INTERNATIONAL HUMAN RIGHTS LAW
CASE MATERIALS, SUMMER, 2008
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Class 1: The Birth of Modern International Human Rights: The Abolition of Slavery

DRED SCOTT, PLAINTIFF IN ERROR, v. JOHN F. A. SANDFORD.
SUPREME COURT OF THE UNITED STATES
60 U.S. 393; *15 L. Ed. 691*; *1856 U.S. LEXIS 472*; *19 HOW 393*

March 5, 1857, Decided; December 1856 Term

FACTS OF THE CASE AS DESCRIBED BY THE COURT:

The case, as he himself states it, on the record brought here by his writ of error, it this:

The plaintiff was a negro salve, belonging to Dr. Emerson, who was a surgeon in the army of the United States. In the year 1834, he took the plaintiff from the State of Missouri to the military post at Rock Island, in the State of Illinois, and held him there as a slave until the month of April or May, 1836. At the time last mentioned, said Dr. Emerson removed the plaintiff from said military post at Rock Island to the military post at Fort Snelling, situate on the west bank of the Mississippi river, in the Territory known as Upper Louisiana, acquired by the United States of France, and situate north of the latitude of thirty-six degrees thirty minutes north, and north of the State of Missouri. Said Dr. Emerson held the plaintiff in slavery at said Fort Snelling, from said last-mentioned date until the year 1838.

In the year 1835, Harriet, who is named in the second count of the plaintiff's declaration, who the negro slave of Major Taliaferro, who belonged to the army of the United States. In that year, 1835, said Major Taliaferro took said Harriet to said Fort Snelling, a military post, situated as hereinbefore stated, and kept her there as a slave until the year 1836, and then sold and delivered her as a slave, at said Fort Snelling, unto the said Dr. Emerson hereinbefore named. Said Dr. Emerson held said Harriet in slavery at said Fort Snelling until the year 1838.

In the year 1836, the plaintiff and Harriet intermarried, at Fort Snelling, with the consent of Dr. Emerson, who then claimed to be their master and owner. Eliza and Lizzie, named in the third count of the plaintiff's declaration, are the fruit of that marriage. Eliza is about fourteen years old, and was born on board the steamboat Gipsey, north of the north line of the State of Missouri, and upon the river Mississippi. Lizzie is about seven years old, and was born in the State of Missouri, at the military post called Jefferson Barracks.

In the year 1838, said Dr. Emerson removed the plaintiff and said Harriet, and their said daughter

Eliza, from said Fort Snelling to the State of Missouri, where they have ever since resided.

Before the commencement of this suit, said Dr. Emerson sold and conveyed the plaintiff, and Harriet, Eliza, and Lizzie, to the defendant, as slaves, and the defendant has ever since claimed to hold them, and each of them, as slaves.

In considering this part of the controversy, two questions arise: 1. Was he, together with his family, free in Missouri by reason of the stay in the territory of the United States hereinbefore mentioned? And 2. If they were not, is Scott himself free by reason of his removal to Rock Island, in the State of Illinois, as stated in the above admissions?

OPINION

Mr. Chief Justice TANEY delivered the opinion of the court.

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The question is simply this: Can a negro, whose ancestors were imported into this country, and sold as salves, become a member of the political community formed and brought into existence by the Constitution of the United States, and as such become entitled to all the rights, and privileges, and immunities, guarantied by that instrument to the citizen? One of which rights is the privilege of suing in a court of the United States in the cases specified in the Constitution.

It will be observed, that the plea applies to that class of persons only whose ancestors were negroes of the African race, and imported into this country, and sold and held as salves. The only matter in issue before the court, therefore, is, whether the descendants of such salves, when they shall be emancipated, or who are born of parents who had become free before their birth, are citizens of a State, in the sense in which the word citizen is used in the Constitution of the United States. And this being the only matter in dispute on the pleadings, the court must be understood as speaking in this opinion of that class only, that is, of those persons who are the descendants of Africans who were imported into this country, and sold as salves.

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We proceed to examine the case as presented by the pleadings.

The words "people of the United States" and "citizens" are synonymous terms, and mean the same thing. They both describe the political body who, according to our republican institutions, form the sovereignty, and who holdthe power and conduct the Government through their representatives. They are what we familiarly call the "sovereign people," and every citizen is one of this people, and a constituent member of this sovereignty. The question before us is, whether the class of persons described in the plea in abatement compose a portion of this people, and are constituent members of this sovereignty? We think they are not, and that they are not included, and were not intended to be included, under the word "citizens" in the Constitution, and can therefore claim none of the rights and privileges which that instrument provides for and secures to citizens of the United States. On the contrary, they were at that time considered as a subordinate and inferior class of beings, who had been subjugated by the dominant race, and, whether emancipated or not, yet remained subject to their authority, and had no rights or

privileges but such as those who held the power and the Government might choose to grant them.

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The question then arises, whether the provisions of the Constitution, in relation to the personal rights and privileges to which the citizen of a State should be entitled, embraced the negro African race, at that time in this country, or who might afterwards be imported, who had then or should afterwards be made free in any State; and to put it in the power of a single State to make him a citizen of the United States, and endue him with the full rights of citizenship in every other State without their consent? Does the Constitution of the United States act upon him whenever he shall be made free under the laws of a State, and raised there to the rank of a citizen, and immediately cloth him with all the privileges of a citizen in every other State, and in its own courts?

The court think the affirmative of these propositions cannot be maintained. And if it cannot, the plaintiff in error could not be a citizenof the State of Missouri, within the meaning of the Constitution of the United States, and, consequently, was not entitled to sue in its courts.

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It becomes necessary, therefore, to determine who were citizens of the several States when the Constitution was adopted. And in order to do this, we must recur to the Governments and institutions of the thirteen colonies, when they separated from Great Britain and formed new sovereignties, and took their places in the family of independent nations. We must inquire who, at that time, were recognized as the people or citizens of a State, whose rights and liberties had been outraged by the English Government; and who declared their independence, and assumed the powers of Government to defend their rights by force of arms.

In the opinion of the court, the legislation and histories of the times, and the language used in the Declaration of Independence, show, that neither the class of persons who had been imported as slaves, nor their descendants, whether they had become free or not, were then acknowledged as a part of the people, nor intended to be included in the general words used in that memorable instrument.

It is difficult at this day to realize the state of public opinion in relation to that unfortunate race, which prevailed in the civilized and enlightened portions of the world at the time of the Declaration of Independence, and when the Constitution of the United States was framed and adopted. But the public history of every European nation displays it in a manner too plain to be mistaken.

They had for more than a century before been regarded as beings of an inferior order, and altogether unfit to associate with the white race, either in social or political relations; and so far inferior, that they had no rights which the white man was bound to respect; and that the negro might justly and lawfully be reduced to slavery for his benefit. He was bought and sold, and treated as an ordinary article of merchandise and traffic, whenever a profit could be made by it. This opinion was at that time fixed and universal in the civilized portion of the white race. It was

regarded as an axiom in morals as well as in politics, which no one thought of disputing, or supposed to be open to dispute; and men in every grade and position in society daily and habitually acted upon it in their private pursuits, as well as in matters of public concern, without doubting for a moment the correctness of this opinion.

And in no nation was this opinion more firmly fixed or more uniformly acted upon than by the English Government and English people. They not only seized them on the coast of Africa, and sold them or held them in slavery for their own use; but they took them as ordinary articles of merchandise to every country where they could make a profit on them, and were far more extensively engaged in this commerce than any other nation in the world.

The opinion thus entertained and acted upon in England was naturally impressed upon the colonies they founded on this side of the Atlantic. And, accordingly, a negro of the African race was regarded by them as an article of property, and held, and bought and sold as such, in every one of the thirteen colonies which united in the Declaration of Independence, and afterwards formed the Constitution of the United States. The slaves were more or less numerous in the different colonies, as slave labor was found more or less profitable. But no one seems to have doubted the correctness of the prevailing opinion of the time.

The legislation of the different colonies furnishes positive and indisputable proof of this fact.

[The Court reviewed English, Colonial and State laws which restrict the privileges and rights of black people, including:

- laws prohibiting interracial marriage, e.g., (Maryland Rev. Stat., ch. 13, sec. 5 (1717, "if any free negro or mulatto intermarry with any white woman, or if any white man shall intermarry with any negro or mulatto woman, such negro or mulatto shall become a salve during life, excepting mulattoes born of white women . . .
- Massachusetts Statutes, 1705, (ch. 6.) It ("if any negro or mulatto shall presume to smite or strike any person of the English or other Christian nation, such negro or mulatto shall be severely whipped, at the discretion of the justices before whom the offender shall be convicted.")]

We give both of these laws in the words used by the respective legislative bodies, because the language in which they are framed, as well as the provisions contained in them, show, too plainly to be misunderstood, the degraded condition of this unhappy race. They were still in force when the Revolution began, and are a faithful index to the state of feeling towards the class of persons of whom they speak, and of the position they occupied throughout the thirteen colonies, in the eyes and thoughts of the men who framed the Declaration of Independence and established the State Constitutions and Governments. They show that a perpetual and impassable barrier was intended to be erected between the white race and the one which they had reduced to slavery, and governed as subjects with absolute and despotic power, and which they then looked upon as so far below them in the scale of created beings, that intermarriages between white persons and negroes or mulattoes were regarded as unnatural and immoral, and punished as crimes, not only in the parties, but in the person who joined them in marriage. And no

distinction in this respect was made between the free negro or mulatto and the slave, but this stigma, of the deepest degradation, was fixed upon the whole race.

We refer to these historical facts for the purpose of showing the fixed opinions concerning that race, upon which the statesmen of that day spoke and acted. It is necessary to do this, in order to determine whether the general terms used in the Constitution of the United States, as to the rights of man and the rights of the people, was intended to include them, or to give to them or their posterity the benefit of any of its provisions.

The language of the Declaration of Independence is equally Conclusive:

It begins by declaring that, "when in the course of human events it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth the separate and equal station to which the laws of nature and nature's God entitle them, a decent respect for the opinions of mankind requires that they should declare the causes which impel them to the separation."

It then proceeds to say: "We hold these truths to be self-evident: that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among them is life, liberty, and the pursuit of happiness; that to secure these rights, Governments are instituted, deriving their just powers from the consent of the governed."

The general words above quoted would seem to embrace the whole human family, and if they were used in a similar instrument at this day would be so understood. But it is too clear for dispute, that the enslaved African race were not intended to be included, and formed no part of the people who framed and adopted this declaration; for if the language, as understood in that day, would embrace them, the conduct of the distinguished men who framed the Declaration of Independence would have been utterly and flagrantly inconsistent with the principles theyasserted; and instead of the sympathy of mankind, to which they so confidently appeared, they would have deserved and received universal rebuke and reprobation.

Yet the men who framed this declaration were great men -- high in literary acquirements -- high in their sense of honor, and incapable of asserting principles inconsistent with those on which they were acting. They perfectly understood the meaning of the language they used, and how it would be understood by others; and they knew that it would not in any part of the civilized world be supposed to embrace the negro race, which, by common consent, had been excluded from civilized Governments and the family of nations, and doomed to slavery. They spoke and acted according to the then established doctrines and principles, and in the ordinary language of the day, no one misunderstood them. The unhappy black race were separated from the white by indelible marks, and laws long before established, and were never thought of or spoken of except as property, and when the claims of the owner or the profit of the trader were supposed to need protection.

This state of public opinion had undergone no change when the Constitution was adopted, as is equally evident from its provisions and language.

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But there are two clauses in the Constitution which point directly and specifically to the negro race as a separate class of persons, and show clearly that they were not regarded as a portion of the people or citizens of the Government then formed.

One of these clauses reserves to each of the thirteen States the right to import slaves until the year 1808, if it thinks proper. And the importation which it thus sanctions was unquestionably of persons of the race of which we are speaking, as the traffic in slaves in the United States had always been confined to them. And by the other provision the States pledge themselves to each other to maintain the right of property of the master, by delivering up to him any slave who may have escaped from his service, and be found within their respective territories. By the first above-mentioned clause, therefore, the right to purchase and hold this property is directly sanctioned and authorized for twenty years by the people who framed the Constitution. And by the second, they pledge themselves to maintain and uphold the right of the master in the manner specified, as long as the Government they then formed should endure. And these two provisions show, conclusively, that neither th description of persons therein referred to, not their descendants, were embraced in any of the other provisions of the Constitution; for certainly these two clauses were not intended to confer on them or their posterity the blessings of liberty, or any of the personal rights so carefully provided for the citizen.

No one of that race had ever migrated to the United States voluntarily; all of them had been brought here as articles of merchandise. The number that had been emancipated at that timewere but few in comparison with those held in slavery; and they were identified in the public mind with the race to which they belonged, and regarded as a part of the slave population rather than the free. It is obvious that they were not even in the minds of the framers of the Constitution when they were conferring special rights and privileges upon the citizens of a State in every other part of the Union.

Indeed, when we look to the condition of this race in the several States at the time, it is impossible to believe that these rights and privileges were intended to be extended to them.

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And if we turn to the legislation of the States where slavery had worn out, or measures taken for its speedy abolition, we shall find the same opinions and principles equally fixed and equally acted upon.

[referring back to its earlier discussion of the laws banning interracial marriage, the Court noted that even colonies and states which abolished the death penalty in the 18th Century, such as Connecticut, continued to ban interracial marriage, preclude the establishment of black schools or the integration of white schools, and the United States, after the War of 1812, passed a law precluding blacks from obtaining employment on Unites States vessels. Noting New Hampshires law precluding blacks from serving in its militia, the Court said, “Nothing could more strongly mark the entire repudiation of the African race.”

The Court’s point: an intent to abolish slavery does not equate with an intent to make Negroes citizens with equal rights of whites.]

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The legislation of the States therefore shows, in a manner not to be mistaken, the inferior and subject condition of that race at the time the Constitution was adopted, and long afterwards, throughout the thirteen States by which that instrument was framed; and it is hardly consistent with the respect due to these States, to suppose that they regarded at that time, as fellow-citizens and members of the sovereignty, a class of beings whom they had thus stigmatized; whom, as we are bound, out of respect to the State sovereignties, to assume they had deemed it just and necessary thus to stigmatize, and upon whom they had impressed such deep and enduring marks of inferiority and degradation; or, that when they met in convention to form the Constitution, they looked upon them as a portion of their constituents, or designed to include them in the provisions so carefully inserted for the security and protection of the liberties and rights of their citizens. It cannot be supposed that they intended to secure to them rights, and privileges, and rank, in the new political body throughout the Union, which every one of them denied within the limits of its own dominion. More especially, it cannot be believed that the large slaveholding States regarded them as included in the word citizens, or would have consented to a Constitution which might compel them to receive them in that character from another State. For if they were so received, and entitled to the privileges and immunities of citizens, it would exempt them from the operation of the special laws and from the police regulations which they considered to be necessary for their own safety. It would give to persons of the negro race, who were recognized as citizens in any one State of the Union, the right to enter every other State whenever they pleased, singly or in companies, without pass or passport, and without obstruction, to sojourn there as long as they pleased, to go where they pleased at every hour of the day or night without molestation, unless they committed some violation of law for which a white man would be punished; and it would give them the full liberty of speech in public and in private upon all subjects upon which its own citizens might speak; to hold public meetings upon political affairs, and to keep and carry arms wherever they went. And all of this would be done in the face of the subject race of the same color, both free and slaves, and inevitably producing discontent and insubordination among them, and endangering the peace and safety of the State.

It is impossible, it would seem, to believe that the great men of the slaveholding States, who took so large a share in framing the Constitution of the United States, and exercised so much influence in procuring its adoption, could have been so forgetful or regardless of their own safety and the safety of those who trusted and confided in them.

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And even as late as 1820, (chap. 104, sec. 8,) in the charter to the city of Washington, the corporation is authorized "to restrain and prohibit the nightly and other disorderly meetings of slaves, free negroes, and mulattoes," thus associating them together in its legislation; and after prescribing the punishment that may be inflicted on the salves, proceeds in the following words: "And to punish such free negroes and mulattoes by penalties not exceeding twenty dollars for any one offence; and in case of the inability of any such free negro or mulatto to pay any such penalty and cost thereon, to cause him or her to be confined to labor for any time not exceeding six calendar months." And in a subsequent part of the same section, the act authorizes the

corporation "to prescribe the terms and conditions upon which free negroes and mulattoes may reside in the city."

This law, like the laws of the States, shows that this class of persons were governed by special legislation directed expressly to them, and always connected with provisions for the government of slaves, and not with those for the government of free white citizens. And after such an uniform course of legislation as we have stated, by the colonies, by the States, and by Congress, running through a period of more than a century, it would seem that to call persons thus marked and stigmatized, "citizens" of the United States, "fellow-citizens," a constituent part of the sovereignty, would be an abuse of terms, and not calculated to exalt the character of an American citizen in the eyes of other nations.

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The only two provisions which point to them and include them, treat them as property, and make it the duty of the Government to protect it; no other power, in relation to this race, is to be found in the Constitution; and as it is a Government of special, delegated, powers, no authority beyond these two provisions can be constitutionally exercised. The Government of the United States had no right to interfere for any other purpose but that of protecting the rights of the owner, leaving it altogether with the several States to deal with this race, whether emancipated or not, as each State may think justice, humanity, and the interests and safety of society, require. The States evidently intended to reserve this power exclusively to themselves.

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Upon these considerations, it is the opinion of the court that the act of Congress which prohibited a citizen from holding and owning property of this kind in the territory of the United States north of the line therein mentioned, is not warranted by the Constitution, and is therefore void; and that neither Dred Scott himself, nor any of his family, were made free by being carried into this territory; even if they had been carried there by the owner, with the intention of becoming a permanent resident.

[Concurring opinions of Mr. Justice WAYNE, joined by NELSON; GRIER; DANIEL; CAMPBELL; CARTON are omitted]

DISSENT

Mr. Justice McLEAN dissenting.

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The civil law throughout the Continent of Europe, it is believed, without an exception, is, that slavery can exist only within the territory where it is established; and that, if a slave escapes, or is carried beyond such territory, his master cannot reclaim him, unless by virtue of some express stipulation. (Grotius, lib. 2, chap. 15, 5, 1; lib. 10, chap. 10, 2, 1; Wicqueposts Ambassador, lib. 1, p. 418; 4 Martin, 385; Case of the Creole in the House of Lords, 1842; 1 Phillimore on International Law, 316, 335.)

There is no nation in Europe which considers itself bound to return to his master a fugitive slave, under the civil law or the law of nations. On the contrary, the slave is held to be free where there is no treaty obligation, or compact in some other form, to return him to his master. The Roman law did not allow freedom to be sold. An ambassador or any other public functionary could not take a slave to France, Spain, or any other country of Europe, without emancipating him. A number of slaves escaped from a Florida plantation, and were received on board of ship by Admiral Cochrane; by the King's Bench, they were held to be free. (2 Barn. and Cres., 440.)

In the great and leading case of Prigg v. The State of Pennsylvania, (16 Peters, 594; 14 Curtis, 421,) this court say that, by the general law of nations, no nation is bound to recognize the state of slavery, as found within its territorial dominions, where it is in opposition to its own policy and institutions, in favor of the subjects of other nations where slavery is organized. If it does it, it is as a matter of comity, and not as a matter of international right. The state of slavery is deemed to be a mere municipal regulation, founded upon and limited to the range of the territorial laws. This was fully recognized in Somersett's case, (Lafft's Rep., 1; 20 Howell's State Trials, 79,) which was decided before the American Revolution.

There was some contrariety of opinion among the judges on certain points ruled in Prigg's case, but there was none in regard to the great principle, that slavery is limited to the range of the laws under which it is sanctioned.

No case in England appears to have been more thoroughly examined than that of Somersett. The judgment pronounced by Lord Mansfield was the judgment of the Court of King's Bench. The cause was argued at great length, and with great ability, by Hargrave and others, who stood among the most eminent counsel in England. It was held under advisement from term to term, and a due sense of its importance was felt and expressed by the Bench.

In giving the opinion of the court, Lord Mansfield said:

"The state of slavery is of such a nature that it is incapable of being introduced on any reasons, moral or political, but only by positive law, which preserves its force long after the reasons, occasion, and time itself, from whence it was created, is erased from the memory; it is of a nature that nothing can be suffered to support it but positive law."

He referred to the contrary opinion of Lord Hardwicke, in October, 1749, as Chancellor: "That he and Lord Talbot, when Attorney and Solicitor General, were of opinion that no such claim, as here presented, for freedom, was valid."

The weight of this decision is sought to be impaired, from the terms in which it was described by the exuberant imagination of Curran. The words of Lord Mansfield, in giving the opinion of the court, were such as were fit to be used by a great judge, in a most important case. It is a sufficient answer to all objections to that judgment, that it was pronounced before the Revolution, and that it was considered by this court as the highest authority. For near a century, the decision in Somersett's case has remained the law of England. The case of the slave Grace, decided by Lord Stowell in 1827, does not, as has been supposed, overrule the judgment of Lord Mansfield. Lord Stowell held that, during the residence of the slave in England, "No dominion,

authority, or coercion, can be exercised over him." Under another head, I shall have occasion to examine the opinion in the case of Grace.

To the position, that slavery can only exist except under the authority of law, it is objected, that in few if in any instances has it been established by statutory enactment. This is no answer to the doctrine laid down by the court. Almost all the principles of the common law had their foundation in usage. Slavery was introduced into the colonies of this country by Great Britain at an early period of their history, and it was protected and cherished, until it became incorporated into the colonial policy. It is immaterial whether a system of slavery was introduced by express law, or otherwise, if it have the authority of law. There is no slave State where the institution is not recognized and protected by statutory enactments and judicial decisions. Slaves are made property by the laws of the slave States, and as such are liable to the claims of creditors; they descend to heirs, are taxed, and in the South they are a subject of commerce.

In the case of Rankin v. Lydia, (2 A.K. Marshall's Rep.,) Judge Mills, speaking for the Court of Appeals of Kentucky, says: "In deciding the question, (of slavery,) we disclaim the influence of the general principles of liberty, which we all admire, and conceive it ought to be decided by the law as it is, and not as it ought to be. Slavery is sanctioned by the laws of this State, and the right to hold slaves under our municipal regulations is unquestionable. But we view this as a right existing by positive law of a municipal character, without foundation in the law of nature, or the unwritten and common law."

I will now consider the relation which the Federal Government bears to slavery in the States:

Slavery is emphatically a State institution. In the ninth section of the first article of the Constitution, it is provided "that the migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year 1808, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person."

In the Convention, it was proposed by a committee of eleven to limit the importation of slaves to the year 1800, when Mr. Pinckney moved to extend the time to the year 1808. This motion was carried -- New Hampshire, Massachusetts, Connecticut, Maryland, North Carolina, South Carolina, and Georgia, voting in the affirmative; and New Jersey, Pennsylvania, and Virginia, in the negative. In opposition to the motion, Mr. Madison said: "Twenty years will produce all the mischief that can be apprehended from the liberty to import slaves; so long a term will be more dishonorable to the American character than to say nothing about it in the Constitution." (Madison Papers.)

The provision in regard to the slave trade shows clearly that Congress considered slavery a State institution, to be continued and regulated by its individual sovereignty; and to conciliate that interest, the slave trade was continued twenty years, not as a general measure, but for the "benefit of such States as shall think proper to encourage it."

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We need not refer to the mercenary spirit which introduced the infamous traffic in slaves, to show the degradation of negro slavery in our country. This system was imposed upon our

colonial settlements by the mother country, and it is due to truth to say that the commercial colonies and States were chiefly engaged in the traffic. But we know as a historical fact, that James Madison, that great and good man, a leading member in the Federal Convention, was solicitous to guard the language of that instrument so as not to convey the idea that there could be property in man.

I prefer the lights of Madison, Hamilton, and Jay, as a means of construing the Constitution in all its bearings, rather than to look behind that period, into a traffic which is now declared to be piracy, and punished with death by Christian nations. I do not like to draw the sources of our domestic relations from so dark a ground. Our independence was a great epoch in the history of freedom; and while I admit the Government was not made especially for the colored race, yet many of them were citizens of the New England States, and exercised the rights of suffrage when the Constitution was adopted, and it was not doubted by any intelligent person that its tendencies would greatly ameliorate their condition.

Many of the States, on the adoption of the Constitution, or shortly afterward, took measures to abolish slavery within their respective jurisdictions; and it is a well-known fact that a belief was cherished by the leading men, South as well as North, that the institution of slavery would gradually decline, until it would become extinct. The increased value of slave labor, in the culture of cotton and sugar, prevented the realization of this expectation. Like all other communities and States, the South were influenced by what they considered to be their own interests.

But if we are to turn our attention to the dark ages of the world, why confine our view to colored slavery? On the same principles, white men were made slaves. All slavery has its origin in power, and is against right.

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A slave is not a mere chattel. He bears the impress of his Maker, and is amenable to the laws of God and man; and he is destined to an endless existence.

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In 1816, the common law, by statute, was made a part of the law of Missouri; and that includes the great principles of international law. These principles cannot be abrogated by judicial decisions. It will require the same exercise of power to abolish the common law, as to introduce it. International law is founded in the opinions generally received and acted on by civilized nations, and enforced by moral sanctions. It becomes a more authoritative system when it results from special compacts, founded on modified rules, adapted to the exigencies of human society; it is in fact an international morality, adapted to the best interests of nations. And in regard to the States of this Union, on the subject of slavery, it is eminently fitted for a rule of action, subject to the Federal Constitution. "The laws of nations are but the natural rights of man applied to nations." (Vattel.)

If the common law have the force of a statutory enactment in Missouri, it is clear, as it seems to me, that a slave who, by a residence in Illinois in the service of his master, becomes entitled to his freedom, cannot again be reduced to slavery by returning to his former domicil in a slave

State. It is unnecessary to say what legislative power might do by a general act in such a case, but it would be singular if a freeman could be made a slave by the exercise of a judicial discretion. And it would be still more extraordinary if this could be done, not only in the absence of special legislation, but in a State where the common law is in force.

It is supposed by some, that the third article in the treaty of cession of Louisiana to this country, by France, in 1803, may have some bearing on this question. The article referred to provides, "that the inhabitants of the ceded territory shall be incorporated into the Union, and enjoy all the advantages of citizens of the United States, and in the mean time they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion they profess.

As slavery existed in Louisiana at the time of the cession, it is supposed this is a guaranty that there should be no change in its condition.

The answer to this is, in the first place, that such a subject does not belong to the treaty-making power; and any such arrangement would have been nugatory. And, in the second place, by no admissible construction can the guaranty be carried further than the protection of property in slaves at that time in the ceded territory. And this has been complied with. The organization of the slave States of Louisiana, Missouri, and Arkansas, embraced every slave in Louisiana at the time of the cession. This removes every ground of objection under the treaty. There is therefore no pretence, growing out of the treaty, that any part of the territory of Louisiana, as ceded, beyond the organized States, is slave territory.

* * * *

The slave States have generally adopted the rule, that where the master, by a residence with his slave in a State or Territory where slavery is prohibited, the slave was entitled to his freedom everywhere. This was the settled doctrine of the Supreme Court of Missouri. It has been so held in Mississippi, in Virginia, in Louisiana, formerly in Kentucky, Maryland, and in other States.

The law, where a contract is made and is to be executed, governs it. This does not depend upon comity, but upon the law of the contract. And if, in the language of the Supreme Court of Missouri, the master, by taking his slave to Illinois, and employing him there as a slave, emancipates him as effectually as by a deed of emancipation, is it possible that such an act is not matter for adjudication in any slave State where the master may take him? Does not the master assent to the law, when he places himself under it in a free State?

The States of Missouri and Illinois are bounded by a common line. The one prohibits slavery, the other admits it. This has been done by the exercise of that sovereign power which appertains to each. We are bound to respect the institutions of each, as emanating from the voluntary action of the people. Have the people of either any right to disturb the relations of the other? Each State rests upon the basis of its own sovereignty, protected by the Constitution. Our Union has been the foundation of our prosperity and national glory. Shall we not cherish and maintain it? This can only be done by respecting the legal rights of each State.

If a citizen of a free State shall entice or enable a slave to escape from the service of his master, the law holds him responsible, not only for the loss of the slave, but he is liable to be

indicted and fined for the misdemeanor. And I am bound here to say, that I have never found a jury in the four States which constitute my circuit, which have not sustained this law, where the evidence required them to sustain it. And it is proper that I should also say, that more cases have arisen in my circuit, by reason of its extent and locality, than in all other parts of the Union. This has been done to vindicate the sovereign rights of the Southern States, and protect the legal interests of our brethren of the South.

Let these facts be contrasted with the case now before the court. Illinois has declared in the most solemn and impressive form that there shall be neither slavery nor involuntary servitude in that State, and that any slave brought into it, with a view of becoming a resident, shall be emancipated. And effect has been given to this provision of the Constitution by the decision of the Supreme Court of that State. With a full knowledge of these facts, a slave is brought from Missouri to Rock Island, in the State of Illinois, and is retained there as a slave for two years, and then taken to Fort Snelling, where slavery is prohibited by the Missouri compromise act, and there he is detained two years longer in a state of slavery. Harriet, his wife, was also kept at the same place four years as a slave, having been purchased in Missouri. They were then removed to the State of Missouri, and sold as slaves, and in the action before us they are not only claimed as slaves, but a majority of my brethren have held that on their being returned to Missouri the status of slavery attached to them.

I am not able to reconcile this result with the respect due to the State of Illinois. Having the same rights of sovereignty as the State of Missouri in adopting a Constitution, I can perceive no reason why the institutions of Illinois should not receive the same consideration as those of Missouri. Allowing to my brethren the same right of judgment that I exercise myself, I must be permitted to say that it seems to me the principle laid down will enable the people of a slave State to introduce slavery into a free State, for a longer or shorter time, as may suit their convenience; and by returning the slave to the State whence he was brought, by force or otherwise, the status of slavery attaches, and protects the rights of the master, and defies the sovereignty of the free State. There is no evidence before us that Dred Scott and his family returned to Missouri voluntarily. The contrary is inferable from the agreed case: "In the year 1838, Dr. Emerson removed the plaintiff and said Harriet, and their daughter Eliza, from Fort Snelling to the State of Missouri, where they have ever since resided." This is the agreed case; and can it be inferred from this that Scott and family returned to Missouri voluntarily? He was removed; which shows that he was passive, as a slave, having exercised no volition on the subject. He did not resist the master by absconding or force. But that was not sufficient to bring him within Lord Stowell's decision; he must have acted voluntarily. It would be a mockery of law and an outrage on his rights to coerce his return, and then claim that it was voluntary, and on that ground that his former status of slavery attached.

If the decision be placed on this ground, it is a fact for a jury to decide, whether the return was voluntary, or else the fact should be distinctly admitted. A presumption against the plaintiff inthis respect, I say with confidence, is not authorized from the facts admitted.

In coming to the conclusion that a voluntary return by Grace to her former domicil, slavery attached, Lord Stowell took great pains to show that England forced slavery upon her colonies,

and that it was maintained by numerous acts of Parliament and public policy, and, in short, that the system of slavery was not only established by Great Britain in her West Indian colonies, but that it was popular and profitable to many of the wealthy and influential people of England, who were engaged in trade, or owned and cultivated plantations in the colonies. No one can read his elaborate views, and not be struck with the great difference between England and her colonies, and the free and slave States of this Union. While slavery in the colonies of England is subject to the power of the mother country, our States, especially in regard to slavery, are independent, resting upon their own sovereignties, and subject only to international laws, which apply to independent States.

* * * *

I think the judgment of the court below should be reversed.

Mr. Justice CURTIS dissenting.

[omitted]

THE UNITED STATES, APPELLANTS, v. THE LIBELLANTS AND CLAIMANTS OF THE SCHOONER AMISTAD, HER TACKLE, APPAREL, AND FURNITURE, TOGETHER WITH HER CARGO, AND THE AFRICANS MENTIONED AND DESCRIBED IN THE SEVERAL LIBELS AND CLAIMS, APPELLEES.

SUPREME COURT OF THE UNITED STATES

40 U.S. 518; *10 L. Ed. 826*; *1841 U.S. LEXIS 279*

March 9, 1841, Decided

Mr. Justice STORY delivered the opinion of the Court.

This is the case of an appeal from the decree of the Circuit Court of the District of Connecticut, sitting in admiralty. The leading facts, as they appear upon the transcript of the proceedings, are as follows: On the 27th of June, 1839, the schooner L'Amistad, being the property of Spanish subjects, cleared out from the port of Havana, in the island of Cuba, for Puerto Principe, in the same island. On board of the schooner were the captain, Ransom Ferrer, and Jose Ruiz, and Pedro Montez, all Spanish subjects. The former had with him a negro boy, named Antonio, claimed to be his slave. Jose Ruiz had with him forty-nine negroes, claimed by him as his slaves, and stated to be his property, in a certain pass or document, signed by the Governor General of Cuba. Pedro Montez had with him four other negroes, also claimed by him as his slaves, and stated to be his property, in a similar pass or document, also signed by the Governor General of Cuba. On the voyage, and before the arrival of the vessel at her port of destination, the negroes rose, killed the captain, and took possession of her. On the 26th of August, the vessel was discovered by Lieutenant Gedney, of the United States brig Washington, at anchor on the high seas, at the distance of half a mile from the shore of Long Island. A part of the negroes were then on shore at Culloden Point, Long Island; who were seized by Lieutenant Gedney, and brought on board. The vessel, with the negroes and other persons on board, was brought by Lieutenant Gedney into the district of Connecticut, and there libeled for salvage in the District Court of the United States. A libel for salvage was also filed by Henry Green and Pelatiah Fordham, of Sag Harbour, Long Island. On the 18th of September, Ruiz and Montez filed claims and libels, in which they asserted their ownership of the negroes as their slaves, and of certain parts of the cargo, and prayed that the same might be "delivered to them, or to the representatives of her Catholic majesty, as might be most proper." On the 19th of September, the Attorney of the United states, for the district of Connecticut, filed an information or libel, setting forth, that the Spanish minister had officially presented to the proper department of the government of the United States, a claim for the restoration of the vessel, cargo, and slaves, as the property of Spanish subjects, which had arrived within the jurisdictional limits of the United States, and were taken possession of by the said public armed brig of the United States; under such circumstances as made it

the duty of the United States to cause the same to be restored to the true proprietors, pursuant to the treaty between the United States and Spain: and praying the Court, on its being made legally to appear that the claim of the Spanish minister was well founded, to make such order for the disposal of the vessel, cargo, and slaves, as would best enable the United States to comply with their treaty stipulations. But if it should appear, that the negroes were persons transported from Africa, in violation of the laws of the United States, and brought within the United States contrary to the same laws; he then prayed the Court to make such order for their removal to the coast of Africa, pursuant to the laws of the United States, as it should deem fit.

