. The right to be presumed innocent attaches only to an individual charged with a criminal offense, and thus does not arise with the ‘determination of civil rights and obligations.’”⁴⁴

Article 6 (3): The Rights of the Defense

Article 6 (3) enumerates five specific rights of the defense in a criminal case. Taken together, their intent is to ascertain that prosecution and defense are playing on a level playing field. Everyone is “to be informed

⁴³ Gomien, 1993, pp. 44-45.

⁴⁴ Gomien, Harris, and Zwaak, 1996, p. 182.

promptly, in a language which he understands, and in detail, of the nature and cause of the accusation against him.” **Article 6 (3) (a)**. In the 1989 *Brozicek* case the Court found in favor of a German resident who complained that an Italian court’s charges against him were never properly made known to him, and that his trial *in absentia* was therefore invalid. He had been sent two letters in Italian, one to the wrong address, and the Italian authorities were unable to prove that Brozicek had adequate fluency in that language sufficient to understand the charges brought against him.

In a related case, the Court found against the defendant, *Kamasinski*, who had been arrested in Austria on several charges of fraud and misappropriation. The defendant did not understand German, so an interpreter was provided, along with legal assistance. Kamasinski argued that his due process had been violated because the charges had been presented him in oral rather than written form, but the Court concluded from the evidence, and from the defendant’s behavior, that he had sufficient knowledge of the charges against him, and that therefore his rights had not been violated under the provisions of **Article 6**.

Article 6 (3) (b): Time and Facilities to Prepare a Defense

The issue of adequate time to prepare a defense is important and many cases under this article have come about because of defendants’ finding undue delays in the trial and important information being withheld from them. Attorneys need time to prepare cases, especially human rights cases which are not the usual practice of most lawyers. Also, if an attorney is replaced on a case, it requires time for a new attorney to prepare the case for trial. A defendant in a criminal case, generally represented through their attorney, should be provided with the case assembled by the prosecution, including both the specific charges and the legal reasoning and evidence used to support the charges. This is the intent of **Article 6 (3)**. Additionally, the Commission has held that ‘facilities’ as mentioned in paragraph (b) mean allowing an accused person to become familiar with the outcome of the authorities’ investigations. To meet the standards of this provision, the prosecution is required to allow access to all relevant documentation.⁴⁵

Article 6 (3) (c): The Right to Legal Assistance

The accused has the right “to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for

⁴⁵ Robertson and Merrills, 1993, p. 110.

legal assistance, to be given it free when the interests of justice so require.” The Court has established that, in a criminal case, a defendant without legal assistance is entitled to counsel. If the defendant is unable to pay for the lawyer’s services, the cost should be assumed by the Court. A significant feature of *Article 6 (3) (c)* is that it guarantees the accused not merely *pro forma* legal assistance, but *effective* legal assistance. In the *Artico* case an Italian court had named an attorney to assist a defendant in the preparation of his case. The attorney, claiming ill health and a busy work schedule, declined the case. The applicant invoked *Article 6 (3) (c)* to the Court, and the Italian government responded it had fulfilled its obligations in appointing the original lawyer and had no further responsibilities in this regard. The Court found this totally unacceptable:

“The Court recalls that the Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective; this is particularly so of the rights of the defense in view of the prominent place held in a democratic society by the right to a fair trial, from which they derive...As the Commission’s Delegates correctly emphasized, *Article 6 (3) (c)* speaks of ‘assistance’ and not of ‘nomination’... Adoption of the government’s restrictive interpretation would lead to results that are unreasonable and incompatible with both the wording of sub-paragraph (c) and the structure of *Article 6* taken as a whole; in many instances free legal assistance might prove to be worthless.”⁴⁶

An additional argument advanced by the government in this case was that, while the applicant could not afford a lawyer, it was not obliged to provide legal assistance because the case was so clear-cut no defense was necessary. The Court rejected this argument.

Article 6 (3) (d): The Right to Confront Witnesses

Here the accused has the right “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.” In a finding the Commission has noted this “does not permit an accused person to obtain the attendance of any and every person and in particular of one who is not in a position by his evidence to assist in establishing the truth.”⁴⁷

The Court has been consistent in its jurisprudence in finding the testimony of anonymous witnesses unavailable for examination by the defence to be a violation of *Article 6 (3) (a)*. Three leading cases where witnesses were given special protected status are (*Kostovski v. Netherlands*)

⁴⁶ Series A, No. 37 para. 33, in Robertson and Merrills, 1993, p. 113.

⁴⁷ Application 753/60 in Robertson and Merrills, 1993, p. 114.

(1989), (*Windisch v. Austria*) (1990), and (*Unterpertinger v. Austria*) (1986). Unterpertinger was convicted from testimony given by his wife and stepdaughter, evidence he could not challenge since they had been granted special status under Austrian law. The Commission accepted the Austrian government's position that, since neither side could question the exempted witnesses, no basic inequality existed between the two parties to the case. Still, the Court held that the defendant's **Article 6** rights had been violated, since the local court had allowed the witnesses' in support of several key accusations against the defendant, who had been prohibited from confronting his accusers.⁴⁸

Kostovski had a long criminal record and, once he had escaped from prison, was seen by two witnesses participating in a bank robbery. Fearing reprisals, they declined to appear at his trial. Kostovski was convicted on the basis of these anonymous reports given to the police and examining magistrates. Notwithstanding, the Commission and Court held that the applicant's rights had been breached under **Article 6 (3) (d)**. Robertson and Merrills write: "In principle, the Court explained, all the evidence has to be produced in the presence of the accused at a public hearing with a view to adversarial argument. However, statements obtained at the pre-trial stage could be used as evidence provided the rights of the defense had been respected. As a rule, those rights required that the accused be given, at some stage in the proceedings, an adequate and proper opportunity to challenge and question a witness against him. In the Court's view such an opportunity had not been given in the present case. At no stage could the anonymous witnesses be questioned directly by the applicant or his representative. In addition, written questions which the applicant or his representative was allowed to put had been restricted by the decision to preserve the witnesses' anonymity. Indeed, this had compounded the applicant's difficulty because 'if the defense is unaware of the identity of the person it seeks to question, it may be deprived of the very particulars enabling it to demonstrate that he or she is prejudiced, hostile, or unreliable.'"⁴⁹

The Court's actual wording in this case is instructive:

"If the defense is unaware of the identity of the person it seeks to question, it may be deprived of the very particulars enabling it to demonstrate that he or she is prejudiced, hostile or unreliable. Testimony or other declarations inculcating an accused may well be designedly untruthful or simply erroneous and the

⁴⁸ Gomien, 1993, pp. 48-49.

⁴⁹ Series A, No. 166 para.42, in Robertson and Merrills, 1993, p. 115.

defense will scarcely be able to bring this to light if it lacks the information permitting it to test the author's reliability or cast doubt on his creditability. The dangers inherent in such a situation are obvious."⁵⁰

The *Unterpertinger* case presents a different set of issues. Here the defendant was convicted of bodily harming his wife and stepdaughter, both of whom made statements to the police, neither of whom would testify in the actual case. Following Austrian practice, their statements were read in court and this constituted the principle evidence against Unterpertinger. Robertson and Merrills write: "Examining the circumstances of the applicant's trial, the Court pointed out that his conviction was based mainly on the statements of his wife and stepdaughter which had been treated by the Austrian courts not simply as items of information, but as proof of the truth of the accusations against him. Although it was for the Court of Appeals to assess the evidence, it had refused to allow the applicant to adduce evidence to put the creditability of his wife and stepdaughter in doubt. In view of this the applicant had been convicted on the basis of 'testimony' in respect of which his defense rights were appreciably restricted. Accordingly here, as in the *Kostovski* case, the Court concluded that the applicant did not have a fair trial and there was therefore a breach of **Article 6 (1)**, taken together with the principles inherent in **Article 6 (3) (d)**."⁵¹

The Question of Effective Remedies

The right to a fair hearing provisions of **Article 6** should be considered in conjunction with several other articles, including Protocol No. 7, Articles 2 and 4 and Article 13. The Convention's **Article 13** states "an effective remedy before a national authority" is available to any person whose rights have been violated. Gomien notes: "Although these words appear to present a fairly straightforward legal concept, **Article 13** has presented more problems of interpretation for the Commission and the Court than has any provision of the Convention."⁵² Key cases include (*Klass and Others v. Federal Republic of Germany*) (1978), (*Silver and Others v. United Kingdom*) (1983), (*Leander v. Sweden*) (1987) and (*Abdulaziz, Cabales and Balkandali v. United Kingdom*) (1985). In *Silver* the Court wrote: "Where an individual has an arguable claim to be the victim of a violation set forth in the Convention, he should have a remedy before a national authority in order both to have his claim decided and, if appropriate, to obtain redress."

⁵⁰ Kostovski judgment of November 20, 1989, Series A. No. 166, p. 20, para 42.

⁵¹ Robertson and Merrills, 1993, p. 117.

⁵² Gomien, 1993, p. 49.

Article 7: Freedom from Retroactive Criminal Legislation

The specific intent of **Article 7** is to protect an individual from being convicted of a criminal charge that did not exist in law at the time the act was committed. The same Article prohibits a State from imposing a more severe penalty on an individual criminal offender than the penalty in force at the time the act was committed. **Article 7**'s first paragraph corresponds to the comparable Article in the Universal Declaration.

There is a pattern to the drafting of **Articles 8** through **11**, establishing rights in the first paragraph, limiting them in the second, perhaps reflecting the political caution drafters of the late 1940s, writing when the future powers of the state and their relation to individual rights were by no means clear. If the Convention were drafted today, it is doubtful such a formula would be employed, since it makes it difficult to enunciate what exactly is a right. Additionally, in a mature democracy courts can be expected to match the statement of rights with applicable case law and precedent in deciding cases. A result of this green light–red light approach to human rights law drafting is a jurisprudence that is elaborate, nuanced, and at times contradictory. For example, the tension between individual and states' rights is described in a Court decision: "Some compromise between the requirements for defending a democratic society and individual rights is inherent in the system of the Convention...a balance must be sought between the exercise by the individual of the right guaranteed...and the necessity...for the protection of the democratic society as a whole."⁵³ The Court has rejected any idea that there is any doctrine of inherent limitations to rights and freedoms listed in the Convention and instead applies a two-fold test in cases where the state has claimed such a restriction: first, was the interference "in accordance with law;" second, was it "necessary in a democratic society." If the interference was not "in accordance with law," the Court will find a violation against the state. The Court has held: "It would be contrary to the rule of law for the legal discretion granted to the executive to be expressed in terms of unfettered power. Consequently, the law must indicate the scope of any such discretion conferred on the competent authorities and the manner of its exercise with sufficient clarity, having regard to the legitimate aim of the measure in question, to give the individual adequate protection against arbitrary interference."⁵⁴

Commenting on the "necessary in a democratic society" clause, Gomien, Harris, and Zwaak write: "The supervisory organs have rejected the

⁵³ Klass judgment of September 6, 1978, Series A, No. 28, p. 28, para 59.

⁵⁴ Malone judgment of August 2, 1984, Series A, No. 82, p.32, para 67.

notion that states may apply the ‘necessary in a democratic society’ clause in a vacuum. They must always tie it to one of the more specific clauses in the same restricting provision. A few of these specific restrictions appear in several Articles: others appear in only one or two. ‘Public safety’ and ‘the protection of health or morals’ appear in all four Articles. ‘National security’ and ‘the prevention of disorder or crime’ appear in **Articles 8, 10, and 11**; ‘protection of the rights and freedoms of others’ in **Articles 8, 9, and 11**. Three of the four articles contain unique restrictions as well. **Article 8** mentions ‘the economic well-being of the country,’ **Article 9** ‘the protection of public order,’ **Article 10** ‘territorial integrity,’ ‘the protection of the reputation or rights of others,’ ‘preventing the disclosure of information received in confidence,’ and ‘maintaining the authority and impartiality of the judiciary.’⁵⁵

Article 8: The Right to Respect for Private and Family Life, Home and Correspondence

(See also **Articles 8 and 12** and Protocol No. 7, Article 5)

A difference between **Article 8** and its companion documents, **Article 16 (3)** of the Universal Declaration and **Article 23 (1)** of the Covenant on Civil and Political Rights, is that **Article 8** focuses on individual members of a family, whereas the family unit as such is the subject of the other instruments. Gomien, Harris, and Zwaak state: “The doctrine of non-interference by the state is, as far as **Article 8** is concerned, firmly established in the right to privacy. In a democratic society, the individual is entitled to live his daily life without the state’s monitoring or controlling his activities. The Court confirmed this primary duty of the state to abstain from interference in its judgment in the *Airey* case, stating that the object of **Article 8** is ‘essentially that of protecting the individual against arbitrary interference by the public authorities.’ For example, private citizens have a general right to receive uncensored mail, to live without publicity, and to establish and develop relationships with other persons.”⁵⁶

Robertson and Merrills quote a definition of privacy, with reference to **Article 8**: lumping together the four headings of privacy, family life, home and correspondence.⁵⁷

Privacy is defined as:

⁵⁵ Gomien, Harris, and Zwaak, 1996, p. 215.

⁵⁶ Gomien, Harris, and Zwaak, 1996, p. 228-229.

⁵⁷ Robertson and Merrills, 1993, p. 128.

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- “1. Protection of the individual’s physical and mental inviolability and a person’s moral and intellectual freedom.
 2. Protection against attacks on an individual’s honor or reputation and assimilated torts.
 3. Protection of an individual’s name, identity or likeness against unauthorized use.
 4. Protection of the individual against being spied on, watched or harassed.
 5. Protection against disclosure of information covered by the duty of professional secrecy.”⁵⁸

Homosexuality

An issue facing legal systems in Central and Eastern Europe is how to treat questions involving homosexual activity. Robertson and Merrills write: “Whether the punishment of homosexuality infringes **Article 8** is an important question which has been considered on several occasions. In an early decision the Commission took the view that a German law which criminalized homosexual practices constituted an interference with private life but could be justified under **Article 8 (2)** as necessary for the protection of health and morals. Subsequently, however, in the *Dudgeon* case the Commission held that a similar law in Northern Ireland could not be so justified and when the matter was then referred to the Court, it came to the same conclusion. Soon afterwards equivalent legislation in the Irish Republic was challenged in the *Norris* case and again the decision was that it violated the Convention. As the reasoning in these cases would appear to be generally applicable, it can now be regarded as settled that the criminalization of homosexuality is contrary to **Article 8**.”⁵⁹

Articles 8 to 11: Grounds for Restricting the Exercise of Rights

(See **Articles 8 to 11**, paragraph 2, and **Article 2** of Protocol 4, plus **Articles 17 and 18**). In these articles, as noted above, specific rights and freedoms are enumerated in the first paragraph, then grounds to limit the rights and freedoms follow. The intent of this seemingly contradictory approach to legal drafting is to balance individual rights with the broader interests of the state. Several western democracies take a different approach, the rights are clearly stated in a Bill or Charter of Rights and the Courts, through precedent and case law, establish their parameters. Some newly independent states in Central and Eastern Europe have expressed concern that the restrictive clauses, familiar from the earlier Russian Constitution,

⁵⁸ J. Velu, in *Privacy and Human Rights*, pp.12-25, in Robertson and Merrills, 1993, p. 126.

