JUSTICE ?

THE MILITARY COURT SYSTEM IN THE ISRAELI-OCCUPIED TERRITORIES.

Including an introduction to relevant international human rights and humanitarian law.

by Paul Hunt

The author is a solicitor and volunteer researcher with Al-Haq/LSM and the Gaza Centre for Rights and Law.

AL-HAQ / LAW IN THE SERVICE OF MAN
West Bank affiliate of the
International Commission of Jurists.

GAZA CENTRE FOR RIGHTS AND LAW
Gaza Strip affiliate of the
International Commission of Jurists.

February 1987.

CONTENTS

PREFACE

This paper describes the Israeli military court system, beginning with arrest and including interrogation, charge, trial and sentence. Also, it compares the actual rights available to detainees in the military court process with some international human rights and provisions of humanitarian law. The account is designed for people with little or no legal background, especially those unfamiliar with the Occupied Territories.

The paper is based mainly but not exclusively upon interviews with defence lawyers who practise, or used to practise, in the Israeli military courts. Some of them described the military courts as a "sham", "charade" or "theatre". All believed that the military court process may have the superficial appearance of a fair system of justice but is, in reality, weighted overwhelmingly against the detainee. Many of those interviewed doubted defence lawyers have any significant constructive role to play in the legal process and feared their participation only lent legitimacy to an intrinsically unjust system. Indeed, a few of the interviewees had been persuaded by these considerations to give up altogether their work in military courts.

The Israeli military courts referred to and described herein operate throughout the territories occupied by Israel after the 1967 war, with the exception of East Jerusalem and the Golan Heights which were subsequently annexed by the State of Israel.

In the West Bank the Military Order regulating most of the military court process is M.O. 378, as amended; in the Gaza Strip it is a parallel unnumbered Military Order of 1970 found in Volume 19 of the 'Proclamations, Orders and Announcements' issued by the Israeli military authorities, as amended. Military Order 378 and its unnumbered Gazan equivalent are the Israeli Military Orders referred to in this

paper, unless stated otherwise.

Israel's use of administrative detention, that is detention without charge or trial, is not considered in this paper. Administrative detention is discussed very thoroughly in LSM's Occasional Paper No.1 written by Emma Playfair.

Since 1967 the Israelis have created military tribunals called Objections Committees to consider numerous civil matters in the Gaza Strip and West Bank. For instance, these quasi-judicial bodies, staffed by Israeli army officers, adjudicate upon critical issues of land ownership. This paper does not consider these very important military tribunals which are discussed in Occupier's Law by Raja Shehadeh (Institute for Palestine Studies, 1985); their widening jurisdiction raises significant issues of international law.

This Introduction considers firstly a few general features of Israeli military courts and secondly the background to the international human rights and humanitarian law relied upon subsequently.

i) Israeli Military Courts: General Features

Israeli military courts have jurisdiction to try all cases which the authorities consider to be security cases. Also, the military courts have concurrent jurisdiction with local, non-military criminal courts to try all alleged criminal offences. The military authorities decide whether or not a particular criminal case or class of cases should be heard by a military or local court.

The military court legal system is based loosely upon the common law. However, judges in the military courts, unlike the judiciary in most common law legal systems, are not bound to follow precedents, meaning the decisions of previous cases. Nevertheless, in practice, some military court judges choose to consider precedents as persuasive authority; in particular, a judge is likely to regard as persuasive one of his own earlier decisions or the previous decision of another judge arising from the same facts. The absence of legally binding precedents tends to promote a lack of uniformity in military court decisions and a feeling of arbitrariness amongst defendants and lawyers alike.

Normally, the decisions of an appeal court encourage a consistent interpretation of the law; but, in breach of the law of international human rights (see page 32), there is no appeal court in the military court system.

The quality of justice dispensed in any legal system depends upon the independence and impartiality of the judges. In the Israeli military courts all judges are serving Israeli army officers, some of whom are without legal qualifications. Inevitably these features affect profoundly the perceived and

actual justice available in Israeli military courts. The military court judiciary is considered in more detail on page 34.

One characteristic of common law legal systems is that proceedings are adversarial, meaning that in a case there are two contending parties, firstly the prosecution representing the State and secondly the accused.

ii) International Human Rights and Humanitarian Law.

This study compares some of the rights available to detainees in the military courts of the Occupied Territories with some of the rights enumerated in the Universal Declaration of Human Rights ("UDHR"), the International Covenant on Civil and Political Rights ("ICPR") and the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 1949, ("the Fourth Geneva Convention"). UDHR and ICPR are in the attached Appendix C and D.

The provisions of UDHR, ICPR and the Fourth Geneva Convention under consideration, are those not guaranteed in the Israeli military courts; of course, there are other provisions, for instance, a detainee's right to call evidence, which are found in the law and practice of Israeli military courts.

a. The Universal Declaration of Human Rights (UDHR)

The United Nations' first catalogue of human rights and fundamental freedoms was declared by the United Nations General Assembly in December 1948. Although the Universal Declaration of Human Rights tends to be general rather than specific, it is a document of immense significance in the field of international human rights. Israel became a member of the United Nations in May 1949, thereby adopting UDHR.

There are at least three schools of thought on the legal status of the UDHR. One argues that, however great its moral

or political authority, the UDHR does not itself create binding obligations under international law. The second argues that the UDHR today creates binding obligations for member states of the United Nations because they have expressly accepted these obligations. The third school of thought argues that over the 37 years since its adoption, the UDHR has become part of customary international law and therefore is binding on all states, whether or not they are members of the United Nations. According to this view, UDHR is directly applicable in those states, such as Israel, whose domestic legal systems incorporate customary international law.

This paper adopts UDHR as a model for comparison because, according to these views, it is at least a document of great moral and political authority and, arguably, part of customary international law.

b. International Covenant on Civil and Political Rights (ICPR)

In 1947 work began on the drafting of detailed Covenants on human rights designed to become legally binding on United Nations member states. Two Covenants, the International Covenant on Civil and Political Rights (ICPR) and the International Covenant on Economic, Social and Cultural Rights (ICES), were adopted by the United Nations General Assembly and signed by Israel in 1966. Both Covenants elaborate many of the rights declared in UDHR . For instance, while UDHR declares simply a defendant's right to be tried with "all the guarantees" necessary for his defence, ICPR lists the "minimum guarantees" to which "everyone shall be entitled" in 7 paragraphs. ICPR, which is the only one of the 2 Covenants relevant to this paper, did not come into force until March 1976. However, negotiating and signing states, such as Israel, do not become legally bound by the Covenant unless and until they ratify it. Israel has yet to ratify the Covenant and accordingly is not legally bound by its terms.

Despite Israel's failure to ratify ICPR, comparisons with the Covenant remain apposite because, firstly, Israel's signature of the Covenant indicates the importance Israel once attached to it, and secondly ICPR is a detailed and authoritative elaboration of principles declared in UDHR.

c. The Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War (1949)

International humanitarian law is intended to regulate hostilities in order to reduce useless hardships. The main body of humanitarian law is found in the four Geneva Conventions of 1949 which seek to protect members of the armed forces who are wounded, sick or shipwrecked (the First and Second Geneva Conventions), prisoners of war (the Third Geneva Convention), and civilians (the Fourth Geneva Convention). In 1951 Israel ratified all four Geneva Conventions of 1949.

The status under international law of the territories occupied by Israel after June 1967 has been much debated, the discussion centring upon the applicability of the Fourth Geneva Convention to the Occupied Territories. This paper will not contribute to the debate because Israel declares it observes the humanitarian provisions of the Fourth Geneva Convention, even though it disputes its legal obligation to do so under international law.

The text of the Fourth Geneva Convention is published by the International Committee of the Red Cross with a detailed Commentary written under the general editorship of Dr. Jean Pictet, the leading authority on humanitarian law. The interpretations of the Convention expressed in the Commentary, passages from which are quoted in this paper, are neither binding nor conclusive, but they are considered to be of persuasive authority.

THE MILITARY COURT SYSTEM

1. Powers of Arrest

Under the Israeli Military Orders relating to the Occupied Territories, a soldier may arrest any person who has, or is suspected of having, committed a security offence. Many activities are defined as " security offences" including participating in a demonstration, stone throwing and failing to carry appropriate identification papers (hawiyas).

Arrests are made at any time of the day or night. They occur at innumerable places: in homes, at the Allenby Bridge when travelling between Jordan and the Occupied Territories, on a university campus following a "disturbance", at road-blocks and after individuals have been "stopped-and-searched" by soldiers in the street. Some people receive letters instructing them to report to the military authorities at a given time and place, and when they comply some are arrested. Students have been arrested in the examination hall and on one occasion a lawyer was arrested when visiting clients in prison.

According to UDHR 9 and ICPR 9(1): "No one shall be subjected to arbitrary arrest or detention." Arbitrary means without legal cause; it implies bad faith and randomness. In the Occupied Territories after an "incident" it is the military's practice to make large scale arrests. For instance, in September - October 1986, two Israelis in Gaza Town were fatally stabbed. Amongst its very numerous, repressive responses, the military arrested and searched some two hundred young, male Palestinians in the central square of Gaza Town, seven days after the second stabbing. From the writer's personal observations, it appeared that all young, Arab males passing through or working in the square, or its immediate vicinity, were arrested and placed in the middle of the square where they were searched; some of the soldiers' conduct was gratuitously harsh, including the kicking of "suspects". The arrests were made and searches conducted in the busiest part of Gaza Town, where neither stabbing

occurred, one week after the second attack. It is suggested that such arrests made in these circumstances, as well as being contrary to Article 33 of the Fourth Geneva Convention (prohibition of collective punishment and intimidation), are "arbitrary" in breach of UDHR 9 and ICPR 9(1).