On the 19th of November, the Attorney of the United States filed a second information or libel, similar to the first, with the exception of the second prayer above set forth in his former one. On the same day, Antonio G. Vega, the vice-consul of Spain, for the state of Connecticut, filed his libel, alleging that Antonio was a slave, the property of the representatives of Ramon Ferrer, and praying the Court to cause him to be delivered to the said vice-consul, that he might be returned by him to his lawful owner in the island of Cuba.

On the 7th of January, 1840, the negroes, Cinque and others, with the exception of Antonio, by their counsel, filed an answer, denying that they were slaves, or the property of Ruiz and Montez, or that the Court could, under the Constitution or laws of the United States, or under any treaty, exercise any jurisdiction over their persons, by reason of the premises; and praying that they might be dismissed. They specially set forth and insist in this answer, that they were native born Africans; born free, and still of right ought to be free and not slaves; that they were, on or about the 15th of April, 1839, unlawfully kidnapped, and forcibly and wrongfully carried on board a certain vessel on the coast of Africa, which was unlawfully engaged in the slave trade, and were unlawfully transported in the same vessel to the island of Cuba, for the purpose of being there unlawfully sold as slaves; that Ruiz and Montez, well knowing the premises, made a pretended purchase of them: that afterwards, on or about the 28th of June, 1839, Ruiz and Montez, confederating with Ferrer, (captain of the Amistad,) caused them, without law or right, to be placed on board of the Amistad, to be transported to some place unknown to them, and there to be enslaved for life; that, on the voyage, they rose on the master, and took possession of the vessel, intending to return therewith to their native country, or to seek an asylum in some free state; and the vessel arrived, about the 26th of August, 1839, off Montauk Point, near Long Island; a part of them were sent on shore, and were seized by Lieutenant Gedney, and carried on board; and all of them were afterwards brought by him into the district of Connecticut.

On the 7th of January, 1840, Jose Antonio Tellincas, and Messrs. Aspe and Laca, all Spanish subjects, residing in Cuba, filed their claims, as owners to certain portions of the goods found on board of the schooner L'Amistad.

* * * *

On the 23d day of January, 1840, the District Court made a decree [rejecting all claims by any party that the Africans were "property."] [The District Court] decreed that they should be delivered to the President of the United States, to be

transported to Africa, pursuant to the act of 3d March, 1819.

From this decree the District Attorney, on behalf of the United States, appealed to the Circuit Court, except so far as related to the restoration of the slave Antonio.

* * * *

In the next place, the parties before the Court on the other side as appellees, are Lieutenant Gedney, on his libel for salvage, and the negroes, (Cinque, and others,) asserting themselves, in their answer, not to be slaves, but free native Africans, kidnapped in their own country, and illegally transported by force from that country; and now entitled to maintain their freedom.

No question has been here made, as to the proprietary interests in the vessel and cargo. It is admitted that they belong to Spanish subjects, and that they ought to be restored. The only point on this head is, whether the restitution ought to be upon the payment of salvage or not? The main controversy is, whether these negroes are the property of Ruiz and Montez, and ought to be delivered up; and to this, accordingly, we shall first direct our attention.

It has been argued on behalf of the United States, that the Court are bound to deliver them up, according to the treaty of 1795, with Spain, which has in this particular been continued in full force, by the treaty of 1819, ratified in 1821. The sixth article of that treaty, seems to have had, principally, in view cases where the property of the subjects of either state had been taken possession of within the territorial jurisdiction of the other, during war. The eighth article provides for cases where the shipping of the inhabitants of either state are forced, through stress of weather, pursuit of pirates, or enemies, or any other urgent necessity, to seek shelter in the ports of the other. There may well be some doubt entertained, whether the present case, in its actual circumstances, falls within the purview of this article. But it does not seem necessary, for reasons hereafter stated, absolutely to decide it. The ninth article provides, "that all ships and merchandise, of what nature so ever, which shall be rescued out of the hands of any pirates or robbers, on the high seas, shall be brought into some port of either state, and shall be delivered to the custody of the officers of that port, in order to be taken care of and restored entire to the true proprietor, as soon as due and sufficient proof shall be made concerning the property thereof." This is the article on which the main reliance is placed on behalf of the United States, for the restitution of these negroes. To bring the case within the article, it is essential to establish, First, That these negroes, under all the circumstances, fall within the description of merchandise, in the sense of the treaty. Secondly, That there has been a rescue of them on the high seas, out of the hands of the pirates and robbers; which, in the present case, can only be, by showing that they themselves are pirates and robbers; and, Thirdly, That Ruiz and Montez, the asserted proprietors, are the true proprietors, and have established their title by competent proof.

If these negroes were, at the time, lawfully held as slaves under the laws of Spain, and recognised by those laws as property capable of being lawfully bought and sold; we see no reason why they may not justly be deemed within the intent of the treaty, to be included under the denomination of merchandise, and, as such, ought to be restored to the claimants: for,

upon that point, the laws of Spain would seem to furnish the proper rule of interpretation. But, admitting this, it is clear, in our opinion, that neither of the other essential facts and requisites has been established in proof; and the onus probandi of both lies upon the claimants to give rise to the causes foederis. It is plain beyond controversy, if we examine the evidence, that these negroes never were the lawful slaves of Ruiz or Montez, or of any other Spanish subjects. They are natives of Africa, and were kidnapped there, and were unlawfully transported to Cuba, in violation of the laws and treaties of Spain, and the most solemn edicts and declarations of that government. By those laws, and treaties, and edicts, the African slave trade is utterly abolished; the dealing in that trade is deemed a heinous crime; and the negroes thereby introduced into the dominions of Spain, are declared to be free. Ruiz and Montez are proved to have made the pretended purchase of these negroes, with a full knowledge of all the circumstances. And so cogent and irresistible is the evidence in this respect, that the District Attorney has admitted in open Court, upon the record, that these negroes were native Africans, and recently imported into Cuba, as alleged in their answers to the libels in the case. The supposed proprietary interest of Ruiz and Montez, is completely displaced, if we are at liberty to look at the evidence of the admissions of the District Attorney.

If, then, these negroes are not slaves, but are kidnapped Africans, who, by the laws of Spain itself, are entitled to their freedom, and were kidnapped and illegally carried to Cuba, and illegally detained and restrained on board of the Amistad; there is no pretence to say, that they are pirates or robbers. We may lament the dreadful acts, by which they asserted their liberty, and took possession of the Amistad, and endeavoured to regain their native country; but they cannot be deemed pirates or robbers in the sense of the law of nations, or the treaty with Spain, or the laws of Spain itself; at least so far as those laws have been brought to our knowledge. Nor do the libels of Ruiz or Montez assert them to be such.

This posture of the facts would seem, of itself, to put an end to the Whole inquiry upon the merits. But it is argued, on behalf of the United States, that the ship, and cargo, and negroes were duly documented as belonging to Spanish subjects, and this Court have no right to look behind these documents; that full faith and credit is to be given to them; and that they are to be held conclusive evidence in this cause, even although it should be established by the most satisfactory proofs, that they have been obtained by the grossest frauds and impositions upon the constituted authorities of Spain. To this argument we can, in no wise, assent. There is nothing in the treaty which justifies or sustains the argument. We do not here meddle with the point, whether there has been any connivance in this illegal traffic, on the part of any of the colonial authorities or subordinate officers of Cuba; because, in our view, such an examination is unnecessary, and ought not to be pursued, unless it were indispensable to public justice, although it has been strongly pressed at the bar. What we proceed upon is this, that although public documents of the government, accompanying property found on board of the private ships of a foreign nation, certainly are to be deemed prima facie evidence of the facts which they purport to state, yet they are always open to be impugned for fraud; and whether that fraud be in the original obtaining of these

documents, or in the subsequent fraudulent and illegal use of them, when once it is satisfactorily established, it overthrows all their sanctity, and destroys them as proof. Fraud will vitiate any, even the most solemn transactions; and an asserted title to property, founded upon it, is utterly void. The very language of the ninth article of the treaty of 1795, requires the proprietor to make due and sufficient proof of his property. And how can that proof be deemed either due or sufficient, which is but a connected, and stained tissue of fraud? This is not a mere rule of municipal jurisprudence. Nothing is more clear in the law of nations, as an established rule to regulate their rights, and duties, and intercourse, than the doctrine, that the ship's papers are but prima facie evidence, and that, if they are shown to be fraudulent, they are not to be held proof of any valid title. This rule is familiarly applied, and, indeed, is of every-days occurrence in cases of prize, in the contests between belligerents and neutrals, as is apparent from numerous cases to be found in the Reports of this Court; and it is just as applicable to the transactions of civil intercourse between nations in times of peace. If a private ship, clothed with Spanish papers, should enter the ports of the United States, claiming the privileges, and immunities, and rights belonging to bona fide subjects of Spain, under our treaties or laws, and she should, in reality, belong to the subjects of another nation, which was not entitled to any such privileges, immunities, or rights, and the proprietors were seeking, by fraud, to cover their own illegal acts, under the flag of Spain; there can be no doubt, that it would be the duty of our Courts to strip off the disguise, and to look at the case according to its naked realities. In the solemn treaties between nations, it can never be presumed that either state intends to provide the means of perpetrating or protecting frauds; but all the provisions are to be construed as intended to be applied to bona fide transactions. The seventeenth article of the treaty with Spain, which provides for certain passports and certificates, as evidence of property on board of the ships of both states, is, in its terms, applicable only to cases where either of the parties is engaged in a war. This article required a certain form of passport to be agreed upon by the parties, and annexed to the treaty. It never was annexed; and, therefore, in the case of the Amiable Isabella, 6 Wheaton, 1, it was held inoperative.

It is also a most important consideration in the present case, which ought not to be lost sight of, that, supposing these African negroes not to be slaves, but kidnapped, and free negroes, the treaty with Spain cannot be obligatory upon them; and the United States are bound to respect their rights as much as those of Spanish subjects. The conflict of rights between the parties under such circumstances, becomes positive and inevitable, and must be decided upon the eternal principles of justice and international law. If the contest were about any goods on board of this ship, to which American citizens asserted a title, which was denied by the Spanish claimants, there could be no doubt of the right of such American citizens to litigate their claims before any competent American tribunal, notwithstanding the treaty with Spain. A fortiori, the doctrine must apply where human life and human liberty are in issue; and constitute the very essence of the controversy. The treaty with Spain never could have intended to take away the equal rights of all foreigners, who should contest their claims before any of our

Courts, to equal justice; or to deprive such foreigners of the protection given them by other treaties, or by the general law of nations. Upon the merits of the case, then, there does not seem to us to be any ground for doubt, that these negroes ought to be deemed free; and that the Spanish treaty interposes no obstacle to the just assertion of their rights.

There is another consideration growing out of this part of the case, which necessarily rises in judgment. It is observable, that the United States, in their original claim, filed it in the alternative, to have the negroes, if slaves and Spanish property, restored to the proprietors; or, if not slaves, but negroes who had been transported from Africa, in violation of the laws of the United States, and brought into the United States contrary to the same laws, then the Court to pass an order to enable the United States to remove such persons to the coast of Africa, to be delivered there to such agent as may be authorized to receive and provide for them. At a subsequent period, this last alternative claim was not insisted on, and another claim was interposed, omitting it; from which the conclusion naturally arises that it was abandoned. The decree of the District Court, however, contained an order for the delivery of the negroes to the United States, to be transported to the coast of Africa, under the act of the 3d of March, 1819, ch. 224. The United States do not now insist upon any affirmance of this part of the decree; and, in our judgment, upon the admitted facts, there is no ground to assert that the case comes within the purview of the act of 1819, or of any other of our prohibitory slave trade acts. These negroes were never taken from Africa, or brought to the United States in contravention of those acts. When the Amistad arrived she was in possession of the negroes, asserting their freedom; and in no sense could they possibly intend to import themselves here, as slaves, or for sale as slaves. In this view of the matter, that part of the decree of the District Court is unmaintainable, and must be reversed.

* * * *

As to the claim of Lieutenant Gedney for the salvage service, it is understood that the United States do not now desire to interpose any obstacle to the allowance of it, if it is deemed reasonable by the Court. It was a highly meritorious and useful service to the proprietors of the ship and cargo; and such as, by the general principles of maritime law, is always deemed a just foundation for salvage. The rate allowed by the Court, does not seem to us to have been beyond the exercise of a sound discretion, under the very peculiar and embarrassing circumstances of the case.

Upon the whole, our opinion is, that the decree of the Circuit Court, affirming that of the District Court, ought to be affirmed, except so far as it directs the negroes to be delivered to the President, to be transported to Africa, in pursuance of the act of the 3d of March, 1819; and, as to this, it ought to be reversed: and that the said negroes be declared to be free, and be dismissed from the custody of the Court, and go without day.

Class 2 and 3: The Law of War, the Hague and Geneva Conventions, The Holocaust, and Post-WWII development of human rights standards.

IN RE YAMASHITA, 327 U.S. 1 (1946)
SUPREME COURT OF THE UNITED STATES

MR. CHIEF JUSTICE STONE delivered the opinion of the Court.

. . . [P]rior to September 3, 1945, petitioner was the Commanding General of the Fourteenth Army Group of the Imperial Japanese Army in the Philippine Islands. On that date he surrendered to and became a prisoner of war of the United States Army Forces in Baguio, Philippine Islands. On September 25th, . . . petitioner was [charged] with a violation of the law of war. On October 8, 1945, petitioner, after pleading not guilty to the charge, was held for trial before a military commission of five Army officers appointed by order of General Styer. The order appointed six Army officers, all lawyers, as defense counsel. . .

[Petitioner moved] to dismiss the charge on the ground that it failed to state a violation of the law of war. On October 29th . . . the motion to dismiss was denied. The trial then proceeded until its conclusion on December 7, 1945, the commission hearing two hundred and eighty-six witnesses, who gave over three thousand pages of testimony. On that date petitioner was found guilty of the offense as charged and sentenced to death by hanging.

The petitions for habeas corpus set up that the detention of petitioner for the purpose of the trial was unlawful for reasons which are now urged as showing that the military commission was without lawful authority or jurisdiction to place petitioner on trial, as follows:

> (a) That the military commission which tried and convicted petitioner was not lawfully created, and that no military commission to try petitioner for violations of the law of war could lawfully be convened after the cessation of hostilities between the armed forces of the United States and Japan;
>
> (b) That the charge preferred against petitioner fails to charge him with a violation of the law of war;
>
> (c) That the commission was without authority and jurisdiction to try and convict petitioner because the order governing the procedure of the commission permitted the admission in evidence of depositions, affidavits and

hearsay and opinion evidence, and because the commission's rulings admitting such evidence were in violation of the 25th and 38th Articles of War *(10 U. S. C. § § 1496,* 1509) and the Geneva Convention (47 Stat. 2021), and deprived petitioner of a fair trial in violation of the due process clause of the Fifth Amendment;

(d) That the commission was without authority and jurisdiction in the premises because of the failure to give advance notice of petitioner's trial to the neutral power representing the interests of Japan as a belligerent as required by Article 60 of the Geneva Convention, 47 Stat. 2021, 2051.

On the same grounds the petitions for writs of prohibition set up that the commission is without authority to proceed with the trial.

The Supreme Court of the Philippine Islands, after hearing argument, denied the petition for habeas corpus presented to it, on the ground, among others, that its jurisdiction was limited to an inquiry as to the jurisdiction of the commission to place petitioner on trial for the offense charged, and that the commission, being validly constituted by the order of General Styer, had jurisdiction over the person of petitioner and over the trial for the offense charged.

In *Ex parte Quirin, 317 U.S. 1,* we had occasion to consider at length the sources and nature of the authority to create military commissions for the trial of enemy combatants for offenses against the law of war. We there pointed out that Congress, in the exercise of the power conferred upon it by Article I, § 8, Cl. 10 of the Constitution to "define and punish . . . Offences against the Law of Nations . . . ," of which the law of war is a part, had by the Articles of War *(10 U. S. C. § § 1471*-1593) recognized the "military commission" appointed by military command, as it had previously existed in United States Army practice, as an appropriate tribunal for the trial and punishment of offenses against the law of war. Article 15 declares that the "provisions of these articles conferring jurisdiction upon courts martial shall not be construed as depriving military commissions . . . or other military tribunals of concurrent jurisdiction in respect of offenders or offenses that by statute or by the law of war may be triable by such military commissions . . . or other military tribunals." See a similar provision of the Espionage Act of 1917, *50 U. S. C. § 38.* Article 2 includes among those persons subject to the Articles of War the personnel of our own military establishment. But this, as Article 12 indicates, does not exclude from the class of persons subject to trial by military commissions "any other person who by the law of war is subject to trial by military tribunals," and who, under Article 12, may be tried by court-martial, or under Article 15 by military commission.

We further pointed out that Congress, by sanctioning trial of enemy combatants for violations of the law of war by military commission, had not attempted to codify the law of war or to mark its precise boundaries. Instead, by Article 15 it had incorporated, by reference, as within the preexisting jurisdiction of military

commissions created by appropriate military command, all offenses which are defined as such by the law of war, and which may constitutionally be included within that jurisdiction. It thus adopted the system of military common law applied by military tribunals so far as it should be recognized and deemed applicable by the courts, and as further defined and supplemented by the Hague Convention, to which the United States and the Axis powers were parties.

* * * *

With these governing principles in mind we turn to the consideration of the several contentions urged to establish want of authority in the commission. We are not here concerned with the power of military commissions to try civilians. See *Ex parte Milligan, 4 Wall. 2, 132; Sterling v. Constantin, 287 U.S. 378; Ex parte Quirin, supra, 45.* The Government's contention is that General Styer's order creating the commission conferred authority on it only to try the purported charge of violation of the law of war committed by petitioner, an enemy belligerent, while in command of a hostile army occupying United States territory during time of war. Our first inquiry must therefore be whether the present commission was created by lawful military command and, if so, whether authority could thus be conferred on the commission to place petitioner on trial after the cessation of hostilities between the armed forces of the United States and Japan.

The authority to create the commission. General Styer's order for the appointment of the commission was made by him as Commander of the United States Army Forces, Western Pacific. His command includes, as part of a vastly greater area, the Philippine Islands, where the alleged offenses were committed, where petitioner surrendered as a prisoner of war, and where, at the time of the order convening the commission, he was detained as a prisoner in custody of the United States Army. The congressional recognition of military commissions and its sanction of their use in trying offenses against the law of war to which we have referred, sanctioned their creation by military command in conformity to long-established American precedents. Such a commission may be appointed by any field commander, or by any commander competent to appoint a general court-martial, as was General Styer, who had been vested with that power by order of the President. 2 Winthrop, Military Law and Precedents, 2d ed., * 1302; cf. Article of War 8.

Here the commission was not only created by a commander competent to appoint it, but his order conformed to the established policy of the Government and to higher military commands authorizing his action. In a proclamation of July 2, 1942 (56 Stat. 1964), the President proclaimed that enemy belligerents who, during time of war, enter the United States, or any territory or possession thereof, and who violate the law of war, should be subject to the law of war and to the jurisdiction of military tribunals. Paragraph 10 of the Declaration of Potsdam of July 26, 1945, declared that ". . . stern justice shall be meted out to all war criminals, including those who have visited cruelties upon our prisoners." U.S. Dept. of State Bull., Vol. XIII, No. 318, pp. 137-138. This Declaration was accepted by the Japanese government by its note of August 10, 1945. U.S. Dept. of State Bull., Vol.

XIII, No. 320, p. 205.

By direction of the President, the Joint Chiefs of Staff of the American Military Forces, on September 12, 1945, instructed General MacArthur, Commander in Chief, United States Army Forces, Pacific, to proceed with the trial, before appropriate military tribunals, of such Japanese war criminals "as have been or may be apprehended." By order of General MacArthur of September 24, 1945, General Styer was specifically directed to proceed with the trial of petitioner upon the charge here involved. This order was accompanied by detailed rules and regulations which General MacArthur prescribed for the trial of war criminals. These regulations directed, among other things, that review of the sentence imposed by the commission should be by the officer convening it, with "authority to approve, mitigate, remit, commute, suspend, reduce or otherwise alter the sentence imposed," and directed that no sentence of death should be carried into effect until confirmed by the Commander in Chief, United States Army Forces, Pacific.

It thus appears that the order creating the commission for the trial of petitioner was authorized by military command, and was in complete conformity to the Act of Congress sanctioning the creation of such tribunals for the trial of offenses against the law of war committed by enemy combatants. And we turn to the question whether the authority to create the commission and direct the trial by military order continued after the cessation of hostilities.

An important incident to the conduct of war is the adoption of measures by the military commander, not only to repel and defeat the enemy, but to seize and subject to disciplinary measures those enemies who, in their attempt to thwart or impede our military effort, have violated the law of war. *Ex parte Quirin, supra, 28.* The trial and punishment of enemy combatants who have committed violations of the law of war is thus not only a part of the conduct of war operating as a preventive measure against such violations, but is an exercise of the authority sanctioned by Congress to administer the system of military justice recognized by the law of war. That sanction is without qualification as to the exercise of this authority so long as a state of war exists -- from its declaration until peace is proclaimed. See *United States v. Anderson, 9 Wall. 56, 70; The Protector, 12 Wall. 700, 702; McElrath v. United States, 102 U.S. 426, 438; Kahn v. Anderson, 255 U.S. 1, 9-10.* The war power, from which the commission derives its existence, is not limited to victories in the field, but carries with it the inherent power to guard against the immediate renewal of the conflict, and to remedy, at least in ways Congress has recognized, the evils which the military operations have produced. See *Stewart v. Kahn, 11 Wall. 493, 507.*

We cannot say that there is no authority to convene a commission after hostilities have ended to try violations of the law of war committed before their cessation, at least until peace has been officially recognized by treaty or proclamation of the political branch of the Government. In fact, in most instances the practical administration of the system of military justice under the law of war would fail if such authority were thought to end with the cessation of hostilities. For only after their

cessation could the greater number of offenders and the principal ones be apprehended and subjected to trial.

No writer on international law appears to have regarded the power of military tribunals, otherwise competent to try violations of the law of war, as terminating before the formal state of war has ended. n1 In our own military history there have been numerous instances in which offenders were tried by military commission after the cessation of hostilities and before the proclamation of peace, for offenses against the law of war committed before the cessation of hostilities. n2

n1 The Commission on the Responsibility of the Authors of the War and on the Enforcement of Penalties of the Versailles Peace Conference, which met after cessation of hostilities in the First World War, were of the view that violators of the law of war could be tried by military tribunals. See Report of the Commission, March 9, 1919, *14 Am. J. Int. L. 95, 121.* See also memorandum of American commissioners concurring on this point, *id., at p. 141.* The treaties of peace concluded after World War I recognized the right of the Allies and of the United States to try such offenders before military tribunals. See Art. 228 of Treaty of Versailles, June 28, 1919; Art. 173 of Treaty of St. Germain, Sept. 10, 1919; Art. 157 of Treaty of Trianon, June 4, 1920.

The terms of the agreement which ended hostilities in the Boer War reserved the right to try, before military tribunals, enemy combatants who had violated the law of war. 95 British and Foreign State Papers (1901-1902) 160. See also trials cited in Colby, War Crimes, 23 Michigan Law Rev. 482, 496-7.

n2 See cases mentioned in *Ex parte Quirin, supra, p. 32,* note 10, and in 2 Winthrop, *supra*, * 1310-1311, n. 5; *14 Op. A. G. 249* (Modoc Indian Prisoners).

The extent to which the power to prosecute violations of the law of war shall be exercised before peace is declared rests, not with the courts, but with the political branch of the Government, and may itself be governed by the terms of an armistice or the treaty of peace. Here, peace has not been agreed upon or proclaimed. Japan, by her acceptance of the Potsdam Declaration and her surrender, has acquiesced in the trials of those guilty of violations of the law of war. The conduct of the trial by the military commission has been authorized by the political branch of the Government, by military command, by international law and usage, and by the terms of the surrender of the Japanese government.

The charge. Neither congressional action nor the military orders constituting the commission authorized it to place petitioner on trial unless the charge preferred against him is of a violation of the law of war. The charge, so far as now relevant, is that petitioner, between October 9, 1944 and September 2, 1945, in the Philippine Islands, "while commander of armed forces of Japan at war with the United States of America and its allies, unlawfully disregarded and failed to discharge his duty as commander to

control the operations of the members of his command, permitting them to commit brutal atrocities and other high crimes against people of the United States and of its allies and dependencies, particularly the Philippines; and he . . . thereby violated the laws of war."

Bills of particulars, filed by the prosecution by order of the commission, allege a series of acts, one hundred and twenty-three in number, committed by members of the forces under petitioner's command during the period mentioned. The first item specifies the execution of "a deliberate plan and purpose to massacre and exterminate a large part of the civilian population of Batangas Province, and to devastate and destroy public, private and religious property therein, as a result of which more than 25,000 men, women and children, all unarmed noncombatant civilians, were brutally mistreated and killed, without cause or trial, and entire settlements were devastated and destroyed wantonly and without military necessity." Other items specify acts of violence, cruelty and homicide inflicted upon the civilian population and prisoners of war, acts of wholesale pillage and the wanton destruction of religious monuments.

It is not denied that such acts directed against the civilian population of an occupied country and against prisoners of war are recognized in international law as violations of the law of war. Articles 4, 28, 46, and 47, Annex to the Fourth Hague Convention, 1907, 36 Stat. 2277, 2296, 2303, 2306-7. But it is urged that the charge does not allege that petitioner has either committed or directed the commission of such acts, and consequently that no violation is charged as against him. But this overlooks the fact that the gist of the charge is an unlawful breach of duty by petitioner as an army commander to control the operations of the members of his command by "permitting them to commit" the extensive and widespread atrocities specified. The question then is whether the law of war imposes on an army commander a duty to take such appropriate measures as are within his power to control the troops under his command for the prevention of the specified acts which are violations of the law of war and which are likely to attend the occupation of hostile territory by an uncontrolled soldiery, and whether he may be charged with personal responsibility for his failure to take such measures when violations result. That this was the precise issue to be tried was made clear by the statement of the prosecution at the opening of the trial.

It is evident that the conduct of military operations by troops whose excesses are unrestrained by the orders or efforts of their commander would almost certainly result in violations which it is the purpose of the law of war to prevent. Its purpose to protect civilian populations and prisoners of war from brutality would largely be defeated if the commander of an invading army could with impunity neglect to take reasonable measures for their protection. Hence the law of war presupposes that its violation is to be avoided through the control of the operations of war by commanders who are to some extent responsible for their subordinates.

This is recognized by the Annex to the Fourth Hague Convention of 1907,

respecting the laws and customs of war on land. Article 1 lays down as a condition which an armed force must fulfill in order to be accorded the rights of lawful belligerents, that it must be "commanded by a person responsible for his subordinates." 36 Stat. 2295. Similarly Article 19 of the Tenth Hague Convention, relating to bombardment by naval vessels, provides that commanders in chief of the belligerent vessels "must see that the above Articles are properly carried out." 36 Stat. 2389. And Article 26 of the Geneva Red Cross Convention of 1929, 47 Stat. 2074, 2092, for the amelioration of the condition of the wounded and sick in armies in the field, makes it "the duty of the commanders-in-chief of the belligerent armies to provide for the details of execution of the foregoing articles, [of the convention] as well as for unforeseen cases . . ." And, finally, Article 43 of the Annex of the Fourth Hague Convention, 36 Stat. 2306, requires that the commander of a force occupying enemy territory, as was petitioner, "shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country."

These provisions plainly imposed on petitioner, who at the time specified was military governor of the Philippines, as well as commander of the Japanese forces, an affirmative duty to take such measures as were within his power and appropriate in the circumstances to protect prisoners of war and the civilian population. This duty of a commanding officer has heretofore been recognized, and its breach penalized by our own military tribunals. n3 A like principle has been applied so as to impose liability on the United States in international arbitrations. *Case of Jeannaud*, 3 Moore, International Arbitrations, 3000; *Case of The Zafiro*, 5 Hackworth, Digest of International Law, 707.

> n3 Failure of an officer to take measures to prevent murder of an inhabitant of an occupied country committed in his presence. Gen. Orders No. 221, Hq. Div. of the Philippines, August 17, 1901. And in Gen. Orders No. 264, Hq. Div. of the Philippines, September 9, 1901, it was held that an officer could not be found guilty for failure to prevent a murder unless it appeared that the accused had "the power to prevent" it.

We do not make the laws of war but we respect them so far as they do not conflict with the commands of Congress or the Constitution. There is no contention that the present charge, thus read, is without the support of evidence, or that the commission held petitioner responsible for failing to take measures which were beyond his control or inappropriate for a commanding officer to take in the circumstances. n4 . . . . These are questions within the peculiar competence of the military officers composing the commission and were for it to decide. See *Smith v. Whitney, 116 U.S. 167, 178.* It is plain that the charge on which petitioner was tried charged him with a breach of his duty to control the operations of the members of his command, by permitting them to commit the specified atrocities. This was enough to require the commission to hear evidence tending to establish the culpable failure of petitioner to perform the duty imposed on him by the law of war and to pass upon its

sufficiency to establish guilt.

n4 In its findings the commission took account of the difficulties "faced by the Accused with respect not only to the swift and overpowering advance of American forces, but also to the errors of his predecessors, weaknesses in organization, equipment, supply . . . , training, communication, discipline and morale of his troops," and the "tactical situation, the character, training and capacity of staff officers and subordinate commanders as well as the traits of character . . . of his troops." It nonetheless found that petitioner had not taken such measures to control his troops as were "required by the circumstances." We do not weigh the evidence. We merely hold that the charge sufficiently states a violation against the law of war, and that the commission, upon the facts found, could properly find petitioner guilty of such a violation.

Obviously charges of violations of the law of war triable before a military tribunal need not be stated with the precision of a common law indictment. Cf. *Collins v. McDonald, supra, 420.* But we conclude that the allegations of the charge, tested by any reasonable standard, adequately allege a violation of the law of war and that the commission had authority to try and decide the issue which it raised. Cf. *Dealy v. United States, 152 U.S. 539; Williamson v. United States, 207 U.S. 425, 447; Glasser v. United States, 315 U.S. 60, 66,* and cases cited.

* * * *

We think that neither Article 25 nor Article 38 is applicable to the trial of an enemy combatant by a military commission for violations of the law of war. Article 2 of the Articles of War enumerates "the persons . . . subject to these articles," who are denominated, for purposes of the Articles, as "persons subject to military law." In general, the persons so enumerated are members of our own Army and of the personnel accompanying the Army. Enemy combatants are not included among them. Articles 12, 13 and 14, before the adoption of Article 15 in 1916, made all "persons subject to military law" amenable to trial by courts-martial for any offense made punishable by the Articles of War. Article 12 makes triable by general court-martial "any other person who by the law of war is subject to trial by military tribunals." Since Article 2, in its 1916 form, includes some persons who, by the law of war, were, prior to 1916, triable by military commission, it was feared by the proponents of the 1916 legislation that in the absence of a saving provision, the authority given by Articles 12, 13 and 14 to try such persons before courts-martial might be construed to deprive the non-statutory military commission of a portion of what was considered to be its traditional jurisdiction. To avoid this, and to preserve that jurisdiction intact, Article 15 was added to the Articles. n7 It declared that "The provisions of these articles conferring jurisdiction upon courts-martial shall not be construed as depriving military commissions . . . of concurrent jurisdiction in respect of offenders or offenses that . . . by the law of war may be triable by such military commissions."

n7 [omitted]

* * * *

Petitioner further urges that by virtue of Article 63 of the Geneva Convention of 1929, 47 Stat. 2052, he is entitled to the benefits afforded by the 25th and 38th Articles of War to members of our own forces. Article 63 provides: "Sentence may be pronounced against a prisoner of war only by the same courts and according to the same procedure as in the case of persons belonging to the armed forces of the detaining Power." Since petitioner is a prisoner of war, and as the 25th and 38th Articles of War apply to the trial of any person in our own armed forces, it is said that Article 63 requires them to be applied in the trial of petitioner. But we think examination of Article 63 in its setting in the Convention plainly shows that it refers to sentence "pronounced against a prisoner of war" for an offense committed while a prisoner of war, and not for a violation of the law of war committed while a combatant.

Article 63 of the Convention appears in part 3, entitled "Judicial Suits," of Chapter 3, "Penalties Applicable to Prisoners of War," of § V, "Prisoners' Relations with the Authorities," one of the sections of Title III, "Captivity." All taken together relate only to the conduct and control of prisoners of war while in captivity as such. Chapter 1 of § V, Article 42 deals with complaints of prisoners of war because of the conditions of captivity. Chapter 2, Articles 43 and 44, relates to those of their number chosen by prisoners of war to represent them.

Chapter 3 of § V, Articles 45 through 67, is entitled "Penalties Applicable to Prisoners of War." Part 1 of that chapter, Articles 45 through 53, indicate what acts of prisoners of war, committed while prisoners, shall be considered offenses, and defines to some extent the punishment which the detaining power may impose on account of such offenses. n8 Punishment is of two kinds -- "disciplinary" and "judicial," the latter being the more severe. Article 52 requires that leniency be exercised in deciding whether an offense requires disciplinary or judicial punishment. Part 2 of Chapter 2 is entitled "Disciplinary Punishments," and further defines the extent of such punishment, and the mode in which it may be imposed. Part 3, entitled "Judicial Suits," in which Article 63 is found, describes the procedure by which "judicial" punishment may be imposed. The three parts of Chapter 3, taken together, are thus a comprehensive description of the substantive offenses which prisoners of war may commit during their imprisonment, of the penalties which may be imposed on account of such offenses, and of the procedure by which guilt may be adjudged and sentence pronounced.

n8 Part 1 of Chapter 3, "General Provisions," provides in Articles 45 and 46 that prisoners of war are subject to the regulations in force in the armies of the detaining power, that punishments other than those provided "for the same acts for soldiers of the national armies" may not be imposed on prisoners of war, and that "Collective punishment for individual acts" is forbidden. Article 47 provides that "Acts constituting an offense against discipline, and particularly attempted escape, shall be verified immediately; for all

> prisoners of war, commissioned or not, preventive arrest shall be reduced to the absolute minimum. Judicial proceedings against prisoners of war shall be conducted as rapidly as the circumstances permit . . . In all cases, the duration of preventive imprisonment shall be deducted from the disciplinary or judicial punishment inflicted . . ."
>
> Article 48 provides that prisoners of war, after having suffered "the judicial or disciplinary punishment which has been imposed on them," are not to be treated differently from other prisoners, but provides that "prisoners punished as a result of attempted escape may be subjected to special surveillance." Article 49 recites that prisoners "given disciplinary punishment may not be deprived of the prerogatives attached to their rank." Articles 50 and 51 deal with escaped prisoners who have been retaken or prisoners who have attempted to escape. Article 52 provides: "Belligerents shall see that the competent authorities exercise the greatest leniency in deciding the question of whether an infraction committed by a prisoner of war should be punished by disciplinary or judicial measures. This shall be the case especially when it is a question of deciding on acts in connection with escape or attempted escape. . . . A prisoner may not be punished more than once because of the same act or the same count."