⁵⁹ *Dudgeon* is in Series A, No. 45, *Norris* is in Series A, No. 142, in Robertson and Merrills, 1993, p. 129.

are easy to invoke as ways of limiting individual rights and freedoms. As might be expected, this issue provoked much debate within the Commission and Court and can be expected to do so as more central and eastern European countries join the Council of Europe.

Given the broad nature of the restrictive clauses, the Commission sought a narrow interpretation of their meaning in a landmark case, (*Sunday Times v. United Kingdom*) (1979). Here the court wrote:

“Strict interpretation means that no other criteria than those mentioned in the exception clause itself may be at the basis of any restrictions, and these criteria, in turn, must be understood in such a way that the language is not extended beyond its ordinary meaning.”

“Strict interpretation” requires any limitations of rights and freedoms to be both lawful and “necessary in a democratic society.” In considering a case where a state has employed one or more of this article’s limiting clauses, Commission and Court ask was the State action done “in accordance with law”. If the action does not meet this legal test, the Commission or Court will declare a violation and the review process is terminated. Assuming, however, that the legality standard is met, the Commission or Court will next consider if the action can be classified as “necessary in a democratic society,” having as its purpose one of the topics listed in the applicable article, such as the preservation of public order, national security, or the protection of health or morals.⁶⁰

Interpreting “in accordance with law” and “prescribed by law”

In the *Sunday Times* case two standards of lawfulness were established, that the law must be both accessible and foreseeable to the citizen, and its application not be a capricious act by the State:

“Firstly, the law must be adequately accessible: the citizen must be able to have an indication that is adequate in the circumstances of the legal rules in a given case. Secondly, a norm cannot be regarded as ‘law’ unless it is formulated with sufficient precision to enable the citizen to regulate his conduct.”

In (*Malone v. United Kingdom*) (1984) the Court established that use of State power must be for legitimate aims:

⁶⁰ Gomien, 1993, pp. 53-54.

“It would be contrary to the rule of law for the legal discretion granted to the executive to be expressed in terms of an unfettered power. Consequently, the law must indicate the scope of any such discretion conferred on by the competent authorities and the manner of its exercise with sufficient clarity, having regard to the legitimate aim of the measure in question, to give the individual adequate protection against arbitrary interference.”

Interpreting “necessary in a democratic society”

To the requirements of lawfulness described in “In accordance with law” and “prescribed by law” comes a third category, the restriction must be one that is “necessary in a democratic society.” Here the Court has given wide discretion to a State to determine what is democratic within its own boundaries. In (*Handyside v. United Kingdom*) (1976) the Court wrote:

“By reason of their direct and continuous contact with the vital forces of their countries, State authorities are in principle in a better position than the international judge to give an opinion on the exact content of these requirements...as well as on the ‘necessity’ of a ‘restriction’ or ‘penalty’ intended to meet them.”

In the *Handyside* case the Court noted, as it has in several cases, that courts and countries have an obligation to both promulgate local and European standards. For instance, a country cannot invoke vague concepts of general unrest or necessity as grounds to limit individual rights and freedoms (*Greek case*) (Comm. Rept. of 1969). Also, the Commission and Court apply modern standards of political governance in their review of such cases, promoting the growth of political pluralism, tolerance, and broadmindedness in civic governance, none of which were stated in the Convention, which was written in the late 1940s, but all of which have become part of later UN, OSCE and Council of Europe political-legal thought.

How is the “necessary in a democratic society” standard to be interpreted? Convention bodies have devised a two-part analysis; first, they ascertain if the restriction’s purpose is legitimate. The Court found that controlling prisoners’ correspondence (*Golder and Silver*), or prohibiting homosexual activity for young men under twenty-one are legitimate aims (*Dudgeon v. United Kingdom*) (1981) and (*Norris v. Ireland*) (1988). Second, the question is are the means used to restrict the particular right or freedom “proportionate to the legitimate aim pursued.” Gomien notes: “This requirement is often more difficult for the State to meet. For example, in

the prisoners' correspondence cases, the Court held that the authorities could not prevent a prisoner from writing to his lawyer (*Golder*), and could only censor letters threatening violence or planning future crimes (*Silver*). In the homosexuality cases, the Court refused to accept that criminalizing homosexual acts of consenting adults met the proportionality standard.”⁶¹

Article 8: Rights to Privacy, Family Life, Home and Correspondence, to Marry and Found a Family, to Equality of Spouses

(This Article should be considered in conjunction with **Article 12** and Protocol 7, Article 5)

It is difficult to break this broad category of rights down into discrete units, since many of the topics overlap. This discussion, therefore, will highlight key issues raised in the various categories.

A leading case is (*Marckx v. Belgium*) (1979) where a mother and her natural child challenged Belgian laws requiring the mother to obtain legal status for her daughter by taking certain specific steps. The Court ruled the State's requirements to constitute a violation of the right of family life. It held:

“When the State determines in its domestic legal system the regime applicable to certain family ties...it must act in a manner calculated to allow those concerned to lead a normal family life.”

In (*Airey v. Ireland*) (1979) the Court found against the Irish government for declining legal assistance to a woman who sought a separation from a violent husband. The Court held:

“Although the object of **Article 8** is essentially that of protecting the individual against arbitrary interference by the public authorities, it does not merely compel the State to abstain from such interference: in addition to this primarily negative undertaking, there may be positive obligations inherent in an effective respect for private and family life.”

Electronic Surveillance and Data Collection on Individuals

In (*Klass and Others v. Federal Republic of Germany*) (1978) during a criminal investigation petitioners claimed government surveillance

⁶¹ Gomien, 1993, pp. 56-57.

violated their privacy rights. However, the Court found that the Federal Republic of Germany laws on surveillance were carefully drafted and it followed that the State's need to protect itself against "imminent dangers" threatening its "free democratic constitutional order" justified its actions. Beddard writes: "The *Klass* case, which was referred to the Court in 1978, concerned surveillance and interception of mail and telecommunications in Germany. The applicants, a group of lawyers, complained that legislation passed in 1968 restricted the right of secrecy of mail, post and telecommunications in that it authorized surveillance, in certain circumstances, without the need for informing the person concerned. The Court was in no doubt that such a procedure was contrary to **Article 8**, but the cardinal issue was whether the interference was justified under Paragraph 2. That Paragraph, emphasized the Court, must be narrowly interpreted. It was of the opinion that 'Powers of secret surveillance of citizens, characterizing as they do the police state, are tolerable under the Convention only in so far as strictly necessary for safeguarding democratic institutions.' The Court felt that, in view of the threat posed to democracy nowadays by highly sophisticated forms of espionage and by terrorism, some powers of secret surveillance were necessary. Whatever system is employed, however, there must exist adequate and effective guarantees against abuse. After examining the German legislation the Court came to the conclusion that no breach of **Article 8** could be found."⁶²

In (*Malone v. United Kingdom*) (1984) the Court dealt with police wiretapping, finding the United Kingdom law on wiretapping overly vague. The Court wrote:

"It would be contrary to the rule of law for the legal discretion granted to the executive to be expressed in terms of an unfettered power. Consequently, the law must indicate the scope of any such discretion conferred on the competent authorities and the manner of its exercise with sufficient clarity, having regard to the legitimate aim of the measure in question, to give the individual adequate protection against arbitrary interference." In two French cases the Court held that French laws failed to meet the legality requirement enumerated in **Article 8**. (*Huvig v. France*) (1990) and (*Kruslin v. France*) (1990).

In (*Gaskin v. United Kingdom*) (1989) the Court found against the State for failing to heed the applicant's requests for access to his case records. Gomien

⁶² (1978) Series A, No. 28, in Beddard, 1993, p. 101.

writes: “In this case the United Kingdom authorities had refused to supply a young man who had spent virtually his entire childhood in a series of foster homes, with all the records relating to his time in public care, on the grounds that the information therein had originally been provided in confidence and that consent could not be obtained from those who had supplied it. The Court first balanced the interests of the young man, in obtaining information about his own life, against those of third parties, in preserving confidentiality, and the State, in encouraging the compilation of objective and reliable information. Although finding such ‘balancing’ within the scope of the State’s margin of appreciation, the Court nevertheless found a violation of *Article 8* in that no procedure existed whereby an independent authority could take a final decision to release records in instances where a contributor either could not be found or unreasonably withheld his consent.”⁶³

Family Life, the Right to Marry, the Equality of Spouses

Family life has been interpreted by Commission and Court to include ties between near relatives including, in addition to the nuclear family, grandparents and grandchildren. Commission and Court decisions tend to favor vertical family relationships, such as those including minor children, parents, and grandparents, to horizontal ones, like siblings, nieces, and nephews.

Gomien writes: “The strongest evidence of the existence of ‘family life’ is proof that those claiming the right already enjoy such a life. However, the Court had held that ‘this does not mean that all intended family life falls entirely outside [*Article 8*’s] ambit’ (*Abdulaziz, Cabales and Balkandali v. United Kingdom*) (1985) in which women who were legally married or engaged have been unable to establish fully normal family life due to restrictive immigration laws in force in the United Kingdom). Conversely, the Court has held that the State cannot legitimately act to break up a family unit on the divorce of parents (*Berrehab v. Netherlands*) (1988), in which a Moroccan father who had married and divorced in the Netherlands, but who maintained close contacts with his very young daughter and contributed regularly to her material support, successfully claimed that a deportation order against him constituted a violation of *Article 8*.”⁶⁴

On issues involving parents and children, a significant number of cases have developed. The *Marckx* case deals with the legal consequences of illegitimacy. Under Belgian law, only if the mother formally acknowledges maternity of an illegitimate child can the child be declared legitimate.

⁶³ Gomien, 1993, pp. 64-65.

⁶⁴ Gomien, 1993, pp. 65-66.

Notwithstanding, the child's rights to inheritance and gifts were appreciably less than those of a legitimate child. In *Marckx* a mother and her illegitimate daughter took issue with these restrictions, basing their claims on **Articles 8** and **14** and Article 1 of Protocol No. 1. Both Commission and Court held in favor of the applicants under **Article 8**. The right of the applicants to respect for their family life was found violated by the Belgian law's requirements. Regarding inheritance rights, the bodies concluded **Article 8** had not been violated because this statute does not discuss the question of inheritance.⁶⁵

On another issue, that of monitoring electronic devices, the issue is to what extent is monitoring of communications by electronic devices compatible with **Article 8**. Convention bodies must tread a careful path. There are two conflicting issues: in many countries, the control of security questions is guided by rather vague language, not often subject to judicial review. Thus the requirement that the action be "in accordance with the law" must be balanced against the national security interest. Robertson and Merrills believe the Commission and Court have done this quite successfully, "neither setting an unreasonably strict standard, nor being too easily satisfied. Thus in the *Malone* case the Court and the Commission found that the English law on the interception of telephone communications was insufficiently precise and in the *Kruslin* and *Huwig* cases came to the same conclusion as regards the French scheme. In the *Klass* case, on the other hand, which concerned German arrangements for secret surveillance which were based on legislation laying down strict conditions and procedures, this requirement was found to be satisfied."⁶⁶

Article 9: Freedom of Thought, Conscience and Religion

"Thought," "belief," "conscience," and "religion" cover a wide spectrum. Gomien writes: "To date, the Commission has only once found a breach of **Article 9** (*Darby v. Sweden*) (Comm. Rept. of 1989): the Court has never done so. In part, this is because the rights of freedom of thought, conscience and religion are largely exercised inside an individual's heart and mind. It is only when one manifests one's thoughts or beliefs that the State will become aware of their existence or character. But at that very point a given manifestation may also raise issues in the realm of freedom of expression (**Article 10**) or another article of the Convention. Where a case raises issues under **Article 9** in addition to other articles, the Commission and Court invariably choose to limit their review to alleged violations of those other articles."⁶⁷

⁶⁵ Robertson and Merrills, 1993, p. 133.

⁶⁶ Series A, No. 176 A and 176 B, in Robertson and Merrills, 1993, p. 143.

⁶⁷ Gomien, 1993, p. 69.

For example in once case (*Arrowsmith v. United Kingdom*) (Comm. Rept. of 1978) a British pacifist said her freedom of belief was being violated by the United Kingdom Government when it prohibited her from distributing leaflets to soldiers, encouraging them to become conscientious objectors and not accept military assignments to Northern Ireland. The Commission found the case came, not under **Article 9**, but under **Article 10** concerning freedom of expression. Here, though, it found the State's position to be legitimate in defending its national security interests and maintaining order within its military force.

Elsewhere the Commission has determined that under **Article 9** a State must allow an individual to leave a church and, likewise, a State cannot force an individual to make financial contributions, usually through taxes, to a state church (*Appl. No 9781/82*) and (*Appl No. 9781/82*).

Conscientious Objectors

As for the issue of conscientious objectors, the Commission did not find a violation of **Article 9** when Switzerland imposed a criminal sentence on a man who refused military service (*Appl. No. 10640/83*) and in a similar case when the Federal Republic of Germany declined to allow an exemption from alternative civilian service (*Appl. No. 7705/76*).

Beddard comments: "Conscientious objection from military or substitute service has been the subject matter of several applications. Mr. Grandrath, who was a Jehovah's Witness, complained that although he was a conscientious objector he was required by the Federal German authorities to do substitute service which was contrary to his religious beliefs. The question arose, first of all, whether the Convention's terms included the right of conscientious objection. **Article 4** of the Convention, in one of the exceptions to the rule forbidding forced or compulsory labor, says that service exacted instead of military service is acceptable for conscientious objectors 'in countries where they are recognized.' There would seem to be, therefore, no automatic right to conscientious objection. **Article 14** of the Convention says there shall be no discrimination of enjoyment of the Convention's rights on, inter alia, religious grounds, and Grandrath complained that ministers of religion in some churches in Germany were excused substitute service whereas he, as a Jehovah's Witness, was not allowed such exemption. The Commission was of the view, however, that the restriction in Germany was imposed to avoid widespread avoidance of military service, was based on function, and that, since Mr. Grandrath's ministry was only in his spare time, there was no case of discrimination. In an Application in 1983, however, the complaint was that Jehovah's Witnesses were allowed exemption from military and substitute service in

Sweden, whereas the applicant, a pacifist, was not. The Commission's view here was that membership of such a religious sect as the Jehovah's Witness was an objective fact which created a high degree of probability that exemption was not granted to persons who simply wished to escape service."⁶⁸

In summary, freedom of religion under **Article 9 (1)** includes freedom to change one's religion, and the freedom to teach and practice it. Freedom of religion also includes the freedom not to participate in religious activities. Hence compulsory religious services or teaching violates provision of the Convention. Additionally, public manifestations of religion are subject to regulation under **Article 9 (2)**. These include holding public services, processions and other manifestations. Public religious demonstrations sometimes have a provocative intent, and Commission and Court practice is to grant a wide margin of appreciation in the application of this Article.⁶⁹

Article 10: Freedom of Expression

There is a close relationship between the contents of **Articles 9** and **10**, and parts of **Articles 8** and **11**. Also, **Article 10** is grounded in **Article 19** of the European Convention on Human Rights and **Article 19** of the International Covenant on Civil and Political Rights. The wording of **Article 10** is broader than in some other articles, including the "freedom to hold opinions and to receive and impart information and ideas."