ICPR Article 9(2) states: "Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest...". If this requirement is applied it is likely to deter arbitrary arrests, for instance those based upon prejudice or a personal grudge. However, in contradiction of ICPR 9(2), Israeli Military Orders do not require arrested persons to be informed at the time of arrest the reasons for arrest. This breach of ICPR 9(2) tends to encourage soldiers to arrest at their personal whim thereby making those arrested feel helpless subjects of an arbitrary system. In short, this contravention of international human rights seriously undermines the rule of law.

However, it seems the new Legal Advisor to the Military Government of the West Bank is aware of the problems created by failure to comply with ICPR 9(2). In late 1986, he informed a Palestinian lawyer associated with al-Haq, that he had issued instructions requiring soldiers to give the arrested person, at the time of the arrest, the reasons for arrest. These instructions, assuming they are followed, will ensure practical compliance with ICPR 9(2), despite the absence of supporting Israeli Military Orders. Such developments are warmly welcomed by al-Haq which will continue to monitor the situation.

According to the Israeli Military Orders, the arrested person should be taken as soon as possible to a detention centre or the nearest police station. The Military Orders provide that each detainee must be registered on entering a detention centre and given a receipt for possessions taken by the authorities. At first sight it appears that the requirement to register should assist greatly lawyers who are trying to find where a client is detained. However, in practice the registration is less useful because often prison

personnel refuse to say whether or not a particular detainee is registered and sometimes give information which later proves to be false. It seems some detention centres have quarters where Shin Bet, the Israeli security service, interrogates detainees without the detention centre personnel knowing, in all cases, which detainees are in the Shin Bet quarters.

Sometimes a detainee may be traced through the interrogators' office in Nablus or Bethlehem or the Israeli Legal Advisors' Department which is in Beit El in the West Bank and Gaza Town in the Gaza Strip. In the Gaza Strip the more common practice is to locate a detainee through the register of detainees in Gaza Prison, through the International Committee of the Red Cross (ICRC), on the basis of information given by other detainees when they appear in court, or by an application for bail on which occasion the detainee must be brought to court. Once located a detainee may be moved for a number of reasons e.g. to permit a confrontation with a witness from another town. In these circumstances a lawyer's hunt for a detainee resumes.

In recent years there has been an increase in the number of "disappeared" people in the Occupied Territories, namely men and women who go missing under suspicious circumstances. For instance, a man may leave his house for a business appointment, but neither arrive as arranged nor return home. In due course the body of the "disappeared" person may be found; sometimes no trace is ever found of either the person or body.

Again, the new Legal Advisor to the Military Government in the West Bank has issued an instruction which, if complied with, should reduce some of the anxieties generated by the phenomenon of "disappeared" persons. According to the same Palestinian lawyer referred to above, the Legal Advisor in the West Bank has issued instructions requiring that, if a person is arrested away from his home, the person's family must be informed of the arrest. If complied with, one effect of this instruction will be that a family will know more quickly when

someone is not "disappeared"; also, the instruction means that once a person is arrested and the family informed, he or she cannot become a "disappeared" person.

This development, too, will be monitored closely. Unfortunately, there is no indication whether or not either of these recent instructions issued by the Legal Advisor in the West Bank, will be adopted by the appropriate authority in the Gaza Strip.

2. Length of Detention

i) The First 18 Days

Immediately following arrest, a detainee may be detained for up to 18 days without appearing before a court. The 18 days is calculated as follows. Within 4 days of the arrest, the arresting soldier may obtain a Detention Order against the detainee from a police officer. If the Detention Order is not obtained within 4 days, the detainee should be released immediately. The period of detention under the Detention Order may not exceed 7 days. However, the period of detention may be extended for up to a further 7 days by a police officer of a rank not below that of inspector. Therefore, in summary, the arresting soldier may detain for 4 days, a Detention Order may be granted for 7 days and it may be extended for a further 7 days, totalling 18 days.

However, although required by the relevant Military Orders, these procedural steps within the first 18 days have no practical effect. Indeed, it is unclear whether or not they are followed at all. One lawyer's argument that in his client's case the required steps had not been followed was disregarded by the court as totally irrelevant.

ii) After 18 Days

After 18 days, only a Military Court may extend a period of detention. It must not extend the detention for a total period of more than 6 months unless the detainee is charged.

Therefore, a detainee who has been in detention for 6 months without charge must be released. However, once a detainee is charged, the court may, and almost invariably does, extend the period of detention until the end of all legal proceedings against the detainee. This creates pressure on the detainee to plead guilty in order to speed up the proceedings, a case involving a guilty plea normally being heard very much more quickly than one involving a plea of not-guilty.

In addition to the power of the military court to extend detention until the end of all legal proceedings against the detainee, the authorities have the power to detain administratively i.e. detention without charge or trial. Indeed, these two powers of detention may be used consecutively. For instance, in one case, on the day fixed for trial, the authorities withdrew the charge against the detainee and replaced it with a six-month order of Administrative Detention.

In the course of each case there may be several hearings for extensions of detention. What is said and not said at these hearings may have far reaching effects upon the detainees' chances of acquittal. However, it is more convenient to deal with these important hearings later (see page 19), after other issues, such as interrogation and bail, have been discussed.

3. Interrogation

After their arrest most detainees are interrogated. The questioning of detainees is conducted either by military personnel, security personnel (Shin Bet) or members of the police. Security personnel and the police may work in plain clothes often making it impossible to distinguish between them. As we will see, interrogation is the most critical stage of the proceedings against a detainee and it is also when the detainee is the most vulnerable.

In most cases, detainees give a signed confession during interrogation. Usually it is written down by an interrogator

in Hebrew, a language few detainees understand. In most cases the confession is the primary and decisive evidence against a detainee. It is extremely rare for the defence to argue successfully later in court that the confession is inadmissible because it was extracted by improper means. In virtually every case in which a detainee has confessed under interrogation, he or she will be convicted. Thus, the treatment, conditions and rights of a detainee during interrogation are critical to an understanding of the justice or otherwise of the Israeli military courts.

The vulnerability of a detainee under interrogation flows from a number of factors, including the following:

i) no right to consult a lawyer

According to the Israeli Military Orders a detainee has no absolute right to consult a lawyer before or during interrogation. The detainee's access to a lawyer is discussed more fully at page 21; at this stage, suffice it to say that the authorities' practice is to allow a detainee to consult a lawyer only after the interrogation is complete. Consequently, most detainees do not know of their right to remain silent during interrogation.

ii) psychological and physical mistreatment

Many detainees complain of psychological and physical mistreatment during interrogation. This paper is not the place to add to the numerous documented cases of torture and intimidation; such details may be found in, for instance, Amnesty International's 'Report and Recommendations to the Government of the State of Israel' (June 1979), and LSM/al-Haq's two reports of 1984 on the treatment of security prisoners in the West Bank PRISON of al-Fara'a. More recently, in September 1986, Amnesty International published details about Adnan Mansour Ghanem who alleges that during interrogation he was hooded, strangled, made to take repeated cold showers, faced to stand for long periods, deprived of

sleep, beaten, threatened and humiliated.

When asked, the Israeli authorities have been unable to refer to any code of practice for interrogation which could, for instance, forbid certain interrogation methods and regulate the length of interrogation. The authorities stress torture is forbidden by Israeli law and that offenders are punished. However, since the occupation began in 1967 there have been very few convictions for the mistreatment of detainees; in the same period there have been many documented allegations of torture.

iii) no right to an independent, registered doctor

According to Israeli Military Orders a detainee has the right to medical treatment and a written medical report (in the Gaza Strip M.O. 410 (5); in the West Bank M.O. 29 (5)). But the value to the detainee of this right is restricted severely in two ways: firstly the medical treatment and report are provided by prison personnel and secondly the person providing the treatment and report does not have to be a registered doctor.

The example of Adnan Mansour Ghanem, given above, shows how unsatisfactory are a detainee's rights to medical treatment and reports. According to Amnesty International, Adnan Mansour's lawyer "reported that he (Adnan Mansour) had a wound in the middle of his head which was swollen, discharging pus and painted with green iodine, that pus was coming from his right ear, that the bruises around his eyes had disappeared and he was able to move his head a little, although his body as a whole ached from the beatings". Three days later Adnan Mansour was examined in prison by a doctor who, according to Amnesty International, reported Adnan Mansour's condition was good, without sign of injury and that antibiotics and ear drops had been prescribed.

If detainees had access to an independent, registered

doctor their position would be improved appreciably.

On 17th October 1986, the Jerusalem Post reported a staff doctor of al-Fara'a Detention Centre who said he did not visit the cells where detainees are interrogated; he added that detainees are checked medically before and after interrogation.