We think it clear, from the context of these recited provisions, that part 3, and Article 63, which it contains, apply only to judicial proceedings directed against a prisoner of war for offenses committed while a prisoner of war. Section V gives no indication that this part was designed to deal with offenses other than those referred to in parts 1 and 2 of Chapter 3.

Effect of failure to give notice of the trial to the protecting power. Article 60 of the Geneva Convention of July 27, 1929, 47 Stat. 2051, to which the United States and Japan were signatories, provides that "At the opening of a judicial proceeding directed against a prisoner of war, the detaining Power shall advise the representative of the protecting Power thereof as soon as possible, and always before the date set for the opening of the trial." Petitioner relies on the failure to give the prescribed notice to the protecting power n9 to establish want of authority in the commission to proceed with the trial.

> n9 Switzerland, at the time of the trial, was the power designated by Japan for the protection of Japanese prisoners of war detained by the United States, except in Hawaii. U.S. Dept. of State Bull., Vol. XIII, No. 317, p. 125.

For reasons already stated we conclude that Article 60 of the Geneva Convention, which appears in part 3, Chapter 3, § V, Title III of the Geneva Convention, applies only to persons who are subjected to judicial proceedings for offenses committed while prisoners of war. n10

> n10 One of the items of the bill of particulars, in support of the charge

against petitioner, specifies that he permitted members of the armed forces under his command to try and execute three named and other prisoners of war, "subjecting to trial without prior notice to a representative of the protecting power, without opportunity to defend, and without counsel; denying opportunity to appeal from the sentence rendered; failing to notify the protecting power of the sentence pronounced; and executing a death sentence without communicating to the representative of the protecting power the nature and circumstances of the offense charged." It might be suggested that if Article 60 is inapplicable to petitioner it is inapplicable in the cases specified, and that hence he could not be lawfully held or convicted on a charge of failing to require the notice, provided for in Article 60, to be given.

As the Government insists, it does not appear from the charge and specifications that the prisoners in question were not charged with offenses committed by them as prisoners rather than with offenses against the law of war committed by them as enemy combatants. But apart from this consideration, independently of the notice requirements of the Geneva Convention, it is a violation of the law of war, on which there could be a conviction if supported by evidence, to inflict capital punishment on prisoners of war without affording to them opportunity to make a defense. 2 Winthrop, *supra*, * 434-435, 1241; Article 84, Oxford Manual, Laws and Customs of War on Land; U.S. War Dept., Basic Field Manual, Rules of Land Warfare (1940) par. 356; Lieber's Code, G. O. No. 100 (1863) Instructions for the Government of Armies of the United States in the Field, par. 12; Spaight, War Rights on Land, 462, n.

Further, the commission, in making its findings, summarized as follows the charges, on which it acted, in three classes, any one of which, independently of the others if supported by evidence, would be sufficient to support the conviction: (1) execution or massacre without trial and maladministration generally of civilian internees and prisoners of war; (2) brutalities committed upon the civilian population, and (3) burning and demolition, without adequate military necessity, of a large number of homes, places of business, places of religious worship, hospitals, public buildings and educational institutions.

The commission concluded: "(1) That a series of atrocities and other high crimes have been committed by members of the Japanese armed forces" under command of petitioner "against people of the United States, their allies and dependencies . . . ; that they were not sporadic in nature but in many cases were methodically supervised by Japanese officers and noncommissioned officers"; (2) that during the period in question petitioner "failed to provide effective control of . . . [his] troops, as was required by the circumstances." The commission said: ". . . where murder and rape and vicious, revengeful actions are widespread offenses, and there is no effective attempt by a commander to discover and control the criminal acts, such a commander may be held responsible, even criminally liable, for the lawless acts of his

troops, depending upon their nature and the circumstances surrounding them."

The commission made no finding of non-compliance with the Geneva Convention. Nothing has been brought to our attention from which we could conclude that the alleged non-compliance with Article 60 of the Geneva Convention had any relation to the commission's finding of a series of atrocities committed by members of the forces under petitioner's command, and that he failed to provide effective control of his troops, as was required by the circumstances; or which could support the petitions for habeas corpus on the ground that petitioner had been charged with or convicted for failure to require the notice prescribed by Article 60 to be given.

It thus appears that the order convening the commission was a lawful order, that the commission was lawfully constituted, that petitioner was charged with violation of the law of war, and that the commission had authority to proceed with the trial, and in doing so did not violate any military, statutory or constitutional command. We have considered, but find it unnecessary to discuss, other contentions which we find to be without merit. We therefore conclude that the detention of petitioner for trial and his detention upon his conviction, subject to the prescribed review by the military authorities, were lawful, and that the petition for certiorari, and leave to file in this Court petitions for writs of habeas corpus and prohibition should be, and they are.

Denied.

MR. JUSTICE MURPHY, dissenting.

* * * *

The grave issue raised by this case is whether a military commission so established and so authorized may disregard the procedural rights of an accused person as guaranteed by the Constitution, especially by the due process clause of the Fifth Amendment.

The answer is plain. The Fifth Amendment guarantee of due process of law applies to "any person" who is accused of a crime by the Federal Government or any of its agencies. No exception is made as to those who are accused of war crimes or as to those who possess the status of an enemy belligerent. Indeed, such an exception would be contrary to the whole philosophy of human rights which makes the Constitution the great living document that it is. The immutable rights of the individual, including those secured by the due process clause of the Fifth Amendment, belong not alone to the members of those nations that excel on the battlefield or that subscribe to the democratic ideology. They belong to every person in the world, victor or vanquished, whatever may be his race, color or beliefs. They rise above any status of belligerency or outlawry. They survive any popular passion or frenzy of the moment. No court or legislature or executive, not even the mightiest army in the world, can ever destroy them. Such is the universal and indestructible nature of the rights which the due process clause of the Fifth Amendment recognizes and protects when life or liberty is threatened by virtue of the authority of the United States.

The existence of these rights, unfortunately, is not always respected. They are often trampled under by those who are

motivated by hatred, aggression or fear. But in this nation individual rights are recognized and protected, at least in regard to governmental action. They cannot be ignored by any branch of the Government, even the military, except under the most extreme and urgent circumstances.

The failure of the military commission to obey the dictates of the due process requirements of the Fifth Amendment is apparent in this case. The petitioner was the commander of an army totally destroyed by the superior power of this nation. While under heavy and destructive attack by our forces, his troops committed many brutal atrocities and other high crimes. Hostilities ceased and he voluntarily surrendered. At that point he was entitled, as an individual protected by the due process clause of the Fifth Amendment, to be treated fairly and justly according to the accepted rules of law and procedure. He was also entitled to a fair trial as to any alleged crimes and to be free from charges of legally unrecognized crimes that would serve only to permit his accusers to satisfy their desires for revenge.

A military commission was appointed to try the petitioner for an alleged war crime. The trial was ordered to be held in territory over which the United States has complete sovereignty. No military necessity or other emergency demanded the suspension of the safeguards of due process. Yet petitioner was rushed to trial under an improper charge, given insufficient time to prepare an adequate defense, deprived of the benefits of some of the most elementary rules of evidence and summarily sentenced to be hanged. In all this needless and unseemly haste there was no serious attempt to charge or to prove that he committed a recognized violation of the laws of war. He was not charged with personally participating in the acts of atrocity or with ordering or condoning their commission. Not even knowledge of these crimes was attributed to him. It was simply alleged that he unlawfully disregarded and failed to discharge his duty as commander to control the operations of the members of his command, permitting them to commit the acts of atrocity. The recorded annals of warfare and the established principles of international law afford not the slightest precedent for such a charge. This indictment in effect permitted the military commission to make the crime whatever it willed, dependent upon its biased view as to petitioner's duties and his disregard thereof, a practice reminiscent of that pursued in certain less respected nations in recent years.

In my opinion, such a procedure is unworthy of the traditions of our people or of the immense sacrifices that they have made to advance the common ideals of mankind. The high feelings of the moment doubtless will be satisfied. But in the sober afterglow will come the realization of the boundless and dangerous implications of the procedure sanctioned today. No one in a position of command in an army, from sergeant to general, can escape those implications. Indeed, the fate of some future President of the United States and his chiefs of staff and military advisers may well have been sealed by this decision. But even more significant will be the hatred and ill-will growing out of the application of this unprecedented procedure. That has been the inevitable effect of every method of punishment disregarding the element of personal culpability. The effect in this

instance, unfortunately, will be magnified infinitely, for here we are dealing with the rights of man on an international level. To subject an enemy belligerent to an unfair trial, to charge him with an unrecognized crime, or to vent on him our retributive emotions only antagonizes the enemy nation and hinders the reconciliation necessary to a peaceful world.

That there were brutal atrocities inflicted upon the helpless Filipino people, to whom tyranny is no stranger, by Japanese armed forces under the petitioner's command is undeniable. Starvation, execution or massacre without trial, torture, rape, murder and wanton destruction of property were foremost among the outright violations of the laws of war and of the conscience of a civilized world. That just punishment should be meted out to all those responsible for criminal acts of this nature is also beyond dispute. But these factors do not answer the problem in this case. They do not justify the abandonment of our devotion to justice in dealing with a fallen enemy commander. To conclude otherwise is to admit that the enemy has lost the battle but has destroyed our ideals.

War breeds atrocities. From the earliest conflicts of recorded history to the global struggles of modern times inhumanities, lust and pillage have been the inevitable by-products of man's resort to force and arms. Unfortunately, such despicable acts have a dangerous tendency to call forth primitive impulses of vengeance and retaliation among the victimized peoples. The satisfaction of such impulses in turn breeds resentment and fresh tension. Thus does the spiral of cruelty and hatred grow.

If we are ever to develop an orderly international community based upon a recognition of human dignity it is of the utmost importance that the necessary punishment of those guilty of atrocities be as free as possible from the ugly stigma of revenge and vindictiveness. Justice must be tempered by compassion rather than by vengeance. In this, the first case involving this momentous problem ever to reach this Court, our responsibility is both lofty and difficult. We must insist, within the confines of our proper jurisdiction, that the highest standards of justice be applied in this trial of an enemy commander conducted under the authority of the United States. Otherwise stark retribution will be free to masquerade in a cloak of false legalism. And the hatred and cynicism engendered by that retribution will supplant the great ideals to which this nation is dedicated.

* * * *

It is important, in the first place, to appreciate the background of events preceding this trial. From October 9, 1944, to September 2, 1945, the petitioner was the Commanding General of the 14th Army Group of the Imperial Japanese Army, with headquarters in the Philippines. The reconquest of the Philippines by the armed forces of the United States began approximately at the time when the petitioner assumed this command. Combined with a great and decisive sea battle, an invasion was made on the island of Leyte on October 20, 1944. "In the six days of the great naval action the Japanese position in the Philippines had become extremely critical. Most of the serviceable elements of the Japanese Navy had been

committed to the battle with disastrous results. The strike had miscarried, and General MacArthur's land wedge was firmly implanted in the vulnerable flank of the enemy . . . There were 260,000 Japanese troops scattered over the Philippines but most of them might as well have been on the other side of the world so far as the enemy's ability to shift them to meet the American thrusts was concerned. If General MacArthur succeeded in establishing himself in the Visayas where he could stage, exploit, and spread under cover of overwhelming naval and air superiority, nothing could prevent him from overrunning the Philippines." Biennial Report of the Chief of Staff of the United States Army, July 1, 1943, to June 30, 1945, to the Secretary of War, p. 74.

By the end of 1944 the island of Leyte was largely in American hands. And on January 9, 1945, the island of Luzon was invaded. "Yamashita's inability to cope with General MacArthur's swift moves, his desired reaction to the deception measures, the guerrillas, and General Kenney's aircraft combined to place the Japanese in an impossible situation. The enemy was forced into a piecemeal committment of his troops." *Ibid.*, p. 78. It was at this time and place that most of the alleged atrocities took place. Organized resistance around Manila ceased on February 23. Repeated land and air assaults pulverized the enemy and within a few months there was little left of petitioner's command except a few remnants which had gathered for a last stand among the precipitous mountains.

As the military commission here noted, "The Defense established the difficulties faced by the Accused with respect not only to the swift and overpowering advance of American forces, but also to the errors of his predecessors, weaknesses in organization, equipment, supply with especial reference to food and gasoline, training, communication, discipline and morale of his troops. It was alleged that the sudden assignment of Naval and Air Forces to his tactical command presented almost insurmountable difficulties. This situation was followed, the Defense contended, by failure to obey his orders to withdraw troops from Manila, and the subsequent massacre of unarmed civilians, particularly by Naval forces. Prior to the Luzon Campaign, Naval forces had reported to a separate ministry in the Japanese Government and Naval Commanders may not have been receptive or experienced in this instance with respect to a joint land operation under a single commander who was designated from the Army Service."

* * * *

Nowhere was it alleged that the petitioner personally committed any of the atrocities, or that he ordered their commission, or that he had any knowledge of the commission thereof by members of his command.

The findings of the military commission bear out this absence of any direct personal charge against the petitioner. The commission merely found that atrocities and other high crimes "have been committed by members of the Japanese armed forces under your command . . . that they were not sporadic in nature but in many cases were methodically supervised by Japanese officers and noncommissioned officers; . . . That during the period in question you failed

to provide effective control of your troops as was required by the circumstances."

In other words, read against the background of military events in the Philippines subsequent to October 9, 1944, these charges amount to this: "We, the victorious American forces, have done everything possible to destroy and disorganize your lines of communication, your effective control of your personnel, your ability to wage war. In those respects we have succeeded. We have defeated and crushed your forces. And now we charge and condemn you for having been inefficient in maintaining control of your troops during the period when we were so effectively besieging and eliminating your forces and blocking your ability to maintain effective control. Many terrible atrocities were committed by your disorganized troops. Because these atrocities were so widespread we will not bother to charge or prove that you committed, ordered or condoned any of them. We will assume that they must have resulted from your inefficiency and negligence as a commander. In short, we charge you with the crime of inefficiency in controlling your troops. We will judge the discharge of your duties by the disorganization which we ourselves created in large part. Our standards of judgment are whatever we wish to make them."

Nothing in all history or in international law, at least as far as I am aware, justifies such a charge against a fallen commander of a defeated force. To use the very inefficiency and disorganization created by the victorious forces as the primary basis for condemning officers of the defeated armies bears no resemblance to justice or to military reality.

International law makes no attempt to define the duties of a commander of an army under constant and overwhelming assault; nor does it impose liability under such circumstances for failure to meet the ordinary responsibilities of command. The omission is understandable. Duties, as well as ability to control troops, vary according to the nature and intensity of the particular battle. To find an unlawful deviation from duty under battle conditions requires difficult and speculative calculations. Such calculations become highly untrustworthy when they are made by the victor in relation to the actions of a vanquished commander. Objective and realistic norms of conduct are then extremely unlikely to be used in forming a judgment as to deviations from duty. The probability that vengeance will form the major part of the victor's judgment is an unfortunate but inescapable fact. So great is that probability that international law refuses to recognize such a judgment as a basis for a war crime, however fair the judgment may be in a particular instance. It is this consideration that undermines the charge against the petitioner in this case. The indictment permits, indeed compels, the military commission of a victorious nation to sit in judgment upon the military strategy and actions of the defeated enemy and to use its conclusions to determine the criminal liability of an enemy commander. Life and liberty are made to depend upon the biased will of the victor rather than upon objective standards of conduct.

The Court's reliance upon vague and indefinite references in certain of the Hague Conventions and the Geneva Red Cross Convention is misplaced. Thus the statement in Article 1 of the Annex to Hague

Convention No. IV of October 18, 1907, 36 Stat. 2277, 2295, to the effect that the laws, rights and duties of war apply to military and volunteer corps only if they are "commanded by a person responsible for his subordinates," has no bearing upon the problem in this case. Even if it has, the clause "responsible for his subordinates" fails to state to whom the responsibility is owed or to indicate the type of responsibility contemplated. The phrase has received differing interpretations by authorities on international law. In Oppenheim, International Law (6th ed., rev. by Lauterpacht, 1940, vol. 2, p. 204, fn. 3) it is stated that "The meaning of the word 'responsible' . . . is not clear. It probably means 'responsible to some higher authority,' whether the person is appointed from above or elected from below; . . ." Another authority has stated that the word "responsible" in this particular context means "presumably to a higher authority," or "Possibly it merely means one who controls his subordinates and who therefore can be called to account for their acts." Wheaton, International Law (7th ed., by Keith, London, 1944, p. 172, fn. 30). Still another authority, Westlake, International Law (1907, Part II, p. 61), states that "Probably the responsibility intended is nothing more than a capacity of exercising effective control." Finally, Edmonds and Oppenheim, Land Warfare (1912, p. 19, par. 22) state that it is enough "if the commander of the corps is regularly or temporarily commissioned as an officer or is a person of position and authority . . ." It seems apparent beyond dispute that the word "responsible" was not used in this particular Hague Convention to hold the commander of a defeated army to any high standard of efficiency when he is under destructive attack; nor was it used to impute to him any criminal responsibility for war crimes committed by troops under his command under such circumstances.

The provisions of the other conventions referred to by the Court are on their face equally devoid of relevance or significance to the situation here in issue. Neither Article 19 of Hague Convention No. X, 36 Stat. 2371, 2389, nor Article 26 of the Geneva Red Cross Convention of 1929, 47 Stat. 2074, 2092, refers to circumstances where the troops of a commander commit atrocities while under heavily adverse battle conditions. Reference is also made to the requirement of Article 43 of the Annex to Hague Convention No. IV, 36 Stat. 2295, 2306, that the commander of a force occupying enemy territory "shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country." But the petitioner was more than a commander of a force occupying enemy territory. He was the leader of an army under constant and devastating attacks by a superior re-invading force. This provision is silent as to the responsibilities of a commander under such conditions as that.

* * * *

The only conclusion I can draw is that the charge made against the petitioner is clearly without precedent in international law or in the annals of recorded military history. This is not to say that enemy commanders may escape punishment for clear and unlawful failures to prevent atrocities. But that punishment should be based upon charges fairly drawn in light of established rules of international law and

recognized concepts of justice.

But the charge in this case, as previously noted, was speedily drawn and filed but three weeks after the petitioner surrendered. The trial proceeded with great dispatch without allowing the defense time to prepare an adequate case. Petitioner's rights under the due process clause of the Fifth Amendment were grossly and openly violated without any justification. All of this was done without any thorough investigation and prosecution of those immediately responsible for the atrocities, out of which might have come some proof or indication of personal culpability on petitioner's part. Instead the loose charge was made that great numbers of atrocities had been committed and that petitioner was the commanding officer; hence he must have been guilty of disregard of duty. Under that charge the commission was free to establish whatever standard of duty on petitioner's part that it desired. By this flexible method a victorious nation may convict and execute any or all leaders of a vanquished foe, depending upon the prevailing degree of vengeance and the absence of any objective judicial review.

At a time like this when emotions are understandably high it is difficult to adopt a dispassionate attitude toward a case of this nature. Yet now is precisely the time when that attitude is most essential. While peoples in other lands may not share our beliefs as to due process and the dignity of the individual, we are not free to give effect to our emotions in reckless disregard of the rights of others. We live under the Constitution, which is the embodiment of all the high hopes and aspirations of the new world. And it is applicable in both war and peace. We must act accordingly. Indeed, an uncurbed spirit of revenge and retribution, masked in formal legal procedure for purposes of dealing with a fallen enemy commander, can do more lasting harm than all of the atrocities giving rise to that spirit. The people's faith in the fairness and objectiveness of the law can be seriously undercut by that spirit. The fires of nationalism can be further kindled. And the hearts of all mankind can be embittered and filled with hatred, leaving forlorn and impoverished the noble ideal of malice toward none and charity to all. These are the reasons that lead me to dissent in these terms.

The Nazi War Crimes Trial

Charter of the International Military Tribunal

August 8, 1945

(Selected Articles)

ARTICLE 1

In pursuance of the Agreement signed on the 8th day of August 1945 by the Government of the United States of America, the Provisional Government of the French Republic, the Government of the United Kingdom of Great Britain and Northern Ireland, and the Government of the Union of Soviet Socialist Republics, there shall be established an International Military Tribunal (hereafter called "the Tribunal") for the just and prompt trial and punishment of major war criminals of the European Axis.

ARTICLE 2

The Tribunal shall consist of four members, each with an alternate. One member and one alternate shall be appointed by each of the Signatories. The alternates shall, so far as they are able, be present at all sessions of the Tribunal. In case of illness of any member of the Tribunal or his incapacity for some other reason to fulfill his functions, his alternate shall take his place....

ARTICLE 6

The Tribunal established by the Agreement referred to in Article 1 hereof for the trial and punishment of the major war criminals of the European Axis countries shall have the power to try and punish persons who, acting in the interests of the European Axis countries, whether as individuals or as members of organizations, committed any of the following crimes. The following acts, or any of them, are crimes coming within the jurisdiction of the Tribunal for which there shall be individual responsibility:

(a) Crimes against Peace: namely, planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a Common Plan or Conspiracy for the accomplishment of any of the foregoing;
(b) War Crimes: namely, violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to slave labor or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction

of cities, towns, or villages, or devastation not justified by military necessity;
(c) Crimes against Humanity: namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war,14 or persecutions on political, racial, or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of domestic law of the country where perpetrated. Leaders, organizers, instigators, and accomplices participating in the formulation or execution of a Common Plan or Conspiracy to commit any of the foregoing crimes are responsible for all acts performed by any persons in execution of such plan.

ARTICLE 7

The official position of defendants, whether as Heads of State or responsible officials in Government departments, shall not be considered as freeing them from responsibility or mitigating punishment.

ARTICLE 8

The fact that the defendant acted pursuant to order of his Government or of a superior shall not free him from responsibility, but may be considered in mitigation of punishment if the Tribunal determine that justice so requires.

ARTICLE 9

At the trial of any individual member of any group or organization the Tribunal may declare (in connection with any act of which the individual may be convicted) that the group or organization of which the individual was a member was a criminal organization.

After receipt of the Indictment the Tribunal shall give such notice as it thinks fit that the Prosecution intends to ask the Tribunal to make such declaration and any member of the organization will be entitled to apply to the Tribunal for leave to be heard by the Tribunal upon the question of the criminal character of the organization. The Tribunal shall have power to allow or reject the application. If the application is allowed, the Tribunal may direct in what manner the applicants shall be represented and heard.

ARTICLE 10

In cases where a group or organization is declared criminal by the Tribunal, the competent national authority of any Signatory shall have the right to bring individuals to trial for membership therein before national, military, or occupation courts. In any such case the criminal nature of the group or organization is considered proved and shall not be questioned.

ARTICLE 11

Any person convicted by the Tribunal may be charged before a national, military, or occupation court, referred to in Article 10 of this Charter, with a crime other than of membership in a criminal group or organization and such court may, after convicting him, impose upon him

punishment independent of and additional to the punishment imposed by the Tribunal for participation in the criminal activities of such group or organization....

ARTICLE 13

The Tribunal shall draw up rules for its procedure. These rules shall- not be inconsistent with the provisions of this Charter.

ARTICLE 14

Each Signatory shall appoint a Chief Prosecutor for the investigation of the charges against and the prosecution of major war criminals. The Chief Prosecutors shall act as a committee for the following purposes:

(a) to agree upon a plan of the individual work of each of the Chief Prosecutors and his staff,
(b) to settle the final designation of major war criminals to be tried by the Tribunal,
(c) to approve the Indictment and the documents to be submitted therewith,
(d) to lodge the Indictment and the accompanying documents with the Tribunal,
(e) to draw up and recommend to the Tribunal for its approval draft rules of procedure, contemplated by Article 13 of this Charter. The Tribunal shall have power to accept, with or without amendments, or to reject, the rules so recommended. The Committee shall act in all the above matters by a majority vote and shall appoint a Chairman as may be convenient and in accordance with the principle of rotation: provided that if there is an equal division of vote concerning the designation of a defendant to be tried by the Tribunal, or the crimes with which he shall be charged, that proposal will be adopted which was made by the party which proposed that the particular defendant be tried, or the particular charges be preferred against him....

ARTICLE 16

In order to ensure fair trial for the defendants, the following procedure shall be followed:

(a) 'Me Indictment shall include full particulars specifying in detail the charges against the defendants. A copy of the Indictment and of all the documents lodged with the Indictment, translated into a language which he understands, shall be furnished to the defendant at a reasonable time before the Trial.
(b) During any preliminary examination or trial of a defendant he shall have the right to give any explanation relevant to the charges made against him.
(c) A preliminary examination of a defendant and his trial shall be conducted in, or translated into, a language which the defendant understands.
(d) A defendant shall have the right to conduct his own defense before the Tribunal or to have the assistance of counsel.
(e) A defendant shall have the right through himself or through his counsel to present evidence at the Trial in support of his defense, and to cross-examine any witness called by the Prosecution....

ARTICLE 18

The Tribunal shall:

(a) confine the Trial strictly to an expeditious hearing of the issues raised by the charges,
(b) take strict measures to prevent any action which will cause unreasonable delay, and rule out irrelevant issues and statements of any kind whatsoever,
(c) deal summarily with any contumacy, imposing appropriate punishment, including exclusion of any defendant or his counsel from some or all further proceedings, but without prejudice to the determination of the charges.

ARTICLE 19

The Tribunal shall not be bound by technical rules of evidence. It shall adopt and apply to the greatest possible extent expeditious and nontechnical procedure, and shall admit any evidence which it deems to have probative value....

ARNCLE 26

The judgment of the Tribunal as to the guilt or the innocence of any defendant shall give the reasons on which it is based, and shall be final and not subject to review.

ARTICLE 27

The Tribunal shall have the right to impose upon a defendant on conviction, death or such other punishment as shall be determined by it to be just.

Indictments

Count One: Conspiracy to Wage Aggressive War

This count helped address the crimes committed before the war began, showing a plan to commit crimes during the war.

Count Two: Waging Aggressive War, or "Crimes Against Peace"

Including “the planning, preparation, initiation, and waging of wars of aggression, which were also wars in violation of international treaties, agreements, and assurances.”

Count Three: War Crimes

These were the more “traditional” violations of the law of war including treatment of prisoners of war, slave labor, and use of outlaws weapons.

Count Four: Crimes Against Humanity

This count involved the actions in concentration camps and other death rampages.

You are not required to read the following ten pages, but you may find it interesting and informative to skim through the description and outcomes of the cases against each defendant.

Note that there were only three outright acquittals, Hans Fritzche and Hjalmar Schacht, and Franz von Papen, likely due in each case to the relative lack of authority or involvement in the implementation of war crime directives.

Verdicts and Sentences

Defendants:

Martin Bormann

Count I:	Indicted	Not Guilty
Count II:		
Count III:	Indicted	Guilty
Count IV:	Indicted	Guilty

Sentenced to: Death by hanging

Bormann was in charge of the Aid Fund of the SA and became the head of the party Chancellery in 1941. He later became Secretary to the Fuehrer. He was known to have a strong influence on Hitler's decisions, although the evidence does not show he attended the important meetings where Hitler announced plans for war.

He is directly linked to orders for enslaving and annihilating people in the occupied territories. He was particularly active in the persecution of Jewish people. He issued orders with respect to the slave labor programs as well as for prisoners of war.

There was little evidence for defense counsel to use in light of the numerous documents signed by Bormann. His council did argue that Bormann was dead (no actual proof of this but he had not appeared) and therefore the tribunal should not waste its time arguing his fate. Article 12 of the Nuremberg Charter, however, allows proceedings in the absence of the defendant. Article 29 allows mitigation facts to be heard if Bormann is later found.

Karl Doenitz

Count I:	Indicted	Not Guilty
Count II:	Indicted	Guilty
Count III:	Indicted	Guilty
Count IV:		

Sentenced to: Ten years imprisonment

Doenitz became Commander-in-Chief of the German Navy in 1943 but the evidence does not show he knew of Hitler's plans to initiate war. He did have the U-boat arm of the Navy prepared for war, however, and was solely in charge of this area of the military. While in control of the U-boats, Doenitz allowed them to sink all merchant ships, regardless of the ships were enemy or neutral. In 1944 he ordered 12,000 concentration camp prisoners to be employed in the shipyards for additional labor. He is ultimately unsure if this order was carried out as Doenitz was not in charge of the shipyards, but it does offer evidence of his knowledge of the concentration camps' existence.

Hans Frank

Count I:	Indicted	Not Guilty
Count II:		
Count III:	Indicted	Guilty
Count IV:	Indicted	Guilty

Sentenced to: Death by hanging

Frank held positions such as President of the Academy of German Law until he was dismissed from the position as a result of a dispute with Himmler. He did not play a significant role in the plans for war. He was instrumental in the attacks against Poland, however, and for that he was found guilty. He is quoted as saying "Poland shall be treated like a colony; the Poles will become the slaves of the Greater German World Empire." This attack was especially violent. He was also a key player in the initial plan to use slave laborers. He oversaw the first ghettos created for Jewish German people.

Frank's testimony included feelings of guilt for what he did. "A thousand years will pass and the guilt of Germany will not be erased." He also explained that the police, rather than Frank himself carried out these atrocities. He tried to give the responsibility for his actions to others high in command, but Frank was a willing participant in too many crimes against humanity to put the blame on other people.

Wilhelm Frick

Count I:	Indicted	Not Guilty
Count II:	Indicted	Guilty
Count III:	Indicted	Guilty
Count IV:	Indicted	Guilty

Sentenced to: Death by hanging

Frick held numerous positions, including Minister of the Interior, that gave him knowledge of the plans for war. He signed laws and issued orders against many countries and their citizens. He also signed many laws ordering the elimination of Jewish people. He also had knowledge of the torture committed against people in nursing homes, hospitals, and asylums. Although others complained to Frick about the murder of these innocent people, Frick turned his head and allowed it to continue.

Hans Fritzsche

Count I:	Indicted	Not Guilty
Count II:		
Count III:	Indicted	Not Guilty
Count IV:	Indicted	Not Guilty

Fritzche was active as a radio commentator and later became the head of the Wireless News Service for the Reich Government. He was in charge of the Media when anti-semitic messages were printed. The tribunal found, however, that he did not hold any positions that gave him control over the decisions to wage war or the crimes against humanity, and he was therefore acquitted of all charges.

Walther Funk

Count I:	Indicted	Not Guilty
Count II:	Indicted	Guilty
Count III:	Indicted	Guilty
Count IV:	Indicted	Guilty

Sentenced to: Imprisonment for life

Funk was one of Hitler's economic advisers, but did not serve in this role until after the important conferences that established the plans for war. He did assist in the attack on the U.S.S.R. He participated in plans to ban Jewish people from German society. His role as economic advisor gave him power to order the belongings of Jewish people into the possession of the SS. He also participated in the plan to take the gold reserves of the Czech banks. His main mitigating evidence that ultimately saved his life was that Funk never took a lead role in the activities in which he participated.

Hermann Wilhelm Goering

Count I:	Indicted	Convicted
Count II:	Indicted	Convicted
Count III:	Indicted	Convicted
Count IV:	Indicted	Convicted

Sentenced to: Death by hanging. Goering committed suicide in his cell by swallowing poison before his hanging.

Known as the second in command to Hitler until their relationship deteriorated in 1943, commanding the SA during most of the war and developing the Gestapo. He also served as Chief of the Air Force. Goering was arrested in 1945. He freely told the Tribunal the positions he held, the conferences he attended, and the fact that he treated humans as slave labor, demonstrating his violation of both the crimes against peace, the war crimes, and crimes against humanity.

In court Goering said, "I must take 100 percent responsibility. I even overruled objections by the Fuehrer and brought everything to its final development." Although Himmler was the one in charge of the extermination of the Jewish people, Goering signed several anti-Jewish decrees and he often directed Himmler's actions.

Rudolf Hess

Count I:	Indicted	Guilty
Count II:	Indicted	Guilty
Count III:	Indicted	Not Guilty
Count IV:	Indicted	Not Guilty

Sentenced to: Imprisonment for life. Hess committed suicide in prison in 1987 at age 92.

Hess was imprisoned with Hitler in 1924, during which time he became Hitler's Deputy and confidant. He was the top ranking official in the Nazi Party. His every action was in support of Hitler's ultimate plan until he escaped to England after the war.

Although there was evidence linking Hess to the proposed laws against Jewish people and Polish people, the Tribunal did not find enough evidence to find him guilty of these crimes.

Hess' psychological health was questioned before the trial. One medical exam was completed before the trial and he was found competent to stand trial despite repeated motions to have him examined again. Although he may have acted in an unusual manner during the trial, he seemed to realize the nature of the charges and had council appointed by the tribunal specifically to help defend himself.

Alfred Jodl

Count I:	Indicted	Guilty
Count II:	Indicted	Guilty
Count III:	Indicted	Guilty
Count IV:	Indicted	Guilty

Sentenced to: Death by hanging

Jodl held high-ranking positions in the Reich starting in 1935, including Chief of Army Operations. Jodl was instrumental in planning the attack on Czechoslovakia as well as Norway, Greece and Yugoslavia. He wrote "The genius of the Fuehrer and his determination not to shun even a World War have again won the victory without the use of force. The hope remains that the incredulous, the weak, and the doubtful people have been converted and will remain that way".

Jodl and his staff signed numerous documents detailing plans to annihilate people, including the plan to kill Soviet commissars. But the evidence does not show he was involved in the slave labor program.

His defense was that he was an obedient soldier, signing orders only as a command from Hitler. This was not a defense allowed under Article Eight of the Charter, however, and no other mitigation evidence could be offered.

Ernst Kaltenbrunner

Count I:	Indicted	Not Guilty
Count II:		
Count III:	Indicted	Guilty
Count IV:	Indicted	Guilty

Sentenced to: Death by hanging

By 1935 Kaltenbrunner was the leader of the Austrian branch of the SS and parts of the Gestapo. He was part of the plans to end the rein of the Austrian government, but he did not appear to be a part of the general plans for war. Rather, Kaltenbrunner was involved with the crimes against humanity. He issued orders against Jewish people, prisoners of war, and slave laborers. He took a leading role in the "final solution". People under Kaltenbrunner's command killed over four million Jewish people in concentration camps.

Kaltenbrunner's defense was that he was under orders involving foreign intelligence and never assumed control of the activities of the SS police. He claims he did not know of the overall plan. This defense only convinced the tribunal that Kaltenbrunner
was not part of the plans to wage war.