The Commission in 1985 reviewed a complaint where the applicants, broadcast professionals, argued a prohibition of television broadcasts of a trial violated their **Article 10** rights and the public's right to know the details of an important judicial proceeding (*Appls. Nos. 11553/85* and *11658/85*). Although the Commission found the complaint inadmissible, it still referred to both **Article 10** and **Article 6**:

"Freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfillment. Of particular importance, in this context, is the freedom of the press to impart information and ideas and the right of the public to receive them."

Next the Commission further described the importance of the right to a fair trial in a democratic society, a right provided for by **Article 6.1** of the

⁶⁸ Application 2299/64, *Grandrath v. Federal Republic of Germany*, 16 CD 41 and Application 10410/83, *N. v. Sweden*, 40 D&R 203, in *Beddard*, 1993, p. 116.

⁶⁹ *Robertson and Merrills*, 1993, p. 145.

Convention. It also underlined the importance attached to public coverage of trials as an important way through which public confidence in a transparent judicial system is maintained. Notwithstanding, the Commission, in supporting the trial judge's prohibition against media coverage of the trial, concluded:

“It is clear from the reasons given by the trial judge for the Order that he considered it necessary to protect the proper administration of justice and...[the] right to a fair trial...[T]hese aims correspond to the purpose of ‘maintaining the authority and impartiality of the judiciary’ as set out in **Article 10.2** of the Convention.”⁷⁰

An important early case before the Commission came from an applicant who complained that a life-time prohibition on publishing, part of his conviction for war time treachery, constituted a violation of freedom of expression under **Article 10** (*DeBecker v. Belgium*) (1962). The Belgian government responded the restrictions were justifiable under **Articles 2** to **7** of the Convention, both of which permit the imposition of penal sanctions. The Commission disagreed, stating:

“Where the penal sanction in question involves a deprivation or restriction of the right to freedom of expression, it runs counter to the whole plan and method of the Convention to seek its justification in **Articles 2, 5** and **4** dealing with the right to life, to liberty and to scrutiny of the person and to freedom from forced labor, rather than in **Article 10**, which guarantees the right to freedom of expression.”⁷¹

The right to freedom of expression means a person “shall include freedom to hold opinions and to receive and impart information and ideas.” (*Handyside v. United Kingdom*) (1976) was a case about an individual publishing a reference book for school children; its content also contained sexual advice. The Court said the State was acting within its rights in the “protection of morals” to ban distribution of the book, but also laid out standards for freedom of expression: “Freedom of expression constitutes one of the essential foundations of such a society, one of the basic conditions for its progress and for the development of every man...It is applicable not only to ‘information’ or ‘ideas’ that are favorably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population.

⁷⁰ Gomien, 1993, pp. 72-73.

⁷¹ Gomien, 1993, pp. 73-74.

Such are the demands of that pluralism, tolerance and broadmindedness without which there is no democratic society.”

Freedom of the Press

The jurisprudence developed under this topic is extensive. The main case to emerge to date is (*Sunday Times v. United Kingdom*) (1979). In this case, the Court held that the public had a right to know the facts about the story even if some of the issues were still before the local court in litigation. The case established a high level of protection for a free press, the argument being a democratic people are best served by the widest possible sources of information. In this case the applicants had prepared an article about a pharmaceutical company’s research and testing procedures before releasing the drug thalidomide, a sedative, for sale. The drug was alleged to cause severe birth defects in babies whose mothers had taken it during pregnancy. (This information was gained apart from the newspapers). Some families had concluded out-of-court settlements with the company, others were still in negotiation, and still others had just begun legal action when the pharmaceutical company received an advance copy of the newspaper story. At that point the firm sought, and was granted, an injunction against its publication. The injunction was sustained on appeal, the local courts holding that publication of the article would constitute contempt of court because legal proceedings on the issue were still working their way through the courts. When the matter reached the Court, the latter ruled the injunction interfered with the newspaper’s right to freedom of expression contained in **Article 10 (1)**. The Court reasoned that one purpose of the law on contempt was to protect the power and independence of the courts. This was a legitimate restriction allowed by **Article 10 (2)**, the Court stated, but another legal issue must be considered at the same time, was banning the article “necessary in a democratic society?” Here the Court found the United Kingdom government failed to prove the injunction against publication was necessary because of a “pressing social need” nor was it “proportionate to the legitimate aim pursued.” Gomien writes: “The Court highlighted several facts as important to its judgment, for example, the breadth and the unqualified restriction of the injunction, the moderate nature of the specific article being enjoined, the length and dormant nature of the legal proceedings and the settlement negotiations, and the extensive public debate engaged concerning the subject matter of the article. The Court also addressed the Government’s argument that it had properly balanced two public interests, in freedom of expression and in the fair administration of justice, by stating:

“There is general recognition of the fact that the courts can not operate in a vacuum. Whilst they are the forum for the settlement of disputes, this does not mean that

there can be no prior discussion of disputes elsewhere, be it in specialized journals, in the general press or amongst the public at large. Furthermore, whilst the mass media must not overstep the bounds imposed in the interests of the proper administration of justice, it is incumbent on them to impart information and ideas concerning matters that come before the courts just as in other areas of public interest. Not only do the media have the task of imparting such information and ideas: the public also has the right to receive them.”

The Court held that the families involved in the thalidomide tragedy:

“Had a vital interest in knowing all the underlying facts and the various possible solutions. They could be deprived of this information, which was crucially important for them, only if it appeared absolutely certain that its diffusion would have presented a threat to the ‘authority of the judiciary.’ ”⁷²

Commenting on the *Sunday Times* case, Robertson and Merrills note the Court: “placed great emphasis on press freedom and the concept of the press as an essential component of a democratic society in its reasoning. It also relied on the principle that restrictions on the Convention’s rights and freedoms are to be strictly construed. This clearly has the effect of reinforcing the case for freedom of publication. For if freedom of expression is the primary principle and the administration of justice a limited exception, restriction requires a very strong justification. To the minority judges, on the other hand, although freedom of expression was important, the Court’s task was to balance competing and correlative objectives. Finding that the disputed injunction was restricted in both its subject matter and its duration, they concluded that as a justly proportionate response, it met the requirements of the Convention.”⁷³

Another important freedom of the press case, this one involving defamation of a highly-placed politician, was (*Lingens v. Austria*) (1986). Here a magazine editor published two articles sharply critical of the Chancellor of Austria, raising questions about his suitability to hold office. The Chancellor replied with two defamation suits against the editor, both of which were sustained in Austrian courts. When the editor took the case to the Court at Strasbourg, claiming his freedom of expression rights were violated under **Article 10**, the Court agreed:

⁷² Gomien, 1993, pp. 78-79.

⁷³ Robertson and Merrills, 1993, p. 156.

“freedom of the press...affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of political leaders. More generally, freedom of political debate is at the very core of the concept of a democratic society which prevails throughout the Convention.

The limits of acceptable criticism are accordingly wider as regards a politician as such than as regards a private individual. Unlike the latter, the former inevitably and knowingly lays himself open to close scrutiny of his every word and deed by both journalists and the public at large...

Article 10 (2) enables the reputation of others...to be protected, and this protection extends to politicians too...but in such cases the requirements of such protection have to be weighed in relation to the interests of open discussion of political issues.”

Next the Court took issue with Austria’s defamation law for placing the burden of proof on the accused to establish the veracity of their statements. The Court stated:

“A careful distinction needs to be made between facts and value-judgments. The existence of facts can be demonstrated, whereas the truth of value-judgments is not susceptible of proof...[under Austrian law]. Journalists in a case such as this cannot escape conviction...unless they can prove the truth of their statements...As regards value-judgments, this requirement is impossible of fulfillment and it infringes freedom of opinion itself, which is a fundamental part of the right secured by *Article 10* of the Convention.”

Concerning the Austrian government’s application of sanctions against a journalist for criticizing a highly-placed political figure, the Court held this:

“Amounted to a kind of censure, which would be likely to discourage him from making criticisms...in the future...In the context of political debate such a sentence would be likely to deter journalists from contributing to public discussion of issues affecting the life of the community. By the same token, a sanction such as this is liable to hamper the press in performing its task as purveyor of information and public watchdog.”

Both the *Sunday Times* and *Lingens* cases demonstrate that the Commission and Court frequently accord a high level of protection to media under **Article 10**. Many Court opinions stress the importance the media play in a democratic society, through promoting the public debate of issues, through helping keep the political system transparent, and through making public figures accountable for their actions.⁷⁴

The *Lingens* case also raises an important question, what are the limitations raised in protecting the reputation or rights of others under **Article 10 (2)**? “Reputation” raises the perennial question of balancing the protection of a person’s good name with the public rights of freedom of speech. Case law focuses on two issues, freedom of expression and the extent of a margin of appreciation.

The *Lingens* case is about a Viennese journalist and magazine editor who published two articles strongly criticizing Austrian Chancellor Bruno Kreisky. Kreisky successfully sued the applicant for defamation, the writer received both a prison sentence and a fine. However, the Court, in reviewing the case under **Article 10**, cited the principles relating to freedom of expression established in earlier cases, and thus rejected the government’s position that the applicant could be found guilty under **Article 10 (2)**. The Court held that politicians can understandably be held to a higher level of public scrutiny than private citizens and that individuals who wish to avoid criticism should stay out of politics. Additionally, the Court rejected arguments that the main purpose of the press is to convey factual information and that journalistic opinion does not enjoy the same high level of legal protection.⁷⁵

Political Speech

The Commission and Court have taken a small number of cases involving the political speech of politicians. In one such case, a member of the Spanish Parliament wrote an article finding the government responsible for the activities of Basque terrorists. As a result, the deputy’s parliamentary immunity was lifted and he was convicted of defaming the State. The Court held this was a violation of his human rights, stressing that governments can be expected to experience wider criticism of their activities than individuals, and the importance of free political speech in a state governed by rule of law.⁷⁶

In (*Goodwin v. the United Kingdom*) (1996) the Court held a journalist’s **Article 10** right to freedom of expression was violated when he was fined

⁷⁴ Gomien, 1993, pp. 79-81.

⁷⁵ Robertson and Merrills, 1993, p. 153.

⁷⁶ Castells judgment, April 23, 1992, Series A, No. 236, pp. 18-24, paras. 23-50.

for refusing to disclose the identity of sources of a controversial article. Goodwin, a British journalist, was given confidential information about a commercial company, TETRA Ltd. The company sued Goodwin, arguing the information was taken from a confidential corporate strategy plan missing from its files, which disclosed the company was having severe financial difficulties. It asked that an order of prior restraint be entered against *The Engineer*, which was scheduled to publish the article, and that Goodwin be made to turn over his notes, which would reveal the source of the information. The prohibition against printing the information injunction was granted and Goodwin was fined £5,000 for contempt when he declined to turn over his notes to local authorities. Weighing the related issues in the case, the Court wrote:

“The order requiring the applicant to reveal his source and the fine imposed upon him for having refused to do so could not be regarded as having been ‘necessary in a democratic society’ for the protection of TETRA’s rights under English Law, notwithstanding the margin of appreciation available to national authorities. Accordingly, the impugned measures gave rise to a violation of the applicant’s right to freedom of expression under **Article 10**.”

Earlier in the opinion the Court stated: “The interest of democratic society in ensuring and maintaining a free press would weigh heavily in the balance in determining whether the restriction was proportional to the legitimate aim pursued.”⁷⁷

Article 11: Freedom of Assembly and Association, the Right to Form Trade Unions

Only a few cases have been heard to date by the Commission and Court on freedom of peaceful assembly issues (**Article 11**). This is because an “assembly” is a vaguer, more informal group than an “association” which implies a more structured, purposeful organization. The Commission has established parameters covering peaceful assembly and in doing so, has established that the requirement for prior authorization for public assemblies is not an infringement of **Article 11**. The Commission wrote:

“The right of peaceful assembly stated in this Article is a fundamental right in a democratic society and...one of the foundations of such a society...As such this right covers both private meetings and meetings in public

⁷⁷ ECH-96-1-006, in Bulletin on Constitutional Case Law, Council of Europe, Strasbourg, 196, pp. 135-136.

thoroughfares. Where the latter are concerned, their subjection to an authorization procedure does not normally encroach upon the essence of the right. Such a procedure is in keeping with the requirements of **Article 11 (1)**, if only in order that the authorities may be in a position to ensure the peaceful nature of a meeting, and accordingly does not as such constitute interference with the exercise of the right.” (*Appl. No.8191/78*)⁷⁸

In another case, the Commission did not accept a government’s argument that an organization’s application to demonstrate was outside the scope of **Article 11** because the proposed demonstration might attract a counter-demonstration from violent opponents. The Commission stated:

“The right to freedom of peaceful assembly is secured to everyone who has the intention of organizing a peaceful demonstration...the possibility of violent counter-demonstrations, or the possibility of extremists with violent intentions, not members of the organizing association, joining the demonstration cannot as such take away that right. Even if there is a real risk of a public procession resulting in disorder by developments outside the control of those organizing it, such procession does not for this reason alone fall outside the scope of **Article 11 (1)** of the Convention, but any restriction placed on such an assembly must be in conformity with the terms of paragraph 2 of that provision.” (*Appl. No. 8440/78*)

The case (*Plattform ‘Ärtze für das Leben’ v. Austria*) (1988) concerns the extent of a state’s obligations to protect groups engaged in peaceful demonstrations. In this instance, permission had been granted by Austrian authorities for an anti-abortion demonstration to meet in a particular place. However, the group requested and was granted a change in location to a site where crowd control was more difficult. Local police told the organizers they were not sure they could fully protect the demonstrators from counter-demonstrators, which is what happened. When a second demonstration resulted in similar problems the applicants charged their **Article 11** rights had been violated by the Austrian government for failing to provide adequate protection. The Court held that Austria had an obligation to provide protection to groups exercising the right of peaceful assembly:

“A demonstration may annoy or give offense to persons opposed to the ideas or claims that it is seeking to promote. The participants must, however, be able to hold the

⁷⁸ Gomien, 1993, p. 88.

demonstration without having to fear that they will be subjected to physical violence by their opponents; such a fear would be liable to deter associations or other groups supporting common ideas or interests from openly expressing their opinions on highly controversial issues affecting the community. In a democracy the right to counter-demonstrate cannot extend to inhibiting the exercise of the right to demonstrate. Genuine, effective freedom of peaceful assembly cannot, therefore, be reduced to a mere duty on the part of the State not to interfere: a purely negative conception would not be compatible with the object and purpose of **Article 11**. Like **Article 8**, **Article 11** sometimes requires positive measures to be taken, even in the sphere of relations between individuals, if need be.”⁷⁹

In summary, the Commission and Court realize there are practical difficulties attached to public assemblies, especially when their subject matter is controversial. States are thus allowed discretion on issues such as issuing permits for demonstrations, providing police protection at controversial demonstrations, and related issues. Robertson and Merrills comment: “The right cannot, of course be guaranteed absolutely and, as the Court explained, States have a wide discretion in the choice of means of protecting it. Similarly, the scope of the obligation ought to depend on whether both demonstrators and counter-demonstrators have peaceful intentions. Respecting freedom of assembly while maintaining public order presents difficult legal issues, as domestic experience demonstrates, but recognizing that **Article 11** can involve positive obligations is a useful step towards an answer.”⁸⁰

The Right to Association

There are two aspects to freedom of association cases, issues originating when people are prevented from joining associations of their choice, or issues arising from their membership in organizations, especially trade unions.