(On 10th February 1986, after approximately 7 weeks in detention, Adnan Mansour was deported, without charge or trial, to Jordan, in breach of Article 49 of the Fourth Geneva Convention of 1949).

iv) Shin Bet interrogators' conduct concealed

During interrogation, a common practice is for Shin Bet personnel to interrogate a detainee until the detainee agrees to provide a signed statement. At that stage a police officer previously uninvolved in the interrogation will take the detainee's statement. Subsequently, this police officer may testify truthfully in court that the detainee gave the statement to him voluntarily, that is without the police officer applying or witnessing any threats or coercion against the detainee. However, the detainee may have given the statement only as a result of earlier mistreatment by the Shin Bet interrogators or through fear of the Shin Bet's interrogation recommencing. This procedural device tends to conceal the Shin Bet interrogators' conduct.

v) no right to an interpreter.

The Israeli Military Orders do not give specifically a detainee the right to an interpreter during interrogation, even though many confessions are given in Hebrew, a language understood by few detainees. This omission is in breach of Article 72 of the Fourth Geneva Convention (1949): "Accused persons shall, unless they freely waive such assistance, be aided by an interpreter, both during preliminary investigation and during the

hearing in court. They shall have at any time the right to object to the interpreter and to ask for his replacement."

One should add that, according to the Israeli Military Orders, during a military court trial a detainee has the right to translation and may object to an interpreter and request a replacement. However, because this right is confined to a military court trial and does not extend to the "preliminary investigation", the Israeli Military Orders remain in breach of Article 72.

Of course, interrogation of a detainee may continue for up to 6 months, interrupted only by occasional court hearings for bail or extensions of detention. As we shall see, frequently the detainee's lawyer is prevented from speaking with his or her client at these short hearings.

From time to time, when the authorities are challenged about the treatment of detainees during interrogation, they refer to the Israeli-ICRC agreement. The implication is that this agreement protects adequately the interests of detainees. The Israeli-ICRC agreement is considered next.

4. The Israeli-ICRC Agreement

The rights of the ICRC, according to its agreement with the Israeli authorities (as at September 1986), may be summarized as follows:-

i) to receive notification within 12 days of an arrest
ii) to have access to a detainee not later than 14 days after arrest
iii) to have access to a detainee subsequently once every 14 days during interrogation
iv) to request, after a visit to a detainee, the detainee's examination by, for instance, an ICRC doctor; the Israeli authorities shall immediately grant such an examination.
v) to request the authorities, following a doctor's

report, to convene a commission of enquiry.

Thus, at least 3 types of reports may be generated by the Israeli-ICRC agreement. Firstly, the report of the ICRC delegate following a visit to a detainee [(ii) and (iii) above], secondly the ICRC medical report [(iv) above] and thirdly the conclusions of the commission of enquiry [(v) above]. However, because of its principle of confidentiality and its obligations under the Fourth Geneva Convention, the ICRC must communicate these reports to the Israeli authorities directly and cannot release them to the public. Often the Israelis cite the public silence of the ICRC as evidence that a detainee's allegations of torture are unfounded, omitting to mention the restraints upon the ICRC's release of the reports. The Government of Israel has declined to disclose any of these reports when challenged to do so by Amnesty International and the International Commission of Jurists.

The Israeli-ICRC agreement prohibits the delegates from firstly advising detainees that they have the right to consult a lawyer and secondly passing information to a lawyer should a detainee wish to appoint one. The first prohibition seems particularly regrettable when it is recalled that the right to counsel is enshrined in Article 72 of the Fourth Geneva Convention (1949) (see the section on 'Right to a Lawyer', page 21). Thus the ICRC, guardian of the Geneva Conventions, is prohibited from informing detainees of their rights under that provision of the Fourth Geneva Convention.

As we saw, some important terms in the Israeli-ICRC agreement depend upon the ICRC knowing the date when the detainee was arrested; in many cases the ICRC is dependent upon the Israelis for this information. According to some defence lawyers, the Israelis do not always inform the ICRC about each arrested person and sometimes they give the ICRC an erroneous date of arrest, thereby circumventing parts of the agreement. In addition, the ICRC does not automatically visit every detainee on his or her fourteenth day of detention; instead, the ICRC has a routine of visiting certain prisons on

particular days, on which occasion an ICRC delegate will see all detainees in the prison who, since the last ICRC visit, have completed 14 days detention after their arrest. It is alleged the Israelis, knowing of a pending ICRC visit, will transfer a particular detainee who they do not want the ICRC to meet, to another prison; thus, no meeting will occur on that occasion between the particular detainee and the ICRC delegate. Apparently, in some cases, this transfer from prison to prison just ahead of an ICRC visit has been repeated several times, so that the first visit by the ICRC to a particular prisoner has been two months or more after the date of arrest.

Despite the limitations of the Israel-ICRC agreement, the ICRC provides a beneficial service to many detainees. However, the Israeli authorities should not be permitted to use its agreement with the ICRC, and the ICRC's enforced silence, as a cloak of respectability.

5. Habeas Corpus and Bail

A writ of habeas corpus is an application to a court which tests the legality of an individual's detention. Military courts refuse to hear applications for habeas corpus, but are willing to hear applications for release on bail.

At any time during detention the detainee, or a lawyer on his or her behalf, may petition the military court to be released on bail. If the court grants bail it may impose any conditions it sees fit, e.g. a cash deposit with the court. Bail is always conditional upon the detainee appearing for questioning and trial, as ordered.

Bail applications for security detainees are very rarely successful. Frequently a lawyer applies for bail without being allowed to see or speak with the detainee and without knowledge of the nature of the suspicion against the client.

Although bail applications are very rarely successful, their value cannot be measured only by the number of occasions

they result in an immediate grant of bail. A bail application may be helpful for the following reasons:-

i) it may result in a detainee being released not immediately but earlier than would otherwise be likely.

ii) it gives a detainee under interrogation a break from interrogation.

iii) it gives the lawyer an opportunity to see the physical condition of the detainee.

iv) it may give the lawyer an opportunity to briefly advise the client.

v) it gives the defence an early opportunity to retract a confession, to complain of "improper means" used during interrogation and to deny an accusation. (If a detainee does not retract a confession and complain of "improper means" at the earliest opportunity before a judge, in practice he or she is precluded from doing so at a later stage).

It should be noted that sometimes when the defence submits a bail application the military prosecutor seeks to ignore the application and to treat the hearing as one for the extension of detention. Moreover, regrettably, often the prosecution's manoeuvres succeed, despite the representations of the defence lawyer before the military court.

The practice of Israeli military courts regarding bail raises some important issues of international human rights. ICPR 9 (3) states: "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....". The striking infrequency of successful bail applications tends to suggest that the general rule applied in security cases is that persons awaiting trial shall be detained in custody; indeed, some military court judges have openly stated this to be the case. Such a practice is directly contrary to the "general rule" laid down in ICPR 9 (3).

Both UDHR 10 and ICPR 14 (1) state: "Everyone is

entitled... to a fair... hearing...". In many Israeli military court cases an advocate is denied the opportunity to see or speak with the client before making a bail application. Indeed, the advocate is frequently not informed of the nature of the suspicion against the detainee before the bail hearing. Bail applications made in such circumstances can be seen as a denial of a person's right to a "fair hearing" as guaranteed in UDHR 10 and ICPR 14(1). An inherent element of a "fair" hearing includes procedural equality between prosecution and defence, what is generally called "equality of arms"; for instance, the presence of the prosecutor without the presence of the defendant or his counsel is a procedural inequality incompatible with the notion of a "fair" hearing. However, there seems no reason why "equality of arms" should be confined to procedural matters at the trial itself; consequently, it is suggested the principle extends also to matters prior to a hearing, such as the provision of adequate information and facilities for the preparation of an application.

Therefore, bail applications made in the circumstances described are not "fair" within the meaning of U.D.H.R. 10 and I.C.P.R. 14 (1). Further, the word "hearing" in both articles is broad enough to include bail hearings as well as trials.

ICPR 14 (3) states: "...everyone shall be entitled to the following minimum guarantees... ...(b) to have adequate time and facilities for the preparation of his defence...". Unless the word "defence" in ICPR 14(3)b is construed as not including a bail hearing, bail applications made in the circumstances described (i.e. inadequate time and facilities for preparation of the application) are clearly in breach of ICPR 14 (3)b.

6. Hearings for Extensions of Detention

As we have seen, immediately following arrest a person may be detained for up to 18 days without appearing before a court. Normally, shortly before or on the eighteenth day, the detainee is brought before a military court and the police or

the military prosecutor requests an extension of detention to permit the authorities to continue their "enquiries". Invariably the judge accedes to the prosecution's request and extends the detention for, say, 30 days at the end of which the authorities may request a further extension. This procedure may repeat itself until the detainee has been held for 6 months. In short, there may be several hearings for extension of detention in every case.

The hearings do not always take place in a military courtroom. Indeed, often the hearing occurs in the detention centre where the detainee is in custody in which case the session will not be open to the public.

A hearing for extension of detention holds the same dangers and opportunities for a detainee as a bail hearing. These have been described already on pages 17-19. However, in addition, at hearings for extension of detention some judges endeavour to obtain from the detainee an admission of guilt, even if the detainee is without legal representation; if an admission of guilt is made it forms part of the court record and is extremely difficult to retract at a later stage.

Also, the absence of a recorded denial of an accusation or charge at a hearing for the extension of detention may be used against the detainee in the subsequent proceedings. As we will see, a detainee's silence at other stages of the proceedings too may be used against him or her, contrary to the international law of human rights and discussed on page 33.