Wilhelm Keitel

Count I: Indicted Guilty
Count II: Indicted Guilty
Count III: Indicted Guilty
Count IV: Indicted Guilty

Sentenced to: Death by hanging

Keitel was the Chief of Staff of the High Command of the Armed Forces while Hitler was in power. He attended all of the conferences that discussed the plans for war. Many of these meetings were with Hitler, Jodl, and Raeder. Although he testified he was opposed to the invasion of the U.S.S.R., he ultimately helped plan the invasion. Evidence also showed Keitel was aware of the plans to rid Poland of Jewish people. He also issued orders to kill Communists.

There was no mitigation evidence to be heard, and his defense that he was just following orders as a soldier is not valid under the Charter.

Erich Raeder

Count I: Indicted Guilty
Count II: Indicted Guilty
Count III: Indicted Guilty
Count IV:

Sentenced to: Imprisonment for life

Raeder was the Chief of Naval Command as early as 1928, later replaced by Doenitz at Raeder's request. He admitted during the trial that under his command the Navy violated the Versailles Treaty. Raeder was against the idea of invading the U.S.S.R. but followed the decision to invade fully. Raeder is charged with the sinking of a British passenger ship headed to America in 1939.

Raeder shares the charges related to unrestricted submarine warfare with Doenitz for sinking merchant ships, whether enemy or neutral.

Alfred Rosenberg

Count I: Indicted Guilty
Count II: Indicted Guilty

Count III:	Indicted	Guilty
Count IV:	Indicted	Guilty

Sentenced to: Death by hanging

Rosenberg was in charge of the Nazi party while Hitler was in jail. He later took part in plans to attack Norway. He is also held responsible for many of the actions in the occupied Eastern Territories. Rosenberg planned the confiscation of art treasures in France. He is also credited with the invasion of almost 70,000 homes in France in 1941. He knew of and participated in crimes against slave laborers and mass killings of Jewish people. Although he occasionally acknowledged the brutality being used, he continued in his post until the end of the war.

Fritz Sauckel

Count I:	Indicted	Not Guilty
Count II:	Indicted	Not Guilty
Count III:	Indicted	Guilty
Count IV:	Indicted	Guilty

Sentenced to: Death by hanging

Sauckel was instrumental in the use of slave labor. The evidence overwhelmingly showed Sauckel established labor service in Germany, to which more than 5.000.000 people were subjected. He is quoted as saying "out of five million foreign workers who arrived in Germany not even 200,000 came voluntarily".

Hjalmar Schacht

Count I:	Indicted	Not Guilty
Count II:	Indicted	Not Guilty
Count III:		
Count IV:		

Schacht served as Commissioner of Currency, President of the Reichbank, and Minister of Economics during the war. By 1936, however, Goering had taken the position Schacht once held as an influential person in the rearmament effort. Although he continued to participate in economic decisions, he was not involved in any of the war plans. For this reason he was acquitted of all crimes.

Arthur Seyss-Inquart

Count I:	Indicted	Not Guilty
Count II:	Indicted	Guilty
Count III:	Indicted	Guilty
Count IV:	Indicted	Guilty

Sentenced to: Death by hanging

Seyss-Inquart was active in the Austrian Nazi party, taking the position of Minister of Security and Interior in 1938. He created a program to take Jewish people's property in Austria and later created economic discrimination policies in the Netherlands. He was also in control during the periods that Jewish people were victims of pogroms, sent to concentration camps, or forced to emigrate.

He also took part in plans in Poland and the Netherlands, including supporting the occupation policies. In the Netherlands, Seyss-Inquart sent forced laborers to Germany.

As did many of the defendants, Seyss-Inquart used as a defense the idea that he only followed orders from above.

Albert Speer

Count I:	Indicted	Not Guilty
Count II:	Indicted	Not Guilty
Count III:	Indicted	Guilty
Count IV:	Indicted	Guilty

Sentenced to: Twenty years imprisonment

Speer was Hitler's personal architect and a personal friend. He also held important positions in the Nazi party. The evidence did not show him as a participant in the plans for war. He was, however, extremely active in the slave labor program. His defense was that he used these laborers only because the demand for labor was so great. He was known to ensure the laborers had food and sufficient work conditions so their work was effective. He also condoned the use of concentration camps for "slackers".

Julius Streicher

Count I:	Indicted	Not Guilty
Count II:		
Count III:		
Count IV:	Indicted	Guilty

Sentenced to: Death by hanging

After joining the Nazi party in 1921, Streicher held appointed and elected positions that made him notorious for his crimes against humanity. Evidence did not show that Streicher participated in the plans for war, however. He was a spokesman for the annihilation of the Jewish people. He is quoted as saying "a punitive expedition must come against the Jews in Russia. A punitive expedition which will provide the same fate for them that every murder and criminal must expect: Death sentence and execution. The Jews in Russia must be killed. They must be

exterminated root and branch." He also published "If the danger of the reproduction of that curse of God in the Jewish blood is finally to come to an end, then there is only one way the extermination of that people whose father is the devil." No defense could justify these remarks!

Konstantin von Neurath

Count I:	Indicted	Guilty
Count II:	Indicted	Guilty
Count III:	Indicted	Guilty
Count IV:	Indicted	Guilty

Sentenced to: Fifteen years imprisonment. He was released after serving just eight years for health reasons.

Von Neurath was Minister of Foreign Affairs. He advised Hitler on many strategic military moves. Von Neurath was allowed to resign in 1938, but continued to be active in the party as a Reich Minister. He was responsible for proclamations and memorandum repressing citizens of Czechoslovokia.

His defense was that the enforcement of his proclamations were carried out by the police and not Von Neurath himself. His mitigation evidence that he did request the release of Czech prisoners in 1939 and 1941. He was reprimanded personally by Hitler for not being harsh enough.

Franz von Papen

Count I:	Indicted	Not Guilty
Count II:	Indicted	Not Guilty
Count III:		
Count IV:		

Von Papen was once the Chancellor of Germany. Although Von Popen held positions in the Reich, there is not enough evidence that he was part of the plans to wage war. He was therefore acquitted.

Joachim von Ribbentrop

Count I:	Indicted	Guilty
Count II:	Indicted	Guilty
Count III:	Indicted	Guilty
Count IV:	Indicted	Guilty

Sentenced to: Death by hanging

Von Ribbentrop became Foreign Policy Adviser to Hitler in 1933. He later served as Ambassador to England. He was active in the plans to attack Poland. He was aware of plans for

the pogroms as well as plans to kill prisoners of war. Von Ribbentrop participated in Hitler's "final solution".

Von Ribbentrop's defense was that he was only carrying out orders from the man he followed so faithfully, Hitler. Not only is this not a valid defense, but the tribunal found convincing evidence that showed Von Ribbentrop's independent belief in what he was doing.

Baldur von Schirach

Count I:	Indicted	Not Guilty
Count II:		
Count III:		
Count IV:	Indicted	Guilty

Sentenced to: Twenty years imprisonment

Von Schirach was the Youth Leader for the Nazi party in 1931 and later the Leader of Youth in the German Reich. While in this position, he took over all youth groups who competed with the Hitler Youth programs. These youth programs were intense and prepared the youth to be replacements for the SS, stressing the importance of giving your life for Hitler. By 1944 the Youth were being used as auxiliaries in the German military. The evidence does not show he was part of the plans to wage war.

Von Schirach was aware of the plans against Jewish people. His office received reports of the deportation, many of which were signed by people on Von Shirach's staff.

Testimony of Rudolf Hoess, Commandant of Auschwitz

[Testimony on Monday, April 15, 1946]

Morning Session

DR. KAUFFMANN: With the agreement of the Tribunal, I now call the witness Hoess.
[The witness Hoess took the stand.]
THE PRESIDENT: Stand up. Will you state your name?
RUDOLF FRANZ FERDINAND HOESS (Witness): Rudolf Franz Ferdinand Hoess.
THE PRESIDENT: Will you repeat this oath after me: "I swear by God,the Almighty and Omniscient, that I will speak the pure truth,and will withhold and add nothing.
[The witness repeated the oath in German.]
THE PRESIDENT: Will you sit down?
DR. KAUFFMANN: Witness, your statements will have far-reaching significance. You are perhaps the only one who can throw some light upon certain hidden aspects, and who can tell which people gave the orders for the destruction of European Jewry, and can further state how this order was carried out and to what degree the execution was kept a secret.
THE PRESIDENT: Dr. Kauffmann, will you kindly put questions to the witness.
DR. KAUFFMANN: Yes.
[Turning to the witness.] From 1940 to 1943, you were the Commander of the camp at Auschwitz. Is that true?
HOESS: Yes.
DR. KAUFFMANN: And during that time, hundreds of thousands of human beings were sent to their death there. Is that correct?
HOESS: Yes.
DR. KAUTFFMANN: Is it true that you, yourself, have made no exact notes regarding the figures of the number of those victims because you were forbidden to make them?
HOESS: Yes, that is correct.
DR. KAUFFMANN: Is it furthermore correct that exclusively one man by the name of Eichmann had notes about this, the man who had the task of organizing and assembling these people?
HOESS: Yes.
DR. KAUFFMANN: Is it furthermore true that Eichmann stated to you that in Auschwitz a total sum of more than 2 million Jews had been destroyed?
HOESS: Yes.
DR. KAUFFMANN: Men, women, and children?
HOESS: Yes.
DR. KAUFFMANN: You were a participant in the World War?
HOESS: Yes.
DR. KAUFFMANN: And then in 1922, you entered the Party?
HOESS: Yes.

DR. KAUFFMANN: Were you a member of the SS?
HOESS: Since 1934.
DR. KAUFFMANN: Is it true that you, in the year 1924, were sentenced to a lengthy term of hard labor because you participated in a so-called political murder?
HOESS: Yes.
DR. KAUFFMANN: And then at the end of 1934, you went to the concentration camp of Dachau?
HOESS: Yes.
DR. KAUFFMANN: What task did you receive?
HOESS: At first, I was the leader of a block of prisoners and then I became clerk and finally, the administrator of the property of prisoners.
DR. KAUFFMANN: And how long did you stay there?
HOESS: Until 1938.
DR. KAUFFMANN: What job did you have from 1938 on and where were you then?
HOESS: In 1938 I went to the concentration camp at Sachsenhausen where, to begin with, I was adjutant to the commander and later on I became the head of the protective custody camp.
DR. KAUFFMANN: When were you commander at Auschwitz?
HOESS: I was commander at Auschwitz from May 1940 until December 1943.
DR. KAUFFMANN: What was the highest number of human beings, prisoners, ever held at one time at Auschwitz?
HOESS: The highest number of internees held at one time at Auschwitz, was about 140,000 men and women.
DR. KAUFFMANN: Is it true that in 1941 you were ordered to Berlin to see Himmler? Please state briefly what was discussed.
HOESS: Yes. In the summer of 1941 1 was summoned to Berlin to Reichsfáhrer SS Himmler to receive personal orders. He told me something to the effect--I do not remember the exact words--that the Fáffrer had given the order for a final solution of the Jewish question. We, the SS, must carry out that order. If it is not carried out now then the Jews will later on destroy the German people. He had chosen Auschwitz on account of its easy access by rail and also because the extensive site offered space for measures ensuring isolation.
DR. KAUFFMANN: During that conference did Himmler tell you that this planned action had to be treated as a secret Reich matter?
HOESS: Yes. He stressed that point. He told me that I was not even allowed to say anything about it to my immediate superior Gruppenfáhrer Glácks. This conference concerned the two of us only and I was to observe the strictest secrecy.
DR. KAUFFMANN: What was the position held by Glácks whom you have just mentioned?
HOESS: Gruppenfáhrer Glácks was, so to speak, the inspector of concentration camps at that time and he was immediately subordinate to the Reichsfáhrer.
DR. KAUFFMANN: Does the expression "secret Reich matter" mean that no one was permitted to make even the slightest allusion to outsiders without endangering his own life?
HOESS: Yes, "secret Reich matter" means that no one was allowed to speak about these matters with any person and that everyone promised upon his life to keep the utmost secrecy.
DR. KAUFFMANN: Did you happen to break that promise?

HOESS: No, not until the end of 1942.
DR. KAUFFMANN: Why do you mention that date? Did you talk to outsiders after that date?
HOESS: At the end of 1942 my wife's curiosity was aroused by remarks made by the then Gauleiter of Upper Silesia, regarding happenings in my camp. She asked me whether this was the truth and I admitted that it was. That was my only breach of the promise I had given to the Reichsfáhrer. Otherwise I have never talked about it to anyone else.
DR. KAUFFMANN: When did you meet Eichmann?
HOESS: I met Eichmann about 4 weeks after having received that order from the Reichsfáhrer. He came to Auschwitz to discuss the details with me on the carrying out of the given order. As the Reichsfáhrer had told me during our discussion, he had instructed Eichmann to discuss the carrying out of the order with me and I was to receive all further instructions from him.
DR. KAUFFMANN: Will you briefly tell whether it is correct that the camp of Auschwitz was completely isolated, describing the measures taken to insure as far as possible the secrecy of carrying out of the task given to you.
HOESS: The Auschwitz camp as such was about 3 kilometers away from the town. About 20,000 acres of the surrounding country had been cleared of all former inhabitants, and the entire area could be entered only by SS men or civilian employees who had special passes. The actual compound called "Birkenau," where later on the extermination camp was constructed, was situated 2 kilometers from the Auschwitz camp. The camp installations themselves, that is to say, the provisional installations used at first were deep in the woods and could from nowhere be detected by the eye. In addition to that, this area had been declared a prohibited area and even members of the SS who did not have a special pass could not enter it. Thus, as far as one could judge, it was impossible for anyone except authorized persons to enter that area.
DR. KAUFFMANN: And then the railway transports arrived. During what period did these transports arrive and about how many people, roughly, were in such a transport?
HOESS: During the whole period up until 1944 certain operations were carried out at irregular intervals in the different countries, so that one cannot speak of a continuous flow of incoming transports. It was always a matter of 4 to 6 weeks. During those 4 to 6 weeks two to three trains, containing about 2,000 persons each, arrived daily. These trains were first of all shunted to a siding in the Birkenau region and the locomotives then went back. The guards who had accompanied the transport had to leave the area at once and the persons who had been brought in were taken over by guards belonging to the camp.
They were there examined by two SS medical officers as to their fitness for work. The internees capable of work at once marched to Auschwitz or to the camp at Birkenau and those incapable of work were at first taken to the provisional installations, then later to the newly constructed crematoria.
DR. KAUFFMANN: During an interrogation I had with you the other day you told me that about 60 men were designated to receive these transports, and that these 60 persons, too, had been bound to the same secrecy described before. Do you still maintain that today?
HOESS: Yes, these 60 men were always on hand to take the internees not capable of work to these provisional installations and later on to the other ones. This group, consisting of about ten leaders and subleaders, as well as doctors and medical personnel, had repeatedly been told, both in writing and verbally, that they were bound to the strictest secrecy as to all that went on in the

camps.
DR. KAUFFMANN: Were there any signs that might show an outsider who saw these transports arrive, that they would be destroyed or was that possibility so small because there was in Auschwitz an unusually large number of incoming transports, shipments of goods and so forth?
HOESS: Yes, an observer who did not make special notes for that purpose could obtain no idea about that because to begin with not only transports arrived which were destined to be destroyed but also other transports. arrived continuously, containing new internees who were needed in the camp. Furthermore, transports likewise left the camp in sufficiently large numbers with internees fit for work or exchanged prisoners.
The trains themselves were closed, that is to say, the doors of the freight cars were closed so that it was not possible, from the outside, to get a glimpse of the people inside. In addition to that, up to 100 cars of materials, rations, et cetera, were daily rolled into the camp or continuously left the workshops of the camp in which war material was being made.
DR. KAUFFMANN: And after the arrival of the transports were the victims stripped of everything they had? Did they have to undress completely; did they have to surrender their valuables? Is that true?
HOESS: Yes.
DR. KAUFFMANN: And then they immediately went to their death?
HOESS: Yes.
DR. KAUFFMANN: I ask you, according to your knowledge, did these people know what was in store for them?
HOESS: The majority of them did not, for steps were taken to keep them in doubt about it and suspicion would not arise that they were to go to their death. For instance, all doors and all walls bore inscriptions to the effect that they were going to undergo a delousing operation or take a shower. This was made known in several languages to the internees by other internees who had come in with earlier transports and who were being used as auxiliary crews during the whole action.
DR. KAUFFMANN: And then, you told me the other day, that death by gassing set in within a period of 3 to 15 minutes. Is that correct?
HOESS: Yes.
DR. KAUFFMANN: You also told me that even before death finally set in, the victims fell into a state of unconsciousness?
HOESS: Yes. From what I was able to find out myself or from what was told me by medical officers, the time necessary for reaching unconsciousness or death varied according to the temperature and the number of people present in the chambers. Loss of consciousness took place within a few seconds or a few minutes.
DR. KAUFFMANN: Did you yourself ever feel pity with the victims, thinking of your own family and children?
HOESS: Yes.
DR. KAUFFMANN: How was it possible for you to carry out these actions in spite of this?
HOESS: In view of all these doubts which I had, the only one and decisive argument was the strict order and the reason given for it by the Reichsfáhrer Himmler.
DR. KAUFFMANN: I ask you whether Himmler inspected the camp and convinced himself, too,

of the process of annihilation?
HOESS: Yes. Himmler visited the camp in 1942 and he watched in detail one processing from beginning to end.
DR. KAUFMANN: Does the same apply to Eichmann?
HOESS: Eichmann came repeatedly to Auschwitz and was intimately acquainted with the proceedings.

* * * *

DR. KAUFFMANN: There is no doubt that the longer the war lasted, the larger became the number of the ill-treated and tortured inmates. Whenever you inspected the concentration camps did you not learn something of this state of affairs through complaints, et cetera, or do you consider that the conditions which have been described are more or less due to excesses?
HOESS: These so-called ill-treatments and this torturing in concentration camps, stories of which were spread everywhere among the people, and later by the prisoners that were liberated by the occupying armies, were not, as assumed, inflicted methodically, but were excesses committed by individual leaders, subleaders, and men who laid violent hands on internees.
DR. KAUFFMANN: Do you mean you never took cognizance of these matters?
HOESS: If in any way such a case came to be known, then the perpetrator was, of course, immediately relieved of his post or transferred somewhere else. So that, even if he were not punished f or lack of evidence to prove his guilt, even then, he was taken away from the internees and given another position.
DR. KAUFFMANN: To what do you attribute the particularly bad and shameful conditions, which were ascertained by the entering Allied troops, and which to a certain extent were photographed and filmed?
HOESS: The catastrophic situation. at the end of the war was due to the fact that, as a result of the destruction of the railway network and of the continuous bombing of the industrial plants, care for these masses--I am thinking of Auschwitz with its 140,000 internees--could no longer be assured. Improvised measures, truck columns, and everything else tried by the commanders to improve the situation were of little or no avail; it was no longer possible. The number of the sick became immense. There were next to no medical supplies; epidemics raged everywhere. Internees who were capable of work were used over and over again. By order of the Reichsfáhrer, even half-sick people had to be used wherever possible in industry. As a result every bit of space in the concentration. camps which could possibly be used for lodging was overcrowded with sick and dying prisoners.

* * * *

DR. KAUFFMANN: What became known to you about so-called medical experiments on living internees?
HOESS: Medical experiments were carried out in several camps. For instance, in Auschwitz there were experiments on sterilization carried out by Professor Klaubert and Dr. Schumann; also experiments on twins by SS medical officer Dr. Mengele.

DR. KAUFFMANN: Do you know the medical officer Dr. Rascher?
HOESS: In Dachau he was a medical officer of the Luftwaffe who carried out experiments, on internees who had been sentenced to death, about the resistance of the human body to cold and in high pressure chambers.
DR. KAUFFMANN: Can you tell whether such experiments carried out within the camp were known to a large circle?
HOESS: Such experiments, just like all other matters, were, of course, called "secret Reich matters." However, it could not be avoided that the experiments became known since they were carried out in a large camp and must have been seen in some way by the inmates. I cannot say, however, to what extent the outside world learned about these experiments.
DR. KAUFFMANN: You explained to me that orders for executions were received in the camp at Auschwitz, and you told me that until the outbreak of war such orders were few, but that later on they became more numerous. Is that correct?
HOESS: Yes. There were hardly any executions until the beginning of the war--only in particularly serious cases. I remember one case in Buchenwald where an SS man had been attacked and beaten to death by internees, and the internees were later hanged.
DR. KAUFFMANN: But during the war--and that you will admit--the number of executions increased, and not inconsiderably.
HOESS: That had already started with the beginning of the war.
DR. KAUFFMANN: Was the basis for these execution orders in many cases a legal sentence of German courts?
HOESS: No. Orders for the executions carried out in the camps came from the RSHA.
DR. KAUFFMANN: Who signed the orders for executions which you received? Is it correct that occasionally you received orders for executions which bore the signature "Kaltenbrunner," and that these were not the originals but were teleprints; which therefore had the signature in typewritten letters?
HOESS: It is correct. The originals of execution orders never came to the camps. The original of these orders either arrived at the Inspectorate of the Concentration Camps, from where they were transmitted by teletype to the camps concerned, or, in urgent cases, the RSHA sent the orders directly to the camps concerned, and the Inspectorate was then only informed, so that the signatures in the camps were always only in teletype.
DR. KAUFFMANN: So as to again determine the signatures, will you tell the Tribunal whether the overwhelming majority of all execution orders either bore the signature of Himmler or that of Máller in the years before the war and until the end of the war.
HOESS: Only very few teletypes which I have ever seen came from the Reichsfáhrer and still fewer from the Defendant Kaltenbrunner. Most of them, I could say practically all, were signed "Signed Máller."
DR. KAUFFMANN: Is that the Máller with whom you repeatedly talked about such matters as you stated earlier?
HOESS: Gruppenfáhrer Máller was the Chief of Department IV in the RSHA. He had to negotiate with the Inspectorate about all matters connected with concentration camps.

* * * *

COL. AMEN: I ask that the witness be shown Document 3868-PS, which will become Exhibit USA-819.
[The document was submitted to the witness.]
COL. AMEN: You signed that affidavit voluntarily, Witness?
HOESS: Yes.
COL. AMEN: And the affidavit is true in all respects?
HOESS: Yes.
COL. AMEN: This, if the Tribunal please, we have in four languages.
[Turning to the witness.] Some of the matters covered in this affidavit you have already told us about in part, so I will omit some parts of the affidavit. If you will follow along with me as I read, please. Do you have a copy of the affidavit before you?
HOESS: Yes.
COL. AMEN: I will omit the first paragraph and start with Paragraph 2:
"I have been constantly associated with the administration of concentration camps since 1934, serving at Dachau until 1938; then as Adjutant in Sachsenhausen from 1938 to 1 May 1940, when I was appointed Commandant of Auschwitz.. I commanded Auschwitz until 1 December 1943, and estimate that at least 2,500,000 victims were executed and exterminated there by gassing and burning, and at least another half million succumbed to starvation and disease making a total dead of about 3,000,000. This figure represents about 70 or 80 percent of all persons sent to Auschwitz as prisoners, the remainder having been selected and used for slave labor in the concentration camp industries; included among the executed and burned were approximately 20,000 Russian prisoners of war (previously screened out of prisoner-of-war cages by the Gestapo) who were delivered at Auschwitz in Wehrmacht transports operated by regular Wehrmacht officers and men. The remainder of the total number of victims included about 100,000 German Jews, and great numbers of citizens, mostly Jewish, from Holland, France, Belgium, Poland, Hungary, Czechoslovakia, Greece, or other countries. We executed about 400,000 Hungarian Jews alone at Auschwitz in the summer of 1944."
That is all true, Witness?
HOESS: Yes, it is.
COL. AMEN: Now I omit the first few lines of Paragraph 3 and start in the middle of Paragraph 3:
". . . prior to establishment of the RSHA, the Secret State Police Office (Gestapo) and the Reich Office of Criminal Police were responsible for arrests, commitments to concentration camps, punishments and executions therein. After organization of the RSHA all of these functions were carried on as before, but pursuant to orders signed by Heydrich as Chief of the RSHA. While Kaltenbrunner was Chief of RSHA orders for protective custody, commitments, punishment, and individual executions were signed by Kaltenbrunner or by Máller, Chief of the Gestapo, as Kaltenbrunner's deputy."
THE PRESIDENT: Just for the sake of accuracy, the last date in Paragraph 2, is that 1943 or 1944?
COL. AMEN: 1944, I believe. Is that date correct, Witness, at the close of Paragraph 2, namely,

that the 400,000 Hungarian Jews alone at Auschwitz in the summer of 1944 were executed? is that 1944 or 1943?
HOESS: 1944. Part of that figure also goes back to 1943; only a part. I cannot give the exact figure; the end was 1944, autumn of 1944.
COL. AMEN: Right.
"4. Mass executions by gassing commenced during the summer of 1941 and continued until fall 1944. 1 personally supervised executions at Auschwitz until first of December 1943 and know by reason of my continued duties in the Inspectorate of Concentration Camps, WVHA, that these mass executions continued as stated above. All mass executions by gassing took place under the direct order, supervision, and responsibility of RSHA. I received all orders for carrying out these mass executions directly from RSHA." Are those statements true and correct, Witness?
HOESS: Yes, they are.
COL. AMEN: "5. On 1 December 1943 1 became Chief of Amt 1 in Amt Group D of the WVHA, and in that office was responsible for co-ordinating all matters arising between RSHA and concentration camps under the administration of WVHA. I held this position until the end of the war. Pohl, as Chief of WVHA, and Kaltenbrunner, as Chief of RSHA, often conferred personally and frequently communicated orally and in writing concerning concentration camps. . . ."
You have already told us about the lengthy report which you took to Kaltenbrunner in Berlin, so I will omit the remainder of Paragraph 5.
"6. The 'final solution' of the Jewish question meant the complete extermination of all Jews in Europe. I was ordered to establish extermination facilities at Auschwitz in June 1941. At that time, there were already in the General Government three other extermination camps: Belzek, Treblinka, and Wolzek. These camps were under the Einsatzkommando of the Security Police and SD. I visited Treblinka to find out how they carried out their exterminations. The camp commandant at Treblinka told me that he had liquidated 80,000 in the course of one-half year. He was principally concerned with liquidating all the Jews from the Warsaw Ghetto. He used monoxide gas, and I did not think that his methods were very efficient. So when I set up the extermination building at Auschwitz, I used Cyklon B, which was a crystallized prussic acid which we dropped into the death chamber from a small opening. It took from 3 to 15 minutes to kill the people in the death chamber, depending upon climatic conditions. We knew when the people were dead because their screaming stopped. We usually waited about one-half hour before we opened the doors and removed the bodies. After the bodies were removed our special Kommandos took off the rings and extracted the gold from the teeth of the corpses."
Is that all true and correct, Witness?
HOESS: Yes.
COL. AMEN: Incidentally, what was done with the gold which was taken from the teeth of the corpses, do you know?
HOESS: Yes.
COL. AMEN: Will you tell the Tribunal?
HOESS: This gold was melted down and brought to the Chief Medical Office of the SS at Berlin.
COL. AMEN:
"7 Another improvement we made over Treblinka was that we built our gas chamber to

accommodate 2,000 people at one time whereas at Treblinka their 10 gas chambers only accommodated 200 people each. The way we selected our victims was as follows: We had two SS doctors on duty at Auschwitz to examine the incoming transports of prisoners. The prisoners would be marched by one of the doctors who would make spot decisions as they walked by. Those who were fit for work were sent into the camp. Others were sent immediately to the extermination plants. Children of tender years were invariably exterminated since by reason of their youth they were unable to work. Still another improvement we made over Treblinka was that at Treblinka the victims almost always knew that they were to be exterminated and at Auschwitz we endeavored to fool the victims into thinking that they were to go through a delousing process. Of course, frequently they realized our true intentions and we sometimes had riots and difficulties due to that fact. Very frequently women would hide their children under the clothes, but of course when we found them we would send the children in to be exterminated. We were required to carry out these exterminations in secrecy but of course the foul and nauseating stench from the continuous burning of bodies permeated the entire area and all of the people living in the surrounding communities knew that exterminations were going on at Auschwitz."

Is that all true and correct, Witness?

HOESS: Yes.

COL. AMEN: Now, I will omit Paragraphs 8 and 9, which have to do with the medical experiments as to which you have already testified.

"10. Rudolf Mildner was the chief of the Gestapo at Katowice . . . from approximately March 1941 until September 1943. As such, he frequently sent prisoners to Auschwitz for incarceration or execution. He visited Auschwitz on several occasions. The Gestapo court, the SS Standgericht, which tried persons accused of various crimes, such as escaping prisoners of war, et cetera, ?frequently met within Auschwitz, and Mildner often attended the trial of such persons, who usually were executed in Auschwitz following their sentence. I showed Mildner through the extermination plant at Auschwitz and he was directly interested in it since he had to send the Jews from his territory for execution at Auschwitz.

"I understand English as it is written above. The above statements are true; this declaration is made by me voluntarily and without compulsion; after reading over the statement I have signed and executed the same at Nuremberg, Germany, on the fifth day of April 1946."

Now I ask you, Witness, is everything which I have read to you true to your own knowledge?

HOESS: Yes.

* * * *

Do you wish to re-examine, Dr. Kauffmann?

DR. KAUFFMANN: I will be very brief.

Witness, in the affidavit which was just read, you said under Point 2 that "at least an additional half million died through starvation and disease." I ask you, when did this take place? Was it towards the end of the war or was this fact observed by you already at an earlier period?

HOESS: No, it all goes back to the last years of the war, that is beginning with the end of 1942.

DR. KAUFFMANN: Under Point 3, do you still have the affidavit before you?

HOESS: No.

DR.KAUFFMANN: May I ask that it be given to the witness again?
[The document was returned to the witness.]
Under Point 3, at the end you state that orders for protective custody, commitments, punishments, and special executions were signed by Kaltenbrunner or Máller, Chief of the Gestapo, as Kaltenbrunner's deputy. Thus, do you wish to contradict what you stated previously?
HOESS: No, this only completes what I said over and again. I read only a few decrees signed by Kaltenbrunner; most of them were signed by Máller.
DR. KAUFFMANN: Under Point 4, at the end, you state:
"All mass executions through gassing took place under the direct order, supervision, and responsibility of RSHA. I received all orders for carrying out these mass executions directly from RSHA."
According to the statements which you previously made to the Tribunal, this entire action came to you directly from Himmler through Eichmann, who had been personally delegated. Do you maintain that now as before?
HOESS: Yes.
DR.KAUFFMANN: With this last sentence under Point 4, do you wish to contradict what you testified before?
HOESS: No. I always, mean regarding mass executions, Obersturmbannfáhrer Eichmann in connection with the RSHA.
DR. KAUFFMANN: Under Point 7, at the end, you state--I am not going to read it--you were saying that even though exterminations took place secretly, the population in the surrounding area noticed something of the extermination of people. Did not, at an earlier period of time--that is, before the beginning of this special extermination action--something of this nature take place to remove people who had died in a normal manner in Auschwitz?
HOESS: Yes, when the crematoria had not yet been built we burned in large pits a large part of those who had died and who could not be cremated in the provisional crematoria of the camp; a large number--I do not recall the figure anymore--were placed in mass graves and later also cremated in these graves. That was before the mass executions of Jews began.
DR. KAUFFMANN: Would you agree with me if I were to say that from the described facts alone, one could not conclusively 'prove that this was concerned with the extermination of Jews?
HOESS: No, this could in no way be concluded from that. The population . . .
THE PRESIDENT: What was your question about?
DR. KAUFFMANN: My question was whether one could assume from the established facts at the end of Paragraph 7 that this concerned the so-called extermination of Jews. I tied this question to the previous answer of the witness. It is my last question.
THE PRESIDENT: The last sentence of Paragraph 7 is with reference to the foul and nauseating stench. What is your question about that?
DR. KAUFFMANN: Whether the population could gather from these things that an extermination of Jews was taking place.
THE PRESIDENT: That really is too obvious a question, isn't it? They could not possibly know who it was being exterminated.
DR. KAUFFMANN: That is enough for me. I have no further questions.
DR. PANNENBECKER: I ask the Tribunal's permission to ask a few supplementary questions,

for during cross examination the witness stated that the Defendant Frick had visited the concentration camps Sachsenhausen and Oranienburg in 1938.
Witness, when an inspection of the concentration camp of Oranienburg took place at that time, 1937-38, was there any evidence at all of atrocities?
HOESS: No.
DR. PANNENBECKER: Why not?
HOESS: Because there was no question of atrocities at that time.
DR. PANNENBECKER: Is it correct that at that period of time the concentration camp at Oranienburg was still a model of order and that agricultural labor was the main occupation? .
HOESS: Yes, that is right. However, work was mainly done in workshops, in wood-finishing workshops.
DR. PANNENBECKER: Can you give me any details as to what was shown at that time at such an official visit?
HOESS: Yes. The visiting party was shown through the prisoners' camp proper, inspected the quarters, the kitchen, the hospital, and then all the administrative buildings; above all the workshops, where the inmates were employed.
DR. PANNENBECKER: At that time were the quarters and the hospitals already overcrowded?
HOESS: No, at that time they were normally filled.
DR. PANNENBECKER: How did these quarters look?
HOESS: At that period of time, living quarters looked the same as the barracks of a training ground. The internees still had bedclothing and all necessary hygienic facilities. Everything was yet in the best of order.
DR. PANNENBECKER: That is all. I have no further questions.
THE TRIBUNAL (Mr. Francis Biddle, Member for the United States): Witness, what was the greatest number of labor camps existing at any one time?
HOESS: I cannot give the exact figure but in my estimation there were approximately 900.
THE TRIBUNAL (Mr. Biddle): What was the population of these 900?
HOESS: I am not able to say that either; the population varied. There were camps with 100 internees and camps with 10,000 internees. Therefore, I cannot give any figure of the total number of people who were in these labor camps.
THE TRIBUNAL (Mr. Biddle): Under whose administration were the labor camps? under what offices?
HOESS: These labor camps, as far as the guarding, direction, and clothing were concerned, were under the control of the Economic and Administration Main Office. All matters dealing with labor output and the supplying of food were attended to by the armament industries which employed these internees.
THE TRIBUNAL (Mr. Biddle): And at the end of the war were the conditions in those labor camps similar to those existing in the concentration camps as you described them before?
HOESS: Yes. Since there no longer was any possibility of bringing ill internees to the main camps, there was much overcrowding in these labor camps and the death rate very high.
THE PRESIDENT: The witness can retire.
[The witness left the stand.]

TESTIMONY OF VLADISLAVA KAROLEWSKA

[Vladislava Karolewska, a former schoolteacher and member of the anti-German resistance in Poland, was arrested in 1941 by the Germans and deported to Ravensbrueck concentration camp near Berlin. At Ravensbrueck, Karolewska was forced to participate in bone regeneration experiments. She testified for the prosecution at the Doctors trial on December 22, 1946. Testimony from *National Archives Records 238, M887*.]