The Court, and the Commission before it, adopted the position that as “association” differs from an “assembly.” This was established in the case of (*Young, James and Webster v. United Kingdom*) (Comm. Rept. of 1979). Here the Commission stated that: “The relationship between workers employed by the same employer cannot be understood as an association in

⁷⁹ Gomien, 1993, pp. 89-90.

⁸⁰ Robertson and Merrills, 1993, p. 160.

the sense of **Article 11** because it depends only on the contractual relationship between employee and employer.” “Association” was seen as a voluntary grouping committed to a common goal. In several cases Commission and Court have cited two aspects of an organization as necessary for it to be an association, the elements being its “voluntary nature” and the purpose of its members to pursue a “common goal.” In *Young* the applicants argued a contract reached between British Rail and several unions violated freedom of association provisions of **Article 11**. The Court, in agreeing with the applicants, held they could not be required to join a trade union in order to retain their jobs. The Court said:

“The right to form and to join trade unions is a special aspect of freedom of association...the notion of a freedom implies some measure of freedom of choice as to its exercise.

Gomien notes: “It does not follow that the negative aspect of a person’s freedom of association falls completely outside the ambit of **Article 11** and that each and every kind of compulsion to join a particular trade union is compatible with the intention of that provision. To construe **Article 11** as permitting every kind of compulsion in the field of trade union membership would strike at the very substance of the freedom it is designed to guarantee.”⁸¹

The Rights of Trade Unions

There are cases of applicants having been prevented from joining trade unions, or of facing adverse action because they were union members. In some instances, the Court found the persons were punished, not for union membership, but for subversive activity. The language of **Article 11 (1)** is about an individual’s right “to form and to join trade unions for the protection of his interests,” which suggests not only the principle of free association, but also positive obligations by the government to listen to or respond to workers’ representations.

As for the important question of the right to strike, a key Court case is (*Schmidt and Dahlström v. Sweden*) (1981) , Series A, No. 21. Here the applicants, members of a striking union, were denied benefits, although they had not participated in the strike. They claimed the denial constituted a breach of **Article 11**. The Court’s response was the right to strike was not unlimited, and that the applicants still had open to them the right of collective bargaining to negotiate for the benefits.

⁸¹ Gomien, 1993, pp. 90-91.

Here the Court had two intentions; first, it recognized that **Article 11** contained a clear statement allowing trade union activity to exist. Second, the Court would not allow a code of labor or industrial relations to be read into the Convention. Thus the Court elected to hold a narrow interpretation to the statute and, as such, refrained from becoming potentially embroiled in an endless series of industrial disputes which, it reasoned, could best be solved by courts in the Contracting States.⁸²

Gomien notes: “The Commission and Court have adopted a literal interpretation of **Article 11**’s protection of the right to form and to join trade unions. Under the case law, the article’s requirements are satisfied if trade unions may be formed and their memberships recognized. To date, neither the Commission nor the Court has accepted arguments relating to the effectiveness of a given trade union’s activities in protecting its members’ interests. For example, the Court has held that **Article 11** does not require States to guarantee a certain level or type of treatment of trade unions, but can choose its own means of dealing with these associations. In the case of the *National Union of Belgian Police* (1975), the applicant union complained that the Belgian Government’s consultation with several large public employees’ unions, to the exclusion of the Belgian Police Union, constituted a violation of **Article 11**....Finally, the Court has even held that **Article 11** does not protect the right to strike, allowing the State to choose other means by which to safeguard a union’s protection of the occupational interests of its members. In the case of (*Schmidt and Dahlström v. Sweden*) (1976), the Court noted that:

“The Convention safeguards freedom to protect the occupational interests of trade union members by trade union action, the conduct and development of which the Contracting States must both permit and make possible.

Article 11 (1) nevertheless leaves each State a free choice of the means to be used towards this end. The grant of a right to strike represents without any doubt one of the most important of these means, but there are others. Such a right, which is not expressly enshrined in **Article 11**, may be subject under national law to regulation of a kind that limits its exercise in certain instances.”⁸³

In *Appl No. 10550/83* the Commission explained its rationale in protecting private activities from State intervention:

⁸² Robertson and Merrills, 1993, p. 162.

⁸³ Gomien, 1993, pp. 93-94.

“The right to form and join trade unions is a special aspect of freedom of association which protects, first and foremost, against State action. The State may not interfere with the forming and joining of trade unions.... The question that arises in the present case, however, concerns the extent to which this provision obliges the State to protect the trade union member against measures taken against him by his union. The right to form trade unions involves, for example, the right of trade unions to draw up their own rules, to administer their own affairs and to establish and join trade union federations...accordingly trade union decisions in these domains must not be subject to restrictions and control by the State. As a corollary, such decisions must be regarded as private activity for which, in principle, the State cannot be responsible under the Convention. The protection afforded by the provision is primarily against interference by the State.”

A closely related question is: If a person is free to join an association, are they also free not to join an association, or not be compelled to join a particular association? This was the question in (*LeCompte, Van Leuwen and DeMeyere v. Belgium*) (1981), a case about disciplinary procedures affecting medical doctors in Belgium. The *Ordre des médecins*, a professional body, was charged with regulating discipline of the medical profession. The applicants argued that, as practicing physicians, they were unjustly obliged by law to join the *Ordre*. Notwithstanding, the Court ruled this was not a violation of **Article 11**. The Court reasoned that the *Ordre* exercised a legitimate public regulatory function, control of the standards of the medical profession. Additionally, the doctors were free to join other professional medical associations, several of which existed. If there had not been a choice of alternative associations for medical professionals to join, the Court held, **Article 11** would have been violated, but since choices were possible, the Article was not violated.

The Court concluded: “Totalitarian regimes have resorted-and resort-to the compulsory regimentation of the professions by means of closed and exclusive organizations taking the place of the professional associations and the traditional trade unions. The authors of the Convention intended to prevent such abuses.” In short, the Court concluded it is permissible for a State to create professional regulatory bodies and to require compulsory membership as long as alternative professional associations are available as well.⁸⁴

⁸⁴ Robertson and Merrills, 1993, p. 162.

Protocol No. 1, Article 1: The Right to Peaceful Enjoyment of Possessions

When the Convention was being drafted, no common accord could be reached among the drafters on exactly which rights should be included in the basic document. Consequently some of these rights were later added in protocols, including the rights to peaceful enjoyment of ones' possessions, education, and free elections through secret ballot. The right to property, the only economic right listed in the Convention, is assured in this Article. However, the right is not absolute. Deprivation of property cannot be an arbitrary action, it may only come "in the public interest and subject to the conditions provided for by law and by the general principles of international law."

As might be expected, the word "arbitrarily" became a focal point for legal interpretation in property confiscation cases. No one contests the right of States to seize property, and when this Protocol was being drafted, the Labor Party in Great Britain was at the height of its nationalization of property program. What has developed in the voluminous case law on this subject is that three distinct rules emerge from this provision. First, the peaceful enjoyment of possessions is assured without a definition of possessions being provided. Second, the conditions under which a person's possessions may be validly taken are enumerated, resulting in an extensive jurisprudence. Third, is a statement that the use of property can be regulated in the state's interest. From this emerges a distinction between deprivation of property and control of the use of property.⁸⁵

In interpreting the phrase "peaceful enjoyment" the Court makes a distinction between deprivation of property and control of its use. The leading case is (*Sporrong and Lönnroth v. Sweden*) (1982) where the applicants contested a Stockholm City Ordinance authorizing the city to expropriate any property. Citing Article 1 of Protocol 1, the Court found in favor of the applicants, stating that the application of Swedish law violated their right to the peaceful use of their possessions. The Court's opinion restated its view that, under the Convention, a balance must be struck between the rights of the individual and the interests of communities. Especially on the issue of deprivation of property, or limits on its use, the Court stated, there must be fairness in decision-making and a right of appeal for individuals against arbitrary decisions by governments to seize property, control its use, or determine levels of compensation.

Gomien writes: "The Court elaborated its views on the balance between private individuals and the public interest in the cases of (*Lithgow and*

⁸⁵ Robertson and Merrills, 1993, pp. 212-213.

Others v. United Kingdom) (1987) and (*James and Others v. United Kingdom*) (1986). In the latter case, the applicants contested the operation of a British statute that permitted certain long-term tenants of given residential properties the right to purchase the landlord's interest in the property, in some instances at less than the market value at the time of the transaction. In finding no violation of the right to property, the Court stated:

“The notion of ‘public interest’ is necessarily extensive... The Court, finding it natural that the margin of appreciation available to the legislature in implementing social and economic policies should be a wide one, will respect the legislature’s judgment as to what is ‘in the public interest’ unless that judgment be manifestly without reasonable foundation. A taking of property effected in pursuance of legitimate social, economic or other policies may be ‘in the public interest,’ even if the community at large has no direct use or enjoyment of the property taken.”⁸⁶

The concept of property has been extended beyond private property to include assets such as shares and contractual monetary claims. Some Greek applicants filed suit against their government for losses they had experienced, including the payment of security bonds, during the life of the contract they had held with the Greek military government of the early 1970s. With the return of civilian government, the contract was terminated and both sides agreed to arbitration to resolve the claim. However, the national legislature in the meantime passed a law voiding the arbitration clause in the original contract and annulling the arbitration award. The Court found a clear violation of Protocol 1, Article 1:

“According to the case law of international courts and of arbitration tribunals any state has a sovereign power to amend or even terminate a contract concluded with private individuals, provided it pays compensation.... This both reflects recognition that the superior interests of the State take precedence over contractual obligations and takes account of the need to preserve a fair balance in a contractual relationship. However, the unilateral termination of a contract does not take effect in relation to certain essential clauses of the contract, such as the arbitration clause. To alter the machinery set up by enacting an authoritative amendment to such a clause

⁸⁶ Gomien, 1993, pp. 99-100.

would make it possible for one of the parties to evade jurisdiction in a dispute in respect of which specific provision was made for arbitration.”⁸⁷

Gomien, Harris, and Zwaak comment: “It is significant that the text of this Article does not explicitly guarantee any claim to compensation as a result of interference with property rights. Contrary to most other provisions of the Convention, this Article expressly protects not only natural, but also legal persons, such as companies. This aspect of the Article is very significant because the economic system of the member states is based on private ownership of property and the freedom to form economic units as ‘legal persons.’ The Court has, however, also given a broader meaning to the notion of ‘person’ under the Convention, also allowing churches, as nongovernmental organizations but not commercial entities, to sustain claims under Article 1 of Protocol No. 1.”⁸⁸

Subsequent articles deal with education and free elections. The right to free elections is detailed in **Article 3**, although in language less extensive than in **Article 25** of the International Covenant on Civil and Political Rights, which casts the right in individual rather than institutional terms:

“The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.”

In the *Mathieu-Mohin and Clerfayt* case, Series A, No. 113, 1987, the Court took the position that both states and individuals could invoke provisions of this Article. Robertson and Merrills write: “What of the content of the right? One of the first issues to be considered in the case law concerned the right to vote. Here the interpretation of the Protocol has changed quite significantly. In its early jurisprudence the Commission ruled that **Article 3** did not guarantee an individual’s right to vote, but was concerned only with the institutional right to have free elections. Subsequently, it reversed this position and decided that **Article 3** in principle requires universal suffrage and, as a consequence, confers subjective rights of participation in the form of a right to vote and a right to stand for election.”⁸⁹

Parenthetically, the Court has taken a broad view of the term “the legislature,” not limiting it to one of the three branches of government,

⁸⁷ *Stran Greek refineries and Straits Andreadis* judgment of December 9, 1994, Series A, No. 301-B, p. 97, paras 72 and 74.

⁸⁸ Gomien, Harris, and Zwaak, 1996, p. 311.

⁸⁹ Robertson and Merrills, 1993, p. 226.

but including every organ of governmental power that has authority over citizens. Other election-related questions include, what membership conditions are required to constitute a political party? To what extent may political parties receive financial subsidies? Who may be candidates? What sort of speech is allowed in election campaigning? Who may have access to the media? Writing in *Mathieu-Mohin and Clerfayt*, the Court held: “Electoral systems seek to fulfill objectives which are sometimes scarcely compatible with each other: on the one hand, to reflect fairly faithfully the opinions of the people, and, on the other, to channel currents of thought so as to promote the emergence of a sufficiently clear and coherent political will.” For the Court, the reference in **Article 3** to the free expression of opinion implies the existence of freedom of expression, already protected by **Article 10**, and “the principle of equality of treatment of all citizens in the exercise of their right to vote and their right to stand for election.”⁹⁰

Articles 14 through 18

No additional rights are secured in **Articles 14** through **18** of the Convention. Instead, these articles deal with the scope and exercise of rights previously enumerated. **Article 12** contains a non-discrimination clause, **Article 15** deals with the complex question of rights and emergency powers, **Article 17** protects from an abuse of freedoms elsewhere enumerated in the Convention. **Article 14** should not be seen as a stand alone anti-discrimination guarantee, but an Article enjoining against discrimination of rights established elsewhere in the Convention and its Protocols. Its application comes in response to provisions of other Convention articles. The protection the Convention affords is for individuals, not groups. This means that only a person or persons who believe their rights to be violated can bring a case to Strasbourg. While group applications are accepted, each person within the group must make a case that they are victims. There are no provisions for class action suits. While human rights advocacy groups are active in assisting group claimants with their applications, the groups as such cannot petition the Court, only individuals can.

Gomien writes: “The protection of **Article 14** is accessory to the other substantive rights enumerated in the Convention. The article has no independent life of its own. That being said, the Commission and Court have stated that, even if a State has complied with its obligations to respect one of the substantive rights at issue in a given case, it may nevertheless be found to have violated that same right in conjunction

⁹⁰ Robertson and Merrills, 1993, p. 227.

with **Article 14**. A relevant case is (*Belgian Linguistics Case*) (1968) where French-speaking parents contested their children's lack of access to French language schools in the Brussels periphery due exclusively to the residence of the parents, while the Flemish-speaking community was not so limited. In deciding the case, the Court applied criteria applied in earlier cases. The Court reviewed issues arising under articles containing built-in restriction clauses. Here the issue was the legitimacy of the aim to be achieved by a given practice and the proportionality between the means employed to achieve it."⁹¹

Article 15: Emergency Powers

This Article permits the possibility of derogation, limiting rights "In time of war or other public emergency threatening the life of the nation." However, there are clear restrictions on the applicability of this Article; no derogations may be made from **Article 2** (right to life), except regarding deaths resulting from lawful acts of war; **Article 3** (freedom from torture or degrading or inhuman treatment), **Article 4 (1)** (freedom from slavery or servitude), and **Article 7** (retroactive application of criminal law). In the *Greek* case the Commission established four elements to what constitutes a situation of war or public emergency:

1. The public emergency must be actual or imminent.
2. Its effects must involve the whole nation.
3. The continuance of the organized life of the community must be threatened.
4. The crisis or danger must be exceptional, in that the normal measures or restrictions permitted by the Convention for the maintenance of public safety, health and order are plainly inadequate.⁹²

Article 25: The Right to Individual Petition

The importance of this article can not be overstated, for it allows individuals to petition the Commission against the violation of their human rights. Gomein states: "The right of individual petition, which represents one of the most effective means of protecting human rights, is the essential element of the supervisory system established by the European Convention. **Article 25** allows the Commission to receive petitions from 'any person, nongovernmental 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.' All High Contracting Parties to the Convention have declared that they accept the right of individual petition established

⁹¹ Gomein, 1993, p. 113.