In the preceding section on "Habeas Corpus and Bail", UDHR 10, ICPR 14(1) and ICPR 14(3), concerning the detainee's right to a "fair trial" and "to adequate time and facilities for the preparation of his defence", were discussed. The same considerations apply to a hearing for extension of detention. However, an additional consideration is that sometimes defence lawyers are not informed of the time and place of a hearing for extension of detention in sufficient time for them to attend the hearing; consequently, the detainee may be left

alone to face the experienced prosecutor and the often unsympathetic judge.

In conclusion, a hearing for extension of detention may have important consequences for a detainee. Although in practice a detainee is allowed representation by a lawyer at these hearings, sometimes lawyer and client are prevented from speaking together before, during or after the hearing, assuming the lawyer was able to attend the hearing at all. Again, this raises the important issue of a detainee's right to consult a lawyer; this right is discussed in the following section.

7. The Right to a Lawyer

Israeli Military Orders do not recognize a detainee's absolute right to consult a lawyer. A detainee may meet a lawyer provided that:

i) the Prison Commander "is convinced that the request was made for the purpose of dealing with the legal affairs of the prisoner and..."

ii) "...the meeting will not impede the course of the investigation". (M.O. 410 (ii) in the Gaza Strip; M.O. 29 (ii) in the West Bank).

In other words, when detainees are under interrogation whether or not they receive legal advice is a matter for the Prison Commander. However, in practice, a lawyer is denied access to an accused until the interrogation is complete; the person who denies or permits access is not the Prison Commander but the interrogator himself.

The Legal Advisor's Department liaises between the detainee's lawyer and the interrogators and informs the lawyer when he or she may meet the client. A lawyer is never permitted to attend the interrogation with the accused, in contrast to the common but not invariable practice of many western countries. If and when an interview between the

lawyer and client is permitted, it normally takes place in the interrogator's office within the environs of the detention centre; often a third person is within earshot. As we have seen many bail applications are made without the lawyer having the opportunity to meet the accused.

ICPR 14 (3) states: "Everyone shall be entitled to the following minimum guarantees..... (b) ... to communicate with counsel of his own choosing". Therefore, Israeli law and practice in the Occupied Territories contravenes ICPR 14(3)b.

UDHR 11 (1) states: "Everyone charged with a penal offence has the right to ... all the guarantees necessary for his defence". It is suggested that one of the "guarantees" protected by UDHR 11 (1) is the absolute right to legal advice, a fundamental human right; if this is so, Israeli law and practice in the Occupied Territories also contravenes UDHR 11 (1).

Under the humanitarian law relevant to the Occupied Territories, the right to counsel is found in Article 72 of the Fourth Geneva Convention: "Accused persons...shall have the right to be assisted by a qualified advocate or counsel of their own choice...".

However, some Israeli jurists argue that Article 72's right to counsel "...is qualified, in that it does not oblige the occupying power to allow communication with a lawyer if the offender is suspected of grave and hostile security offences" (page 30, 'The Rule of Law in the Areas Administered by Israel', published by the Israel National Section of the International Commission of Jurists, 1981). The authority quoted for this proposition is Article 5 of the Fourth Geneva Convention, the second paragraph of which states: "Where in occupied territory an individual protected person is detained as a spy or saboteur, or as a person under definite suspicion of activity hostile to the security of the Occupying Power, such person shall, in those cases where absolute military security so requires, be regarded as having forfeited rights of communication under the present Convention". The following

points deserve special emphasis regarding Article 5's alleged qualification to Article 72's right to counsel. Firstly, forfeiture operates only "...in those cases where absolute military security so requires..."; secondly, with two exceptions, forfeiture occurs only to persons under "...definite suspicion...", in which case mere suspicion is not enough; thirdly, the Commentary to the Fourth Geneva Convention illustrates which rights to communication are forfeited under Article 5 and the right to counsel is not amongst the illustrations.

The Commentary to Article 5 concludes: "It must be emphasized most strongly, therefore, that Article 5 can only be applied in individual cases of an exceptional nature, when the existence of specific charges makes it almost certain that penal proceedings will follow. This Article should never be applied as a result of mere suspicion". It would seem that Article 5's forfeiture of rights of communication is prompted by fears that communication from the detainee to others may include intelligence or other information which could threaten "military security"; however, in practice, Article 5 is used to restrict the communication of information to the detainee concerning his or her rights.

As we have seen, the invariable Israeli practice regarding all security detainees in the Occupied Territories, is to deny them access to a lawyer until the end of interrogation. This practice is applied even in connection with such relatively minor offences as stone-throwing. It is absurd to suggest that in all these cases "absolute military security" requires forfeiture of the detainee's right to counsel. In these circumstances, one is driven to the inevitable conclusion that the Israeli practice in the Occupied Territories abuses Article 5's narrow qualification to Article 72's right to counsel. Consequently, Israeli practice regarding a detainee's right to counsel is in breach of humanitarian law (Articles 5 and 72).

Finally, under the Israeli Military Orders there is no doubt that an accused has the absolute right to a lawyer on

the trial day. Under M.O. 373 in the Gaza Strip and M.O. 400 in the West Bank, the accused is given the choice of either being represented by a lawyer or conducting his or her own defence; however, the court is obliged to appoint a defence lawyer in serious cases when the accused has not and, in that event, the Military Government is responsible for the lawyer's fees.

8. The Military Court Trial

a. The Military Court Rooms

The military courts are found in the Military Government Headquarters of the West Bank towns of Ramallah, Bethlehem, Hebron, Nablus, Jenin, Tulkarem and the Gaza Strip towns of Gaza and Khanyunis.

They adjoin each town's detention centre which is in the same military compound. The courtrooms have a dais for the judge or judges, immediately below which the court interpreter sits. The detainees sit in the dock, guarded by prison personnel. At the rear of the courtroom is the public gallery. The central part of the court contains benches and desks for the prosecution and defence advocates, in addition to a witness stand. The courtroom is usually dominated by a large Israeli flag unfurled and pinned against the wall behind the judge's dais. Armed soldiers constantly wander in and out of the courtroom. The Military prosecution is uniformed and normally armed.

However, a military court may sit at any time or place the President of the court may direct. For instance, if there are "disturbances" leading to mass arrests, a military court may sit at or near the scene of the "disturbances", in a school or other building. In such cases, the proceedings may be expedited and then they are known as "quick trials". In a "quick trial", the time from arrest to sentence may be as little as one day, whereas normally the proceedings take between two and six months. Most "quick trials" constitute a serious breach of a detainee's right "... to adequate time

and facilities for the preparation of his defence..." [ICPR 14(3)b].

b. Charge Sheet

When the authorities have completed the interrogation and their investigations, the detainee is usually charged and if not charged he or she must be released. In almost all cases a detainee who is charged will be held in custody pending trial.

The charge sheet, which is always in Hebrew, sets out the offence with which the detainee is accused, the alleged details of the offence, the statute. Military Order or Regulation which the detainee has allegedly contravened, the number of judges who wil hear the case and a list of prosecution witnesses. A poor Arabic translation of the charge sheet is sometimes also available.

The charge sheet may be presented to the detainee or the detainee's lawyer any time before trial. Often, if the detainee does not have a lawyer, the charge sheet is served upon the defence only within hours or minutes of the beginning of the trial.

Article 71 of the Fourth Geneva Convention states: "Accused persons.... shall be promptly informed in writing, in a language which they understand, of the particulars of the charges preferred against them.....". Israeli practice in the Occupied Territories constitutes a double contravention of Article 71. Firstly, accused persons are not "promptly" informed of the charge and secondly they are not always informed "in writing in a language which they understand."

Article 71 requires the information to be given "promptly" and "in writing" for various reasons, for instance to ensure adequate time for the preparation of a defence and to avoid the possibility of changes being made in the charges preferred.

Before a charge sheet is served upon the defence, the accused may have been informed orally of the charges. However, this does not satisfy the requirements of Article 71.

c. Composition of the Military Court

Military courts may be composed of single judges or a panel of three judges. A single judge and the President of a three judge court must be an army officer with legal qualifications. The other judges of the panel will be army officers who need not have legal qualification.

The military prosecutor decides the composition of the military court. A single judge court may not impose a sentence of more than 5 years imprisonment or a corresponding fine. A three judge court may impose any sentence permitted by the law for the offence, upto and including the death penalty. Although the death penalty has not been imposed in the West Bank or Gaza Strip since 1967, in some serious cases it is used as a threat during negotiations between prosecution and defence lawyers.

The composition of the court decided upon by the prosecution indicates the severity of sentence the prosecution will seek at trial.

d. Trial Procedure

i) Introduction

Detainees have the right to attend their own trial. They cannot be tried in their absence unless the court considers their conduct in court is improper. If the trial proceeds in their absence, they must be informed what is taking place in court. Military court trials should be open to the public, unless in the opinion of the court ".... the security of the I.D.F., the security of the public, the defence of morals or the well-being of a minor..." require the court to sit in closed session (M.O. 378, as amended, in the West Bank and an unnumbered Military Order of 1970, as amended, in the Gaza Strip).

In almost all cases, the trial is conducted in Hebrew. The detainee has the right to translation and may object to an interpreter and request a replacement.