Q: Now, Witness, were you operated while you were in Ravensbrueck concentration camp?

A: Yes, I was.

Q: When did that happen?

A: On the 22nd July 1942, 75 prisoners from our transport that came from Lublin were called, summoned to the chief of the camp. We stood before the camp office, and present Kogel, Mandel and one person which I later recognized Dr. Fischer. We were afterwards sent back to the block and we were told to wait for further instructions. On the 25th of July, all the women from the transport of Lublin were summoned by Mendel, who told us that we were not allowed to work outside of the camp. Also, five women from the transport that came from Warsaw were summoned with us at the same time. We were not allowed to work outside the camp. The next day 75 women were summoned again and we had to stand before the hospital in the camp. Present were Schiedlauski, Oberhauser, Rosenthal, Kogel and the man in when I recognized afterwards Dr. Fischer.

Q: Now, Witness, do you see Oberhauser in the Defendants' dock here?

THE INTERPRETER:
The witness ask for permission to go near the dock and to be able to see them.

MR. MC HANEY:
Please do.

(*Witness points to Dr. Oberhauser*.)

MR. MC HANEY:
And Fischer?

(*Witness pointing to Dr. Fischer*)

MR. MC HANEY:
I will ask that the record show that the witness properly identified the Defendants Oberhauser and Fischer.

THE PRESIDENT:

The record will show that the witness correctly identified the Defendants Oberhauser and Fischer.

I think at this time the Tribunal will take a recess for fifteen minutes. . . .

THE MARSHAL:

The Tribunal is now in session.

Q: Witness, you have told the Tribunal that in July 1942, some seventy-five Polish girls, who were in the transport from Lublin, were called before the camp doctor in Ravensbrueck?

A: Yes.

Q: Now, were any of these girls selected for an operation?

A: On this day we did not know why we were called before the camp doctors and on the same day ten of twenty-five girls were taken to the hospital but we did not know why. Four of them came back and six stayed in the hospital. On the same day six of them came back to the block after having received some injection but we don't know what kind of injection. We did not know what kind of injection. On the 1st of August those six girls were called again to the hospital; these girls who received injections, they were kept in the hospital but we could not get in touch with them to hear from them why they were put in the hospital. A few days later, one of my comrades succeeded to get close to the hospital and learned from one of the prisoners that they were in bed and their legs were in casts. On the 14th of August, the same year, I was called to the hospital and my name was written on a piece of paper. I did not know why. Besides me, eight other girls were called to the hospital. We were called at a time when usually executions took place and I was going to be executed because before some girls were shot down. In the hospital we were put to bed and the hospital room in which we stayed was locked. We were not told what we were to do in the hospital and when one of my comrades put the question she got no answer but she was answered by an ironical smile. Then a German nurse arrived and gave me an injection in my leg. After this injection I vomitted and I was put on a hospital cot and they brought me to the operating room. There, Dr. Schidlauski and Rosenthal gave me the second intravenous injection in my arm. A while before, I noticed Dr. Fischer who went out of the operating room and had operating gloves on. Then I lost my consciousness and when I revived I noticed that I was in a regular hospital room. I recovered my consciousness for a while and I felt severe pain in my leg. Then I lost my consciousness again. I regained my consciousness in the morning and then I noticed that my leg was in a cast from the ankle up to the knee and I felt a very strong pain in this leg and the high temperature. I noticed also that my leg was swollen from the toes up to the groin. The pain was increasing and the temperature, too, and the next day I noticed that some liquid was flowing from my leg.

The third day I was put on a hospital cart and taken to the dressing room. Then I saw Dr. Fischer again. He had an operating gown and rubber gloves on his hands. A

blanket was put over my eyes and I did not know what was done with my leg but I felt great pain and I had the impression that something must have been cut out of my leg. Those present were: Schildauski, Rosenthal, and Oberhauser. After the changing of the dressing I was put again in the regular hospital room. Three days later I was again taken to the dressing room, and the dressing was changed by Dr. Fischer with the assistance of the same doctor, and I was blindfolded, too. I was then sent back to the regular hospital room. The next dressings were made by the camp doctors. Two weeks later we were all taken again to the operating room and put on the operating tables. The bandage was removed, and that was the first time I saw my leg. The incision went so deep that I could see the bone. We were told then there was a doctor from Hohenlychen, Doctor Gebhardt, would come and examine us. We were waiting for his arrival for three hours lying on our tables. When he came a sheet was put over our eyes, but they removed the sheet and I saw him for a short moment. Then, we were taken again to our regular rooms. On the eight of September I was sent back to the block. I could not walk. The puss was draining from my leg; the leg was swollen up and I could not walk. In the block, I stayed in bed for one week; then I was called to the hospital again. I could not walk and I was carried by my comrades. In the hospital I met some of my comrades who were there for the operation. This time I was sure I was going to be executed because I saw an ambulance standing before the office which was used by the Germans to transport people intended for execution. Then, we were taken to the dressing room where Doctor Oberhauser and Doctor Schidlauski examined our legs. We were put to bed again, and on the same day, in the afternoon, I was taken to the operating room and the second operation was performed on my leg. I was put to sleep in the same way as before, having received an injection. And, this time I saw again Doctor Fischer. I woke up in the regular hospital room and I felt a stronger pain and higher temperature.

The symptoms were the same. The leg was swollen and the puss flowed from my leg. After this operation, the dressings were changed by Dr. Fischer every three days. More than ten days afterwards we were taken again to the operating room, put on the table; and we were told that Dr. Gebhardt was going to come to examine our legs. We waited for a long time. Then he arrived and examined our legs while we were blindfolded. This time other people arrived with Dr. Gebhardt; but I don't know their names; and I don't remember their faces. Then we were carried on hospital cots back to our rooms. After this operation I felt still worse; and I could not move. While I was in the hospital, cruelty from Dr. Oberhauser was performed on me.

When I was in my room I made the remark to fellow prisoners that we were operated on in very bad conditions and left here in this room and that we were not given even the possibility to recover. This remark must have been heard by a German nurse who was sitting in the corridor because the door of our room leading to the corridor was opened. The German nurse entered the room and told us to get up and dress. We answered that we could not follow her order because we had great pains in our legs and we couldn't walk. Then the German nurse came with Dr. Oberhauser into our room. Dr. Oberhauser told us to dress and come to the dressing room. We put on our dresses; and, being unable

to walk, we had to hop on one leg going into the operating room. After one hop, we had to rest. Dr. Oberhauser did not allow anybody to help us. When we arrived at the operating room, quite exhausted, Dr. Oberhauser appeared and told us to go back because the change of dressing would not take place that day. I could not walk, but somebody, a prisoner whose name I don't remember, helped me to come back to the room.

Q: Witness, you have told the Tribunal that you were operated on the second time on the 16th of September, 1942? Is that right?

A: Yes, I did.

Q: When did you leave the hospital after this second operation?

A: After the second operation I left the hospital on the 6th of Oct.

Q: Was your leg healed at that time?

A: My leg was swollen up; caused me great pain; and the pus drained from my leg.

Q: Were you able to work?

A: I was unable to work; and I had to stay in bed because I could not walk.

Q: Do you remember when you got out of bed and were able to walk?

A: I stayed in bed several weeks; and then I got up and tried to walk.

Q: How long was it until your leg was healed?

A: The pus was flowing from my leg till June, 1943; and at that time my wound was healed.

Q: Were you operated on again?

A: Yes, I was operated on again in the Bunker.

Q: In the Bunker? That is not in the hospital?

A: Not in the hospital but in the Bunker.

Q: Will you explain to the Tribunal how that happened?

A: May I ask permission to tell something which happened in March, 1943, March or February 1943?

Q: All right.

A: At the end of February 1943, Dr. Oberhauser called us and said, "Those girls are new guinea-pigs"; and we were very well known under this name in the camp. Then we understood that we were persons intended for experiments and we decided to protest against the performance of those operations on healthy people.

We drew up a protest in writing and we went to the camp commander. Not only those girls who had been operated on before but other girls who were called to the hospital came to the office. The operated on girls used crutches and they went without any help.

I would like to tell the contents of the petition made by us. We, the undersigned, Polish political prisoners, ask Herr Commander whether he knew that since the year 1942 in the camp hospital experimental operations have taken place under the name of guinea-pig (das sind Meerschweine), as explaining the meaning of those operations. We ask whether we were operated on as a result of sentences passed on us because, as far as we know, the international law forbids the performance of operations even on political prisoners.

We did not get any answer; and we were not allowed to talk to the commander. On the 15th of August, 1943, a police woman came and read off the names of the ten new prisoners. She told us to follow her to the hospital. We refused to go to the hospital, as we thought that we were intended for a new operation. The police woman told us that we were going probably to be sent to a factory for work outside the camp. We wanted to make sure whether the Arbeitsamt was open because it was Sunday. The police woman told us that we had to go to the hospital and be examined by a doctor before we went to the factory. We refused to go then because we were sure that we will be kept in the hospital and operated on again. All prisoners in the camp were told to stay in the blocks. All of the women who lived in the same block where I was were told to leave the block and stand in line before the Block ten at a time. Then overseer Binz appeared and called out ten names and among them was my name. We went out of the line and stood before the ninth block in line. Then Binz said: "Why do you stand so in line as if you were to be executed?" We told her that the operations were worse for us than executions and that we would prefer to be executed rather than to be operated on again. Binz told us that she might give us work, there was no question of our being operated on but we were going to be sent for work outside the Camp. We told her that we must know that prisoners belonging to our group are not allowed to leave the camp and go outside the camp. Then she told us to follow her into her office, that she would show us a paper proving that we are going to be sent for work to the factory outside the camp. We followed her and we stood before her office. She entered her office for awhile and then went to the canteen where the Camp Commander was. She had a conference with him probably asking him what to do with us. We stood before the office a half an hour. In the meantime one fellow-prisoner who used to work in the canteen walked by us. She told us that Binz asked for help from SS men to take us by force to the hospital. We stood for awhile and then Binz came out of the canteen accompanied by the Camp Commander. We stood for awhile near the camp gate. We were afraid that SS men would come to take us so we ran away and mixed with other people standing before the block. Then Binz and the camp police appeared. They drove us out from the lines by force. She

told us that she put us into the bunker as punishment; that we did not follow her orders. In each cell were put five prisoners although one cell was intended only for one person. The cells were quite dark; without lights. We stayed in the bunker the whole night long and the next day. We slept on the floor because there was only one couch in the cell. The next day we were given a breakfast consisting of black coffee and a piece of dark bread. Then we were locked again in this dark room. We were only troubled by people walking in the corridor of the bunker. The answer was given us the same day in the afternoon.

The watch-woman from the bunker unlocked our cell and got me out of the cell. I thought that I was then to be interrogated or beaten. They took me and they went down the corridor. She opened one door and behind the door stood SS man Dr. Trommel. He told me to follow him upstairs. Following Dr. Trommel I noticed there were other cells, and those cells were with bed clothing. He put me in one of the cells. Then he asked me whether I would agree to a small operation. I told him that I did not agree to it because I had undergone already two operations. He told me that this was going to be a very small operation and that it will not harm me. I told him that I was a political prisoner and that the operation cannot be performed on political prisoners without their consent. He told me to lie down on the bed; I refused to so.

He repeated it twice. Then he want out of the cell and I followed him. He went quickly downstairs and locked the door. Standing before the cell I noticed a cell on the opposite side of the Staircase, and I also noticed some men in operating gowns. There was also one German nurse ready to give an injection. Near the staircase stood a stretcher. That made it clear to me that I was going to be operated on again in the bunker. I decided to defend myself to the last moment. In a moment Trommel came with two SS men. One of these SS men told me to enter the cell. I refused to do it, so he forced me into the cell and threw me on the bed.

Dr. Trommel took me by the left wrist and pulled my arm back. With his other hand he tried to gag me, putting a piece of rag into my mouth, because I shouted. The second SS man took my right hand and stretched it. Two other SS men held me by my feet. Immobilized, I felt that somebody was giving me an injection. I defended myself for a long time, but then I grewweaker. The injection had its effect; I felt sleepy. I heard Trommel saying, "Das ist fertig", that is all.

I regained consciousness again, but I don't know when. Then I noticed that a German nurse was taking off my dress, I then lost consciousness again; I regained it in the morning. Then I noticed that both my legs were in iron splints and were bandaged from the toes to groin. I felt a strong pain in my feet, and a temperature.

In the afternoon of the same day a German nurse came and gave me an injection, in spite of my protests; she gave this injection on my thigh and told me that she had to do it. Four days after this operation a doctor from Hohenlychen arrived, again gave me an injection to put me to sleep, and as I protested he told me that he would change the dressing, I felt a higher temperature and stronger pain in my legs.

Q: Now witness, when was it that you were removed from the bunker after this operation?

A: Ten days after the operation performed in the bunker I was taken -- in the night time -- to the hospital.

Q: Well, that must have been around the latter part of August, is that right; August 1943?

A: Yes it was.

Q: Now, was another operation performed on you in September 1943?

A: About the 15th of September 1943 I was again taken to the operating room and a further operation was performed on my left leg.

Q: Now, in the operation in the bunker they operated on both legs, is that right?

A: Yes in the bunker I was operated in both legs.

Q: In the bunker operation, were your legs dirty the next morning after you woke up; that is, following the operation?

A: When I woke up after the operation that I underwent in the bunker, I noticed that my feet were dirty, covered with mud, that they had not been washed before the operation.

Q: Who performed this operation around the 15th of September 1943 in the camp hospital, do you know?

A: The doctor from Hohenlychen arrived. I was taken to the operating room, I was given an injection, and an operation was performed on my left leg.

Q: Do you know the name of the man who performed the operation?

A: A German nurse told me that this was a doctor from Hohenlychen, assistant to the Chief doctor, whose name was Hartmenn--Dr. Hartmann. However, I don't know whether he actually performed the operation.

Q: Did the nurse tell you that Hartmenn was assistant to Dr. Gebhardt?

A: She told me only that this was a doctor, an assistant, from Hohenlychen.

Q: All right. Now, after this operation on your left leg the middle of September 1943, did they, several weeks later, operated on your right leg?

A: Two weeks later a second operation was performed on my left leg although pus was draining from my former wound, and a piece of shin bone was removed.

Q: Now, witness, I'm a little bit confused. I thought you said that on 15 September 1943 they operated on your left leg. I asked you if two weeks later they performed an operation on your right leg.

A: On 15 September 1943 my right leg was operated on, in spite of the wounds, and two weeks later my left leg was operated on.

Q: Now, do you say, witness, that they removed a piece of shin bone from you legs in these operations.

A: Yes, I do.

Q: Now, how long were you in the hospital after these operations in September 1943?

A: I stayed in the hospital six months. I was in bed. I could not stretch my legs. I could not move them. I could not walk either.

Q: When were you removed from the hospital?

A: At the end of February, 1944.

Q: Were you able to walk then?

A: I tried to walk at that time but couldn't walk.

Q: What sort of work did you do then?

A: When I arrived at the block I stayed in bed for a time and then I used to work knitting stockings.

Q: Have you received any treatment to either of your legs since you were liberated from Ravensbrueck?

A: No.

Q: Do you still suffer any effects from those operations?

A: I'm weak, I have no strength to work and my legs get swollen up very easily.

Q: Witness, I am having handed to you two pictures. These are Documents Nos. 108 1A and 108 1B. Are these pictures taken of you here in Nurnberg?

A: Yes, they were.

Q: I submit these pictures as Prosecution Exhibit 211. Now, witness, will you please remove the shoes and stockings from both of your legs. Now, will you step out from behind the witness box and let the Court see the scars on your legs. Now turn around once, please. Just turn around slowly. Thank you. Sit down now.

Were you ever asked to consent to any of these operations which you underwent at Ravensbrueck?

A: Never.

Q: How many times did you see Gebhardt?

A: Twice.

Q: I will ask you to step down and walk over to the defendant's dock and see whether or not you find the man Gebhardt in the dock.

(*The witness complied and pointed to the Defendant Gebhardt*)

Thank you. Sit down.

I will ask that the record show that the witness properly identified the defendant Gebhardt.

THE PRESIDENT:
The record will show that the witness identified the defendant Gebhardt in the dock.

MR. MC HANEY:
I have no further questions at this time.

Class 4: The United Nations and the Modern Concept of International Human Rights

CHARTER OF THE UNITED NATIONS

PREAMBLE

WE THE PEOPLES OF THE UNITED NATIONS DETERMINED

- to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and
- to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and
- to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and
- to promote social progress and better standards of life in larger freedom,

AND FOR THESE ENDS

- to practice tolerance and live together in peace with one another as good neighbours, and
- to unite our strength to maintain international peace and security, and
- to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest, and
- to employ international machinery for the promotion of the economic and social advancement of all peoples,

HAVE RESOLVED TO COMBINE OUR EFFORTS TO ACCOMPLISH THESE AIMS

Accordingly, our respective Governments, through representatives assembled in the city of San Francisco, who have exhibited their full powers found to be in good and due form, have agreed to the present Charter of the United Nations and do hereby establish an international organization to be known as the United Nations.

CHAPTER IX

INTERNATIONAL ECONOMIC AND SOCIAL CO-OPERATION

Article 55

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

a. higher standards of living, full employment, and conditions of economic and social progress and development;

b. solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and

c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

Article 56

All Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55.

Article 57

1. The various specialized agencies, established by intergovernmental agreement and having wide international responsibilities, as defined in their basic instruments, in economic, social, cultural, educational, health, and related fields, shall be brought into relationship with the United Nations in accordance with the provisions of Article 63.
2. Such agencies thus brought into relationship with the United Nations are hereinafter referred to as specialized agencies.</OL.

Article 58

The Organization shall make recommendations for the co-ordination of the policies and activities of the specialized agencies.

Article 59

The Organization shall, where appropriate, initiate negotiations among the states concerned for the creation of any new specialized agencies required for the accomplishment of the purposes set forth in Article 55.

Article 60

Responsibility for the discharge of the functions of the Organization set forth in this Chapter shall be vested in the General Assembly and, under the authority of the General Assembly, in the Economic and Social Council, which shall have for this purpose the powers set forth in Chapter X.

A Summary of United Nations Agreements on Human Rights

[Note from Professor O'Brien: Although the links on this document are enabled for your convenience, the linked materials are NOT part of the reading assignment.]

Contents

- Universal Declaration of Human Rights
- Covenant on Civil and Political Rights
- Optional Protocol to the Covenant on Civil and Political Rights
- Covenant on Economic, Social, and Cultural Rights
- Convention Against Torture
- Convention Against Genocide
- The Geneva Conventions
- Convention on the Rights of the Child
- Convention on Elimination of Discrimination Against Women
- Charter of the United Nations

Universal Declaration of Human Rights

The UDHR is the first international statement to use the term "human rights", and has been adopted by the Human Rights movement as a charter. It is short, and worth reading in its entirety -- a summary would be about as long as the document itself.

Covenant on Civil and Political Rights

This covenant details the basic civil and political rights of individuals and nations. Among the rights of nations are:

- the right to self determination
- the right to own, trade, and dispose of their property freely, and not be deprived of their means of subsistence

Among the rights of individuals are:

- the right to legal recourse when their rights have been violated, even if the violator was acting in an official capacity
- the right to life
- the right to liberty and freedom of movement
- the right to equality before the law
- the right to presumption of innocence til proven guilty
- the right to appeal a conviction
- the right to be recognized as a person before the law
- the right to privacy and protection of that privacy by law
- freedom of thought, conscience, and religion
- freedom of opinion and expression
- freedom of assembly and association

The covenant forbids torture and inhuman or degrading treatment, slavery or involuntary servitude, arbitrary arrest and detention, and debtor's prisons. It forbids propaganda advocating either war or hatred based on race, religion, national origin, or language.

It provides for the right of people to choose freely whom they will marry and to found a family, and requires that the duties and obligations of marriage and family be shared equally between

partners. It guarantees the rights of children and prohibits discrimination based on race, sex, color, national origin, or language.

It also restricts the death penalty to the most serious of crimes, guarantees condemned people the right to appeal for commutation to a lesser penalty, and forbids the death penalty entirely for people under 18 years of age.

The covenant permits governments to temporarily suspend some of these rights in cases of civil emergency only, and lists those rights which cannot be suspended for any reason. It also establishes the UN Human Rights Commission.

After almost two decades of negotiations and rewriting, the text of the Universal Covenant on Civil and Political Rights was agreed upon in 1966. In 1976, after being ratified by the required 35 states, it became international law.

Optional Protocol to the Covenant on Civil and Political Rights

The protocol adds legal force to the Covenant on Civil and Political Rights by allowing the Human Rights Commission to investigate and judge complaints of human rights violations from individuals from signator countries.

Covenant on Economic, Social, and Cultural Rights

This covenant describes the basic economic, social, and cultural rights of individuals and nations, including the right to:

- self-determination
- wages sufficient to support a minimum standard of living
- equal pay for equal work
- equal opportunity for advancement
- form trade unions
- strike
- paid or otherwise compensated maternity leave
- free primary education, and accessible education at all levels
- copyright, patent, and trademark protection for intellectual property

In addition, this convention forbids exploitation of children, and requires all nations to cooperate to end world hunger. Each nation which has ratified this covenant is required to submit annual reports on its progress in providing for these rights to the Secretary General, who is to transmit them to the Economic and Social Council.

The text of this covenant was finalized in 1966 along with that of the Covenant on Civil and Political Rights, but has not been ratified yet.

UN Convention on the Condition of the Wounded and Sick in Armed Forces (I)

Also called the first Geneva Convention

The first Geneva Convention focuses on the rights of individuals, combatants and non-combatants, during war. It is lengthy and detailed, perhaps because human rights are rarely at such risk as during war and, in particular, involving prisoners of war or enemy captives.

Convention against Genocide

This convention bans acts committed with the intent to destroy, in whole or in part, a national, ethnic, racial or religious group. It declares genocide a crime under international law whether committed during war or peacetime, and binds all signators of the convention to to take measures to prevent and punish any acts of genocide committed within their jurisdiction. The act bans killing of members of any racial, ethnic, national or religious group because of their membership in that group, causing serious bodily or mental harm to members of the group, inflicting on members of the group conditions of life intended to destroy them, imposing measures intended to prevent births within the group, and taking group members' children away from them and giving them to members of another group.

It declares genocide itself, conspiracy or incitement to commit genocide, attempts to commit orcomplicity in the commission of genocide all to be illegal. Individuals are to be held responsible for these acts whether they were acting in their official capacities or as private individuals. Signators to the convention are bound to enact appropriate legislation to make the acts named in Article 3 illegal under their national law and provide appropriate penalties for violators.

People suspected of acts of genocide may be tried by a national tribunal in the territory where the acts were committed or by a properly constituted international tribunal whose jurisdiction is recognized by the state or states involved. For purposes of extradition, an allegation of genocide is not to be considered a political crime, and states are bound to extradite suspects in accordance

with national laws and treaties. Any state party to the Convention may also call upon the United Nations to act to prevent or punish acts of genocide.

The remainder of the Convention specifies procedures for resolving disputes between nations about whether a specific act or acts constitute(s) genocide, and gives procedures for ratification of the convention.

Convention against Torture

This convention bans torture under all circumstances and establishes the UN Committee against Torture. In particular, it defines torture, requires states to take effective legal and other measures to prevent torture, declares that no state of emergency, other external threats, nor orders from a superior officer or authority may be invoked to justify torture. It forbids countries to return a refugee to his country if there is reason to believe he/she will be tortured, and requires host countries to consider the human rights record of the person's native country in making this decision.

The CAT requires states to make torture illegal and provide appropriate punishment for those who commit torture. It requires states to assert jurisdiction when torture is committed within their jurisdiction, either investigate and prosecute themselves, or upon proper request extradite suspects to face trial before another competent court. It also requires states to cooperate with any civil proceedings against accused torturers.

Each state is obliged to provide training to law enforcement and military on torture prevention, keep its interrogation methods under review, and promptly investigate any allegations that its officials have committed torture in the course of their official duties. It must ensure that individuals who allege that someone has committed torture against them are permitted to make and official complaint and have it investigated, and, if the complaint is proven, receive compensation, including full medical treatment and payments to survivors if the victim dies as a result of torture.. It forbids states to admit into evidence during a trial any confession or statement made during or as a result of torture. It also forbids activities which do not rise to the level of torture, but which constitute cruel or degrading treatment.

The second part of the Convention establishes the Committee Against Torture, and sets out the rules on its membership and activities.

The Convention was passed and opened for ratification in February, 1985. At that time twenty nations signed, and five more signed within the month. At present sixty five nations have ratified the Convention against torture and sixteen more have signed but not yet ratified it.

Convention on Eliminiation of Discrimination Against Women

This convention bans discrimination against women. The copy of the Convention on Women presently accessible through this page is a fully- indexed HTML document. A linked summary of the document will be written in the next few weeks.

Convention on the Rights of the Child

This convention bans discrimination against children and provides for special protection and rights appropriate to minors. The copy of the Convention on the Rights of the Child presently accessible through this page is a fully-indexed HTML document. A linked summary of the document will be written in the next few weeks.

Charter of the United Nations

The Charter of the United Nations contains some important human rights provisions, in addition to containing the framework for the organization as a whole. This is a fully indexed HTML version of the charter. A summary will be written at some future date.

UNIVERSAL DECLARATION OF HUMAN RIGHTS

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,

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 their 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 the 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 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 proven 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 committed. 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 an 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 international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23

1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
2. Everyone, without any discrimination, has the right to equal pay for equal work.
3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
4. Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education 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.

Created on July 6, 1994 / Last edited on January 27, 1997

B. UN Human Rights Institutions

Office of the High Commissioner for Human Rights

What we do

Cherif Bassiouni, Independant Expert on Human Rights in Afghanistan

As the principal United Nations office mandated to promote and protect human rights for all, OHCHR leads global human rights efforts speaks out objectively in the face of human rights violations worldwide. We provide a forum for identifying, highlighting and developing responses to today's human rights challenges, and act as the principal focal point of human rights research, education, public information, and advocacy activities in the United Nations system.

Since Governments have the primary responsibility to protect human rights, the High Commissioner for Human Rights (OHCHR) provides assistance to Governments, such as expertise and technical trainings in the areas of administration of justice, legislative reform, and electoral process, to help implement international human rights standards on the ground. We also assist other entities with responsibility to protect human rights to fulfil their obligations and individuals to realize their rights.

Mainstreaming human rights

Plenary Room 61st Commission

Since the establishment of the United Nations in 1945, promoting and encouraging respect for human rights for all without distinction as to race, sex, language, or religion, as stipulated in the United Nations Charter, has been one of the fundamental goals of the organization. We are tasked with mainstreaming human rights within the United Nations, which means injecting a human rights perspective into all United Nations programmes. This is to ensure that peace and security, development, and human rights -- the three essential pillars of the United Nations system -- are interlinked and mutually reinforcing.

This task is essential at a time when the United Nations is undergoing its most far-reaching reform. As we face ever changing challenges in the new millennium, the international community unequivocally puts human rights at centre-stage in addressing various pressing issues worldwide. At the United Nations World Summit in 2005, world leaders reaffirmed the leading role and mandate of OHCHR in responding to the broad range of human rights challenges facing the international community today.

Partnerships

With our leading human rights role and the important task of mainstreaming human rights into the United Nations system, we work with Governments, civil society, national human rights institutions and other United Nations entities and international organizations, such as the International Labour Organization, the

Office of the High Commissioner for Refugees, t he United Nations Children's Fund, United Nations Educational, Scientific and Cultural Organization , the International Criminal Court, specialized criminal tribunals, such as the ones for former Yugoslavia and for Rwanda, established by the Security Council, and the World Bank in their efforts to promote and protect human rights.

Paul Hunt, Special Rapporteur on the highest attainable standards of health in Uganda

Monitoring team COCAP, Nepal

Standard-setting and monitoring

Our method of work focuses on three major dimensions: standard-setting, monitoring, and implementation on the ground. We work to offer the best expertise, and substantive and secretariat support to the different United Nations human rights bodies as they discharge their standard-setting and monitoring duties. OHCHR, for example, serves as the Secretariat of the Human Rights Council. The Council, consisting of State representatives, is the key United Nations intergovernmental body responsible for human rights.

We also support the work of special prodecures –including special rapporteurs , independent experts, and working groups-- appointed by the Council to monitor human rights in different countries or in relation to specific issues. We assist these independent experts as they carry out visits to the field, receive and consider direct complaints from victims of human rights violations, and appeal to governments on behalf of victims. Another example of the standard-setting and monitoring dimensions of our work is the legal research and secretariat support it provides to the core human rights treaty bodies. These committees of independent experts are mandated to monitor State parties' compliance with their treaty obligations. They meet regularly to examine reports from State parties and issue their recommendations.

Asma Jahangir, Special Rapporteur on freedom of religion, with a woman

Implementation on the ground

We work to ensure the implementation of international human rights standards on the ground through greater country engagement and its field presences. Over the years, OHCHR has also increased its presence in the field, reaching out to the people who need it the most. Our field offices and presences play an essential role in identifying, highlighting, and developing responses to human rights challenges, in close collaboration with governments, the United Nations system, non-governmental organizations, and members of civil society. Among these responses are monitoring human rights situations on the ground and implementing projects, such as technical trainings and support in the areas of administration of justice, legislative reform, human rights treaty ratification, and human rights education, designed in cooperation with member States.

UN Commission on the Status of Women

The Commission on the Status of Women (hereafter referred to as "CSW" or "the Commission") is a functional commission of the United Nations Economic and Social Council (ECOSOC), dedicated exclusively to gender equality and advancement of women. It is the principal global policy-making body. Every year, representatives of Member States gather at United Nations Headquarters in New York to evaluate progress on gender equality, identify challenges, set global standards and formulate concrete policies to promote gender equality and advancement of women worldwide.

The Commission was established by ECOSOC resolution 11(II) of 21 June 1946 with the aim to prepare recommendations and reports to the Council on promoting women's rights in political, economic, civil, social and educational fields. The Commission also makes recommendations to the Council on urgent problems requiring immediate attention in the field of women's rights.

Click here to learn more about the Commission's history.

The next session of the Commission (fifty-third session) will take place in 2009. The fifty-second session of the Commission took place from 25 February to 7 March 2008.

Recent CSW session
Fifty-second session of the Commission on the Status of Women (25 February - 7 March 2008)

Mandate

The Commission's mandate was expanded in 1987 by ECOSOC resolution 1987/22 to include the functions of promoting the objectives of equality, development and peace, monitoring the implementation of measures for the advancement of women, and reviewing and appraising progress made at the national, subregional, regional and global levels. Following the 1995 Fourth World Conference on Women, the General Assembly mandated the Commission to integrate into its programme a follow-up process to the Conference, regularly reviewing the critical areas of concern in the Beijing Platform for Action and to develop its catalytic role in mainstreaming a gender perspective in United Nations activities. The Economic and Social Council (ECOSOC) again modified the Commission's terms of reference in 1996, in its resolution 1996/6, to include, inter alia, identifying emerging issues, trends and new approaches to issues affecting equality between women and men.

Membership and composition

Forty-five Member States of the United Nations serve as members of the Commission at any one time. The Commission consists of one representative from each of the 45 Member States elected by the Council on the basis of equitable geographical distribution: thirteen members from Africa; eleven from Asia; nine from Latin America and Caribbean; eight from Western Europe and other States and four from Eastern Europe. Members are elected for a period of four years.

Click **here** to download the list of current members of the Commission.

Annual sessions

The Commission meets annually for a period of 10 working days (late February-early March). The fifty-second session of the Commission took place from 25 February to 7 March 2008. .

The Bureau

The Bureau of the Commission plays a crucial role in facilitating the preparation for, and in ensuring the successful outcome of the annual sessions of the Commission. Bureau members serve for two years. In 2002, in order to improve its work and ensure continuity, the Commission decided to hold the first meeting of its subsequent session, immediately following the closure of the regular session, for the sole purpose of electing the new Chairperson and other members of the Bureau (Council resolution 46/101).

The current Bureau comprises the following members:

- **H.E. Mr. Olivier Belle** (Belgium), Chairperson
- **Mr. Ara Margarian** (Armenia), Vice Chairperson
- **Ms. Enna Park** (Republic of Korea), Vice Chairperson
- **Mr. Julio Peralta** (Paraguay), Vice Chairperson
- **Ms. Cécile Mballa Eyenga** (African Group), Vice Chairperson

Output of the Commission

The principal output of the Commission on the Status of Women is the so-called **Agreed conclusions** on priority themes set for each year. Agreed conclusions, contain an analysis of the priority theme of concern and a set of concrete recommendations for Governments, intergovernmental bodies and other institutions, civil society actors and other relevant stakeholders, to be implemented at the international, national, regional and local level.

In addition to the Agreed Conclusions, the Commission also adopts a number of resolutions on a range of issues, including the situation of and assistance to Palestinian women; and women, the girl child and HIV/AIDS.

The final report of the Commission is submitted to the Economic and Social Council for adoption.

Role of the Secretariat

The Division for the Advancement of Women is responsible for substantive servicing of the Commission, including through supporting the work of the CSW Bureau. The Division is also responsible for facilitating the participation of civil society representatives in the Commission's annual session, as well as for the coordination of parallel events held at the United Nations during the Commission's sessions.

Sub-Commission on the Promotion and Protection of Human Rights

See information leaflet A I C I E I F I R I S

The Sub-Commission is the main subsidiary body of the Commission on Human Rights. It was established by the Commission at its first session in 1947 under the authority of the Economic and Social Council (ECOSOC). In 1999 the Economic and Social Council changed its title from Sub-Commission on Prevention of Discrimination and Protection of Minorities to Sub-Commission on the Promotion and Protection of Human Rights. Its functions are:

(a) To undertake studies, particularly in the light of the Universal Declaration of Human Rights, and to make recommendations to the Commission concerning the prevention of discrimination of any kind relating to human rights and fundamental freedoms and the protection of racial, national, religious and linguistic minorities;

(b) To perform any other functions which may be entrusted to it by the Council or the Commission.

The Sub-Commission is composed of 26 experts who act in their personal capacity and are elected by the Commission with due regard to equitable geographical distribution. The present membership consists of seven experts from African States, five from Asian States, five from Latin American States, three from Eastern European States and six from Western European and other States. Each member has one alternate. Half the members and their alternates are elected every two years and each serves for a term of four years.

The Sub-Commission holds an annual session in Geneva, which ran for four weeks until 1999 and has been reduced to three weeks since 2000. In addition to the members and alternates, it is attended by observers from States, United Nations bodies and specialized agencies, other intergovernmental organizations and non-governmental organizations in consultative status with the Economic and Social Council.