⁹² Quoted in Robertson and Merrills, 1993, p. 184.

under **Article 25**. Most States have exercised their option to recognize the right of individual petition for specific periods of time only, although these States regularly renew their declarations to that effect.”⁹³

Article 46: The Compulsory Jurisdiction of the Court

Article 46.1 of the Convention states that a High Contracting Party may “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.” This means that the compulsory jurisdiction of the Court is recognized by all signatory States, regardless of what cases are brought before the Court. Additionally, the Court’s jurisdiction extends beyond the specific articles in the Convention to the “additional articles” added in several protocols, including the rights to property, education and free elections emanating from the First Protocol and the abolition of the death penalty in the Sixth Protocol. Parenthetically, **Article 46** does not extend to Fourth Protocol rights, i.e. prohibition of imprisonment for debt, prohibition of the expulsion of nationals, prohibition of the collective expulsion of aliens, and the Seventh Protocol, i.e. right of appeal against immigration decisions and criminal convictions, prohibition of double jeopardy, equality of spouses.

THE RELATIONSHIP BETWEEN THE EUROPEAN CONVENTION ON HUMAN RIGHTS AND THE EUROPEAN SOCIAL CHARTER

When the European Convention on Human Rights was written in the late 1940s, its authors, reflecting the political realities of that era, did not include economic, social and cultural rights in the Convention. Coming in the wake of World War II’s devastation, the drafters’ main priority was to establish standards for human rights and the norms applicable to political democracy. The additional presence of the Iron Curtain made any too-elaborate statement of rights illusory. Thus it was decided, following the formula adopted by the United Nations, that two separate treaties would be appropriate, one political, the other economic-social. Parenthetically, there is no individual role in the development or enforcement of the Charter at an international level, unlike in the system established by the European Convention on Human Rights. The collective complaints protocol, on the other hand, allows organizations to play an active role in implementing the Charter. Their active intervention in concrete situations will allow cases of individual rights to reach a wider forum.

⁹³ Gomien, 1993, p. 128.

Although the Convention is well-established as the principle human rights instrument on the European continent, the Charter has never caught hold to the same extent. There are reasons for this, mainly the lack of political will on the part of member states to take on a panoply of economic and social questions as legal issues. Additionally, the Charter was never publicized the way the Convention was, and the possibilities of individuals utilizing it as a legal document to better their situation was not realized. Finally, the parallel development of European Communities' law, now European Union Law, addresses some of the issues presented by the Charter. Now, however, with a new turn in East-West relations, there is great interest in "revitalizing" the Charter. An Amending Protocol has been adopted, creating a more realistic system of Charter supervision, and a proposed Revised European Social Charter is presently before the Committee of Ministers. **Articles 1 to 19** of the original Charter and **Articles 1 to 4** of the Additional Protocol would be combined and updated, and the statement of rights clarified. Some of the new rights contained in the revised charter include:

- protection in cases of termination of employment,
- protection of workers; claims in case of employer insolvency,
- the right to dignity at work,
- equal opportunities and equal treatment for workers with family responsibilities,
- the right to information and consultation when layoffs are being considered,
- protection against poverty and social exclusion,
- the right to housing,
- three weeks annual paid holidays,
- fourteen weeks maternity leave,
- a prohibition against discrimination in the enjoyment of Charter rights on grounds of race, sex, language, religion, association with a national minority, national or social origin, and other grounds.

A State party signing the Revised Charter would be required to accept six out of nine basic or "hard core" articles, the present seven plus **Article 7** of the 1961 Charter protecting young persons and **Article 1** of the Additional Protocol, which provides equal employment opportunities without sexual discrimination.

A Reporting System

The revised Charter calls for an elaborate reporting system on compliance of articles agreed to by a contracting country. The heart of the compliance program is a series of national reports from Contracting Parties to the Charter at two-year intervals on "such provisions of Part II of the Charter

as they have accepted.” The reports are available to the public on request. A novel feature of the reporting system is contained in **Article 23**, sending copies of reports to “such of its national organizations as are members of the international organizations of employers and trade unions.” The comments of management and labor groups may be used by the Committee of Independent Experts as well.

Once the nine-member Committee of Independent Experts receives the national reports, it prepares a set of Conclusions on each. The Committee is authorized to meet privately with representatives of the Contracting Party to obtain additional information and clarification on a country’s law and practice. While it is not proper for the Committee to pressure the Contracting Parties into accepting additional provisions, the Committee has the distinct possibility of making pointed suggestions about ways to bring the country’s laws and practices more into conformity with international standards. The Committee reports next go to a Governmental Social Committee of the Council of Europe composed of a representative of each Contracting Party, which focuses on Committee Conclusions, especially negative ones. The Committee of Experts conclusions should also be forwarded to the Parliamentary Assembly.

As noted elsewhere, the right of individual petition is not available under the Charter, as it is under the Convention, although collective complaints are allowed under an Additional Optional Protocol, which was adopted in 1995 and which will enter into force when five parties ratify it. Complaints may be filed by three sorts of organizations, international organizations of employers and trade unions, other international nongovernmental organizations with consultative status, and representative national employer and trade union organizations. The collective complaints are heard by the Committee of Independent experts, who compile their findings for the Committee of Ministers, which is supposed to adopt a resolution by two-thirds vote. These recommendations are not legally binding, but the Contracting Party is required to “provide information on the measures it has taken to give effect to the Committee of Ministers recommendation” in its next report. Although the process is labyrinthine its intent is obvious, to bring international attention to a problem and through publicity and persuasion, seeking its resolution, hopefully by changes in national attitudes as well as laws. The revised Charter’s authors realized that sometimes persuasion can create a climate for social and economic change otherwise impossible to achieve by a mandate delivered from beyond the country’s borders with little likelihood of its enforcement.

Sometimes the revised Charter is criticized as being vague and general in its language, not detailing the content of rights with enough specificity.

However, the drafters realized it would be difficult to set precise standards for all present and future members since divergent socioeconomic and political settings are represented. Also, the flexible formula allows a margin for discussion and improvement in the international dialogues that take place before countries file their periodic national reports.

Protocol No. 11, Combining Commission and Court

Almost anyone who has studied the operations of the Commission and the Court will conclude that, while their work is admirable, it is also slow and could profit from streamlining and reform. Reform discussions have taken place since the 1980s, driven by the sharp increase in case loads of the two bodies. For example, the number of cases registered with the Commission have increased from 404 in 1981 to 2,037 in 1993. The Commission in January 1994 had 2,672 pending cases, more than 1,487 of which it had not looked at. And as more countries join the Council of Europe, the number of cases can be expected to increase as well. By the year 2000, there may be 35-40 countries participating in the Convention.

As for the Court, until 1988 it rarely heard more than 25 cases a year; but by 1993 the number rose to 52. It takes an average of five years for a case to be heard by the Court. Given the sharp increase in volume of cases and length of time to hear them, it is no wonder that reform efforts were called for, principally for a new single Court to replace the two existing bodies.

Protocol 11, the reform Protocol, is an amending Protocol; all State Parties must express their consent to be bound by it in order for the protocol to enter into force. The protocol entered into force on January 11, 1998.

As envisioned in Protocol 11, the Court will be a permanent body having jurisdiction in all matters concerning the interpretation and application of the Convention, including inter-state cases and individual applications. As at present, the Court may give advisory opinions upon request to the Committee of Ministers.

The number of judges on the Court will equal the number of State Parties to the Convention. Judges will be elected to six year terms and can be re-elected. They will be elected by the Parliamentary Assembly upon nomination of their separate State Parties. Judges will have secretarial support, including law clerks.

When hearing cases the Court will sit in panels of three judges, Chambers of seven judges, or in a Grand Chamber of seventeen judges. The Court

will receive applications from any person, nongovernmental organization or group of individuals claiming to be the victim of a violation of the Convention by one of the State Parties, or a State Party in the case of an inter-state application.

As at present, a registry will communicate with applicants in the preparation of filings and, once an application is registered, a judge rapporteur will be designated to prepare the case, communicate with the interested parties and, after the case has been declared admissible, take steps toward a friendly settlement if possible.

In cases with serious implications, a Chamber may relinquish its jurisdiction to the Grand Chamber any time before a judgment is reached, unless one of the parties objects. Once judgment has been rendered by a Chamber, a party may request a rehearing by the Grand Chamber “if the case raises serious questions concerning the interpretation or application of the Convention or its protocols, or if the case raises an issue of general importance.” A panel of five judges of the Grand Chamber will decide on whether a case is to be accepted for re-examination.

The Court will determine the question of just satisfaction, including costs and expenses.

The Grand Chamber’s judgment will be final; final judgments of the Court will be binding; the Committee of Ministers will supervise their execution.

OUTLINE OF THE PROCEDURE

The basic procedure most cases will follow is:

- lodging of application;
- preliminary contacts with Court’s registry;
- registration of application;
- assignment of application to a Chamber;
- appointment of judge rapporteur by the Chamber;
- examination by a three-member committee;
- communication of the application to the Government;
- filing of observations and establishment of facts;
- oral hearings;
- admissibility decision by Chamber;
- possibility of friendly settlement negotiations;
- judgment by the Chamber.

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**Original participation in or later admission to the CSCE,
and signature by participating States of the Helsinki Final Act
and of the Charter of Paris for a New Europe**

State	Original participation in the CSCE notified by June 25, 1973, or later admission	Signature of the Helsinki Final Act (Original: August 1, 1975)	Signature of the Charter of Paris (Original: November 21, 1990)
Albania	June 19, 1991	September 16, 1991	September 17, 1991
Germany (a)	Original	Original	Original
United States of America	Original	Original	Original
Armenia	January 30, 1992	July 8, 1992	April 17, 1992
Austria	Original	Original	Original
Azerbaijan	January 30, 1992	July 8, 1992	December 20, 1993
Belarus	January 30, 1992	February 26, 1992	April 8, 1992
Belgium	Original	Original	Original
Bosnia-Herzegovina (b)	April 30, 1992	July 8, 1992	
Bulgaria	Original	Original	Original
Canada	Original	Original	Original
Cyprus	Original	Original	Original
Croatia	March 24, 1992	July 8, 1992	
Denmark	Original	Original	Original
Spain	Original	Original	Original
Estonia (c)	September 10, 1991	October 14, 1991	December 6, 1991
Finland	Original	Original	Original
France	Original	Original	Original
Georgia	March 24, 1992	July 8, 1992	January 21, 1994
United Kingdom	Original	Original	Original
Greece	Original	Original	Original
Hungary	Original	Original	Original
Ireland	Original	Original	Original
Iceland	Original	Original	Original
Italy	Original	Original	Original
Kazakhstan	January 30, 1992	July 8, 1992	September 23, 1992
Kyrgyzstan	January 30, 1992	July 8, 1992	June 3, 1994
Latvia (c)	September 10, 1991	October 14, 1991	December 6, 1991
Liechtenstein	Original	Original	Original
Lithuania (c)	September 10, 1991	October 14, 1991	December 6, 1991
Luxembourg	Original	Original	Original
Malta	Original	Original	Original
Moldova	January 30, 1992	February 26, 1992	January 29, 1993
Monaco (d)	Original	Original	Original
Norway	Original	Original	Original
Uzbekistan	January 30, 1992	February 26, 1992	October 27, 1993
Netherlands	Original	Original	Original
Poland	Original	Original	Original
Portugal	Original	Original	Original
Romania	Original	Original	Original
Russian Federation (e)	Original	Original	Original
San Marino	Original	Original	Original
Holy See	Original	Original	Original
Slovak Republic (f)	January 1, 1993		
Slovenia	March 24, 1992	July 8, 1992	March 8, 1993
Sweden	Original	Original	Original
Switzerland	Original	Original	Original
Tajikistan	January 30, 1992	February 26, 1992	
Czech Republic (f)	January 1, 1993		
Turkmenistan	January 30, 1992	July 8, 1992	
Turkey	Original	Original	Original
Ukraine	January 30, 1992	February 26, 1992	June 16, 1992
Yugoslavia (g)	Original	Original	Original
The FYR of Macedonia	Observer since April 28, 1993		

(a) The Federal Republic of Germany and the German Democratic Republic, reunified on October 3, 1990, were both original participants in the CSCE and original signatories of the Helsinki Final Act.

(b) Bosnia-Herzegovina was admitted as a participating State of the CSCE in accordance with a statement by the Chairman at the 10th CSO Meeting on April 30, 1992. The 13th CSO Meeting on July 2, 1992 agreed that the welcoming of Bosnia-Herzegovina at the Helsinki Summit by the president of the host country would be recognized as the formal confirmation, provided for in the said statement by the Chairman, of the admission of Bosnia-Herzegovina.

(c) Estonia, Latvia and Lithuania were admitted as participating States at an additional meeting at ministerial level prior to the opening of the Moscow Meeting of the Conference on the Human Dimension of the CSCE.

(d) Monaco has participated in the CSCE since July 3, 1973, but did not participate in the prior Helsinki Consultations.

(e) Participation of the Union of Soviet Socialist Republics in the CSCE process continued by the Russian Federation (cf. 5-CSO/Journal No. 1 and CSCE Communication No. 10 dated January 7, 1992).

(f) Successor States of the former Czech and Slovak Federal Republic which, under a different name, was an original participant in the CSCE. The Stockholm Council Meeting on December 15, 1992 agreed that the Czech Republic and the Slovak Republic would be welcomed as participating States from January 1, 1993, i.e. following their proclamation of independence.

(g) Suspended from participation since July 8, 1992.

Source: *OSCE Handbook, 20 Years of the Helsinki Final Act, 1975-1995*,
Published by the Secretariat of the OSCE, Vienna, Austria, 1996, Annex I.