A written record of the proceedings is made by the judge.

ii) Pleas

The trial begins with the reading of the charge sheet. The judge may ask firstly if the detainee understands the charge or charges and secondly how he or she pleads.

If the detainee pleads guilty, the judge may ask if the detainee is aware of the consequences of a guilty plea. Provided the court accepts the guilty plea, the military prosecutor may explain the circumstances of the offence and the detainee, or the detainee's lawyer, mitigates. Then the court passes sentence. Mitigation and sentence are discussed briefly below.

A not-guilty plea places the burden on the prosecution to prove its case against the detainee, adopting the procedure described below.

A detainee who refuses to plead either guilty or not-guilty, is deemed to have pleaded not-guilty and the prosecution must prove its case against the detainee. However, a detainee's refusal to plead to the charge may be used against the detainee, raising issues of international human rights which are discussed on page 33.

iii) Evidence

a. General

Three general points are particularly noteworthy regarding the rules of evidence obtaining in military courts. Firstly, the rules of evidence in military courts are the same as those applying in Israeli courts which try Israeli soldiers i.e courts martial. Secondly, Israeli courts martial apply

the rules of evidence obtaining in criminal courts within Israel's pre-1967 borders (see pages 211 and 216, 'Military Government in the Territories Administered by Israel 1967-80, The Legal Aspects', edited by M. Shamgar, Hebrew University, 1982). Thirdly, and significantly, a military court may "deviate" from these rules of evidence "...for special reasons which shall be recorded, if it deems it just to do so". (M.O. 378, as amended, in the West Bank, unnumbered Military Order of 1970, as amended, in the Gaza Strip).

b. Prosecution Evidence

The prosecution normally gives the defence access to copies of the prosecution statements after the charge sheet has been prepared.

If the detainee pleads, or is deemed to have pleaded, not guilty, the military prosecutor outlines the prosecution case against the detainee, after which he or she calls the prosecution witnesses, usually soldiers, to give evidence. After the witness has been examined-in-chief by the prosecution, the defence may cross examine and the prosecution re-examine the witness.

As we have seen the primary and decisive evidence against a detainee is often his or her signed confession given during interrogation and almost invariably written in Hebrew. If, when the prosecution submits the confession in evidence, the detainee seeks to retract it, on the ground it was obtained by duress or coercion, the prosecution must prove the confession was obtained by proper means. The question of the confession's admissibility is decided in a "mini-trial", also called a "trial within a trial", which is held in camera.

In a "mini-trial" the prosecution calls witnesses, for instance the police officer who took the detainee's statement, to give evidence that the confession was given voluntarily; the detainee will give evidence of the alleged improper means used to extract the confession. After hearing the prosecution and defence evidence on this one issue, the court decides

whether or not the confession was given voluntarily by the detainee. If, as is almost always the case, the court finds the confession was given voluntarily, the confession is admissible; alternatively, if the court finds the confession was extracted by improper means, the confession is inadmissible and the court should disregard it as evidence against the detainee.

It can not be over emphasized that only extremely rarely does the defence ever win a "mini-trial". Almost invariably the court decides the confession was given voluntarily and therefore is admissible. For this reason the period of interrogation is of the utmost importance in a detainee's case: many detainees give a signed confession during interrogation which is virtually impossible to retract subsequently, even if there is evidence that the confession was extracted from the detainee by improper means.

When challenged on this issue, some Israeli commentators point out that a detainee may not be convicted upon his or her confession alone. This is technically correct: some other evidence - "dvar ma" or "scintilla" - must be adduced to support the confession. However, it is equally true that this other evidence may be of negligible weight e.g. the actual existence of a person, place or event mentioned by the detainee in his or her confession. Thus, the requirement that a detainee may not be convicted upon his or her confession unless it is supported by some other evidence is, in practical terms, almost valueless.

According to the Israeli Military Orders, at the conclusion of the prosecution evidence, the court must consider whether or not the defence has a "case to answer" and, if it forms the opinion there is " no case to answer", it must acquit the detainee. However, as a matter of practice, in the Israeli military courts this procedural step is either regarded as a mere formality or entirely overlooked. Although legally obliged to consider the issue of a "case to answer", an Israeli Military Court has no legal obligation to hear the

defence's submissions on the point, in contrast to the law and practice of other common law jurisdictions.

c. Defence Evidence

The defence may call witnesses, one of whom may be the detainee. In practice, the defence must always call the detainee to give evidence, because the detainee's failure to give evidence on oath may be used against him. For instance, the detainee's failure to give evidence on oath may be used as the other evidence - "dvar ma" or "scintilla" - required to support a confession (see preceding section). Also, if the detainee chooses to give evidence but not under oath, the court may treat the detainee as if he chose not to testify at all. Therefore, in practice, there is compelling pressure for the detainee to give evidence on oath. This significant qualification to the detainee's right to silence raises important issues of international human rights which are discussed on page 33.

The procedure of examination-in-chief, cross-examination and re-examination of the detainee, and any other defence witnesses, is the same as for the examination of prosecution witnesses save that, of course, the examination-in-chief and re-examination are undertaken by the defence lawyer and cross-examination by the prosecution.

(iv) Summing-up

When the prosecution and defence have no more witnesses to call the military prosecutor sums-up the case against the detainee. The defence has the right to reply.

(v) Verdict, Mitigation and Sentence

The court then gives its verdict. In theory, before convicting a detainee the judge or judges, all of whom are serving Israeli army officers, must be satisfied "beyond a reasonable doubt" that the accused is guilty.

A detainee who is acquitted is immediately released. If the detainee is convicted, whether after pleading guilty or being found guilty, both prosecution and defence may address the court on the question of sentence. For instance, the prosecution is likely to present the court with details of firstly the detainee's previous convictions, secondly aggravating circumstances in the detainee's case and thirdly comparable cases in which the court imposed a harsh sentence. Whereas the defence, in its plea of mitigation, may adduce evidence of the detainee's character, health, economic situation or other special circumstances, as well as details of comparable cases in which the court imposed a lenient sentence.

At this stage, the detainee is invited to address the court personally regarding sentence; this and a defence lawyer's representations to the court raises political issues for many detainees. On the one hand a detainee may wish to say nothing other than "Revolution to Victory", which is very likely to increase the sentence; and on the other hand a detainee may apologize to the court thereby possibly abusing his or her self-respect. However, it is possible for a lawyer to strike a middle course by informing the court, with dignity, of all legitimate mitigating factors without offending the detainee. This style of mitigation enables a detainee to say nothing other than the phrase, or its equivalent, quite frequently heard in the military courts: "I am satisfied with what my lawyer has said".

After hearing the prosecution's representations and the defence's plea of mitigation, the court passes sentence. If the sentence includes a fine, the defence may ask the court for time to pay in installments. All sentences include either an immediate term of imprisonment, or a suspended term of imprisonment, or a fine, or a combination of all three.

In passing, it might be noted that some judges claim to reduce a detainee's sentence if the detainee pleads guilty (a common practice in other legal systems too), but many practising lawyers doubt that in practice any reduction is

noticeable.

Finally, it seems that Israeli military court judges, again in common with other legal systems, have an unofficial sentencing "tariff" which they apply more or less rigidly. In these circumstances it remains unclear to what extent, if any, a plea of mitigation may influence the court's judgement when it passes sentence.

9. Appeal

There is no court to which a detainee can appeal against a conviction or sentence of a military court. Decisions of a three judge court must be ratified by the Regional Commander who has extensive powers to overrule the three judge court's conviction, vary the sentence or order a re-trial. No ratification of a decision of a single judge court is required.

Detainees may petition the Regional Commander against verdicts and sentences of single judge and three judge courts, in which case he may pardon the detainee or reduce the sentence. However, it is very rare for the Regional Commander to interfere with the decision of a three judge court or to accede to a detainee's petition against sentence or verdict.

The absence of a tribunal to which a detainee may appeal against a military court conviction or sentence is in breach of ICPR 14 (5) which states: "Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law".

Further, it is suggested the absence of an appeal tribunal is in breach of UDHR 11 (1) which states: "Everyone charged with a penal offence has the right to .... all the guarantees necessary for his defence". Judicial errors of fact and law are bound to happen in all courts; however, the

risk of error is likely to be more acute in military courts designed to hear cases of a political complexion in which all the judiciary are army officers, some of whom have no legal training. Also, the absence of an appeal tribunal is likely to induce a laxity in the court's application of law and procedure. In these circumstances, it is suggested the right to an appeal tribunal is a "guarantee" necessary for an accused's defence, the absence of which is in breach of UDHR 11(1).

As the Regional Commander is not a "tribunal", the right of a person convicted by a military court to petition the Regional Commander against verdict and sentence does not satisfy the requirements of UDHR 11(1) or ICPR 14(5). The Regional Commander's power to reduce a sentence or grant a pardon is more akin to an executive's prerogative to grant clemency rather than a form of judicial review or appeal.

10. Reduction of Term of Imprisonment

In Israel, defendants sentenced to more than 3 months in prison may apply to be released after serving two thirds of their sentence. There is no comparable provision in the Occupied Territories. However, it seems that very occasionally such applications are made and processed in the Occupied Territories, although without any legal basis.