At present, the Sub-Commission has six working groups. They are the Working Group on Communications (which considers complaints that appear to reveal a consistent pattern of gross and reliably attested violations of human rights within its terms of reference, together with replies from Governments, if any); the Working Group on Contemporary Forms of Slavery; the Working Group on Indigenous Populations; the Working Group on Minorities; the Working Group on Administration of Justice; and the Working Group on Transnational Corporations.

Class 5: Regional instruments and institutions for the protection of human rights.

A. Europe

1. THE EUROPEAN CONVENTION ON HUMAN RIGHTS AND ITS FIVE PROTOCOLS

The European Convention on Human Rights

The Governments signatory hereto, being Members of the Council of Europe,

Considering the Universal Declaration of Human Rights proclaimed by the General Assembly of the United Nations on 10 December 1948;

Considering that this Declaration aims at securing the universal and effective recognition and observance of the Rights therein declared;

Considering that the aim of the Council of Europe is the achievement of greater unity between its Members and that one of the methods by which the aim is to be pursued is the maintenance and further realization of Human Rights and Fundamental Freedoms;

Reaffirming their profound belief in those Fundamental Freedoms which are the foundation of justice and peace in the world and are best maintained on the one hand by an effective political democracy and on the other by a common understanding and observance of the Human Rights upon which they depend;

Being resolved, as the Governments of European countries which are like-minded and have a common heritage of political traditions, ideals, freedom and the rule of law to take the first steps for the collective enforcement of certain of the Rights stated in the Universal Declaration;

Have agreed as follows:

ARTICLE 1

The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.

SECTION I

ARTICLE 2

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:
    - (a) in defence of any person from unlawful violence;
    - (b) in order to effect a lawful arrest or to prevent escape of a person lawfully detained;
    - (c) in action lawfully taken for the purpose of quelling a riot or insurrection.

ARTICLE 3

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

ARTICLE 4

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. For the purpose of this article the term forced or compulsory labour' shall not include:
    - (a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;
    - (b) any service of a military character or, in case of conscientious objectors in countries where they are recognized, service exacted instead of compulsory military service;
    - (c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;
    - (d) any work or service which forms part of normal civic obligations.

ARTICLE 5

1. Everyone has the right to liberty and security of person.

No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

- (a) the lawful detention of a person after conviction by a competent court;
- (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
- (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority of reasonable suspicion of having committed and offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
- (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
- (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts, or vagrants;
- (f) the lawful arrest or detention of a person to prevent his effecting an unauthorized entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and the charge against him.
3. Everyone arrested or detained in accordance with the provisions of paragraph 1(c) of this article shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.
4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.
5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation.

ARTICLE 6

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced

publicly by the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
3. Everyone charged with a criminal offence has the following minimum rights:
    - (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
    - (b) to have adequate time and the facilities for the preparation of his defence;
    - (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
    - (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
    - (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

ARTICLE 7

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.
2. This article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according the general principles of law recognized by civilized nations.

ARTICLE 8

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for

the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

ARTICLE 9

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or the protection of the rights and freedoms of others.

ARTICLE 10

1. Everyone has the right to freedom of expression. this right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or the rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

ARTICLE 11

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. this article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

ARTICLE 12

Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.

ARTICLE 13

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

ARTICLE 14

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

ARTICLE 15

1. In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.
2. No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision.
3. Any High Contracting Party availing itself of this right of derogation shall keep the Secretary-General of the Council of Europe fully informed of the measures which it has taken and the reasons therefor. It shall also inform the Secretary-General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed.

ARTICLE 16

Nothing in Articles 10, 11, and 14 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens.

ARTICLE 17

Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction on any of the rights

and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.

ARTICLE 18

The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.

SECTION II

ARTICLE 19

To ensure the observance of the engagements undertaken by the High Contracting Parties in the present Convention, there shall be set up:

1. A European Commission of Human Rights hereinafter referred to as 'the Commission';
2. A European Court of Human Rights, hereinafter referred to as 'the Court'.

[Subsequent sections omitted]

2. European Commissioner for Human Rights

Mandate of the Commissioner for Human Rights

The fundamental objectives of the Commissioner for Human Rights are laid out in Resolution (99) 50 on the Council of Europe Commissioner for Human Rights. According to this resolution, the Commissioner is mandated to:

- foster the effective observance of human rights, and assist member states in the implementation of Council of Europe human rights standards;
- promote education in and awareness of human rights in Council of Europe member states;
- identify possible shortcomings in the law and practice concerning human rights;
- facilitate the activities of national ombudsperson institutions and other human rights structures; and
- provide advice and information regarding the protection of human rights across the region.

The Commissioner's work thus focuses on encouraging reform measures to achieve tangible improvement in the area of human rights promotion and protection. Being a non-judicial institution, the Commissioner's Office cannot act upon individual complaints, but the Commissioner can draw conclusions and take wider initiatives on the basis of reliable information regarding human rights violations suffered by individuals.

The Commissioner co-operates with a broad range of international and national institutions as

well as human rights monitoring mechanisms. The Office's most important inter-governmental partners include the United Nations and its specialised offices, the European Union, and the OSCE. The Office also cooperates closely with leading human rights NGOs, universities and think-tanks.

Activities of the Commissioner for Human Rights

Dialogue with governments and country visits

The Commissioner seeks to engage in permanent dialogue with Council of Europe member states and conducts official country missions for a comprehensive evaluation of the human rights situation. The missions typically include meetings with the highest representatives of government, parliament, the judiciary, as well as leading members of human rights protection institutions and the civil society. The Commissioner's reports contain both an analysis of human rights practices and detailed recommendations about possible ways of improvement. The reports are presented to the Council of Europe's Committee of Ministers and the Parliamentary Assembly. Subsequently they are published and widely circulated in the policy-making and NGO community as well as the media.

A few years after the official visit to a country, the Commissioner or his Office carries out a follow-up visit to assess the progress made in implementing the recommendations. The Commissioner subsequently issues a follow-up report, which is also widely publicised. Last but not least, the Commissioner conducts contact visits to countries or regions in order to strengthen relations with the authorities and to examine one or a number of problem areas, albeit without issuing general reports.

Thematic recommendations and awareness-raising

The Commissioner for Human Rights is also mandated to provide advice and information on the protection of human rights and the prevention of human rights violations. When the Commissioner considers it appropriate, his Office issues recommendations regarding a specific human rights issue in a single member state (or several). Either on the request of national bodies or on his own initiative, the Commissioner may also give opinions on draft laws and specific practices.

The Commissioner is further mandated to promote awareness of human rights in Council of Europe member states. To this end, the Commissioner's Office organises and co-organises seminars and events on various human rights themes, and seeks to engage in permanent dialogue with governments, civil society organisations and educational institutions in order to improve the publics' awareness of Council of Europe human rights standards.

Promoting the development of national human rights structures

The Commissioner closely cooperates with national Ombudsmen, National Human Rights Institutions and other structures entrusted to protect human rights. The Commissioner also maintains close working relations with the European Union's Ombudsman and organises biennial roundtables with the Ombudsmen and National Human Rights Institutions of Council of Europe member states. In countries where these do not exist or are not fully developed, the Commissioner strongly supports their establishment and effective operation.

Contact

Office of the Commissioner for Human Rights
Council of Europe
F-67075 Strasbourg Cedex
FRANCE

3. The European Court of Human Rights

A. Organisation of the Court

11. The Court, as presently constituted, was brought into being by Protocol No. 11 on 1 November 1998. This amendment made the Convention process wholly judicial, as the Commission's function of screening applications was entrusted to the Court itself, whose jurisdiction became mandatory. The Committee of Ministers' adjudicative function was formally abolished.

12. The provisions governing the structure and procedure of the Court are to be found in Section II of the Convention (Articles 19-51). The Court is composed of a number of judges equal to that of the Contracting States (currently forty-five[6]). Judges are elected by the Parliamentary Assembly of the Council of Europe, which votes on a shortlist of three candidates put forward by Governments. The term of office is six years, and judges may be re-elected. Their terms of office expire when they reach the age of seventy, although they continue to deal with cases already under their consideration. Judges sit on the Court in their individual capacity and do not represent any State. They cannot engage in any activity which is incompatible with their independence or impartiality or with the demands of full-time office.

[6] See Appendix II for the list of judges. Biographical details and photographs of judges are to be found on the Court's internet site.
[#1762893]

13. The Plenary Court has a number of functions that are stipulated in the Convention. It elects the office holders of the Court, i.e. the President, the two Vice-Presidents (who also preside over a Section) and the three other Section Presidents. In each case, the term of office is three years. The Plenary Court also elects the Registrar and Deputy Registrar. The Rules of Court are adopted and amended by the Plenary Court. It also determines the composition of the Sections.
14. Under the Rules of Court, every judge is assigned to one of the five Sections, whose composition is geographically and gender balanced and takes account of the different legal systems of the Contracting States. The composition of the Sections is varied every three years.
15. The great majority of the judgments of the Court are given by Chambers. These comprise seven judges and are constituted within each Section. The Section President and thejudge elected in respect of the State concerned sit in each case. Where the latter is not a member of the Section, he or she sits as an *ex officio* member of the Chamber. If the respondent State in a case is that of the Section President, the Vice-President of the Section will preside. In every case that is decided by a Chamber, the remaining members of the Section who are not full members of that Chamber sit as substitute members.
16. Committees of three judges are set up within each Section for twelve-month periods. Their function is to dispose of applications that are clearly inadmissible.
17. The Grand Chamber of the Court is composed of seventeen judges, who include, as *ex officio* members, the President, Vice-Presidents and Section Presidents. The Grand Chamber deals with

cases that raise a serious question of interpretation or application of the Convention, or a serious issue of general importance. A Chamber may relinquish jurisdiction in a case to the Grand Chamber at any stage in the procedure before judgment, as long as both parties consent. Where judgment has been delivered in a case, either party may, within a period of three months, request referral of the case to the Grand Chamber. Where a request is granted, the whole case is reheard.
18. The effect of Protocol No. 14 on the organisation of the Court is explained at part C below.

B. Procedure before the Court

1. General

19. Any Contracting State (State application) or individual claiming to be a victim of a violation of the Convention (individual application) may lodge directly with the Court in Strasbourg an application alleging a breach by a Contracting State of one of the Convention rights. A notice for the guidance of applicants and the official application form are available on the Court's internet site. They may also be obtained directly from the Registry.
20. The procedure before the European Court of Human Rights is adversarial and public. It is largely a written procedure. Hearings, which are held only in a very small minority of cases, are public, unless the Chamber/Grand Chamber decides otherwise on account of exceptional circumstances. Memorials and other documents filed with the Court's Registry by the parties are, in principle, accessible to the public.
21. Individual applicants may present their own cases, but they should be legally represented once the application has been communicated to the respondent Government. The Council of Europe has set up a legal aid scheme for applicants who do not have sufficient means.
22. The official languages of the Court are English and French, but applications may be submitted in one of the official languages of the Contracting States. Once the application has been declared admissible, one of the Court's official languages must be used, unless the President of the Chamber/Grand Chamber authorises the continued use of the language of the application.

2. The handling of applications

23. Each application is assigned to a Section, where it will be dealt with by a Committee or a Chamber. An individual application that clearly fails to meet one of the admissibility criteria will be referred to a Committee, which will declare it inadmissible or strike it off. A unanimous vote is required, and the Committee's decision is final. All other individual applications, as well as inter-State applications are referred to a Chamber. One member of the Chamber will be designated to act as rapporteur for the case. The identity of the rapporteur is not divulged to the parties. The application will be communicated to the respondent State, which will be asked to address the issues of admissibility and merits that arise, as well as the applicant's claims for just satisfaction. The parties will also be invited to consider whether a friendly settlement is possible. The Registrar facilitates friendly settlement negotiations, which are confidential and without prejudice to the parties' positions.
24. The Chamber will determine both admissibility and merits. As a rule, both aspects are

taken together in a single judgment, although the Chamber may take a separate decision on admissibility, where appropriate. Such decisions, which are taken by majority vote, must contain reasons and be made public.

25. The President of the Chamber may, in the interests of the proper administration of justice, invite or grant leave to any Contracting State which is not party to the proceedings, or any person concerned who is not the applicant, to submit written comments, and, in exceptional circumstances, to make representations at the hearing. A Contracting State whose national is an applicant in the case is entitled to intervene as of right.

26. Chambers decide by a majority vote. Any judge who has taken part in the consideration of the case is entitled to append to the judgment a separate opinion, either concurring or dissenting, or a bare statement of dissent.

27. A Chamber judgment becomes final three months after its delivery. Within that time, any party may request that the case be referred to the Grand Chamber if it raises a serious question of interpretation or application or a serious issue of general importance. If the parties declare that they will not make such a request, the judgment will become final immediately. Where a request for referral is made, it is examined by a panel of five judges composed of the President of the Court, two Section Presidents designated by rotation, and two more judges also designated by rotation. No judge who has considered the admissibility and/or merits of the case may be part of the panel that considers the request. If the panel rejects the request, the Chamber judgment becomes final immediately. A case that is accepted will be re-heard by the Grand Chamber. Its judgment is final.

28. All final judgments of the Court are binding on the respondent States concerned.

29. Responsibility for supervising the execution of judgments lies with the Committee of Ministers of the Council of Europe. The Committee of Ministers verifies whether the State in respect of which a violation of the Convention is found has taken adequate remedial measures, which may be specific and/or general, to comply with the Court's judgment.

30. The changes in procedure that Protocol No. 14 will bring about are described in the next part.

C. Protocol No. 14

[omitted]

B. Inter-American

1. AMERICAN DECLARATION OF THE RIGHTS AND DUTIES OF MAN

(Adopted by the Ninth International Conference of American States,
Bogotá, Colombia, 1948)

WHEREAS:

The American peoples have acknowledged the dignity of the individual, and their national constitutions recognize that juridical and political institutions, which regulate life in human society, have as their principal aim the protection of the essential rights of man and the creation of circumstances that will permit him to achieve spiritual and material progress and attain happiness;

The American States have on repeated occasions recognized that the essential rights of man are not derived from the fact that he is a national of a certain state, but are based upon attributes of his human personality;

The international protection of the rights of man should be the principal guide of an evolving American law;

The affirmation of essential human rights by the American States together with the guarantees given by the internal regimes of the states establish the initial system of protection considered by the American States as being suited to the present social and juridical conditions, not without a recognition on their part that they should increasingly strengthen that system in the international field as conditions become more favorable,

The Ninth International Conference of American States

AGREES:

To adopt the following

AMERICAN DECLARATION OF THE RIGHTS AND DUTIES OF MAN

Preamble

All men are born free and equal, in dignity and in rights, and, being endowed by nature with reason and conscience, they should conduct themselves as brothers one to another.

The fulfillment of duty by each individual is a prerequisite to the rights of all. Rights and duties are interrelated in every social and political activity of man. While rights exalt individual liberty, duties express the dignity of that liberty.

Duties of a juridical nature presuppose others of a moral nature which support them in principle and constitute their basis.

Inasmuch as spiritual development is the supreme end of human existence and the highest expression thereof, it is the duty of man to serve that end with all his strength and resources.

Since culture is the highest social and historical expression of that spiritual development, it is the duty of man to preserve, practice and foster culture by every means within his power.

And, since moral conduct constitutes the noblest flowering of culture, it is the duty of every man always to hold it in high respect.

CHAPTER ONE

Rights

Right to life, liberty and personal security.

Article I. Every human being has the right to life, liberty and the security of his person.

Right to equality before law.

Article II. All persons are equal before the law and have the rights and duties established in this Declaration, without distinction as to race, sex, language, creed or any other factor.

Right to religious freedom and worship.

Article III. Every person has the right freely to profess a religious faith, and to manifest and practice it both in public and in private.

Right to freedom of investigation, opinion, expression and dissemination.

Article IV. Every person has the right to freedom of investigation, of opinion, and of the expression and dissemination of ideas, by any medium whatsoever.

Right to protection of honor, personal reputation, and private and family life.

Article V. Every person has the right to the protection of the law against abusive attacks upon his honor, his reputation, and his private and family life.

Right to a family and to protection thereof.

Article VI. Every person has the right to establish a family, the basic element of society, and to receive protection therefor.

Right to protection for mothers and children.

Article VII. All women, during pregnancy and the nursing period, and all children have the right to special protection, care and aid.

Right to residence and movement.

Article VIII. Every person has the right to fix his residence within the territory of the state of which he is a national, to move about freely within such territory, and not to leave it except by his own will.

Right to inviolability of the home.

Article IX. Every person has the right to the inviolability of his home.

Right to the inviolability and transmission of correspondence

Article X. Every person has the right to the inviolability and transmission of his correspondence.

Right to the preservation of health and to well-being.

Article XI. Every person has the right to the preservation of his health through sanitary and social measures relating to food, clothing, housing and medical care, to the extent permitted by public and community resources.

Right to education.

Article XII. Every person has the right to an education, which should be based on the principles of liberty, morality and human solidarity.

Likewise every person has the right to an education that will prepare him to attain a decent life, to raise his standard of living, and to be a useful member of society.

The right to an education includes the right to equality of opportunity in every case, in accordance with natural talents, merit and the desire to utilize the resources that the state or the community is in a position to provide.

Every person has the right to receive, free, at least a primary education.

Right to the benefits of culture.

Article XIII. Every person has the right to take part in the cultural life of the community, to enjoy the arts, and to participate in the benefits that result from intellectual progress, especially scientific discoveries.

He likewise has the right to the protection of his moral and material interests as regards his inventions or any literary, scientific or artistic works of which he is the author.

Right to work and to fair remuneration.

Article XIV. Every person has the right to work, under proper conditions, and to follow his vocation freely, insofar as existing conditions of employment permit.

Every person who works has the right to receive such remuneration as will, in proportion to his capacity and skill, assure him a standard of living suitable for himself and for his family.

Right to leisure time and to the use thereof.

Article XV. Every person has the right to leisure time, to wholesome recreation, and to the opportunity for advantageous use of his free time to his spiritual, cultural and physical benefit.

Right to social security.

Article XVI. Every person has the right to social security which will protect him from the consequences of unemployment, old age, and any disabilities arising from causes beyond his control that make it physically or mentally impossible for him to earn a living.

Right to recognition of juridical personality and civil rights.

Article XVII. Every person has the right to be recognized everywhere as a person having rights and obligations, and to enjoy the basic civil rights.

Right to a fair trial.

Article XVIII. Every person may resort to the courts to ensure respect for his legal rights. There should likewise be available to him a simple, brief procedure whereby the courts will protect him from acts of authority that, to his prejudice, violate any fundamental constitutional rights.

Right to nationality.

Article XIX. Every person has the right to the nationality to which he is entitled by law and to change it, if he so wishes, for the nationality of any other country that is willing to grant it to him.

Right to vote and to participate in government.

Article XX. Every person having legal capacity is entitled to participate in the government of his country, directly or through his representatives, and to take part in popular elections, which shall be by secret ballot, and shall be honest, periodic and free.

Right of assembly.

Article XXI. Every person has the right to assemble peaceably with others in a formal public meeting or an informal gathering, in connection with matters of common interest of any nature.

Right of association.

Article XXII. Every person has the right to associate with others to promote, exercise and protect his legitimate interests of a political, economic, religious, social, cultural, professional, labor union or other nature.

Right to property.

Article XXIII. Every person has a right to own such private property as meets the essential needs of decent living and helps to maintain the dignity of the individual and of the home.

Right of petition.

Article XXIV. Every person has the right to submit respectful petitions to any competent authority, for reasons of either general or private interest, and the right to obtain a prompt decision thereon.

Right of protection from arbitrary arrest.

Article XXV. No person may be deprived of his liberty except in the cases and according to the procedures established by pre-existing law.

No person may be deprived of liberty for nonfulfillment of obligations of a purely civil character.

Every individual who has been deprived of his liberty has the right to have the legality of his detention ascertained without delay by a court, and the right to be tried without undue delay or, otherwise, to be released. He also has the right to humane treatment during the time he is in custody.

Right to due process of law.

Article XXVI. Every accused person is presumed to be innocent until proved guilty.

Every person accused of an offense has the right to be given an impartial and public hearing, and to be tried by courts previously established in accordance with pre-existing laws, and not to receive cruel, infamous or unusual punishment.

Right of asylum.

Article XXVII. Every person has the right, in case of pursuit not resulting from ordinary crimes, to seek and receive asylum in foreign territory, in accordance with the laws of each country and with international agreements.

Scope of the rights of man.

Article XXVIII. The rights of man are limited by the rights of others, by the security of all, and by the just demands of the general welfare and the advancement of democracy.

CHAPTER TWO

Duties

Duties to society.

Article XXIX. It is the duty of the individual so to conduct himself in relation to others that each and every one may fully form and develop his personality.

Duties toward children and parents.

Article XXX. It is the duty of every person to aid, support, educate and protect his minor children, and it is the duty of children to honor their parents always and to aid, support and protect them when they need it.

Duty to receive instruction.

Article XXXI. It is the duty of every person to acquire at least an elementary education.

Duty to vote.

Article XXXII. It is the duty of every person to vote in the popular elections of the country of which he is a national, when he is legally capable of doing so.

Duty to obey the law

Article XXXIII. It is the duty of every person to obey the law and other legitimate commands of the authorities of his country and those of the country in which he may be.

Duty to serve the community and the nation.

Article XXXIV. It is the duty of every able-bodied person to render whatever civil and military service his country may require for its defense and preservation, and, in case of public disaster, to render such services as may be in his power.

It is likewise his duty to hold any public office to which he may be elected by popular vote in the state of which he is a national.

Duties with respect to social security and welfare.

Article XXXV. It is the duty of every person to cooperate with the state and the community with respect to social security and welfare, in accordance with his ability and with existing circumstances.

Duty to pay taxes.

Article XXXVI. It is the duty of every person to pay the taxes established by law for the support of public services.

Duty to work.

Article XXXVII. It is the duty of every person to work, as far as his capacity and possibilities permit, in order to obtain the means of livelihood or to benefit his community.

Duty to refrain from political activities in a foreign country.

Article XXXVIII. It is the duty of every person to refrain from taking part in political activities that, according to law, are reserved exclusively to the citizens of the state in which he is an alien.

Inter-American Commission on Human Rights

The Inter-American Commission on Human Rights (IACHR) is one of two bodies in the inter-American system for the promotion and protection of human rights. The Commission has its headquarters in Washington, D.C. The other human rights body is the Inter-American Court of Human Rights, which is located in San José, Costa Rica.

The IACHR is an autonomous organ of the Organization of American States (OAS). Its mandate is found in the OAS Charter and the American Convention on Human Rights. The IACHR represents all of the member States of the OAS. It has seven members who act independently, without representing any particular country. The members of the IACHR are elected by the General Assembly of the OAS.

The IACHR is a permanent body which meets in ordinary and special sessions several times a year. The Executive Secretariat of the IACHR carries out the tasks delegated to it by the IACHR and provides legal and administrative support to the IACHR as it carries out its work.

The mailing address of the Secretariat is:

Inter-American Commission on Human Rights
1889 F St., NW, Washington, D.C., USA 20006.
E-mail: cidhoea@oas.org
Telephone: (202)458-6002
Fax: (202)458-3992.

Brief History of the Inter-American Human Rights System

The inter-American human rights system was born with the adoption of the **American Declaration of the Rights and Duties of Man** in Bogotá, Colombia in April of 1948. The American Declaration was the first international human rights instrument of a general nature. The IACHR was created in 1959 and held its first session in 1960. Since that time and until 1997, the Commission has held 97 sessions, some of them at its headquarters, others in different countries of the Americas.

By 1961, the IACHR had begun to carry out on-site visits to observe the general human rights situation in a country or to investigate specific situations. Since that time, the IACHR has carried out 69 visits to 23 member States. In relation to its visits for the observation of the general human rights situation of a country, the IACHR has published 44 special **country reports** to date.

In 1965, the IACHR was expressly authorized to examine complaints or petitions regarding specific cases of human rights violations. Up until 1997, the IACHR has received thousands of petitions, which have resulted in 12,000 cases which have been processed or are currently being processed. (The procedure for the processing of individual cases is

described below). The final published reports of the IACHR regarding these individual cases may be found in the **Annual Reports** of the Commission or independently by country.

In 1969, **the American Convention on Human Rights** was adopted. The Convention entered into force in 1978. As of August of 1997, it has been ratified by 25 countries: Argentina, Barbados, Brazil, Bolivia, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Trinidad and Tobago, Uruguay and Venezuela. The Convention defines the human rights which the ratifying States have agreed to respect and ensure. The Convention also creates the Inter-American Court of Human Rights and defines the functions and procedures of both the Commission and the Court. The IACHR also possesses additional faculties which pre-date and are not derived directly from the Convention, such as the processing of cases involving countries which are still not parties to the Convention.

What are the Functions and Powers of the Commission?

The IACHR has the principal function of promoting the observance and the defense of human rights. In carrying out its mandate, the Commission:

a) Receives, analyzes and investigates individual petitions which allege human rights violations, pursuant to Articles 44 to 51 of the Convention. This procedure will be discussed in greater detail below.

b) Observes the general human rights situation in the member States and publishes special reports regarding the situation in a specific State, when it considers it appropriate.

c) Carries out on-site visits to countries to engage in more in-depth analysis of the general situation and/or to investigate a specific situation. These visits usually result in the preparation of a report regarding the human rights situation observed, which is published and sent to the General Assembly.

d) Stimulates public consciousness regarding human rights in the Americas. To that end, carries out and publishes studies on specific subjects, such as: measures to be taken to ensure greater independence of the judiciary; the activities of irregular armed groups; the human rights situation of minors and women, and; the human rights of indigenous peoples.

e) Organizes and carries out conferences, seminars and meetings with representatives of Governments, academic institutions, non-governmental groups, etc... in order to disseminate information and to increase knowledge regarding issues relating to the inter-American human rights system.

f) Recommends to the member States of the OAS the adoption of measures which would contribute to human rights protection.

g) Requests States to adopt specific "precautionary measures" to avoid serious and irreparable harm to human rights in urgent cases. The Commission may also request that the Court order "provisional measures" in urgent cases which involve danger to persons, even where a case has not yet been submitted to the Court.

h) Submits cases to the Inter-American Court and appears before the Court in the litigation of cases.

i) Requests advisory opinions from the Inter-American Court regarding questions of interpretation of the American Convention.

Commission Processing of Individual Cases

The Commission is currently processing more than 800 individual cases. Any person, group of persons or non-governmental organization may present a petition to the Commission alleging violations of the rights protected in the American Convention and/or the American Declaration. The petition may be presented in any of the four official languages of the OAS and may be presented on behalf of the person filing the petition or on behalf of a third person.

The Commission may only process individual cases where it is alleged that one of the member States of the OAS is responsible for the human rights violation at issue. The Commission applies the Convention to process cases brought against those States which are parties to that instrument. For those States which are not parties, the Commission applies the American Declaration.

The Commission may, of course, study those petitions alleging that human rights violations were committed by State agents. However, the Commission may also process cases where it is asserted that a State failed to act to prevent a violation of human rights or failed to carry out proper follow-up after a violation, including the investigation and sanction of those responsible as well as the payment of compensation to the victim.

The petitions presented to the Commission must show that the victim has exhausted all means of remedying the situation domestically. If domestic remedies have not been exhausted, it must be shown that the victim tried to exhaust domestic remedies but failed because: 1) those remedies do not provide for adequate due process; 2) effective access to those remedies was denied, or; 3) there has been undue delay in the decision on those remedies.

If domestic remedies were exhausted, the petition must be presented within six months after the final decision in the domestic proceedings. If domestic remedies have not been exhausted, the petition must be presented within a reasonable time after the occurrence of the events complained of. The petition must also fulfill other minimal formal

requirements which are found in the Convention and the **Rules of Procedure of the Commission.**

When the Commission receives a petition which meets, in principle, the requirements established in the Convention, the Commission assigns a number to that petition and begins to process it as a case. This decision to open a case does not prejudge the Commission's eventual decision on the admissibility or the merits of the case. This means that the Commission may still declare the petition inadmissible and terminate the process without reaching the merits or may find that no violation has occurred. If the Commission decides that a case is inadmissible, it must issue an express decision to that effect, which is usually published. On the other hand, the Commission need not formally declare a case admissible before addressing the merits. In some, but not all, cases, the Commission will declare a petition admissible before reaching a decision on the merits. In other cases, the Commission will include its discussion regarding the admissibility of a petition with its final decision on the merits.

When a case is opened and a number is assigned, the pertinent parts of the petition are sent to the Government with a request for relevant information. During the processing of the case, each party is asked to comment on the responses of the other party. The Commission also may carry out its own investigations, conducting on-site visits, requesting specific information from the parties, etc... The Commission may also hold a hearing during the processing of the case, in which both parties are present and are asked to set forth their legal and factual arguments. In almost every case, the Commission will also offer to assist the parties in negotiating a friendly settlement if they so desire.

When the parties have completed the basic back-and-forth of briefs and when the Commission decides that it has sufficient information, the processing of a case is completed. The Commission then prepares a report which includes its conclusions and also generally provides recommendations to the State concerned. This report is not public. The Commission gives the State a period of time to resolve the situation and to comply with the recommendations of the Commission.

Upon the expiration of this period of time granted to the State, the Commission has two options. The Commission may prepare a second report, which is generally similar to the initial report and which also generally contains conclusions and recommendations. In this case, the State is again given a period of time to resolve the situation and to comply with the recommendations of the Commission, if such recommendations are made. At the end of this second period granted to the State, the Commission will usually publish its report, although the Convention allows the Commission to decide otherwise.

Rather than preparing a second report for publication, the Commission may decide to take the case to the Inter-American Court. If it wishes to take the case to the Court, it must do so within three months from the date in which it transmits its initial report to the State concerned. The initial report of the Commission will be attached to the application to the Court. The Commission will appear in all proceedings before the Court.

The decision as to whether a case should be submitted to the Court or published should be made on the basis of the best interests of human rights in the Commission's judgment.

Statute of the Inter-American Court on Human Rights

CHAPTER I

GENERAL PROVISIONS

Article 1. Nature and Legal Organization

The Inter-American Court of Human Rights is an autonomous judicial institution whose purpose is the application and interpretation of the American Convention on Human Rights. The Court exercises its functions in accordance with the provisions of the aforementioned Convention and the present Statute.

Article 2. Jurisdiction

The Court shall exercise adjudicatory and advisory jurisdiction:

1. Its adjudicatory jurisdiction shall be governed by the provisions of **Articles 61, 62 and 63** of the Convention, and

2. Its advisory jurisdiction shall be governed by the provisions of **Article 64** of the Convention.

Article 3. Seat

1. The seat of the Court shall be San Jose, Costa Rica; however, the Court may convene in any member state of the Organization of American States (OAS) when a majority of the Court considers it desirable, and with the prior consent of the State concerned.

2. The seat of the Court may be changed by a vote of two-thirds of the States Parties to the Convention, in the OAS General Assembly.

CHAPTER II

COMPOSITION OF THE COURT

Article 4. Composition

1. The Court shall consist of seven judges, nationals of the member states of the OAS, elected in an individual capacity from among jurists of the highest moral authority and of recognized

competence in the field of human rights, who possess the qualifications required for the exercise of the highest judicial functions under the law of the State of which they are nationals or of the State that proposes them as candidates.

2. No two judges may be nationals of the same State.

Article 5.et seq. omitted

American Convention on Human Rights

Preamble

The American states signatory to the present Convention,

Reaffirming their intention to consolidate in this hemisphere, within the framework of democratic institutions, a system of personal liberty and social justice based on respect for the essential rights of man;

Recognizing that the essential rights of man are not derived from one's being a national of a certain state, but are based upon attributes of the human personality, and that they therefore justify international protection in the form of a convention reinforcing or complementing the protection provided by the domestic law of the American states;

Considering that these principles have been set forth in the Charter of the Organization of American States, in the American Declaration of the Rights and Duties of Man, and in the Universal Declaration of Human Rights, and that they have been reaffirmed and refined in other international instruments, worldwide as well as regional in scope;

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

Considering that the Third Special Inter-American Conference (Buenos Aires, 1967) approved the incorporation into the Charter of the Organization itself of broader standards with respect to economic, social, and educational rights and resolved that an inter-American convention on human rights should determine the structure, competence, and procedure of the organs responsible for these matters,

Have agreed upon the following:

* * * *

Article 61

1. Only the States Parties and the Commission shall have the right to submit a case to the Court.

2. In order for the Court to hear a case, it is necessary that the procedures set forth in Articles 48 and 50 shall have been completed.

Article 62

1. A State Party may, upon depositing its instrument of ratification or adherence to this Convention, or at any subsequent time, declare that it recognizes as binding, ipso facto, and not requiring special agreement, the jurisdiction of the Court on all matters relating to the interpretation or application of this Convention.

2. Such declaration may be made unconditionally, on the condition of reciprocity, for a specified period, or for specific cases. It shall be presented to the Secretary General of the Organization, who shall transmit copies thereof to the other member states of the Organization and to the Secretary of the Court.

3. The jurisdiction of the Court shall comprise all cases concerning the interpretation and application of the provisions of this Convention that are submitted to it, provided that the States Parties to the case recognize or have recognized such jurisdiction, whether by special declaration pursuant to the preceding paragraphs, or by a special agreement.

Article 63

1. If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.

2. In cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court shall adopt such provisional measures as it deems pertinent in matters it has under consideration. With respect to a case not yet submitted to the Court, it may act at the request of the Commission.

Article 64

1. The member states of the Organization may consult the Court regarding the interpretation of this Convention or of other treaties concerning the protection of human rights in the American states. Within their spheres of competence, the organs listed in Chapter X of the Charter of the Organization of American States, as amended by the Protocol of Buenos Aires, may in like manner consult the Court.

2. The Court, at the request of a member state of the Organization, may provide that state with opinions regarding the compatibility of any of its domestic laws with the aforesaid international instruments.

CLASS 6: Criminal Proceedings

A. International Court of Justice

CENTER FOR JUSTICE AND INTERNATIONAL LAW • CENTRO POR LA JUSTICIA Y EL DERECHO INTERNACIONAL
CENTRO PELA JUSTIÇA E O DIREITO INTERNACIONAL • CENTRE POUR LA JUSTICE ET LE DROIT INTERNATIONAL

[Note from Professor O'Brien: This is s rough draft of a status report to be filed with the Inter-American Commission on Human Rights. The final document will likely include some changes recommended by counsel for Ramon Martinez-Villareal.]