A Table of Signatories to International Human Rights Conventions

[See footnote references at end of table]

	A	B	C	D	E	F	G	H	I	J	K	L	M
Albania	P	P	P	P	P	P	P	P	P	P	P	P	P
Armenia		P						P	P	P	P	P	P
Austria	P	P	P		P	P	P	P	P	P	P	P	P
Azerbaijan		P							P	P	P		P
Belarus	P	P	P	P		P	P	P	P	P	P	P	P
Belgium	P	P	P	P	P	P	P	P	P	P	P	P	P
Bulgaria	2	P	P	P	P	P	P	P	P	P	P	P	P
Canada	P	P	P			P	P	P	P	P	P	P	P
Croatia	P	P	P	P	P	P	P	P	P	P	P	P	P
Cyprus	P	P	P	P	P	P	P	P	P	P	P	P	P
Czech Rep.	2	P	P	P	P	P	P	P	P	P	P	P	P
Denmark	P	P	P	S	P	P	P	P	P	P	P	P	P
Estonia	2	P			P			P	P	P	P	P	P
Finland	P	P	P	P	P	P	P	P	P	P	P	P	P
France	P	P	P	P	P	P	P	P	P	P	P	P	P
Georgia		P	P						P	P	P	P	P
Germany	P	P	P		P	P	P	P	P	P	P	P	P
Greece	P	P	P		P	P	P	P		P	P	P	P
Hungary	P	P	P	P	P	P	P	P	P	P	P	P	P
Iceland		P	P		P	P	P	P	P	P	P	S	P
Ireland	P	P	P		P	P	P	S	P	P	P	S	P
Italy	P	P	P	P	P	P	P	P	P	P	P	P	P
Kazakhstan			P										P
Kyrgyzstan			P						P	P			P
Latvia	2	P	P	P	S	P	P	P	P	P	P	P	P
Lithuania		P			P				P	P	P	P	P
Luxembourg		P	P	P	P	P	P	P	P	P	P	P	P
Macedonia	2	P	P		S	P		P	P	P	P	P	P
Malta	P				P	P			P	P	P	P	P
Moldova		P			S	P		P	P		P	P	P
Netherlands	P	P	P		P	P	P	P	P	P	P	P	P
Norway	P	P	P	P	P	P	P	P	P	P	P	P	P
Poland	2	P	P	P	P	P	P	P	P	P	P	P	P
Romania	P	P	P	P	P	P	P	P	P	P	P	P	P
Russia	P	P	P	P	P	P	P	P	P	P	P	P	P
Slovak Rep.	2	P	P	P	P	P	P	P	P	P		P	P
Slovenia		P	P	P	P	P	P	P	P	P	P	P	P
Spain	P	P	P	P	P	P	P	P	P	P	P	S	P
Sweden	P	P	P		P	P	P	P	P	P	P	P	P
Switzerland	P	P	P		P	P	P	P	P	P	S	P	S
Tajikistan			P					P			P	P	P
Turkey	P	P	P		P	P	P	S			P	P	P
Ukraine	P	P	P	P	P	P	P	P	P	P	P	P	P
U. K.	P	P	P		P	P	P	P	P	P	P	P	P
U.S.A.	P	P	P			P	P	P	P	S	S	P	P
Uzbekistan			P					P		P	P	P	

P=Party

S=Signatory

1. Based on general declaration concerning treaty obligations prior to independence.
2. Party to 1926 Convention only.

International Human Rights Conventions

- A. Convention to Suppress the Slave Trade and Slavery of September 25, 1926, as amended by the Protocol of December 7, 1953.
- B. Convention on the Prevention and Punishment of the Crime of Genocide of December 9, 1948.
- C. Geneva Convention Relative to the Protection of Civilian Persons in Time of War of August 12, 1949.
- D. Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others of March 21, 1950.
- E. European Convention for the Protection of Human Rights and Fundamental Freedoms of November 4, 1950.
- F. Convention on the Political Rights of Women of March 31, 1953.
- G. Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of September 7, 1956.
- H. International Convention on the Elimination of All Forms of Racial Discrimination of December 21, 1965.
- I. International Covenant on Civil and Political Rights of December 16, 1966.
- J. International Covenant on Economic, Social and Cultural Rights of December 16, 1966.
- K. Convention on the Elimination of All Forms of Discrimination Against Women of December 18, 1979.
- L. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of December 10, 1984.
- M. Convention on the Rights of the Child of November 20, 1989.

Source: Department of State February 1997 *Country Reports on Human Rights for 1996.*, Government Printing Office, Washington, D.C., pp. 1501-15 04.

ADDITIONAL CHART OF SIGNATURES AND RATIFICATIONS

(selected countries as of July 30, 1997)

Convention for the Protection of Human Rights and Fundamental Freedoms

Opening for Signature: Rome, November 11, 1950 Entry into Force:
September 3, 1953, with ten ratifications

Member states signatory: Albania, Austria, Belgium, Bulgaria, Croatia*, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Moldova*, Netherlands, Norway, Poland, Romania, Russian Federation*, Slovakia, Slovenia, Spain, Sweden, Switzerland, the former Yugoslav Republic of Macedonia, Turkey, Ukraine*, United Kingdom.

(* Signed but not ratified.

European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

Opening for Signature: Strasbourg, November 26, 1987 Entry into Force:
February 2, 1989

Member states signatory: Albania, Austria, Belgium, Bulgaria, Croatia*, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia**, Lithuania*, Moldova*, Netherlands, Norway, Poland, Romania, Russian Federation*, Slovakia, Slovenia, Spain, Sweden, Switzerland, the former Yugoslav Republic of Macedonia, Turkey, Ukraine, United Kingdom.

(* Signed but not ratified. (**) Not yet signed.

Protocol No 9 to the Convention for the protection of Human Rights and Fundamental Freedoms

Opening for Signature: Rome, November 6, 1990 Entry into Force:
October 1, 1994, with ten ratifications

Member states signatory: Albania**, Austria, Belgium, Bulgaria**, Croatia**, Cyprus, Czech Republic, Denmark, Estonia, Finland, France*, Germany, Greece*, Hungary, Iceland**, Ireland, Italy, Latvia**, Lithuania, Moldova, Netherlands, Norway, Poland, Romania, Russian Federation**, Slovakia, Slovenia, Spain**, Sweden, Switzerland, the former Yugoslav Republic of Macedonia**, Turkey*, Ukraine, United Kingdom**.

(* Signed but not ratified. (**) Not yet signed.

Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Restructuring the Control Machinery Established Thereby

Opening for Signature: Strasbourg, May 5, 1994 Entry into Force:

Member states signatory: Albania, Austria, Belgium, Bulgaria, Croatia*, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy*, Latvia, Lithuania, Moldova, Netherlands, Norway, Poland, Romania, Russian Federation*, Slovakia, Slovenia, Spain, Sweden, Switzerland, the former Yugoslav Republic of Macedonia, Turkey, Ukraine, United Kingdom.

(*) Signed but not ratified.

European Social Charter

Opening for Signature: Turin, October 18, 1961 Entry into Force:

February 26, 1965, with five ratifications

Member states signatory: Albania**, Austria, Belgium, Bulgaria**, Croatia**, Cyprus, Czech Republic*, Denmark, Estonia**, Finland, France, Germany, Greece, Hungary*, Iceland, Ireland, Italy, Latvia*, Lithuania**, Moldova**, Netherlands, Norway, Poland, Romania*, Russian Federation**, Slovakia*, Slovenia**, Spain, Sweden, Switzerland*, the former Yugoslav Republic of Macedonia**, Turkey, Ukraine*, United Kingdom.

(*) Signed but not ratified. (**) Not yet signed.

Additional Protocol to the European Social Charter

Opening for Signature: Strasbourg, May 5, 1988 Entry into Force:

September 4, 1992, with three ratifications

Member states signatory: Albania**, Austria*, Belgium*, Bulgaria**, Croatia**, Cyprus*, Czech Republic*, Denmark, Estonia**, Finland, France*, Germany*, Greece*, Hungary**, Iceland*, Ireland**, Italy, Latvia*, Lithuania**, Moldova**, Netherlands, Norway, Poland**, Romania**, Russian Federation**, Slovakia**, Slovenia*, Spain*, Sweden, Switzerland**, the former Yugoslav Republic of Macedonia**, Turkey*, Ukraine**, United Kingdom**.

(*) Signed but not ratified. (**) Not yet signed.

Protocol Amending the European Social Charter

Opening for Signature: Turin, October 10, 1991 Entry into Force:

Member states signatory: Albania**, Austria, Belgium*, Bulgaria**, Croatia**, Cyprus, Czech Republic*, Denmark**, Estonia**, Finland, France*, Germany**, Greece*, Hungary*, Iceland**, Ireland**, Italy, Latvia*, Lithuania**, Moldova**, Netherlands, Norway, Poland**, Romania**, Russian Federation**, Slovakia*, Slovenia*, Spain*, Sweden, Switzerland**, the former Yugoslav Republic of Macedonia**, Turkey**, Ukraine**, United Kingdom*.

(*) Signed but not ratified. (**) Not yet signed.

Additional Protocol to the European Social Charter Providing for a System of Collective Complaints

Opening for Signature: Strasbourg, November 9, 1995 Entry into Force: with five ratifications

Member states signatory: Belgium, Cyprus, Denmark, Finland, France, Italy, Norway*, Sweden.

(*) Ratified this Protocol.

European Social Charter (Revised)

Opening for Signature: Strasbourg, May 5, 1996 Entry into Force: with three ratifications. (No ratifications as of July 1, 1997).

Member states signatory: Belgium, Cyprus, Denmark, Finland, France, Greece, Italy, Romania, Sweden.

Framework Convention for the Protection of National Minorities

Opening for Signature: Strasbourg, February 1, 1995 Entry into Force: with twelve ratifications

Member states signatory: Albania*, Austria*, Belgium**, Bulgaria**, Croatia*, Cyprus, Czech Republic*, Denmark*, Estonia, Finland*, France**, Germany*, Greece**, Hungary, Iceland*, Ireland*, Italy*, Latvia*, Lithuania*, Moldova, Netherlands*, Norway*, Poland*, Romania, Russian Federation*, Slovakia*, Slovenia*, Spain, Sweden*, Switzerland*, the former Yugoslav Republic of Macedonia, Turkey**, Ukraine*, United Kingdom*.

(*) Signed but not ratified. (**) Not yet signed.

PREPARING AND FILING A COMPLAINT

In preparing and filing a human rights complaint, both for domestic and international use, it is important to carefully set forth the facts in the case. Find out what forms are required in the country where you are making a complaint. Basic questions include: where did the violation occur? What human rights and other relevant treaties has that country signed? Which international organizations has that country joined? What rights have been violated? Cite the applicable international instrument if possible.

Are you reporting an individual violation, or a pattern of violations? The more specific your complaint is, the easier it is to be addressed. Can this be treated both as an individual complaint and an example of a pattern of repetitive violations?

Are you the victim, a representative of the victim, or a non-governmental organization filing a complaint on behalf of a victim or victims? What steps have been taken domestically to redress the complaint? The European Convention of Human Rights, for example, requires domestic administrative or judicial procedures to have been exhausted before it will consider a complaint.

What remedy is being sought? This should be clearly stated in the communication. It could include restoration of a job, monetary compensation for a loss, return of seized land or goods, access to travel, granting of a passport, visa, or exit permit, education, permission to visit a detainee, release from detention, action by an international body, such as an investigation, or a request that a country cease from violating international human rights norms, or change its legislation.

What local resources are available? Such as a lawyer, human rights organization, governmental office on human rights, ombudsperson? Confidentiality: Do you want any portion of your document to remain confidential, such as your name, or that of the victim or witnesses, or any part of their testimony? Given the wide circulation of human rights complaints, possibilities of keeping sensitive information confidential are not great.

Gaining Support for Your Case

What groups can you call on for support? Can any journalists, trade unions, religious groups, associations, friendly governments, or international associations help resolve the case? In addition to the formal mechanism used to consider complaints, wider public interest is often helpful in their

resolution. This can come from contacting officials in the executive branch, legislators, especially from a petitioner's home district, law schools and bar associations, the media and nongovernmental organizations.

Are you agreeable to media publicity in this case? Often media and diplomatic attention to complaints is effective in their resolution.

Written Communications

Make sure you know the form of communication required both within the country where there is a complaint and the forms used by international organizations. Actual forms used by the United Nations Human Rights Committee and the European Commission on Human Rights can be obtained from those organizations (addresses on pages 218 and 220).

Be sure to state the factual details fully; name of the country where the alleged violation took place, the name and nationality of the petitioner, date and place of birth, present address, and address to which correspondence should be sent.

If the writer of the communication is different from the victim, the same information should be included about the latter. If the petitioner and the victim are relatives or kinspersons, that should be stated. If the petitioner is an organization, a brief description of the organization, including details of its incorporation, should be stated.

The human rights violations should be described to the extent possible, with reference to the country's constitution, charter of rights, criminal or civil codes or procedural codes and other relevant laws.

The statement of facts should be specific. It should include a detailed chronological narrative of alleged violations, including dates, times, places, participants, and witnesses, including their names and addresses, when known. The use of a lawyer may be helpful in preparing such a document.

Include the names, ranks, and descriptions of government officials involved, direct quotes of their statements if remembered, otherwise a paraphrase of what they said. Relevant documents should be attached. Be sure to keep originals or copies. These include affidavits of victims and witnesses, citations of relevant laws and regulations, medical reports, newspaper accounts, and findings of other investigations.

Photographs or simple maps may be helpful in making the case clear to someone not familiar with it.

If numerous violations are being reported, they should be reported as separate violations, including the information above for each case.

Avoid making polemical, ideological statements. Your audience will be interested in the facts and their relationship to the relevant laws, treaties, and international human rights norms.

Local Action

Local redress: be sure to chronicle all efforts used to obtain domestic redress of the complaint. These should include formal and informal reports to police and other government officials, any court filings, including dates and texts of decisions, requests for information of government agencies, where and when, and with whom? Was a court or administrative appeals process used? If so, cite dates, places, participants and results.

Explain if domestic remedies have been exhausted, or only partially used. It may be that no remedies are possible in local law, or authorities are not cooperative, or cause long delays and expenses in filing. The lack of an independent judiciary or independent administrative agencies to hear and resolve complaints should be recorded. Fear of reprisals or the failure of similar cases in the past to obtain a hearing should be noted.

Following are guidelines to use in filing human rights complaints with the United Nations and the European Commission on Human Rights. The Organization for Security and Cooperation in Europe has no mechanism for receiving individual complaints.

United Nations

Three United Nations organizations review individual human rights complaints, the Human Rights Committee, the Committee Against Torture, and the Committee on the Elimination of Racial Discrimination. Before individual petitions can be filed with UN organizations, a state must have specifically declared it will recognize the jurisdiction of the UN body to accept individual applications. The procedure is cumbersome, often taking three to four years from start to finish. It can not be called “user friendly” and should be considered only as a measure of last resort when all local approaches have been exhausted.

The Optional Protocol to the International Covenant on Civil and Political Rights

If a country has ratified this Optional Protocol, the Committee may accept individual petitions from persons in that country. It is important to ascertain whether or not the country has signed the Protocol with reservations, and to what extent the reservations apply to the right(s) which the victim wishes to pursue. The victim or victim's representative may file directly with the 18-person Committee, which meets periodically in Geneva. Complaints filed under the Optional Protocol must substantiate a violation of rights contained in Parts I and III of the Covenant, such as the right not to be tortured, subjected to cruel, inhuman, or degrading treatment or punishment. Other rights include the right to life, liberty, security, a fair trial, freedom of expression, including thought, religion, peaceful assembly and association. Also: equal protection and equality before the law.

Filing Procedure

A potential petitioner should first contact the Committee to obtain a set of its filing procedures. Communications should be addressed to:

Human Rights Committee
UN Centre for Human Rights
Palais des Nations
1211 Geneva 10
Switzerland

Tel: (22) 907 1234
Fax: (22) 917 0092, 917 0212

The basic information required is the victim's name, address and nationality, and the same information if the writer of the complaint is different than the victim. Which state is the complaint being filed against, and what domestic steps have been taken to satisfy the claim? Have all domestic possibilities been exhausted?