11. The Right to Silence

UDHR 11 (1) and ICPR 14 (2) states: "Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law...". The presumption of innocence, a hallowed principle of law, places upon the prosecution the burden of proving every element of a crime. Defendants do not have to prove their innocence. In common law jurisdictions it has frequently been held that the presumption of innocence is imperilled if the prosecution invites the court to draw an adverse inference against a defendant who has chosen to exercise the right to silence. In

brief, the right to silence is a corollary of the presumption of innocence.

However, in proceedings before Israeli military courts, if the defendant exercises his or her right to silence it may be used in support of the prosecution case. For instance, as we have seen, if the detainee declines to deny a charge or accusation in a hearing for extension of detention, the omission may be used against the detainee in the subsequent proceedings (page 20). Also, if the detainee chooses to plead neither guilty nor not guilty, this silence may be used in support of the prosecution's case (page 27). Further, if the defendant chooses not to give evidence, or decides to give evidence but not under oath, this may be used in support of the prosecution's case (page 30).

Therefore, in breach of the presumption of innocence protected by UDHR 11 (1) and ICPR 14 (2), in the Israeli military courts a detainee does not have an absolute right to silence.

12. Israeli Military Courts: "Independent and Impartial"?

As stated in the Introduction, the quality of justice dispensed in any legal system depends upon the independence and impartiality of the judges. "The total independence of the judiciary from everyone else is central to the entire concept of the Rule of Law, for the whole point about a law is that it must be upheld impartially..."(page 89, 'The Lawful Rights of Mankind' by Paul Sieghart, Oxford University Press, 1986).

The international law of human rights recognizes the importance of the judiciary's independence and impartiality; both UDHR 10 and ICPR 14(1) stipulate that everyone is entitled to a fair and public hearing by an "independent and impartial tribunal". The 7th UN Congress on the Prevention of Crime and the Treatment of Offenders, at its meeting in 1985, adopted by consensus "Basic Principles on the Independence of the Judiciary". The Principles have now been passed by the United Nations General Assembly and are the first UN standards in the field (see attached Appendix B taken from the October

1985 Bulletin of the Centre for the Independence of Judges and Lawyers).

Furthermore, it is clear the Israeli authorities are aware that the requirement of judicial independence and impartiality extends to military court judges. On the appointment of ten military court judges to hear cases within Israel's pre-1967 borders, the President of Israel publicly reminded the appointees that even military court judges must be guided only by "the law and their conscience". However, in all legal systems, it is very difficult to guarantee judicial independence and impartiality; it may be equally difficult to prove dependence and partiality.

One important criterion of judicial independence is the procedure of judicial appointment and discharge. However, even technically impeccable procedures do not guarantee independence. In the case of the Israeli military courts in the Occupied Territories, the procedure for judicial appointment and discharge is different for legally qualified judges and for non-legally qualified judges.

According to the Israeli military orders, the appointment procedure for legally qualified judges is as follows: "The Commander of the Region shall, on the recommendation of the Military Advocate General appoint...legally qualified officers of the rank of captain or above to act as legally qualified judges" (M.O. 378, as amended, in the West Bank and an unnumbered Military Order of 1970, as amended, in the Gaza Strip). This procedure raises a number of important points concerning legally qualified judges. Firstly, they are all serving officers in the Israeli army; secondly, they are appointed by the Commander of the Region, who is the executive and legislative authority in the Region; thirdly, the Commander of the Region is required to appoint on the recommendation of the Military Advocate General of the Israeli army; fourthly, the Military Advocate General is the advisor on all legal matters to the Israeli army's Chief of General Staff; fifthly, the discharge procedure for all military court

judges (legally qualified and non-legally qualified) is the same as the appointment procedure (page 181, 'Military Government in the Territories Administered by Israel 1967 - 80, The Legal Aspects', edited by M. Shamgar, Hebrew University, 1982).

This procedure appears to be designed to establish the appearance of a formal 'separation of powers' between, on the one hand, the legally qualified judiciary and, on the other hand, the executive and legislative authority; as we saw, in the Occupied Territories the Commander of the Region is both the executive and legislative authority. However, in the case of legally qualified judges, there is only a 'separation of powers' to the extent that the Commander of the Region is required to make judicial appointments and dismissals on the recommendation of another person, the Military Advocate General. One must note that, of course, both the Commander of the Region and the Military Advocate General are senior members of the Israeli army, answerable ultimately to the Minister of Defence.

The procedure for the appointment and discharge of non-legally qualified judges differs from the procedure described above. According to Col. Joel Singer of the Military Advocate General's Corps, non-legally qualified judges are "...selected by the President (of the court) out of the ranks of the entire IDF, with the exception of officers serving in the military government and its civilian administration" (letter dated 16th June, 1986 to Raja Shehadeh, director of al-Haq). The President of the court is a legally qualified judge appointed by the procedure outlined in the preceding paragraphs. Whatever professional or other considerations apply regarding the appointment of legally qualified judges, no such considerations are required regarding the appointment of non-legally qualified judges, neither as to rank, educational qualifications, experience nor any other matter. Consequently, the risk of total dependence and partiality is even greater in the case of non-legally qualified judges.

In practice, there may be a significant overlap between

dependence and partiality. Professor Pieter van Dijk in 'The Right of the Accused to a Fair Trial under International Law' (published by the Netherlands Institute of Human Rights, 1983), writes "...it is extremely difficult to ascertain by what motives a judge has been prompted. It will therefore only be possible to move that a judge has been partial when this becomes manifest from his attitude during the proceedings or from the contents of the judgment" (page 38). Defence practitioners repeatedly remark upon the questionable manner of many judges in court; apparently, the judicial attitude and courtroom interventions often leave the impression of resolute bias in favour of the prosecution. For instance, if the detainee is without a lawyer, some judges will participate in the prosecution's cross-examination of the detainee, assisting in the extraction of a confession which the judge places on the court record, without either giving the detainee an opportunity to speak for him or herself, or recording the detainee's allegations of mistreatment, or recording any mitigating factors in favour of the detainee. Also, defence practitioners complain that judges almost invariably accept as credible the prosecution evidence tendered by police and soldiers, rejecting defence evidence given by Arab witnesses such as the detainee. Some defence lawyers feel that whatever the official burden of proof is said to be, in practice they need to prove the innocence of their clients beyond a reasonable doubt, if they are to obtain their clients' aquittal. Further, there have been rare occasions when judicial hostility to the defence has even led to the defence lawyer being denied the right to make representations in court (for further details of one such case see Appendix A: letter dated 4th December 1986 from Jonathan Kuttab, advocate and director of al-Haq, to the President of the Military Court, Ramallah). Defence practitioners add that, of course, a judge will endeavour to ensure the court record does not reflect any procedural improprieties or unwanted allegations.

The independence and impartiality or lack thereof of tribunals cannot be assessed by merely considering the procedures for judicial appointment and discharge, or commenting upon judicial behaviour in court. Other matters,

general and specific, must be borne in mind. For instance, the Israeli army dominates the entire governmental apparatus in the Gaza Strip and West Bank, including the military courts. The judges, some of whom have no legal training, are all currently serving army personnel; they hear cases of a political complexion, usually arising out of a conflict between the detainee and the army. Further, the prosecutor, military court staff and most prosecution witnesses, are serving in the Israeli army. The military court system allows for neither a jury nor a court of appeal.

In these circumstances, it seems doubtful whether any military tribunal could maintain complete independence and impartiality. Certainly, all the defence lawyers who were interviewed expressed profound scepticism about the real independence and impartiality of Israeli military courts. Inevitably, the rule of law is jeopardized to the extent that practitioners and detainees seriously doubt the independence and impartiality of the legal process within which they find themselves.

CONCLUSION

Although the Israeli military court system appears to have many of the features of a fair system of justice, in reality the justice it dispenses is seriously flawed.

Most of the defence lawyers who were interviewed, attached special significance to two of the system's defects examined in this paper. Firstly, they emphasized the critical importance and injustice of the prolonged period of interrogation to which a detainee may be subjected without access to independent legal or medical assistance; most detainees give a signed confession during interrogation which it is extremely difficult to retract despite evidence that it was extracted under duress. Secondly, the lawyers stressed the apparent sustained partiality of many military court

judges.

This study is not an exhaustive application of international human rights and humanitarian law to the Israeli military court system. Nonetheless, we have seen that a detainee passing through the system suffers from significant breaches of international human rights and humanitarian law. The rule of law is diminished by all breaches of international human rights and humanitarian law, but especially those, as in the Israeli military court system, which are a routine feature of state practice.

APPENDIX

APPENDIX A: Letter from J. Kuttab to the President of the Military Court, Ramallah.

B: Basic Principles on the Independence of the Judiciary.

C: Universal Declaration of Human Rights.

D: International Covenant on Civil and Political Rights.

APPENDIX A

LETTER FROM JONATHAN KUTTAB, ADVOCATE AND DIRECTOR OF LSM/AL-HAQ, TO THE PRESIDENT OF THE MILITARY COURT, RAMALLAH.

4th December, 1986

To the President of the Military Court
Ramallah

Subject: Permission to represent clients

Dear Sir,

I would like to bring to your attention a serious incident that occurred to me on November 24, 1986 concerning my client Mr. Mahmoud Mustafa Ramahi and Military Court Judge Yuda Oron.

1. This was the first day that I was permitted to speak to this client of mine. He described to me serious allegations of mistreatment which resulted in his hospitalization for 6 days. He also alleged that statements were taken from him under torture.