Washington, DC, April 28, 2008

Santiago Canton
Executive Secretary
Inter-American Commission of Human Rights
1889 F Street, N.W.
Washington, DC 20009

Ref.: Case No. 11.753 Ramon Martinez Villareal

Dear Dr. Canton:

The Center for Justice and International Law (CEJIL) respectfully submits the following information in response to the Inter-American Commission on Human Rights' (hereinafter "the Commission") inquiry, dated November 5, 2007, regarding the United States Government's compliance with the recommendations set forth in Report No. 52/02, issued in the above cited case on October 10, 2002. CEJIL has thus far submitted two compliance reports on the case, dated December 21, 2006, and January 13, 2006. CEJIL will present its observations under two headings, which correspond to the recommendations made by the Commission in Report No. 52/02.

1. Provide Mr. Martinez Villareal with an effective remedy, which includes a re-trial in accordance with due process and fair trial protections prescribed under Articles XVIII and XXVI of the American Declaration or, where a re-trial in compliance with these protections is not possible, Mr. Martinez Villareal's release.

To date, the United States Government has made no effort to retry Mr. Martinez Villareal in accordance with the recommendations of the Commission.

Mr. Martinez Villareal has been released from death row, pursuant to the U.S. Supreme Court's decision in the case *Atkins v. Virginia*,[1] prohibiting the execution of the mentally ill. However, Mr. Martinez Villareal's conviction for two counts of felony murder has not yet been addressed. Under Arizona law, punishment for felony murder is limited to the death penalty (no longer applicable in Mr. Martinez Villareal's case) and life sentence, with a minimum parole eligibility of 25 years. Mr. Martinez Villareal is now facing the question of whether his two 25-year sentences would run concurrently or consecutively. If the sentences were to run concurrently, Mr. Martinez would be expected to serve 25 years in total, resulting in his almost immediate release considering that he has already served 24 years and six months. However, if the sentences were to run consecutively, Mr. Martinez Villareal would be expected to serve 50 years, which would mean that he would likely remain in prison for the rest of his life. At present, Mr. Martinez Villareal's counsel argues that Mr. Martinez Villareal continues to suffer from mental disabilities and would not be competent to proceed with a re-sentencing hearing.

The U.S. Government has not vacated Mr. Martinez Villareal's two counts of felony murder and there is no prospect of retrial. Although Mr. Martinez Villareal has been released from death row and no longer faces the death penalty, the U.S. Government has taken no steps to retry or release Mr. Martinez Villareal in compliance with the Commission's first recommendation. Even if a re-sentencing hearing does take place and Mr. Martinez Villareal's sentences are found to run concurrently, his subsequent release would result from a judicial determination that he has served the entirety of his prison sentence, and not from any action by the U.S. government to vacate or modify this sentence based on the violation of his fair trial rights.

Moreover, serious issues have arisen in recent proceedings. Mr. Martinez Villareal was found mentally incompetent in 2006 and committed to the Arizona State Hospital for care, custody, and treatment until he becomes competent. The Hospital claims to have restored Mr. Martinez Villareal to competence and wishes to end his treatment. Additionally, Arizona has recently passed legislation that precludes the hospitalization of undocumented immigrants. However, Mr. Martinez Villareal's counsel considers that Mr. Martinez Villareal has been thriving in the therapeutic environment at the Hospital and believes that removing him could adversely affect his mental health. A contested hearing on Mr. Martinez Villareal's condition took place on October 10, 2007, and the ruling has not yet been issued.

Despite Mr. Martinez Villareal's release from death row, the United States Government has neither freed him nor taken steps to remedy the due process and fair trial violations outlined by the Commission's Report No. 52/02. The United States Government has therefore failed to comply with any part of the first recommendation made by the Commission in Report No. 52/02.

2. Review its laws, procedures and practices to ensure that foreign nationals who are arrested or committed to prison or in custody pending trial or are detained in any other manner in the United States are informed without delay of their right to consular assistance and that, with

[1] *Atkins v. Virginia,* U.S. Supreme Court, Judgment of June 20, 2002.

his or her concurrence, the appropriate consulate is informed without delay of the foreign national's circumstances, in accordance with the due process and fair trial protections enshrined in Articles XVIII and XXVI of the American Declaration.

Notwithstanding the Commission's second recommendation in this case, the right to consular notification remains insufficiently protected at the local, state and federal levels in the United States some six years after the publication of Report No. 52/02. Though it is impossible to conduct an exhaustive analysis of current U.S. law and practice for purposes of this compliance report, petitioners will provide basic information on recent development that affect consular notification rights in the United States. It is the petitioners' hope that the U.S. government will complement this information in its reply to these observations.

As the Commission is well aware, in both the *LaGrand Case (Germany v. United States)* and the *Case Concerning Avena and Other Mexican Nationals (Mexico v. United States)*, the International Court of Justice (ICJ) found that when there was a failure to facilitate timely consular assistance in the foreign nationals' defense, the procedural default rule[2] under U.S. law constituted a violation of Article 36(2) of the Vienna Convention because it "prevented the full effect from being given to the purposes for which the rights accorded under [Article 36(1)] are intended."[3]

On June 27, 2001, the ICJ issued its judgment on the merits of *LaGrand*. In the case, two brothers, who were both German nationals living in the U.S., were arrested in Arizona in 1982 on suspicion of armed robbery and murder. Neither was informed of his right to consular assistance and both were convicted and sentenced to death. The issue of non-compliance with the Vienna Convention was not raised at trial, on appeal, or in post-conviction proceedings in state courts. The issue was raised in a federal habeas corpus petition, but was denied on the ground that the issue had not been properly raised in state court. The ICJ held that the U.S. had violated the Vienna Convention. Although the ICJ did not hold the procedural default rule to be a violation of the Vienna Convention, the ICJ found that "the combination of (a) the failure to notify the LaGrands of their right and (b) the procedural default rule effectively prevented Germany, in a timely fashion, from retaining private counsel for them and otherwise assisting in their defense."[4]

On March 31, 2004, the ICJ decided *Avena*.[5] The ICJ found that the U.S. had violated Article 36 of the Vienna Convention by failing to inform the fifty-one Mexican nationals facing the death penalty in Texas of their right to consular assistance. On March 31, 2004, the ICJ rejected Mexico's request for the convictions to be nullified, but ordered the U.S. to undertake an "effective review" and reconsideration of the convictions and sentences of the individuals involved. Pursuant to the request of the Mexican government in *Avena*, the U.S. expressed a commitment during the

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[2] Under the *procedural default rule*, a defendant waives his/her right to raise in appeal or in collateral review proceedings an issue that might aid his/her defense when he/she fails to raise that issue at the trial level.

[3] Frederic L. Kirgis, *The Texas Court of Criminal Appeals Decides Medellin's Consular Convention Case*, 10 ASIL Insight 32, (2006), 1, http://www.asil.org/insights/2006/12/insights061208.html.

[4] Frederic L. Kirgis, *World Court Rules Against the United States in LaGrand Case Arising from a Violation of the Vienna Convention on Consular Relations*, (Jul 2001), 1, http://www.asil.org/insights/insigh75.htm.

[5] International Court of Justice (ICJ), *Case Concerning Avena and Other Mexican Nationals (Mexico v. United States)*, 31 March 2004, General List No. 128.

proceedings to ensure the implementation of specific measures under Article 36 as a guarantee of non-repetition.[6]

On February 28, 2005, in a memorandum to the U.S. Attorney General, which was later transmitted to the state attorney general of Texas, President Bush declared that the U.S. would discharge its obligation under the ICJ's *Avena* decision by "having State courts give effect to the decision in accordance to general principles of comity in cases filed by the 51 Mexican nationals addressed in that decision."[7] Meanwhile, in March 2005, the U.S. notified the ICJ of its withdrawal from the Vienna Convention's optional protocol, which subjected the U.S. to ICJ jurisdiction.[8]

José Ernesto Medellín was one of the fifty-one Mexicans on death row who were involved in *Avena*. Medellín petitioned the U.S. Supreme Court to give effect to the ICJ decision[9] and review the decision the Supreme Court had issued before President Bush's memorandum. However, on May 23, 2005, in a *per curiam* decision, the Court dismissed its own writ of certiorari as "improvidently granted," declining to decide the merits of the case given that the President's memorandum had delegated the obligation of reviewing sentences and convictions to the state courts.[10] The Court left the determination of the meaning and impact of the President's memorandum to the state court.[11]

Following President Bush's memorandum, Medellín filed a second application for a writ of habeas corpus in state court. *Ex Parte Medellín*[12] was heard before the Texas Court of Criminal Appeals for reconsideration of his consular relations argument in light of *Avena* and the President's memorandum. On November 15, 2006, the court declined to provide review of Medellín's case, concluding that, pursuant to the *Sanchez-Llamas* decision,[13] the ICJ *Avena* decision and the

[6] Letter from Francisco Quintana and David Baluarte, CEJIL, to Santiago Canton, Executive Secretary, Inter-American Commission on Human Rights (Dec. 21, 2006).
[7] George W. Bush, Memorandum for the Attorney General (Feb. 28, 2005). http://www.whitehouse.gov/news/releases/2005/02/print/20050228-18.html
[8] Frederic L. Kirgis, *The Texas Court of Criminal Appeals Decides Medellin's Consular Convention Case*, 10 ASIL Insight 32, (2006), 1, http://www.asil.org/insights/2006/12/insights061208.html.
[9] Adam Liptak, *U.S. Says It Has Withdrawn from World Judicial Body*, N.Y. Times, Mar. 10, 2005, at A16.
[10] Frederic L. Kirgis, *The Texas Court of Criminal Appeals Decides Medellín's Consular Convention Case*, 10 ASIL Insight 32, (2006), 1, http://www.asil.org/insights/2006/12/insights061208.html; *Medellín v. Dretke,* U.S. Supreme Court, Judgment of May 23, 2005.
[11] *Medellín v. Dretke,* U.S. Supreme Court, Judgment of May 23, 2005; Adam Liptak, *Texas Court Ruling Rebuffs Bush and World Court*, N.Y. Times, Nov. 16, 2006, at A29.
[12] *Ex Parte Medellín,* Texas Criminal Appeals Court, Judgment of November 15, 2006.
[13] *Ex Parte Medellín,* Texas Criminal Appeals Court, Judgment of November 15, 2006; *See Sanchez-Llamas v. Oregon,* U.S. Supreme Court, Judgment of June 28, 2006. In *Sanchez Llamas*, neither petitioner was informed of his right to consular assistance and neither brought up the issue of consular assistance during trial or on appeal. The U.S. Supreme Court held that "even assuming without deciding that the Convention creates judicially enforceable rights, suppression is not an appropriate remedy for a violation, and a State may apply its regular procedural default rules to Convention claims." Particularly, the Court concluded that "states may subject Article 36 claims to the same procedural default rules that apply generally to other federal-law claims" and that although ICJ decisions deserve "respectful consideration," the Court need not follow ICJ's interpretation of the Convention, which in this case would preclude the application of procedural default rules to Article 36 claims.

Presidential memorandum deserved only "respectful consideration"[14] and that the Vienna Convention did not preclude the application of state default rules.[15] Therefore, the Texas Court of Criminal Appeals dismissed Medellín's habeas application on the grounds that Medellín had failed to raise his Vienna Convention claim in a timely manner under state law and therefore, his application constituted an abuse of the writ.[16] . This despite the fact that, unlike the individuals in *Sanchez-Llamas*, Medellín was one of the named individuals in the *Avena* case before the ICJ, and under Articles 59 and 60 of the ICJ Statutes, ICJ decisions are binding between parties to the specific case decided, even though they have no binding force on other cases.[17]

The Texas court further held that President Bush had exceeded his constitutional powers by directing state courts to follow the ICJ decision, deeming this act an intrusion on the independent powers of the judiciary.[18] Consequently, according to the court, neither the *Avena* decision nor the Presidential memorandum was binding on the court. In April 2007, the Texas court also declined relief to five other Mexican nationals involved in *Avena.*[19]

On April 30, 2007, the U.S. Supreme Court agreed to hear Medellín's appeal of the Texas court's decision, and it heard the case on October 10, 2007.[20] The Bush Administration entered the case on Medellín's behalf, urging the Court to overturn the Texas court's decision.[21] Medellín argued that the U.S. had an obligation to comply with the ICJ judgment irrespective of the President's order.[22]

The issues before the U.S. Supreme Court were: 1) whether the ICJ's judgment in *Avena* should be directly enforceable as domestic law in a state court in the U.S.;[23] and 2) whether the President's Memorandum independently required the States to provide review and reconsideration of the claims of the 51 Mexican nationals named in *Avena* without regard to state procedural rules.[24] The Court held that neither *Avena* nor the President's Memorandum constitutes directly enforceable federal law that pre-empts state limitations on the filing of successive habeas petitions, affirming the Texas Court of Criminal Appeals decision dismissing Medellín's habeas corpus application. Furthermore, the U.S. Supreme Court found that individuals cannot benefit from ICJ decisions, reasoning that expressed and established rules mandate that nation-states are the only parties and beneficiaries.[25]

CEJIL highlights these internal proceedings because they represent a significant setback for U.S. compliance with its Vienna Convention obligation to provide effective consular notification rights.

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[14] *Ex Parte Medellín,* Texas Criminal Appeals Court, Judgment of November 15, 2006; Frederic L. Kirgis, *The Texas Court of Criminal Appeals Decides Medellín's Consular Convention Case*, 10 ASIL Insight 32, (2006), 2, http://www.asil.org/insights/2006/12/insights061208.html.
[15] *Medellín v. Texas,* U.S. Supreme Court, Judgment of March 25, 2008, 8.
[16] *Medellín v. Texas,* U.S. Supreme Court, Judgment of May 25, 2008, 18.
[17] Frederic L. Kirgis, *The Supreme Court Decides a Consular Convention Case*, 10 *ASIL Insight* 16 (2006), 2, http://www.asil.org/insights/2006/07/insights060707.html.
[18] *Ex Parte Medellín,* Texas Criminal Appeals Court, Judgment of November 15, 2006; Adam Liptak, *Texas Court Ruling Rebuffs Bush and World Court*, N.Y. Times, Nov. 16, 2006, at A29.
[19] Linda Greenhouse, *Supreme Court to Hear Appeal of Mexican Death Row Inmate,* N.Y. Times, May 1, 2007, at A16.
[20] *See Medellín v. Texas,* U.S. Supreme Court, Judgment of April 30, 2007, *cert. granted*.
[21] Linda Greenhouse, *Supreme Court to Hear Appeal of Mexican Death Row Inmate,* N.Y. Times, May 1, 2007, at A16.
[22] Linda Greenhouse, *Case of Texas Murderer Engrosses Supreme Court*, N.Y. Times, Oct. 11, 2007, at A24.
[23] *Medellín v. Texas,* U.S. Supreme Court, Judgment of March 25, 2008, 8, 11.
[24] *Medellín v. Texas,* U.S. Supreme Court, Judgment of March 25, 2008, 8.
[25] *Medellín v. Texas,* U.S. Supreme Court, Judgment of March 25, 2008, 16.

Even if the Supreme Court had decided in favor of Medellin, its holding would have been limited to the fifty-one Mexican nationals involved in *Avena* and would not extend to individuals such as Mr. Martinez Villareal. Consequently, no systematic changes would have directly resulted from the Supreme Court's decision in *Medellin*. Nonetheless, the Supreme Court's refusal to give effect to the ICJ's judgment, and the U.S.'s related withdrawal from the Vienna Convention's optional protocol, constitute a clear weakening of consular assistance rights in the United States.

Furthermore, no U.S. state has taken steps to codify consular notification rights in its laws since the issuance of the Commission's decision in the instant case. To date, Florida, California, and Oregon remain the only three states to have passed laws that recognize consular assistance notification obligations. [26] These three U.S. states' codifications of notification obligations predated the Commission's Report No. 52/02, however, and the remaining 47 states have not taken similar steps in response to the Commission's judgment.

Some steps have been taken at the local level to comply with international consular relations standards. In May 2006, the Commission on Accreditation for Law Enforcement Agencies (CALEA), an independent nonprofit corporation that works to improve the delivery of public safety services, issued the 5th edition of CALEA Standards for Law Enforcement Agencies; consular notification and access are now included among these Standards.[27] As of July 2006, 562 law enforcement agencies in the U.S. that were accredited as complying with the CALEA standards, while 166 agencies have their accreditation pending.[28] Furthermore, the State Department and some state-level agencies have purportedly issued instruction manuals to introduce treaty obligations to local police.[29]

In conclusion, CEJIL submits that the U.S. has made little progress in complying with the Commission's second recommendation in Report No. 52/02, and has in fact weakened consular notification rights by withdrawing from the Vienna Convention's optional protocol and failing to implement the ICJ's *Avena* judgment. To the extent progress has been made, it has been at the local level. CEJIL therefore encourages the Commission to specifically request information from the U.S. government on this point, especially with regard to State Department initiatives aimed at

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[26] Michael Warren, Human Rights Research, Consular Notification: Statutory and Regulatory Provisions, available at http://www3.sympatico.ca/aiwarren/compliance.htm#State_Codes.

[27] Michael Warren, Human Rights Research, Consular Notification: Statutory and Regulatory Provisions, available at http://www3.sympatico.ca/aiwarren/compliance.htm#State_Codes; Commission on Accreditation for Law Enforcement Agencies [CALEA], 2006 Annual Report (2006), 5.

[28] Michael Warren, Human Rights Research, Consular Notification: Statutory and Regulatory Provisions, available at http://www3.sympatico.ca/aiwarren/compliance.htm#State_Codes.

[29] Consular Notification and Access: Instructions for Federal, State, and Local Law Enforcement and Other Officials Regarding Foreign Nationals in the United States and the Rights of Consular Officials To Assist Them, available at http://travel.state.gov/law/consular/consular_636.html; Michael Warren, Human Rights Research, Consular Notification: Statutory and Regulatory Provisions, available at http://www3.sympatico.ca/aiwarren/compliance.htm#State_Codes.

training local officials regarding the United States' consular notification obligations. Information regarding the content, scope, and impact of these initiatives would greatly assist both the Commission and the petitioners in assessing U.S. efforts to comply in good faith with the Commission's judgment in this case.

CEJIL thanks the Commission for its attention to this important matter.

Michael Camilleri CEJIL	Francisco Quintana CEJIL

B. European Commission On Human Rights

Soering v. United Kindom,

Having deliberated in private on 27 April and 26 June 1989,
Delivers the following judgment, which was adopted on the last-mentioned date:

* * * *

PROCEDURE

1. The case was brought before the Court on 25 January 1989 by the European Commission of Human Rights ("the Commission"), on 30 January 1989 by the Government of the United Kingdom of Great Britain and Northern Ireland and on 3 February 1989 by the Government of the Federal Republic of Germany, within the three-month period laid down by Article 32 § 1 and Article 47 (art. 32-1, art. 47) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention"). It originated in an application (no. 14038/88) against the United Kingdom lodged with the Commission under Article 25 (art. 25) by a German national, Mr Jens Soering, on 8 July 1988.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby the United Kingdom recognised the compulsory jurisdiction of the Court (Article 46) (art. 46). The object of the request and of the two governmental applications was to obtain a decision from the Court as to whether or not the facts of the case disclosed a breach by the respondent State of its obligations under Articles 3, 6 and 13 (art. 3, art. 6, art. 13) of the Convention.

* * * *

I. PARTICULAR CIRCUMSTANCES OF THE CASE

11. The applicant, Mr Jens Soering, was born on 1 August 1966 and is a German national. He is currently detained in prison in England pending extradition to the United States of America to face

charges of murder in the Commonwealth of Virginia.

12. The homicides in question were committed in Bedford County, Virginia, in March 1985. The victims, William Reginald Haysom (aged 72) and Nancy Astor Haysom (aged 53), were the parents of the applicant's girlfriend, Elizabeth Haysom, who is a Canadian national. Death in each case was the result of multiple and massive stab and slash wounds to the neck, throat and body. At the time the applicant and Elizabeth Haysom, aged 18 and 20 respectively, were students at the University of Virginia. They disappeared together from Virginia in October 1985, but were arrested in England in April 1986 in connection with cheque fraud.

13. The applicant was interviewed in England between 5 and 8 June 1986 by a police investigator from the Sheriff's Department of Bedford County. In a sworn affidavit dated 24 July 1986 the investigator recorded the applicant as having admitted the killings in his presence and in that of two United Kingdom police officers. The applicant had stated that he was in love with Miss Haysom but that her parents were opposed to the relationship. He and Miss Haysom had therefore planned to kill them. They rented a car in Charlottesville and travelled to Washington where they set up an alibi. The applicant then went to the parents' house, discussed the relationship with them and, when they told him that they would do anything to prevent it, a row developed during which he killed them with a knife.

On 13 June 1986 a grand jury of the Circuit Court of Bedford County indicted him on charges of murdering the Haysom parents. The charges alleged capital murder of both of them and the separate non-capital murders of each.

14. On 11 August 1986 the Government of the United States of America requested the applicant's and Miss Haysom's extradition under the terms of the Extradition Treaty of 1972 between the United States and the United Kingdom (see paragraph 30 below). On 12 September a Magistrate at Bow Street Magistrates' Court was required by the Secretary of State for Home Affairs to issue a warrant for the applicant's arrest under the provisions of section 8 of the Extradition Act 1870 (see paragraph 32 below). The applicant was subsequently arrested on 30 December at HM Prison Chelmsford after serving a prison sentence for cheque fraud.

15. On 29 October 1986 the British Embassy in Washington addressed a request to the United States authorities in the following terms:

> "Because the death penalty has been abolished in Great Britain, the Embassy has been instructed to seek an assurance, in accordance with the terms of ... the Extradition Treaty, that, in the event of Mr Soering being surrendered and being convicted of the crimes for which he has been indicted ..., the death penalty, if imposed, will not be carried out.
>
> Should it not be possible on constitutional grounds for the United States Government to give such an assurance, the United Kingdom authorities ask that the United States Government undertake to recommend to the appropriate authorities that the death penalty should not be imposed or, if imposed, should not be executed."

* * * *

On 29 June 1987 Mr Soering applied to the Divisional Court for a writ of habeas corpus in respect of his committal and for leave to apply for judicial review. On 11 December both applications were refused by the Divisional Court (Lord Justice Lloyd and Mr Justice Macpherson).

In support of his application for leave to apply for judicial review, Mr Soering had submitted that the assurance received from the United States authorities was so worthless that no reasonable Secretary of State could regard it as satisfactory under Article IV of the Extradition Treaty between the United Kingdom and the United States (see paragraph 36 below). In his judgment Lord Justice Lloyd agreed that "the assurance leaves something to be desired":

> "Article IV of the Treaty contemplates an assurance that the death penalty will not be carried out. That must presumably mean an assurance by or on behalf of the Executive Branch of Government, which in this case would be the Governor of the Commonwealth of Virginia. The certificate sworn by Mr Updike, far from being an assurance on behalf of the Executive, is nothing more than an undertaking to make representations on behalf of the United Kingdom to the judge. I cannot believe that this is what was intended when the Treaty was signed. But I can understand that there may well be difficulties in obtaining more by way of assurance in view of the federal nature of the United States Constitution."

* * * *

According to psychiatric evidence adduced on behalf of the applicant (report dated 16 March 1989 by Dr D. Somekh), the applicant’s dread of extreme physical violence and homosexual abuse from other inmates in death row in Virginia is in particular having a profound psychological effect on him. The psychiatrist’s report records a mounting desperation in the applicant, together with objective fears that he may seek to take his own life.

26. By a declaration dated 20 March 1989 submitted to this Court, the applicant stated that should the United Kingdom Government require that he be deported to the Federal Republic of Germany he would consent to such requirement and would present no factual or legal opposition against the making or execution of an order to that effect.

II. RELEVANT DOMESTIC LAW AND PRACTICE IN THE UNITED KINGDOM

* * * *

B. Extradition

29. The relevant general law on extradition is contained in the Extradition Acts 1870-1935.

30. The extradition arrangements between the United Kingdom and the United States of America are governed by the Extradition Treaty signed by the two Governments on 8 June 1972, a Supplementary Treaty signed on 25 June 1982, and an Exchange of Notes dated 19 and 20 August 1986 amending the Supplementary Treaty. These arrangements have been incorporated into the law of the United Kingdom by Orders in Council (the United States of America (Extradition) Order 1976, S.I. 1976/2144 and the United States of America (Extradition) (Amendment) Order 1986, S.I. 1986/2020).

By virtue of Article I of the Extradition Treaty, "each Contracting Party undertakes to extradite to the other, in the circumstances and subject to the conditions specified in this Treaty, any person found in its territory who has been accused or convicted of any offence [specified in the Treaty and including murder], committed within the jurisdiction of the other Party".

* * * *

[I]t is open to the prisoner to challenge both the decision of the Secretary of State rejecting his petition and the decision to sign the warrant in judicial review proceedings. In such proceedings the court may review the exercise of the Secretary of State's discretion on the basis that it is tainted with illegality, irrationality or procedural impropriety (Council of Civil Service Unions and Others v. Minister for the Civil Service [1984] 3 All England Law Reports 935).

Irrationality is determined on the basis of the administrative-law principles set out in Associated Provincial Picture Houses Ltd v. Wednesbury Corporation [1948] 1 King's Bench Reports 223 (the so-called "Wednesbury principles" of reasonableness). The test in an extradition case would be that no reasonable Secretary of State could have made an order for return in the circumstances. As the judgment of Lord Justice Lloyd in the Divisional Court in the present case shows (see paragraph 22 above), the reliance placed by the Secretary of State on any assurance given by the requesting State may be tested to determine whether such reliance is within the confines of "reasonableness". According to the United Kingdom Government, on the same principle a court would have jurisdiction to quash a challenged decision to send a fugitive to a country where it was established that there was a serious risk of inhuman or degrading treatment, on the ground that in all the circumstances of the case the decision was one which no reasonable Secretary of State could take.

In R v. Home Secretary, ex parte Bugdaycay [1987] 1 All England Law Reports 940 at 952, a House of Lords case concerning a refusal to grant asylum, Lord Bridge, while acknowledging the limitations of the Wednesbury principles, explained that the courts will apply them extremely strictly against the Secretary of State in a case in which the life of the applicant is at risk:

> "Within those limitations the court must, I think, be entitled to subject an administrative decision to the most rigorous examination, to ensure that it is in no way flawed, according to the gravity of the issue which the decision determines. The most fundamental of all human rights is the individual's right to life and, when an administrative decision under challenge is said to be one which may put the applicant's life at risk, the basis of the decision must surely call for the most anxious scrutiny."

Lord Templeman added (at page 956):

> "In my opinion where the result of a flawed decision may imperil life or liberty a special responsibility lies on the court in the examination of the decision-making process."

* * * *

36. There is no provision in the Extradition Acts relating to the death penalty, but Article IV of the United Kingdom-United States Treaty provides:

> "If the offence for which extradition is requested is punishable by death under the relevant law of the requesting Party, but the relevant law of the requested Party does not provide for the death penalty in a similar case, extradition may be refused unless the requesting Party gives assurances satisfactory to the requested Party that the death penalty will not be carried out."

37. In the case of a fugitive requested by the United States who faces a charge carrying the

death penalty, it is the Secretary of State's practice, pursuant to Article IV of the United Kingdom-United States Extradition Treaty, to accept an assurance from the prosecuting authorities of the relevant State that a representation will be made to the judge at the time of sentencing that it is the wish of the United Kingdom that the death penalty should be neither imposed no carried out. This practice has been described by Mr David Mellor, then Minister of State at the Home Office, in the following terms:

> "The written undertakings about the death penalty that the Secretary of State obtains from the Federal authorities amount to an undertaking that the views of the United Kingdom will be represented to the judge. At the time of sentencing he will be informed that the United Kingdom does not wish the death penalty to be imposed or carried out. That means that the United Kingdom authorities render up a fugitive or are prepared to send a citizen to face an American court on the clear understanding that the death penalty will not be carried out - it has never been carried out in such cases. It would be a fundamental blow to the extradition arrangements between our two countries if the death penalty were carried out on an individual who had been returned under those circumstances." (Hansard, 10 March 1987, col. 955)

There has, however, never been a case in which the effectiveness of such an undertaking has been tested.

38. Concurrent requests for extradition in respect of the same crime from two different States are not a common occurrence. If both requests are received at the same time, the Secretary of State decides which request is to be proceeded with, having regard to all the facts of the case, including the nationality of the fugitive and the place of commission of the offence.

* * * *

III. RELEVANT DOMESTIC LAW IN THE COMMONWEALTH OF VIRGINIA

* * * *

Following a moratorium consequent upon a decision of the United States Supreme Court (Furman v. Georgia, 92 S.Ct. 2726 (1972)), imposition of the death penalty was resumed in Virginia in 1977, since which date seven persons have been executed. The means of execution used is electrocution.

The Virginia death penalty statutory scheme, including the provision on mandatory review of sentence (see paragraph 52 below), has been judicially determined to be constitutional. It was considered to prevent the arbitrary or capricious imposition of the death penalty and narrowly to channel the sentencer's discretion (Smith v. Commonwealth, loc. cit.; Turnver v. Bass, 753 Federal Reporter, Second Series (F.2d) 342 (4th Circuit, 1985); Briley v. Bass, 750 F.2d 1238 (4th Circuit, 1984)). The death penalty under the Virginia capital murder statute has also been held not to constitute cruel and unusual punishment or to deny a defendant due process or equal protection (Stamper v. Commonwealth, 220 Va. 260, 257 S.E.2d 808 (1979), certiorari denied, 445 U.S. 972, 100 S.Ct. 1666, 64 L.Ed.2d 249 (1980)). The Supreme Court of Virginia rejected the submission that death by electrocution would cause "the needless imposition of pain before death and emotional suffering while awaiting execution of sentence" (ibid.).

* * * *

. The average time between trial and execution in Virginia, calculated on the basis of the seven executions which have taken place since 1977, is six to eight years. The delays are primarily due to a strategy by convicted prisoners to prolong the appeal proceedings as much as possible. The United States Supreme Court has not as yet considered or ruled on the "death row phenomenon" and in particular whether it falls foul of the prohibition of "cruel and unusual punishment" under the Eighth Amendment to the Constitution of the United States.

* * * *

G. Prison conditions in Mecklenburg Correctional Center

61. There are currently 40 people under sentence of death in Virginia. The majority are detained in Mecklenburg Correctional Center, which is a modern maximum-security institution with a total capacity of 335 inmates. Institutional Operating Procedures (IOP 821.1) establish uniform operating procedures for the administration, security, control and delivery of necessary services to death row inmates in Mecklenburg. In addition conditions of confinement are governed by a comprehensive consent decree handed down by the United States District Court in Richmond in the case of Alan Brown et al. v. Allyn R. Sielaff et al. (5 April 1985). Both the Virginia Department of Corrections and the American Civil Liberties Union monitor compliance with the terms of the consent decree. The United States District Court also retains jurisdiction to enforce compliance with the decree.

62. The channels by which grievances may be ventilated and, if well-founded, remedied include (1) the use of a Federal Court approved Inmate Grievance Procedure of the Virginia Department of Corrections, involving the Warden, the Regional Administrator and the Director of Prisons, and the Regional Ombudsman, (2) formal or informal contact between inmates' counsel and the prison staff, (3) complaint to the courts for breach of the consent decree, and (4) the institution of legal proceedings under Federal or State tort laws.

63. The size of a death row inmate's cell is 3m by 2.2m. Prisoners have an opportunity for approximately 7½ hours' recreation per week in summer and approximately 6 hours' per week, weather permitting, in winter. The death row area has two recreation yards, both of which are equipped with basketball courts and one of which is equipped with weights and weight benches. Inmates are also permitted to leave their cells on other occasions, such as to receive visits, to visit the law library or to attend the prison infirmary. In addition, death row inmates are given one hour out-of-cell time in the morning in a common area. Each death row inmate is eligible for work assignments, such as cleaning duties. When prisoners move around the prison they are handcuffed, with special shackles around the waist.

When not in their cells, death row inmates are housed in a common area called "the pod". The guards are not within this area and remain in a box outside. In the event of disturbance or inter-inmate assault, the guards are not allowed to intervene until instructed to do so by the ranking officer present.

64. The applicant adduced much evidence of extreme stress, psychological deterioration and risk of homosexual abuse and physical attack undergone by prisoners on death row, including Mecklenburg Correctional Center. This evidence was strongly contested by the United Kingdom Government on the basis of affidavits sworn by administrators from the Virginia Department of

Corrections.

65. Death row inmates receive the same medical service as inmates in the general population. An infirmary equipped with adequate supplies, equipment and staff provides for 24-hour in-patient care, and emergency facilities are provided in each building. Mecklenburg also provides psychological and psychiatric services to death row inmates. The United States District Court (Eastern District of Virginia) has recently upheld the adequacy of mental health treatment available to death row inmates in Mecklenburg (Stamper et al. v. Blair et al., decision of 14 July 1988).

66. Inmates are allowed non-contact visits in a visiting room on Saturdays, Sundays and holidays between 8.30am and 3.30pm. Attorneys have access to their clients during normal working hours on request as well as during the scheduled visiting hours. Death row inmates who have a record of good behaviour are eligible for contact visits with members of their immediate family two days per week. Outgoing correspondence from inmates is picked up daily and all incoming correspondence is delivered each evening.

67. As a security precaution, pursuant to rules applicable to all institutions in Virginia, routine searches are conducted of the entire institution on a quarterly basis. These searches may last for approximately a week. During such times, called lockdowns, inmates are confined to their cells; they are showered, receive medical, dental and psychological services outside their cells as deemed necessary by medical staff, and upon request may visit the law library, and are allowed legal visits and legal telephone calls. Other services such as meals are provided to the inmates in their cells. During the lockdown, privileges and out-of-cell time are gradually increased to return to normal operations.

Lockdowns may also be ordered from time to time in relation to death row if information is received indicating that certain of its inmates may be planning a disturbance, hostage situation or escape.

68. A death row prisoner is moved to the death house 15 days before he is due to be executed. The death house is next to the death chamber where the electric chair is situated. Whilst a prisoner is in the death house he is watched 24 hours a day. He is isolated and has no light in his cell. The lights outside are permanently lit. A prisoner who utilises the appeals process can be placed in the death house several times.

* * * *

Mr Soering’s application (no. 14038/88) was lodged with the Commission on 8 July 1988. In his application Mr Soering stated his belief that, notwithstanding the assurance given to the United Kingdom Government, there was a serious likelihood that he would be sentenced to death if extradited to the United States of America. He maintained that in the circumstances and, in particular, having regard to the "death row phenomenon" he would thereby be subjected to inhuman and degrading treatment and punishment contrary to Article 3 (art. 3) of the Convention. In his further submission his extradition to the United States would constitute a violation of Article 6 § 3 (c) (art. 6-3-c) because of the absence of legal aid in the State of Virginia to pursue various appeals. Finally, he claimed that, in breach of Article 13 (art. 13), he had no effective remedy under United Kingdom law in respect of his complaint under Article 3 (art. 3).