When a communication has been received by the Committee, it is first reviewed by the Secretariat which may require additional information. Then the application is sent to the Committee's Special Rapporteur on New Applications, a committee member charged with responding to communications received between sessions. If the rapporteur is satisfied with the petition, it may be sent to the state concerned for comment,

usually with a two month deadline for response. In turn, the petition's author is given an opportunity to respond to the state's comment, after which the petition goes to a five-person Committee working group. If they unanimously accept the petition, it is admitted; if their vote is not unanimous, the case goes to the entire committee for consideration. If the case is admitted, a country has six months to submit a written explanation about the case and any steps taken toward its resolution. Such explanations are supplied to the author as well, who is then allowed to furnish additional comments, usually within six weeks. Neither on-site investigations nor oral hearings are provided for in the Committee's procedures, nor are funds available to help petitioners with their cases.

Decisions

While the Committee seeks to work by consensus, a majority decision of members present is sufficient. Having no juridical power, the Committee communicates its "views" to member states and the person filing the complaint. These statements often contain information about the states and whether or not they are in violation of Covenant obligations and what steps should be taken immediately to make them in compliance with the Covenant, such as commutation of a sentence, release of a victim, changing an unjust law, or providing a victim with appropriate compensation. Since the Committee's views lack legal force, states often ignore them. In recent years, the Committee's approach has been to send a letter to the state involved, informing the state of its position, and seeking the state's response. Some states have responded positively to this approach. An even more direct approach has been used since 1990. The Committee now asks the affected states to inform the Committee of any actions taken in response to a case within 180 days. A Special Rapporteur for the Follow-Up of Views monitors cases and recommends follow-up action in unresolved cases.

Two additional conventions include The International Convention on the Elimination of All Forms of Racial Discrimination and The Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment. Each of these conventions have mandates and procedures similar to those of the Human Rights Committee, and both are just beginning to receive individual complaints. Additional information may be obtained by writing the United Nations Centre for Human Rights at the address on page 218.

European Convention on Human Rights

Article 25 of the European Convention on Human Rights allows for individual petitions to the Commission once domestic remedies have

been exhausted and provided the petition is filed within six months after the final domestic decision by the state. More than 1,000 communications have been filed annually under the Convention, only about ten percent of which are admissible. Most are rejected because the complaints are clearly about domestic, not international legal problems. Even if accepted, a case may take three to four years to resolve. Potential petitioners should communicate directly with the Commission for procedures on filing a complaint. They should write directly to:

Secretary-General of the Council of Europe
c/o European Commission on Human Rights
67006 Strasbourg Cedex
France

Tel: 33 388 41 23 50
Fax: 33 388 41 27 93

The Commission. **Article 20** provides for a number of Commission members equal to the number of High Contracting Parties to the Convention. Terms are for six years and may be renewed. Members sit on the Commission in their individual capacity, which helps assure their independence and impartiality. Although Commission opinions are not legally binding, the Commission can refer cases to the Court, whose opinions are legally binding.

The Secretariat. The Secretariat assists the Commission by answering correspondence, keeping archives, and maintaining a register of applications and their disposition. The Secretariat prepares a file on each case and assures that it contains all the necessary information. It also informs applicants if the six-month time period has expired and if the violation in question is one covered by the Convention.

Commission Procedures. **Article 26** of the European Convention states 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.” Applicants should also state whether they have filed complaints with other international organizations.

Exhaustion of domestic remedies means that all judicial and administrative steps have been taken. Often the Commission has found that available remedies are ineffective because they are framed in such a way that the applicant has little possibility of success in pleading before local authorities.

Petitioners must be victims, or a close relative or someone acting on their behalf. The petition must be signed by the applicant (*Article 27*), who can also request that their name not be published. No anonymous petitions can be accepted. Applicants should also designate any other person filing on their behalf with a power of attorney; failure to do so may result in the application's registration being delayed. Petitions must specifically cite the Convention right allegedly violated—general political statements will lead to the petition's rejection as being outside the Commission's jurisdiction.

The Commission has the right under *Article 27 (2)* to reject a petition if it has a clearly political motive, or contains unfounded or unsupported accusations. The complaint must be filed against a state and its agents, such as police officers or government employees, for an action they took or failed to take. Individual complaints against private citizens or associations do not have standing under the Convention.

The Commission (address on page 220) will provide an application form with details for filing under the Commission's procedural Rule 44. Applications should contain the applicant's name, age, occupation, and address; the same information should be listed if another person is filing on behalf of the applicant.

The name of the state party against whom the filing is being made should be listed, followed by a specific citation of the parts of the Convention alleged to have been violated. This should include a detailed statement of facts, including relevant documents, such as judicial or administrative decisions and letters. Should there be a request for monetary damages, this should be noted, although no specific sum need be indicated in the filing.

The burden of proof is on the individual who must make the most comprehensive and convincing claim possible for their case.

Financial Assistance to Petitioner. After an application has been referred to the respondent government, the Commission may provide financial support to applicants to cover legal fees, travel, subsistence, and out-of-pocket expenses. These modest sums cover preparation of written documents and costs of appearing at oral hearings. The applicant can request financial aid, or the Commission may grant it on its own initiative, but such legal aid can only be granted to applicants when domestic authorities certify their inability to pay for the expenses of pursuing a case before the Commission. It is prudent to inquire of the Commission the rules for granting financial assistance in each case.

Admission. The Secretariat screens each application and corresponds directly with each. Registered petitions are then sent to individual Commission members who review them for admissibility. Once all needed information is gathered, a report is prepared for the full Commission. If the petition is to be accepted, the Commission will ask the relevant government for its comments on admissibility of the case, usually to be furnished within six weeks. It is at this stage that some cases are resolved. If this does not happen, this process narrows the number of issues between both sides, sharpening questions of fact, admissibility, and merits of the various arguments. Then a new report on admissibility is prepared for the Commission and oral hearings are scheduled if the application is accepted.

Oral Hearings on Admissibility. Usually the oral hearings on admissibility take half a day and are held in Strasbourg. Participants are asked questions on the case the Commission has asked parties to address. Participants and their representatives both respond to the Commission and to the other parties' submissions, and answer questions from the Commission, after which the Commission deliberates privately and informs both parties of its decision to admit or deny the petition. Assuming the case is accepted, the Commission then conducts its own investigation of the case and seeks to reach a negotiated settlement satisfactory to all parties (**Article 28**). If that is impossible, it may refer the case to the European Court of Human Rights.

Possibly fifteen percent of cases accepted by the Commission are resolved by friendly means. Settlements typically include demands for monetary compensation or a change in national legislation. Should no settlement be reached, the Commission prepares a report for the Committee of Ministers, which decides whether a breach of the Convention has taken place and whether or not to publicize the Commission's report. After three months the Commission, the respondent state, or the state whose nationality the applicant has, may refer the case directly to the European Court of Human Rights, whose decision is legally binding on all parties.

The Compulsory Jurisdiction of the Court. **Article 46.1** of the Convention states a High Contracting Party may 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.

The number of judges on the Court equals the number of member states of the Council of Europe. Judges serve in their individual capacities. So far the court has heard over 300 cases; probably the case load will increase

when the Court begins hearing cases referred to it by individuals. This will happen when Protocol No. 9 to the Convention becomes effective. The Protocol was opened for signature in November 1990 and will become effective after ten member countries sign it.

With permission of the Court, third parties may file briefs supporting a petitioner in the case. This has allowed a number of non-governmental organizations with human rights, free speech, and equal protection interests to comment on the content of state law and practice in other countries.

Court judgments are legally binding and often contain monetary awards or mandates for the state to render “just satisfaction” to a party whose rights were violated.

A RESOURCE GUIDE

UN Human Rights Activities

The United Nations has several Human Rights programs. Its UN Technical Cooperation Program in the Field of Human Rights allows participating states to request technical assistance in the training of judges, police officers, lawyers, or members of the armed forces. In some countries it establishes a long-term field presence in troubled regions. For example, the UN recently opened an office in Abkhazia, Georgia to protect human rights of the local population, deal with internally displaced persons, help refugees return, and report on human rights to the United Nations. Institutionally, the UN has six committees monitoring its major Human Rights treaties. This is done through reviewing reports from member states filed under those treaties and, when necessary, engaging states in constructive dialogue about treaty fulfillment. Three UN groups accept individual human rights complaints against governments; the Human Rights Committee, Committee against Torture, and the Committee on Racial Discrimination. Outside the treaty mechanism, special rapporteurs may be appointed to review country specific or general thematic problems.

A UN publication notes: “Anyone may bring a human rights problem to the attention of the United Nations and thousands of people around the world do so each year. Treaty-based complaints procedures are operational under the Optional Protocol to the International Covenant on Civil and Political Rights, **Article 22** of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and **Article 14** of the International Convention on the Elimination of All Forms of Racial Discrimination. These procedures can be applied in relation to States Parties which have ratified (in the case of the Optional Protocol) or have made a declaration under the appropriate article (in the case of the Conventions).”⁹⁴

The Centre for Human Rights, Geneva, under supervision of the High Commissioner for Human Rights, is the main UN agency dealing with human rights issues on a day-to-day basis. It contains a Research and Right to Development Branch, a Support Services Branch, and an Activities and Programs Branch, the latter carrying out field operations in places like the former Yugoslavia.

Of particular note are several recent UN publications in support of training programs conducted in individual countries. They include works for judges,

⁹⁴ United Nations High Commissioner for Human Rights, Introduction to the United Nations Human Rights Program, press release, <http://193.135.15/html/ABO-INTR.HTM>, Geneva, April 28, 1997.

social workers, prison officials, police, prosecutors and other legal offices and cover the content of the main UN accords and how they are applied in the daily life of law enforcement and administration of justice officials.

Details for contacting the various United Nations offices are contained elsewhere in this publication.

OSCE's Human Rights Activities

OSCE's Office of Democratic Institutions and Human Rights (ODIHR) has an active rule of law program to strengthen the independence of the judiciary in emerging democracies, analyzing draft legal codes for their conformity to international human rights norms, and conducting seminars for judges and other administration of justice officials on professional topics, including human rights accords, free media, and related issues. Since 1991 OSCE has been active in organizing and monitoring elections in countries including Albania, parts of the former Yugoslavia, Belarus, Bulgaria, the Russian Federation, Romania, Latvia, Lithuania, Kazakhstan, Ukraine, Armenia and Georgia, among others. Human Dimension seminars and meetings are organized periodically in Warsaw and elsewhere on topics like Free Media, Migrant Workers, Local Democracy, and the Situation of Roma Populations. ODIHR has an active program for contact with NGOs, maintaining contact with NGO networks and inviting NGOs to participate in Human Dimension seminars, implementation meetings and review conferences, and assisting NGOs with election monitoring.

The Council of Europe's Human Rights Activity

The Council of Europe has numerous well-established assistance programs with countries of central and eastern Europe, such as the Demosthenes, Themis, and Demo-droit programs. The oldest of these programs is the Demosthenes program, modified since its origins in 1990 by the Demosthenes-Bis program for states of the former Soviet Union and others with "guest" status. Judges, lawyers, journalists, youth leaders, civil servants, leaders of civic associations and NGOs, national and local leaders in the various fields relevant to Council of Europe activities all are potential participants in this program.

The Council's Themis program is uniquely aimed at legal cooperation, including training judges, prosecutors, lawyers, notaries, prison administrators and judicial administrators in human rights and rule of law skills. Program themes include: the role of the judge in a democratic society, the transformation of the procuratura into a body compatible with democratic governance, management of ministries of justice, the police in transitional

societies, new concepts in prison system administration, the notary as a guarantor of legal security in a democratic state, drafting laws in a state governed by the rule of law, lawyers and bar associations in a modern state.

The Demo-droit program, an offshoot of the Demosthenes program, focuses on the judicial system, emphasizes the independence of the judiciary, access to justice, and reform of criminal codes and codes of criminal procedure, and is aimed at bringing national legislation in the countries of central and eastern Europe more closely into line with the legal instruments of the Council of Europe. Open to countries whether or not they are members of the Council of Europe, the program includes seminars, training workshops, study visits in western European countries, and analysis of draft legislation, such as constitutions, civil and criminal procedure codes, and laws on the status of the judiciary.

The Venice Commission

The European Commission for Democracy through Law, also known as the Venice Commission, was established in 1990 pursuant to a Partial Agreement of the Council of Europe. It is a consultative body which cooperates with member States of the Council of Europe and with non-member States. It is composed of independent experts in the fields of law and political science whose main tasks are the following:

- to help new Central and Eastern European democracies to set up new political and legal infrastructures;
- to reinforce existing democratic structures;
- to promote and strengthen the principles and institutions which are the essence of a true democracy.

The activities of the Venice Commission comprise, inter alia, research, seminars and legal opinions on issues such as constitutional reform, electoral laws and the protection of minorities, as well as the collection and dissemination of case-law in matters of constitutional law from Constitutional Courts and other equivalent courts.

The Venice Commission has set up a Centre on Constitutional Justice whose purpose is to further the knowledge of constitutional law and democratic values in Europe by gathering and disseminating all information relevant to European constitutional development.

The Secretariat of the Venice Commission and the Centre on Constitutional Justice are based at the Council of Europe.

Council of Europe/Conseil de l'Europe
F-67075 Strasbourg Cedex
Tel: +33 (0)3 88 41 20 67
Fax: +33 (0)3 88 41 37 38
E-mail: Venice @ coe. fr

INTRODUCING HUMAN RIGHTS; A WEEKS' SEMINAR CONTENTS

Sometimes the question is asked, "How do you organize a training seminar on human rights subjects?" The following model is adapted from seminars held by the OSCE, Council of Europe, and UN. Although designed as a seven-day event, the format can be adapted for shorter seminars as well.

- Day One:** *Morning:*
 Introductions
 What are Human Rights? (An International Overview)
 How are Human Rights Interpreted in this Country's Constitution?
Afternoon:
 United Nation Human Rights Accords, an Overview
- Day Two:** *Morning:*
 Overview of OSCE Accords
 First Case Study: a free speech issue, small group discussion, followed by
 general discussion
Afternoon:
 Survey of the European Convention, Part I
- Day Three:** *Morning:*
 Survey of the European Convention, Part II
 Second Case Study: a due process issue, small group discussion,
 followed by general discussion
Afternoon:
 How the Commission and Court Work
- Day Four:** *Morning:*
 Litigating a Human Rights Case Locally (a judge, prosecutor, attorney,
 non-governmental organization representative)
 Case study: members of a local minority group claim systematic
 deprivation of rights: what should they do? Small group discussion,
 followed by general discussion
Afternoon:
 The Media and Human Rights (local media representatives, plus
 Ministry of Justice and other officials)
- Day Five:** *Morning:*
 The Role of an Independent Judiciary in Assuring Human Rights
 (judges from district, Supreme, Constitutional and other courts)
 Case study: a mock trial on a right to free expression, peaceful assembly
 issue
Afternoon:
 The Legislature's Role in Protecting Human Rights
- Day Six:** *Morning:*
 The Executive Branch and Executive Agencies as Protectors of Human
 Rights
 Teaching about Human Rights in Schools and Universities
Afternoon:
 National and International NGO and the Protection of Human Rights
- Day Seven:** *Morning:*
 Workshops on specific issues, use of media in human rights cases,
 work of NGOs, discussion on preparation of a human rights claim,
 Open Microphone
 Closing Luncheon. (In case of time constraints, some of the sessions
 can be shortened or eliminated, especially for the last two days.)