2. I also learnt that he was going to be brought to court that same day for an extension of his detention since he has been already in detention for 17 days.

3. I entered into the judge's chambers with my client when the police requested the extension of his detention for 60 days. The honorable judge began questioning my client directly and although I tried to stand and represent him, I

was prohibited by the judge from speaking and told that I will be able to talk later.

4. The judge then proceeded to question my client for over 15 minutes. The nature of the questions seemed intended to find some basis for the request of the police and to reject his denial of the charges.

5. Among the questions given were the following:

"If you are innocent how come you were brought to jail?"

"In the police station you said other things than you are saying now?"

"Have you ever possessed weapons? A gun maybe? A handgrenade?"

"When did you go to Amman last?"

"Have you ever been a representative for Fateh?"

"What else can you remember and tell to us?"

"The police talked about a gun and grenade, who was responsible for them?"

- Here my client answered "Musa Amouri".

"What is your relation with Musa Amouri?"

"Is he the one who asked you to join al-Fateh? If not, who is the person who enlisted you?"

"Do you have any previous convictions?"

"Why would the police be after you a respectable citizen?"

8. The sum total of these questions appeared to be an attempt to obtain a confession from my client in court. My repeated attempts to intervene, and to stand up to address the court were prohibited by the judge who instructed me to stay silent until he finished conducting the hearing. At that time, he decided to grant the request of the police and extend the detention of my client for 60 days. He then proceeded to tell my client "you can assist the police by co-operating with them thereby shortening the time of your detention." Then my client was led out of the court at which time only and at my request I was permitted to address the court.

9. I bring the above matters to your attention precisely because it is not normal and usual in terms of my own experience in military courts and because of its strange nature.

10. I believe, and I wish to be corrected if I am mistaken that a defendant has the right to be represented by an attorney during a hearing for an extension of his detention, and this right includes giving the attorney permission to speak on behalf of the client. I also believe that it is not proper for a judge to attempt to obtain a confession from a defendant when his attorney is present and is objecting to the fact especially since the protocol of the extension hearing is often used as evidence in the subsequent trial.

If my understanding is incorrect, I wish for this matter to be clarified. If it is, I trust that you will take the necessary action that you deem appropriate in this case and also ensure that such behavior does not occur in the future, and any other action you may feel appropriate in this case as well.

Yours faithfully,

Jonathan Kuttab
Attorney at law

APPENDIX B

Basic Principles on the Independence of the Judiciary

The 7th UN Congress on the Prevention of Crime and the Treatment of Offenders, at its meeting in Milan, Italy, from 26 August to 6 September 1985 adopted by consensus Basic Principles on the Independence of the Judiciary. Committee I of the Congress, which was charged with the initial consideration of the Principles, engaged in extensive discussions about them; the Secretary of the CIJL actively participated in those discussions. The Principles have now been passed by the UN General Assembly and are the first UN Standards in the field.

The Congress resolution adopting the Basic Principles recommends that they be implemented at the national, regional and inter-regional levels, urges regional and international commissions, institutes and organisations, including non-governmental organisations, to become actively involved in their implementation; requests the Secretary-General to take steps to ensure the widest possible dissemination of the Basic Principles and to assist member states in their implementation.

Below are the Basic Principles adopted by the 7th Congress.

"Whereas in the Charter of the United Nations the peoples of the world affirm, inter alia, their determination to establish conditions under which justice can be maintained to achieve international cooperation in promoting and encouraging respect for human rights and fundamental freedoms without any discrimination,

"Whereas the Universal Declaration of Human Rights enshrines in particular the principles of equality before the law, of the presumption of innocence and of the right to a fair and public hearing by a competent, independent and impartial tribunal established by law,

"Whereas the International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights both guarantee the exercise of those rights, and in addition, the Covenant on Civil and Political Rights further guarantees the right to be tried without undue delay,

"Whereas frequently there still exists a gap between the vision underlying those principles and the actual situation,

"Whereas the organisation and administration of justice in every country should be inspired by those principles, and efforts should be undertaken to translate them fully into reality,

"Whereas rules concerning the exercise of judicial office should aim at enabling judges to act in accordance with those principles,

"Whereas judges are charged with the ultimate decision over life, freedoms, rights, duties and property of citizens,

"Whereas the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, by its resolution 16, called upon the Committee on Crime Prevention and Control to include among its priorities the elaboration of guidelines relating to the independence of judges and the selection, professional training and status of judges and prosecutors,

"Whereas it is, therefore, appropriate that consideration be first given to the role of judges in relation to the system of justice and to the importance of their selection, training and conduct,

"The following basic principles, formulated to assist Member States in their task of securing and promoting the independence of the judiciary should be taken into account and respected by Governments within the framework of their national legislation and practice and be brought to the attention of judges, lawyers, members of the executive and the legislature and the public in general. The principles have been formulated principally with professional judges in mind, but they apply equally, as appropriate, to lay judges, where they exist."

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.

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 organisations 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, colour, 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 terms 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 of 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 behaviour 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.

20. Decisions in disciplinary, suspension or removal proceedings should 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.

APPENDIX C

TEXTS PREPARED WITHIN THE UNITED NATIONS

1. Universal Declaration of Human Rights[1]

Adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948

Preamble

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

Whereas 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 as the highest aspiration of the common people,

Whereas it is essential, if man 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,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

---

1. Text reproduced from : United Nations - Human Rights : A Compilation of International Instruments - ST/HR/1/Rev. 2 (1983), pp. 1/3.

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, therefore,

The General Assembly

Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under this jurisdiction.

Article 1

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3

Everyone has the right to life, liberty and security of person.

Article 4

No one shall be held in slavery or servitude ; slavery and the slave trade shall be prohibited in all their forms.

Article 5

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

Article 6

Everyone has the right to recognition everywhere as a person before the law.

Article 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9

No one shall be subjected to arbitrary arrest, detention or exile.

Article 10

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11

1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was commited. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

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.

Article 14

1. Everyone has the right to seek and to enjoy in other countries asylum from persecution.

2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15

1. Everyone has the right to a nationality.

2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16

1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

2. Marriage shall be entered into only with the free and full consent of the intending spouses.

3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17

1. Everyone has the right to own property alone as well as in association with others.

2. No one shall be arbitrarily deprived of his property.

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.

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.

Article 20

1. Everyone has the right to freedom of peaceful assembly and association.

2. No one may be compelled to belong to any association.

Article 21

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

2. Everyone has the right of equal access to public service in his country.

3. The will of the people shall be the basis of the authority of government ; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and

shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

3. Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27

1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 28

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 29

1. Everyone has duties to the community in which alone the free and full development of his personality is possible.

2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

APPENDIX D

International Covenant on Civil and Political Rights[1]

Adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI) of 16 December 1966

Entry into force : 23 March 1976, in accordance with Article 49

Preamble

The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

1. Text reproduced from : ST/HR/1/Rev. 2 (1983), pp. 8/16.

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles :

Part I

Article 1

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 peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

Part II

Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes :

a. 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 ;

b. To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy ;

c. To ensure that the competent authorities shall enforce such remedies when granted.

Article 3

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.

Article 4

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly

required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

2. No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.

3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

Article 5

1. 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.

2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

Part III

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 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 judgement 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 any 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.

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.

Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 8

1. No one shall be held in slavery ; slavery and the slave-trade in all their forms shall be prohibited.

2. No one shall be held in servitude.

3. *a*. No one shall be required to perform forced or compulsory labour ;

b. Paragraph 3.*a* shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court ;

c. For the purpose of this paragraph the term "forced or compulsory labour" shall not include :

i. Any work or service, not referred to in sub-paragraph *b*, normally required of a person who is under detention in consequence

of a lawful order of a court, or of a person during conditional release from such detention ;

ii. Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors ;

iii. Any service exacted in cases of emergency or calamity threatening the life or well-being of the community ;

iv. Any work or service which forms part of normal civil obligations.

Article 9

1. 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 procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. 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, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4. Anyone who is 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.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Article 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

2. *a.* Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons ;

b. Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

Article 11

No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.

Article 12

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

4. No one shall be arbitrarily deprived of the right to enter his own country.

Article 13

An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

Article 14

1. 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. The Press and the public may be excluded from all or part of a trial for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice : but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality :

a. To be informed promptly 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 defence 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 such 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 ;

g. Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

Article 15

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.

2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

Article 16

Everyone shall have the right to recognition everywhere as a person before the law.

Article 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

Article 18

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

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

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

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

1. Everyone shall have the right to freedom of 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.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice the guarantees provided for in that Convention.

Article 23

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

2. The right 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

1. Every child shall have, without any discrimination as to race, colour, 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

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions :

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

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, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 27

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.

Part IV

Article 28

1. There shall be established a Human Rights Committee (hereafter referred to in the present Covenant as the Committee). It shall consist of eighteen members and shall carry out the functions hereinafter provided.

2. The Committee shall be composed of nationals of the States Parties to the present Covenant who shall be persons of high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience.

3. The members of the Committee shall be elected and shall serve in their personal capacity.

Article 29

1. The members of the Committee shall be elected by secret ballot from a list of persons possessing the qualifications prescribed in article 28 and nominated for the purpose by the States Parties to the present Covenant.

2. Each State Party to the present Covenant may nominate not more than two persons. These persons shall be nationals of the nominating State.