PUBLICATIONS OF SPECIAL INTEREST

The Bulletin on Constitutional Case Law

The *Bulletin on Constitutional Case Law* reports three times a year, in English and French on the most significant decisions of constitutional courts and courts of equivalent jurisdiction in Greater Europe and other continents, as well as those of the European Court of Human Rights and the Court of Justice of the European Communities.

The *Bulletin* aims at quickly informing the reader of the key points of a decision.

The decision is first identified according to specific reference information. Following a brief presentation of the legal issues raised the summary presents the facts of the case and the reasoning of the decision. Moreover, a systematic thesaurus especially developed by the Venice Commission and liaison officers of participating courts allows easy access to information sought in relation to specific subjects.

The *Bulletin* thus offers a broad, periodic overview and update on constitutional developments.

Its aim is to allow all persons interested in the evolution of constitutional law — lawyers, members of the judiciary, civil servants, researchers and students — to find information quickly. The *Bulletin* is thus a highly practical tool.

The Venice Commission is also publishing a series of special editions: the *Special Bulletin*. The first series presents the legal context of constitutional jurisdictions (descriptions and basic texts); the second will be devoted to the leading judgments in the constitutional case-law of Greater Europe and other countries.

Bulletin on Constitutional Case Law
Secretariat of the Venice
Commission
Council of Europe
F-67075 Strasbourg Cedex
France
Tel: 33 3 88 41 20 67
Fax: 33 3 88 41 37 38
E-mail: venice@coe.fr

CSCE Digest
The Commission on Security and
Cooperation in Europe
234 Ford House Office Building
Washington, D.C. 20515
U.S.A.
Tel: 202 225 1901
E-mail: csce@hr.house.gov
Homepage: <http://www.house.gov/csce/>

*Eastern European Constitutional
Review*
published in Russian as
*Konstitutsionnoe Pravo:
Vostochoevropieskoe Obozrenie*
Olga Sidorovich, Editor
Moscow Public Science Foundation
Prospekt Mira 36
Rooms 200-201
Moscow, 101000, Russia
Fax: 7095 280 3515
E-mail: olga@glas.apc.org

Center for the Study of
Constitutionalism in Eastern Europe
The University of Chicago Law
School
1111 East 60th Street
Chicago, IL. 60637
U.S.A.
Tel: 773 702 9979
Fax: 773 702 0730
E-mail: dwight_semler@law.uchicago.edu

or: *Eastern European Constitutional Review*

Alison Rose
COLPI
Nador utca 11
Budapest
1051-Hungary
Tel: 361 327 3102
Fax: 361 327 3103
E-mail: rosa@osi.hu

Helsinki Monitor
Netherlands Helsinki Committee
P.O. Box 30920
2500 GX The Hague
The Netherlands
Tel: 31 70 34 21 855
Fax: 31 70 34 21 858
E-mail: a.bloed@pobox.ruu.nl

Netherlands Quarterly of Human Rights
Netherlands Institute of Human Rights (SIM)
Janskerkhof 16
35123 BM Utrecht
The Netherlands
Tel: 31 30 25 38 033
Fax: 31 30 25 37 168
E-mail: sim@rgl.ruu.nl

Human Rights Law Journal
N. P. Engel
P.O. Box 1940
77679 Kehl am Rhein
Germany
Tel: 49 7851 2463 or 75275
Fax: 49 7851 4235

Human Rights Quarterly
Johns Hopkins University Press
Journals Publishing Division
701 W. 40th St., Suite 275
Baltimore, MD. 21211
U.S.A.

OSCE-Jahrbuch
Nomos Publishers, Baden-Baden
Germany
Institut für Friedensforschung
und Sicherheitsproblematik an
der Universität Hamburg (IFSH)
Falkenstein 1
22587 Hamburg
Germany
Tel: 49 40 86 60 770
Fax: 49 40 86 63 615
A Russian edition of the yearbook was published in 1996, German, Russian, and English versions are contemplated for 1997.

The SIPRI Yearbook: Armaments, Disarmament and International Security
Oxford University Press
Oxford, England,
for The Stockholm International
Peace Research Institute (SIPRI)
Frösunda
17153 Solna
Sweden
Tel: 46 8 65 59 700
Fax: 46 8 65 59 733
E-mail: sipri@sipri.se
Homepage: <http://www.sipri.se>
The Institute publishes an authoritative yearbook on security and armament issues, conflict resolution, and OSCE activities.

ELECTRONIC FORMAT RESOURCE MATERIALS

Gopher and Web Sites

United Nations Gopher, Press Releases, SG Statements and Messages-
Human Rights Committee
gopher://gopher.undp.org:70+11/uncurr/press_releases/HR

Summary of United Nations Human Rights Agreements
<http://www.traveller.com/~hrweb/legal/undocs.html>

United Nations Gopher
<gopher://nywork1.undp.org:70/>
Accesses all UN documents, resolutions, conference documents, telephone directories, etc.

UNICEF Gopher
<gopher://hqfaus01.unicef.org/>
The main source for UN information about children. Contains the full text of the Convention on the Rights of the Child, and information on United Nations child survival, development, and advocacy programs.

University of Minnesota Human Rights Library
<http://www.umn.edu/humanrts/>
Full texts of the International Covenant on Civil and Political Rights and other international instruments.

WomensNet-Women's Equality Beijing
<gopher://gopher.igc.apc.org/11/women>
Many documents on international issues affecting women, including papers of the Fourth World Conference on Women. Provides links to other women's information sources on the Internet.

Women's Studies and Resources
<gopher://cwis.uci.edu:7000/11/gopher.welcome/peg/women>
Multiple sources on women's issues.

Databases

Human Rights on CD-ROM: Bibliographical Database for United Nations Documents and Publications, United Nations, New York, 1994.

International Committee of the Red Cross, International Humanitarian Law "IHL" CD-ROM, International Committee of the Red Cross, Geneva, Switzerland.
Eighty-seven IHL treaty texts, plus commentaries, information on ratifications and reservations, etc.

LEXIS-NEXIS

LAWREV contains texts of many U.S. law reviews and periodicals, plus the Legal Resource Index by IAC in the LGLIND file. Laws of some foreign countries are available. CELEX, a European Union database, is also available through the INTLAW library in the ECLAW file. LEXIS-NEXIS is a comprehensive, expensive, subscription service.

UN Index on CD-ROM, NewsBank/Readex, New Canaan, CT

A CD-ROM index to UN documents and publications since 1976.

WESTLAW

Comprehensive entries from international and American law journals and reviews, plus news and information from many countries. An expensive subscription service.

Internet

American University Washington College of Law WWW, Center for Human Rights and Humanitarian Law

Provides access to Human Rights Brief. For access to other international and U.S. human rights material utilize:

<http://www.wcl.american.edu/pub/humright/brief/index.html>

Amnesty International On-Line (Official Internet Site)

<http://www.amnesty.org/>

Contains summaries of documents, Amnesty International publications, links to other sites, and up-to-date global human rights information.

Coalition for International Justice

<http://www.igc.apc.org/cij/>

An international, nonprofit organization, the Coalition supports the Yugoslavia and Rwanda war crimes tribunals. Contains case files, Rules of Procedure, and other documents related to the investigations and prosecutions of war crimes.

Department of State Foreign Affairs Network

<http://dosfan.lib.uic.edu/ERC/democracy.html>

Contains the annual human rights country reports issued since 1993.

Diana (Yale Law School)

<http://diana.law.yale.edu/>

An international electronic human rights library on the Internet named for Diana Vincent-Daviss, a leading bibliographer of human rights literature at the Schell Center for International Human Rights at Yale University Law School.

Diana (University of Cincinnati Law School)

<http://www.law.uc.edu/Diana/>

Contains treaties, court decisions, legal briefs, and up-to-date information from governmental and non-governmental sources.

European Union and Internet
<http://www.helsinki.fi/~aunesluo/eueng.html>
Information about the European Union

Global Democracy Network
<http://www.gdn.org/>
<gopher://gopher.gdn.org:70/1>
Includes Parliamentary Human Rights Foundation papers, the CSCE site, Human Rights Watch Human Rights Reports; operated by the United States' Congressional Human Rights Foundation. Accesses the Parliaments of the World site: <http://www.gdn.org/flags.html>

Human Rights Gopher
<gopher://gopher.humanrights.org:5000/1>
Access to many major international Human Rights organizations, includes newsletters, action alerts, press releases, etc.

Human Rights Web
<http://www.hrweb.org>
Information on meetings and conferences, home pages of human rights organizations, lists of resources, Internet-based databases.

International Affairs Resources (IANWEB)
<http://www.etown.edu/vl/>
Links to international organizations such as the UN, OSCE, NATO, plus national government information sources.

International Committee of the Red Cross (ICRC)
<http://www.icrc.org>
Texts of international humanitarian law, links to other Red Cross/Red Crescent sites, information on conflicts and conflict victims.

OSCE
<http://www.osceprag.cz>
Contains an OSCE homepage, which is regularly updated. The entry "High Commissioner on National Minorities" will produce information about the mandate and activities of the High Commissioner. The homepage also contains an OSCE Newsletter. Other information on OSCE is available: <http://www.fsk.ethz.ch/osce/> This entry is produced by the Center for Security Studies and Conflict Research, Zurich, for the Swiss Federal Department of Foreign Affairs. The Swiss provided an OSCE chair during 1996, and membership in the governing troika, 1995-1997. An additional homepage, with access to many additional links and resources, is maintained on behalf of the Danish Chairman-in-Office for 1997: <http://www.um.dk/english/udenrigspolitik/osce/>

United Nations Commission on Human Rights Reports

<gopher://gopher.undp.org:70/11/undocs/eed/E/CN.4/1995>

Full texts of some of the main 1995 thematic reports.

World Bank

<http://www.worldbank.org/>

Country projects information and other data from the World Bank.

A Special Note on the Council of Europe CODICES Database

The secretariat of the Council of Europe, European Commission for Democracy through Law, has prepared a fully functioning database on constitutional case law, building on its present widely-circulated *Bulletin*. The project is called CODICES, Digest of CONstitutional CasES. This database is the equivalent of 12,000 pages of printed text in English, French or the original language, in which any type of search can be performed.

Links have been set up allowing users to jump from the summary of a decision to its full text, to gain direct access to the constitutional provision at issue, etc...

For example, users can rapidly find important decisions on a particular topic, read certain full texts of decisions, get to the relevant sections of the constitution and then print the results of their search.

CODICES is available on CD-ROM and on the Internet. Both versions are updated with the publication of the *Bulletin*, i.e. three times a year. To be able to use this CD-ROM, you should be using a PC with Windows 3.1 or 95 with at least 16 MB of memory, equipped with a CD-ROM drive. For CODICES-Internet, access to the Web and a standard Web browser like Netscape™ or Internet Explorer™ is required. Access to the Internet version is obtained using a password provided by the Venice Commission.

Subscription formulas for the *Bulletin* on Constitutional Case Law and the database CODICES (post and packing free) can be obtained from:

Council of Europe Publishing
F-67075 Strasbourg Cedex
Tel: 33 (0)388 41 25 81
Fax: 33 (0)3 88 41 39 10
E-mail: publishing@coe.fr

USEFUL ADDRESSES AND RESOURCES

Telephone and fax numbers, E-mail and Internet homepage addresses are included as available.

OSCE

Organization for Security and
Cooperation in Europe
Secretariat
Kärntnerring 5-7, 4th Floor
1010 Vienna
Austria
Tel: 43 1 514 36 196 or 514 360
Fax: 43 1 514 36 99 or 514 36 96
E-mail: wkempaosce.or.at

Documentation Section of the Prague
Office of the OSCE Secretariat
Rytirsk 31
110 00 Prague 1
Czech Republic
Tel: 420 2 216 10 212
Fax: 420 2 242 23 882
E-mail: Quest@osceprag.cz
Homepage: <http://www.osceprag.cz>
*The office distributes the OSCE Newsletter
and other publications.*

Organization for Security and
Cooperation in Europe
Office of Democratic Institutions
and Human Rights
19 Ujazdowskie Ave.
00-557 Warsaw
Poland
Tel: 48-22-52-00-600
Fax: 48-22-52-00-605
E-mail: office@odhr.osce.waw.pl
*The ODIHR Bulletin is available on the
Internet: <http://www.osceprag.cz>*

OSCE High Commissioner on
National Minorities
P.O. Box 20062
2500 EB The Hague
The Netherlands
Tel: 31 70.31 25 500
Fax: 31 70 36 35 910
E-mail: cscehnm@euronet.nl

UN

United Nations Centre for
Human Rights
Palais des Nations
8-14 Avenue de la Paix
1211 Geneva 10
Switzerland
Tel: 41 22 734 6011, 731 0211
Fax: 41 22 733 9879

*(For issues concerning the Convention on the
Elimination of All Forms of Discrimination
Against Women.)*

Centre for Social Development and
Humanitarian Affairs
United Nations Office at Vienna
Vienna International Centre
P. O. Box 500
1400 Vienna
Austria
Tel: 43 1 211 310
Fax: 43 1 232 156

United Nations High Commissioner
for Refugees
Palis des Nations
CH-1211 Geneva 10
Switzerland
Tel: 41 22 31 02 61
Fax: 41 22 739 8681

Council of Europe

European Commission on Human Rights
(For individual complaints brought under the European Convention on Human Rights, Article 25.)

Secretary-General of the Council of Europe

c/o European Commission on Human Rights

67006 Strasbourg Cedex

France

Tel: 33 388 41 23 50

Fax: 33 388 41 27 93

European Committee for the Prevention of Torture

Secretariat of the Committee

Council of Europe

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Basic Rights

Basic Rights, as enumerated in the documents follow, using the outline of the European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950, plus protocols.

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HUMAN RIGHTS, DEMOCRACY AND RULE OF LAW

*W*e undertake to build, consolidate and strengthen democracy as the only system of government of our nations. In this endeavor, we will abide by the following:

Human rights and fundamental freedoms are the birthright of all human beings, are inalienable and are guaranteed by law. Their protection and promotion is the first responsibility of government. Respect for them is an essential safeguard against an over-mighty State. Their observation and full exercise are the foundation of freedom, justice and peace.

Democratic government is based on the will of the people, expressed regularly through free and fair elections. Democracy has as its foundation respect for the human person and the rule of law. Democracy is the best safeguard of freedom of expression, tolerance of all groups of society and equality of opportunity for each person.

Democracy, with its representative and pluralist character, entails accountability to the electorate, the obligation of public authorities to comply with the law and justice administered impartially. No one will be above the law.

*Charter of Paris for a New Europe-CSCE Summit
Paris, November 21, 1990*

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Dr. Frederick Quinn has assisted many governments in the New Independent States on constitutional and judicial change and has led seminars on these issues throughout Central and Eastern Europe. A former International Programs Adviser to the Federal Judicial Center, Washington, D.C., Dr. Quinn is author of *Democracy at Dawn: Notes from Poland and Points East*, and (with Andrej Rzeplinski) *Human Rights and the Judiciary, a Collection of International Documents*, *The Federalist Papers Reader* and other books plus numerous articles for *The Legal Times* and other publications on international legal and political issues. He worked closely with the Chief Justice of the United States, Warren E. Burger, during the Bicentennial of the U.S. Constitution and is a former Rule of Law Advisor to OSCE/ODIHR.



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