3. A person shall be eligible for renomination.

Article 30

1. The initial election shall be held no later than six months after the date of the entry into force of the present Covenant.

2. At least four months before the date of each election to the Committee, other than an election to fill a vacancy declared in accordance with article 34, the Secretary-General of the United Nations shall address a written invitation to the States Parties to the present Covenant to submit their nominations for membership of the Committee with three months.

3. The Secretary-General of the United Nations shall prepare a list in alphabetical order of all the persons thus nominated, with an indication of the States Parties which have nominated them, and shall submit it to the States Parties to the present Covenant no later than one month before the date of each election.

4. Elections of the members of the Committee shall be held at a meeting of the States Parties to the present Covenant convened by the Secretary-General of the United Nations at the Headquarters of the United Nations. At that meeting, for which two thirds of the States Parties to the present Covenant shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

Article 31

1. The Committee may not include more than one national of the same State.

2. In the election of the Committee, consideration shall be given to equitable geographical distribution of membership and to the representation of the different forms of civilization and of the principal legal systems.

Article 32

1. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the terms of nine of the members elected at the first election shall expire at the end of two years ; immediately after the first election, the names of these nine members shall be chosen by lot by the Chairman of the meeting referred to in article 30, paragraph 4.

2. Elections at the expiry of office shall be held in accordance with the preceding articles of this part of the present Covenant.

Article 33

1. If, in the unanimous opinion of the other members, a member of the Committee has ceased to carry out his functions for any cause other than absence of a temporary character, the Chairman of the Committee shall notify the Secretary-General of the United Nations, who shall then declare the seat of that member to be vacant.

2. In the event of the death or the resignation of a member of the Committee, the Chairman shall immediately notify the Secretary-General of the United Nations, who shall declare the seat vacant from the date of death or the date on which the resignation takes effects.

Article 34

1. When a vacancy is declared in accordance with article 33 and if the term of office of the member to be replaced does not expire within six months of the declaration of the vacancy, the Secretary-General of the United Nations shall notify each of the States Parties to the present Covenant, which may within two months submit nominations in accordance with article 29 for the purpose of filling the vacancy.

2. The Secretary-General of the United Nations shall prepare a list in alphabetical order of the persons thus nominated and shall submit it to the States Parties to the present Covenant. The election to fill the vacancy shall then take place in accordance with the relevant provisions of this part of the present Covenant.

3. A member of the Committee elected to fill a vacancy declared in accordance with article 33 shall hold office for the remainder of the term of the member who vacated the seat on the Committee under the provisions of that article.

Article 35

The members of the Committee shall, with the approval of the General Assembly of the United Nations, receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide, having regard to the importance of the Committee's responsibilities.

Article 36

The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Covenant.

Article 37

1. The Secretary-General of the United Nations shall convene the initial meeting of the Committee at the Headquarters of the United Nations.

2. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.

3. The Committee shall normally meet at the Headquarters of the United Nations or at the United Nations Office at Geneva.

Article 38

Every member of the Committee shall, before taking up his duties, make a solemn declaration in open committee that he will perform his functions impartially and conscientiously.

Article 39

1. The Committee shall elect its officers for a term of two years. They may be re-elected.

2. The Committee shall establish its own rules of procedure, but these rules shall provide, *inter alia*, that :

a. Twelve members shall constitute a quorum ;

b. Decisions of the Committee shall be made by a majority vote of the members present.

Article 40

1. The States Parties to the present Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights :

a. Within one year of the entry into force of the present Covenant for the States Parties concerned ;

b. Thereafter whenever the Committee so requests.

2. All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit them to the Committee for consideration. Reports shall indicate the factors and difficulties, if any, affecting the implementation of the present Covenant.

3. The Secretary-General of the United Nations may, after consultation with the Committee, transmit to the specialized agencies concerned copies of such parts of the reports as may fall within their field of competence.

4. The Committee shall study the reports submitted by the States Parties to the present Covenant. It shall transmit its reports, and such general comments as it may consider appropriate, to the States Parties. The Committee may also transmit to the Economic and Social Council these comments along with copies of the reports it has received from States Parties to the present Covenant.

5. The States Parties to the present Covenant may submit to the Committee observations on any comments that may be made in accordance with paragraph 4 of this article.

Article 41

1. A State Party to the present Covenant may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State

Party claims that another State Party is not fulfilling its obligations under the present Covenant. Communications under this article may be received and considered only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure :

a. If a State Party to the present Covenant considers that another State Party is not giving effect to the provisions of the present Covenant, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication an explanation or any other statement in writing clarifying the matter, which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending, or available in the matter.

b. If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State.

c. The Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged.

d. The Committee shall hold closed meetings when examining communications under this article.

e. Subject to the provisions of sub-paragraph *c*, the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for human rights and fundamental freedoms as recognized in the present Covenant.

f. In any matter referred to it, the Committee may call upon the States Parties concerned, referred to in sub-paragraph *b*, to supply any relevant information.

g. The States Parties concerned, referred to in sub-paragraph *b*, shall have the right to be represented when the matter is being considered in the Committee and to make submissions orally and/or in writing.

h. The Committee shall, within twelve months after the date of receipt of notice under sub-paragraph *b*, submit a report :

i. If a solution within the terms of sub-paragraph *e* is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached ;

ii. If a solution within the terms of sub-paragraph *e* is not reached, the Committee shall confine its report to a brief statement of the facts ; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report.

In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of this article shall come into force when ten States Parties to the present Covenant have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article ; no further communication by any State Party shall be received after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

Article 42

1. *a*. If a matter referred to the Committee in accordance with article 41 is not resolved to the satisfaction of the States Parties concerned, the Committee may, with the prior consent of the States Parties concerned, appoint an *ad hoc* Conciliation Commission (hereinafter referred to as the Commission). The good offices of the Commission shall be made available to the States Parties concerned with a view to an amicable solution of the matter on the basis of respect for the present Covenant ;

b. The Commission shall consist of five persons acceptable to the States Parties concerned. If the States Parties concerned fail to reach agreement within three months on all or part of the composition of the Commission, the members of the Commission concerning whom no agreement has been reached shall be elected by secret ballot by a two-thirds majority vote of the Committee from among its members.

2. The members of the Commission shall serve in their personal capacity. They shall not be nationals of the States Parties concerned, or of a State not party to the present Covenant, or of a State Party which has not made a declaration under article 41.

3. The Commission shall elect its own Chairman and adopt its own rules of procedure.

4. The meetings of the Commission shall normally be held at the Headquarters of the United Nations or at the United Nations Office at Geneva. However, they may be held at such other convenient places as the Commission may determine in consultation with the Secretary-General of the United Nations and the States Parties concerned.

5. The secretariat provided in accordance with article 36 shall also service the commissions appointed under this article.

6. The information received and collated by the Committee shall be made available to the Commission and the Commission may call upon the States Parties concerned to supply any other relevant information.

7. When the Commission has fully considered the matter, but in any event not later than twelve months after having been seized of the matter, it shall submit to the Chairman of the Committee a report for communication to the States Parties concerned :

a. If the Commission is unable to complete its consideration of the matter within twelve months, it shall confine its report to a brief statement of the status of its consideration of the matter ;

b. If an amicable solution to the matter on the basis of respect for human rights as recognized in the present Covenant is reached, the Commission shall confine its report to a brief statement of the facts and of the solution reached ;

c. If a solution within the terms of sub-paragraph *b* is not reached, the Commission's report shall embody its findings on all

questions of fact relevant to the issues between the States Parties concerned, and its views on the possibilities of an amicable solution of the matter. This report shall also contain the written submissions and a record of the oral submissions made by the States Parties concerned ;

d. If the Commission's report is submitted under sub-paragraph *c*, the States Parties concerned shall, within three months of the receipt of the report, notify the Chairman of the Committee whether or not they accept the contents of the report of the Commission.

8. The provisions of this article are without prejudice to the responsibilities of the Committee under article 41.

9. The States Parties concerned shall share equally all the expenses of the members of the Commission in accordance with estimates to be provided by the Secretary-General of the United Nations.

10. The Secretary-General of the United Nations shall be empowered to pay the expenses of the members of the Commission, if necessary, before reimbursement by the States Parties concerned, in accordance with paragraph 9 of this article.

Article 43

The members of the Committee, and of the *ad hoc* conciliation commissions which may be appointed under article 42, shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

Article 44

The provisions for the implementation of the present Covenant shall apply without prejudice to the procedures prescribed in the field of human rights by or under the constituent instruments and the conventions of the United Nations and of the specialized agencies and shall not prevent the States Parties to the present Covenant from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them.

Article 45

The Committee shall submit to the General Assembly of the United Nations, through the Economic and Social Council, an annual report on its activities.

Part V

Article 46

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt within the present Covenant.

Article 47

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

Part VI

Article 48

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a party to the present Covenant.

2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States which have signed this Covenant or acceded to it of the deposit of each instrument of ratification or accession.

Article 49

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.

2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 50

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

Article 51

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General of the United Nations shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.

3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

Article 52

Irrespective of the notifications made under article 48, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph 1 of the same article of the following particulars :

a. Signatures, ratifications and accessions under article 48 ;

b. The date of the entry into force of the present Covenant under article 49 and the date of the entry into force of any amendments under article 51.

Article 53

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 48.