* * * *

At the public hearing on 24 April 1989 the United Kingdom Government maintained the concluding submissions set out in their memorial, whereby they requested the Court to hold “that neither the extradition of the applicant nor any act or decision of the United Kingdom Government

in relation thereto constitutes a breach of Article 3 (art. 3) of the Convention. . .”

* * * *

AS TO THE LAW

I. ALLEGED BREACH OF ARTICLE 3 (art. 3)

80. The applicant alleged that the decision by the Secretary of State for the Home Department to surrender him to the authorities of the United States of America would, if implemented, give rise to a breach by the United Kingdom of Article 3 (art. 3) of the Convention, which provides:

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

A. Applicability of Article 3 (art. 3) in cases of extradition

81. The alleged breach derives from the applicant’s exposure to the so-called "death row phenomenon". This phenomenon may be described as consisting in a combination of circumstances to which the applicant would be exposed if, after having been extradited to Virginia to face a capital murder charge, he were sentenced to death.

82. In its report (at paragraph 94) the Commission reaffirmed "its case-law that a person’s deportation or extradition may give rise to an issue under Article 3 (art. 3) of the Convention where there are serious reasons to believe that the individual will be subjected, in the receiving State, to treatment contrary to that Article (art. 3)".

The Government of the Federal Republic of Germany supported the approach of the Commission, pointing to a similar approach in the case-law of the German courts.

The applicant likewise submitted that Article 3 (art. 3) not only prohibits the Contracting States from causing inhuman or degrading treatment or punishment to occur within their jurisdiction but also embodies an associated obligation not to put a person in a position where he will or may suffer such treatment or punishment at the hands of other States. For the applicant, at least as far as Article 3 (art. 3) is concerned, an individual may not be surrendered out of the protective zone of the Convention without the certainty that the safeguards which he would enjoy are as effective as the Convention standard.

* * * *

In the instant case it is common ground that the United Kingdom has no power over the practices and arrangements of the Virginia authorities which are the subject of the applicant’s complaints. It is also true that in other international instruments cited by the United Kingdom Government - for example the 1951 United Nations Convention relating to the Status of Refugees (Article 33), the 1957 European Convention on Extradition (Article 11) and the 1984 United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (Article 3) - the problems of removing a person to another jurisdiction where unwanted consequences may follow are addressed expressly and specifically.

These considerations cannot, however, absolve the Contracting Parties from responsibility under Article 3 (art. 3) for all and any foreseeable consequences of extradition suffered outside their jurisdiction.

87. In interpreting the Convention regard must be had to its special character as a treaty for the collective enforcement of human rights and fundamental freedoms (see the Ireland v. the United Kingdom judgment of 18 January 1978, Series A no. 25, p. 90, § 239). Thus, the object and purpose of the Convention as an instrument for the protection of individual human beings require that its provisions be interpreted and applied so as to make its safeguards practical and effective (see, inter alia, the Artico judgment of 13 May 1980, Series A no. 37, p. 16, § 33). In addition, any interpretation of the rights and freedoms guaranteed has to be consistent with "the general spirit of the Convention, an instrument designed to maintain and promote the ideals and values of a democratic society" (see the Kjeldsen, Busk Madsen and Pedersen judgment of 7 December 1976, Series A no. 23, p. 27, § 53).

88. Article 3 (art. 3) makes no provision for exceptions and no derogation from it is permissible under Article 15 (art. 15) in time of war or other national emergency. This absolute prohibition of torture and of inhuman or degrading treatment or punishment under the terms of the Convention shows that Article 3 (art. 3) enshrines one of the fundamental values of the democratic societies making up the Council of Europe. It is also to be found in similar terms in other international instruments such as the 1966 International Covenant on Civil and Political Rights and the 1969 American Convention on Human Rights and is generally recognised as an internationally accepted standard.

The question remains whether the extradition of a fugitive to another State where he would be subjected or be likely to be subjected to torture or to inhuman or degrading treatment or punishment would itself engage the responsibility of a Contracting State under Article 3 (art. 3). That the abhorrence of torture has such implications is recognised in Article 3 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which provides that "no State Party shall ... extradite a person where there are substantial grounds for believing that he would be in danger of being subjected to torture". The fact that a specialised treaty should spell out in detail a specific obligation attaching to the prohibition of torture does not mean that an essentially similar obligation is not already inherent in the general terms of Article 3 (art. 3) of the European Convention. It would hardly be compatible with the underlying values of the Convention, that "common heritage of political traditions, ideals, freedom and the rule of law" to which the Preamble refers, were a Contracting State knowingly to surrender a fugitive to another State where there were substantial grounds for believing that he would be in danger of being subjected to torture, however heinous the crime allegedly committed. Extradition in such circumstances, while not explicitly referred to in the brief and general wording of Article 3 (art. 3), would plainly be contrary to the spirit and intendment of the Article, and in the Court's view this inherent obligation not to extradite also extends to cases in which the fugitive would be faced in the receiving State by a real risk of exposure to inhuman or degrading treatment or punishment proscribed by that Article (art. 3).

89. What amounts to "inhuman or degrading treatment or punishment" depends on all the circumstances of the case (see paragraph 100 below). Furthermore, inherent in the whole of the Convention is a search for a fair balance between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. As movement about the world becomes easier and crime takes on a larger international dimension, it is increasingly in the interest of all nations that suspected offenders who flee abroad should be brought to justice. Conversely, the establishment of safe havens for fugitives would not only result in danger for the State obliged to harbour the protected person but also tend to undermine the foundations of extradition. These considerations must also be included among the factors to be taken into account in the interpretation and application of the notions of inhuman and degrading treatment or punishment in extradition cases.

90. It is not normally for the Convention institutions to pronounce on the existence or otherwise of potential violations of the Convention. However, where an applicant claims that a decision to extradite him would, if implemented, be contrary to Article 3 (art. 3) by reason of its foreseeable consequences in the requesting country, a departure from this principle is necessary, in view of the serious and irreparable nature of the alleged suffering risked, in order to ensure the effectiveness of the safeguard provided by that Article (art. 3) (see paragraph 87 above).

91. In sum, the decision by a Contracting State to extradite a fugitive may give rise to an issue under Article 3 (art. 3), and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person concerned, if extradited, faces a real risk of being subjected to torture or to inhuman or degrading treatment or punishment in the requesting country. The establishment of such responsibility inevitably involves an assessment of conditions in the requesting country against the standards of Article 3 (art. 3) of the Convention. Nonetheless, there is no question of adjudicating on or establishing the responsibility of the receiving country, whether under general international law, under the Convention or otherwise. In so far as any liability under the Convention is or may be incurred, it is liability incurred by the extraditing Contracting State by reason of its having taken action which has as a direct consequence the exposure of an individual to proscribed ill-treatment.

B. Application of Article 3 (art. 3) in the particular circumstances of the present case

92. The extradition procedure against the applicant in the United Kingdom has been completed, the Secretary of State having signed a warrant ordering his surrender to the United States authorities (see paragraph 24 above); this decision, albeit as yet not implemented, directly affects him. It therefore has to be determined on the above principles whether the foreseeable consequences of Mr Soering's return to the United States are such as to attract the application of Article 3 (art. 3). This inquiry must concentrate firstly on whether Mr Soering runs a real risk of being sentenced to death in Virginia, since the source of the alleged inhuman and degrading treatment or punishment, namely the "death row phenomenon", lies in the imposition of the death penalty. Only in the event of an affirmative answer to this question need the Court examine whether exposure to the "death row phenomenon" in the circumstances of the applicant's case would involve treatment or punishment incompatible with Article 3 (art. 3).

* * *

At the public hearing the Attorney General nevertheless made clear his Government's understanding that if Mr Soering were extradited to the United States there was "some risk", which was "more than merely negligible", that the death penalty would be imposed.

94. As the applicant himself pointed out, he has made to American and British police officers and to two psychiatrists admissions of his participation in the killings of the Haysom parents, although he appeared to retract those admissions somewhat when questioned by the German prosecutor (see paragraphs 13, 16 and 21 above). It is not for the European Court to usurp the function of the Virginia courts by ruling that a defence of insanity would or would not be available on the psychiatric evidence as it stands. The United Kingdom Government are justified in their assertion that no assumption can be made that Mr Soering would certainly or even probably be convicted of capital murder as charged (see paragraphs 13 in fine and 40 above). Nevertheless, as the Attorney General conceded on their behalf at the public hearing, there is "a significant risk" that the applicant would be so convicted.

* * * *

The Court's conclusion is therefore that the likelihood of the feared exposure of the applicant to the "death row phenomenon" has been shown to be such as to bring Article 3 (art. 3) into play.

2. Whether in the circumstances the risk of exposure to the "death row phenomenon" would make extradition a breach of Article 3 (art. 3)

(a) General considerations

100. As is established in the Court's case-law, ill-treatment, including punishment, must attain a minimum level of severity if it is to fall within the scope of Article 3 (art. 3). The assessment of this minimum is, in the nature of things, relative; it depends on all the circumstances of the case, such as the nature and context of the treatment or punishment, the manner and method of its execution, its duration, its physical or mental effects and, in some instances, the sex, age and state of health of the victim (see the above-mentioned Ireland v. the United Kingdom judgment, Series A no. 25, p. 65, § 162; and the Tyrer judgment of 25 April 1978, Series A no. 26, pp. 14-15, §§ 29 and 30).

Treatment has been held by the Court to be both "inhuman" because it was premeditated, was applied for hours at a stretch and "caused, if not actual bodily injury, at least intense physical and mental suffering", and also "degrading" because it was "such as to arouse in [its] victims feelings of fear, anguish and inferiority capable of humiliating and debasing them and possibly breaking their physical or moral resistance" (see the above-mentioned Ireland v. the United Kingdom judgment, p. 66, § 167). In order for a punishment or treatment associated with it to be "inhuman" or "degrading", the suffering or humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate punishment (see the Tyrer judgment, loc. cit.). In this connection, account is to be taken not only of the physical pain experienced but also, where there is a considerable delay before execution of the punishment, of the

sentenced person's mental anguish of anticipating the violence he is to have inflicted on him.

101. Capital punishment is permitted under certain conditions by Article 2 § 1 (art. 2-1) of the Convention, which reads:

> "Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law."

In view of this wording, the applicant did not suggest that the death penalty per se violated Article 3 (art. 3). He, like the two Government Parties, agreed with the Commission that the extradition of a person to a country where he risks the death penalty does not in itself raise an issue under either Article 2 (art. 2) or Article 3 (art. 3). On the other hand, Amnesty International in their written comments (see paragraph 8 above) argued that the evolving standards in Western Europe regarding the existence and use of the death penalty required that the death penalty should now be considered as an inhuman and degrading punishment within the meaning of Article 3 (art. 3).

102. Certainly, "the Convention is a living instrument which ... must be interpreted in the light of present-day conditions"; and, in assessing whether a given treatment or punishment is to be regarded as inhuman or degrading for the purposes of Article 3 (art. 3), "the Court cannot but be influenced by the developments and commonly accepted standards in the penal policy of the member States of the Council of Europe in this field" (see the above-mentioned Tyrer judgment, Series A no. 26, pp. 15-16, § 31). De facto the death penalty no longer exists in time of peace in the Contracting States to the Convention. In the few Contracting States which retain the death penalty in law for some peacetime offences, death sentences, if ever imposed, are nowadays not carried out. This "virtual consensus in Western European legal systems that the death penalty is, under current circumstances, no longer consistent with regional standards of justice", to use the words of Amnesty International, is reflected in Protocol No. 6 (P6) to the Convention, which provides for the abolition of the death penalty in time of peace. Protocol No. 6 (P6) was opened for signature in April 1983, which in the practice of the Council of Europe indicates the absence of objection on the part of any of the Member States of the Organisation; it came into force in March 1985 and to date has been ratified by thirteen Contracting States to the Convention, not however including the United Kingdom.

Whether these marked changes have the effect of bringing the death penalty per se within the prohibition of ill-treatment under Article 3 (art. 3) must be determined on the principles governing the interpretation of the Convention.

103. The Convention is to be read as a whole and Article 3 (art. 3) should therefore be construed in harmony with the provisions of Article 2 (art. 2) (see, mutatis mutandis, the Klass and Others judgment of 6 September 1978, Series A no. 28, p. 31, § 68). On this basis Article 3 (art. 3) evidently cannot have been intended by the drafters of the Convention to include a general prohibition of the death penalty since that would nullify the clear wording of Article 2 § 1 (art. 2-1).

Subsequent practice in national penal policy, in the form of a generalised abolition of capital punishment, could be taken as establishing the agreement of the Contracting States to abrogate the exception provided for under Article 2 § 1 (art. 2-1) and hence to remove a textual limit on the

scope for evolutive interpretation of Article 3 (art. 3). However, Protocol No. 6 (P6), as a subsequent written agreement, shows that the intention of the Contracting Parties as recently as 1983 was to adopt the normal method of amendment of the text in order to introduce a new obligation to abolish capital punishment in time of peace and, what is more, to do so by an optional instrument allowing each State to choose the moment when to undertake such an engagement. In these conditions, notwithstanding the special character of the Convention (see paragraph 87 above), Article 3 (art. 3) cannot be interpreted as generally prohibiting the death penalty.

104. That does not mean however that circumstances relating to a death sentence can never give rise to an issue under Article 3 (art. 3). The manner in which it is imposed or executed, the personal circumstances of the condemned person and a disproportionality to the gravity of the crime committed, as well as the conditions of detention awaiting execution, are examples of factors capable of bringing the treatment or punishment received by the condemned person within the proscription under Article 3 (art. 3). Present-day attitudes in the Contracting States to capital punishment are relevant for the assessment whether the acceptable threshold of suffering or degradation has been exceeded.

(b) The particular circumstances

105. The applicant submitted that the circumstances to which he would be exposed as a consequence of the implementation of the Secretary of State’s decision to return him to the United States, namely the "death row phenomenon", cumulatively constituted such serious treatment that his extradition would be contrary to Article 3 (art. 3). He cited in particular the delays in the appeal and review procedures following a death sentence, during which time he would be subject to increasing tension and psychological trauma; the fact, so he said, that the judge or jury in determining sentence is not obliged to take into account the defendant’s age and mental state at the time of the offence; the extreme conditions of his future detention on "death row" in Mecklenburg Correctional Center, where he expects to be the victim of violence and sexual abuse because of his age, colour and nationality; and the constant spectre of the execution itself, including the ritual of execution. He also relied on the possibility of extradition or deportation, which he would not oppose, to the Federal Republic of Germany as accentuating the disproportionality of the Secretary of State’s decision.

The Government of the Federal Republic of Germany took the view that, taking all the circumstances together, the treatment awaiting the applicant in Virginia would go so far beyond treatment inevitably connected with the imposition and execution of a death penalty as to be "inhuman" within the meaning of Article 3 (art. 3).

On the other hand, the conclusion expressed by the Commission was that the degree of severity contemplated by Article 3 (art. 3) would not be attained.

The United Kingdom Government shared this opinion. In particular, they disputed many of the applicant’s factual allegations as to the conditions on death row in Mecklenburg and his expected fate there.

i. Length of detention prior to execution

106. The period that a condemned prisoner can expect to spend on death row in Virginia before being executed is on average six to eight years (see paragraph 56 above). This length of time awaiting death is, as the Commission and the United Kingdom Government noted, in a sense largely of the prisoner's own making in that he takes advantage of all avenues of appeal which are offered to him by Virginia law. The automatic appeal to the Supreme Court of Virginia normally takes no more than six months (see paragraph 52 above). The remaining time is accounted for by collateral attacks mounted by the prisoner himself in habeas corpus proceedings before both the State and Federal courts and in applications to the Supreme Court of the United States for certiorari review, the prisoner at each stage being able to seek a stay of execution (see paragraphs 53-54 above). The remedies available under Virginia law serve the purpose of ensuring that the ultimate sanction of death is not unlawfully or arbitrarily imposed.

Nevertheless, just as some lapse of time between sentence and execution is inevitable if appeal safeguards are to be provided to the condemned person, so it is equally part of human nature that the person will cling to life by exploiting those safeguards to the full. However well-intentioned and even potentially beneficial is the provision of the complex of post-sentence procedures in Virginia, the consequence is that the condemned prisoner has to endure for many years the conditions on death row and the anguish and mounting tension of living in the ever-present shadow of death.

ii. Conditions on death row

107. As to conditions in Mecklenburg Correctional Center, where the applicant could expect to be held if sentenced to death, the Court bases itself on the facts which were uncontested by the United Kingdom Government, without finding it necessary to determine the reliability of the additional evidence adduced by the applicant, notably as to the risk of homosexual abuse and physical attack undergone by prisoners on death row (see paragraph 64 above).

The stringency of the custodial regime in Mecklenburg, as well as the services (medical, legal and social) and the controls (legislative, judicial and administrative) provided for inmates, are described in some detail above (see paragraphs 61-63 and 65-68). In this connection, the United Kingdom Government drew attention to the necessary requirement of extra security for the safe custody of prisoners condemned to death for murder. Whilst it might thus well be justifiable in principle, the severity of a special regime such as that operated on death row in Mecklenburg is compounded by the fact of inmates being subject to it for a protracted period lasting on average six to eight years.

iii. The applicant's age and mental state

108. At the time of the killings, the applicant was only 18 years old and there is some psychiatric evidence, which was not contested as such, that he "was suffering from [such] an abnormality of mind ... as substantially impaired his mental responsibility for his acts" (see paragraphs 11, 12 and 21 above).

Unlike Article 2 (art. 2) of the Convention, Article 6 of the 1966 International Covenant on Civil

and Political Rights and Article 4 of the 1969 American Convention on Human Rights expressly prohibit the death penalty from being imposed on persons aged less than 18 at the time of commission of the offence. Whether or not such a prohibition be inherent in the brief and general language of Article 2 (art. 2) of the European Convention, its explicit enunciation in other, later international instruments, the former of which has been ratified by a large number of States Parties to the European Convention, at the very least indicates that as a general principle the youth of the person concerned is a circumstance which is liable, with others, to put in question the compatibility with Article 3 (art. 3) of measures connected with a death sentence.

It is in line with the Court's case-law (as summarised above at paragraph 100) to treat disturbed mental health as having the same effect for the application of Article 3 (art. 3).

109. Virginia law, as the United Kingdom Government and the Commission emphasised, certainly does not ignore these two factors. Under the Virginia Code account has to be taken of mental disturbance in a defendant, either as an absolute bar to conviction if it is judged to be sufficient to amount to insanity or, like age, as a fact in mitigation at the sentencing stage (see paragraphs 44-47 and 50-51 above). Additionally, indigent capital murder defendants are entitled to the appointment of a qualified mental health expert to assist in the preparation of their submissions at the separate sentencing proceedings (see paragraph 51 above). These provisions in the Virginia Code undoubtedly serve, as the American courts have stated, to prevent the arbitrary or capricious imposition of the death penalty and narrowly to channel the sentencer's discretion (see paragraph 48 above). They do not however remove the relevance of age and mental condition in relation to the acceptability, under Article 3 (art. 3), of the "death row phenomenon" for a given individual once condemned to death.

Although it is not for this Court to prejudge issues of criminal responsibility and appropriate sentence, the applicant's youth at the time of the offence and his then mental state, on the psychiatric evidence as it stands, are therefore to be taken into consideration as contributory factors tending, in his case, to bring the treatment on death row within the terms of Article 3 (art. 3).

(c) Conclusion

111. For any prisoner condemned to death, some element of delay between imposition and execution of the sentence and the experience of severe stress in conditions necessary for strict incarceration are inevitable. The democratic character of the Virginia legal system in general and the positive features of Virginia trial, sentencing and appeal procedures in particular are beyond doubt. The Court agrees with the Commission that the machinery of justice to which the applicant would be subject in the United States is in itself neither arbitrary nor unreasonable, but, rather, respects the rule of law and affords not inconsiderable procedural safeguards to the defendant in a capital trial. Facilities are available on death row for the assistance of inmates, notably through provision of psychological and psychiatric services (see paragraph 65 above).

However, in the Court's view, having regard to the very long period of time spent on death row in such extreme conditions, with the ever present and mounting anguish of awaiting execution of the death penalty, and to the personal circumstances of the applicant, especially his age and mental

state at the time of the offence, the applicant's extradition to the United States would expose him to a real risk of treatment going beyond the threshold set by Article 3 (art. 3). A further consideration of relevance is that in the particular instance the legitimate purpose of extradition could be achieved by another means which would not involve suffering of such exceptional intensity or duration.

Accordingly, the Secretary of State's decision to extradite the applicant to the United States would, if implemented, give rise to a breach of Article 3 (art. 3).

Class 7. Non-governmental organizations (NGO)

A. The Role of NGO's

"Expanding and deepening the relationship with non-governmental organizations will further strengthen both the United Nations and the intergovernmental debates on issues of global importance".

Report of the Secretary-General in response to the report of the Panel of Eminent Persons on United Nations-Civil Society Relations (A/59/354)

The United Nations works in partnership with civil society on issues of global concern. Non-governmental organizations (NGOs) may engage with the United Nations through consultative status with the Economic and Social Council (ECOSOC) or association with the Department of Public Information (DPI). Formal relations with ECOSOC are based on Article 71 of the Charter and governed by ECOSOC resolution 1996/31, which sets out eligibility requirements, rights and obligations of NGOs in consultative status.

Since the first NGOs were granted consultative status in 1946, the participation of NGOs in intergovernmental bodies has increased significantly. Today, more than 2,500 NGOs have consultative status with ECOSOC, and over 1,500 NGOs are associated with DPI. In the Millennium Declaration, world leaders resolved to give greater opportunities to the private sector, non-governmental organizations and civil society, in general, to contribute to the realization of the Organization's goals and programmes.

The Secretary-General's report on the reform of the Organization, "Strengthening the United Nations: an agenda for further change" (A/57/387) reflected on this growing importance of NGOs to the work of the United Nations. At the same time, the Secretary-General noted that the system for facilitating this interaction needed to be strengthened. Therefore, the Secretary-General appointed in February 2003 a High-Level Panel of Eminent Persons on United Nations-Civil Society Relations, chaired by the former Brazilian President Henrique Fernando Cardoso, to produce a set of practical recommendations as to how the Organization's work with civil society could be improved. UNOG provided support to meetings of the Panel taking place in Geneva in December 2003.

In June 2004, the panel's report (A/58/817) was presented to the Secretary-General, who submitted his own response (A/59/354) to the General Assembly in September 2004. In this Report, the Secretary-General emphasized how expanding and deepening the relationship with NGOs would further strengthen both the institution and the intergovernmental debate.

Of the over 8,000 meetings that take place annually at the United Nations Office at Geneva, more than half are open to NGOs. The Director-General, through the NGO Liaison Office, maintains liaison with non-governmental organizations in consultative status with ECOSOC and facilitates their participation in United Nations activities.

B. Amnesty International

The History of Amnesty International [reprinted from web site]

Ever since we started campaigning in 1961, we've worked around the globe to stop the abuse of human rights.

We now have more than 2.2 million members, supporters and subscribers in over 150 countries and territories, in every region of the world.

The following short history highlights many of the campaigns and actions we've undertaken and key human rights developments since we began all those years ago.

The 1960s

1961

British lawyer Peter Benenson launched a worldwide campaign, 'Appeal for Amnesty 1961' with the publication of a prominent article, 'The Forgotten Prisoners', in The Observer newspaper. The imprisonment of two Portuguese students, who had raised their wine glasses in a toast to freedom, moved Benenson to write this article. His appeal was reprinted in other papers across the world and turned out to be the genesis of Amnesty International.

The first international meeting was held in July, with delegates from Belgium, the UK, France, Germany, Ireland, Switzerland and the US. They decided to establish "a permanent international movement in defence of freedom of opinion and religion".

A small office and library, staffed by volunteers, opened in Peter Benenson's chambers, in Mitre Court, London. The 'Threes Network' was established through which each Amnesty International group adopted three prisoners from contrasting geographical and political areas, emphasizing the impartiality of the group's work.

On Human Rights Day, 10 December, the first Amnesty candle was lit in the church of St-Martin-in-the-Fields, London.

1962

In January the first research trip was undertaken. This trip to Ghana, was followed by Czechoslovakia in February (on behalf of a prisoner of conscience, Archbishop Josef Beran), and then to Portugal and East Germany.

The Prisoner of Conscience Fund was established to provide relief to prisoners and their families.

AI's first annual report was published; it contained details of 210 prisoners who had been adopted by 70 groups in seven countries; in addition, 1,200 cases were documented in the Prisoners of Conscience Library.

At a conference in Belgium, a decision was made to set up a permanent organization that will be known as *Amnesty International*.

An observer attended the trial of Nelson Mandela.

1963

Amnesty International now comprised 350 groups – there was a two-year total of 770 prisoners adopted and 140 released.

The International Secretariat (Amnesty International's headquarters) was established in London.

1964

Peter Benenson was named president. There were now 360 groups in 14 countries. In August the United Nations gave Amnesty International consultative status.

1965

Amnesty International issued its first reports – on prison conditions in Portugal, South Africa and Romania – and sponsored a resolution at the United Nations to suspend and finally abolish the death penalty for peacetime political offences.

The monthly Postcards for Prisoners campaign started.

* * *

1967

There were 550 groups in 18 countries, and Amnesty International was working for nearly 2,000 prisoners in 63 countries – 293 prisoners had been released.

1968

The first Prisoner of Conscience Week was observed in November.

Martin Ennals was appointed AI Secretary General.

1969

In January, UNESCO granted Amnesty International consultative status as the organization reached another milestone – 2,000 prisoners of conscience released.

The International Convention on the Elimination of All Forms of Racial Discrimination was adopted.

The 1970s

1970

There were now 850 groups in 27 countries; 520 prisoners had been released during the year.

1971

Amnesty International's 10th anniversary received widespread publicity in international press, radio and television, in a year when 700 prisoners were released.

1972

Amnesty International launched its first worldwide campaign for the abolition of torture.

1973

The first full Urgent Action was issued, on behalf of Professor Luiz Basilio Rossi, a Brazilian who was arrested for political reasons. Luiz himself believed that Amnesty International's appeals were crucial: "I knew that my case had become public, I knew they could no longer kill me. Then the pressure on me decreased and conditions improved."

The new regime in Chile agreed to admit a three-person Amnesty International mission for an on-the-spot probe into allegations of massive violations of human rights.

The United Nations unanimously approved the Amnesty International-inspired resolution formally denouncing torture.

1974

Amnesty International's Sean McBride, Chair of the International Executive Committee, was awarded the Nobel Peace Prize in recognition of his lifelong work for human rights.

On the first anniversary of Chile's military coup, AI published a report exposing political oppression, executions and torture under the regime of President Augusto Pinochet.

Mumtaz Soysal of Turkey became first ever former prisoner of conscience elected to the International Executive Committee, Amnesty International's most senior governance body.

1975

The United Nations unanimously adopted a Declaration Against Torture.

There were now 1,592 groups in 33 countries and more than 70,000 members in 65 countries.

1976

The first Secret Policeman's Ball fundraising event in London featured John Cleese and Monty Python, Peter Cook and

other Beyond the Fringe comedians, Not the Nine o'Clock News, Fawlty Towers and The Goodies. The series continued in later years starring comedians and musicians such as Peter Gabriel, Duran Duran, Mark Knopfler, Bob Geldolf, Eric Clapton and Phil Collins paved the way for benefits such as Live Aid.

The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights entered into force. Together they are known as the International Bill of Rights.

1977

Amnesty International was awarded the Nobel Peace Prize for "having contributed to securing the ground for freedom, for justice, and thereby also for peace in the world".

1978

Amnesty International won the United Nations Human Rights prize for "outstanding contributions in the field of human rights".

1979

List published of 2,665 cases of people known to have "disappeared" in Argentina after the military coup by Jorge Rafael Videla.

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was adopted by the UN General Assembly.

The 1980s

* * *

1982

On 10 December, Human Rights Day, an appeal was launched for a universal amnesty for all prisoners of conscience. More than one million people sign petitions, which were presented to the United Nations a year later.

1983

Amnesty International launched a special report on political killings by governments.

1984

Amnesty International launched the second Campaign Against Torture, which included a 12-point plan for the abolition of torture.

1985

Amnesty International published its first educational pack: Teaching and Learning about Human Rights.

The International Council Meeting in Helsinki, Finland, made a decision to broaden the statute to include work for refugees.

There were now more than half a million members, supporters and subscribers.

1986

Amnesty International USA launched the Conspiracy of Hope rock concert tour with U2, Sting, Peter Gabriel, Bryan Adams, Lou Reed, the Neville Brothers and others.

Ian Martin became General Secretary.

1987

AI published a report which said that the death penalty in the USA is racially biased and arbitrary and violated treaties such as the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR).

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment enters into force.

1988

Human Rights Now! concert tour, featuring Sting and Bruce Springsteen, among others, travelled to 19 cities in 15 countries and was viewed by millions when broadcast on Human Rights Day.

Membership surged in many countries following the tour.

1989

Amnesty International published a major new study on the death penalty, When the State Kills.

The 1990s

1990

Membership increased to 700,000 members in 150 countries, with more than 6,000 volunteer groups in 70 countries.

1991

Amnesty International’s 30th anniversary saw the organization broaden its scope to cover work on abuses by armed opposition groups, hostage taking and people imprisoned due to their sexual orientation.

1992

Membership passed one million.

Pierre Sané was appointed Secretary General of Amnesty International.

The UN Declaration on the Protection of all Persons from Enforced Disappearance was adopted.

1993

Amnesty International activists demonstrated at the United Nations World Conference on Human Rights in Vienna, and displayed Urgent Actions from around the world.

1994

Amnesty International launched major international campaigns on women's rights, disappearances and political killings.

1995

Amnesty International campaigned to Stop the Torture Trade.

1996

Amnesty International launched the campaign for a permanent International Criminal Court.

1997

Human rights of refugees worldwide became a major focus of campaigning.

1998

The Rome Statute of the International Criminal Court was adopted in July 1998.

Amnesty International launched the Get Up, Sign Up! campaign to mark the 50th anniversary of the Universal Declaration of Human Rights – 13 million pledges of support were collected.

A concert was held in Paris on Human Rights Day featuring Radiohead, Asian Dub Foundation, Bruce Springsteen, Tracey Chapman, Alanis Morissette, Youssou N'Dour and Peter Gabriel, with special appearances by the Dalai Lama and international human rights activists.

1999

The United Nations Declaration on Human Rights Defenders was adopted in March 1999.

Our International Council Meeting agreed to expand Amnesty International’s remit to include: the impact of economic

relations on human rights; empowering human rights defenders; campaigning against impunity; enhancing work to protect refugees; and strengthening grassroots activism.

The Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women was adopted, meaning the Committee on the Elimination of Discrimination against Women can receive and consider complaints from individuals or groups.

2000-present day

2000

Amnesty International launched the third Campaign against Torture.

2001

Irene Khan was appointed Secretary General of Amnesty International.

In its 40th anniversary year, Amnesty International changed its Statute to incorporate, into its mission, work for economic, social and cultural rights thus committing itself to advance both the universality and indivisibility of all human rights enshrined in the Universal Declaration.

Amnesty International's Stop Torture website won a Revolution Award, which recognised the best in digital marketing.

2002

The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict was adopted (the Convention on the Rights of the Child itself having been adopted in 1959).

The 60th ratification of the Rome Statute took place, paving the way for the International Criminal Court to come into force on 1 July 2002.

Amnesty International launched a campaign in the Russian Federation against the widespread human rights abuses committed in a climate of impunity.

2003

Amnesty International, Oxfam and the International Action Network on Small Arms (IANSA) launched the global Control Arms campaign.

2004

Amnesty International launched the Stop Violence Against Women campaign.

2005

Amnesty International launched the Make Some Noise campaign – music, celebration and action in support of Amnesty International's work. Yoko Ono made a gift to Amnesty International of the recording rights to Imagine and John Lennon's entire solo songbook.

Amnesty International's report, Cruel. Inhuman. Degrades us all – Stop torture and ill-treatment in the 'war on terror', challenged the claim that, in the face of terrorist threats, states need not be bound by previously agreed human rights standards.

2006

Amnesty International's report, Partners in crime: Europe's role in US renditions, detailed the involvement of European states in US flights used to secretly seize and imprison terrorist suspects without due process.

The millionth person to post a picture of himself on the Control Arms Million Faces web petition calling for an Arms Trade Treaty presented the petition to UN Secretary-General Kofi Annan. A further quarter of a million people signed the petition before the year was out.

Amnesty International and its partners in the Control Arms campaign achieved a major victory when the UN voted overwhelmingly to start work on a treaty.

The UN adopted the International Convention For The Protection Of All Persons From Enforced Disappearance.

2007

Amnesty International launched a global petition calling on Sudan's government to protect civilians in Darfur and launched a CD featuring 30 world-class musicians to mobilize support, called Make Some Noise: The Campaign to Save Darfur.

The United Nations General Assembly (GA) adopted the Declaration on the Rights of Indigenous Peoples.

Following intense campaigning by Amnesty International and its partners in the World Coalition Against the Death Penalty, the UN General Assembly (UNGA) Third Committee's 62nd session adopted resolution L29 calling for a global moratorium on executions.

Amnesty International has more than 2.2 million members, supporters and subscribers in over 150 countries and territories in every region of the world.

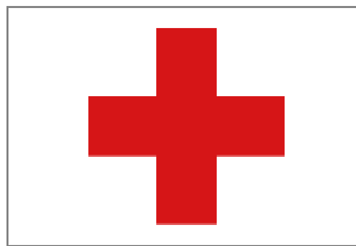
C. International Red Cross

The International Red Cross and Red Crescent Movement

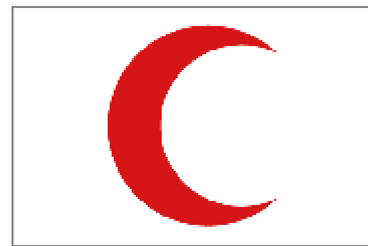
The Red Cross was founded in 1863 by the initiative of a Swiss citizen Henri Dunant. The international Red Cross is a well-known international humanitarian aid agency. It is not clearly non-governmental or governmental organizations since it is ruled by the international conferences where all the member states are represented and the members of the Committee are all Swiss citizens.

The Red Cross has seven principles:

1. Humanity,
2. Impartiality,
3. Neutrality,
4. Independence,
5. Voluntary service,
6. Unity
7. Universality.



The Red Cross emblem



The Red Crescent emblem

The Mission

The international Red Cross is based on the Geneva Convention and its mission is to help wounded and sick soldiers without discrimination and protect the medical staff, equipment, and facilities. The states recognize the value of international humanitarian law , which is not the same as the human rights. The Red Cross mandate allows it to take action, the right to put forward proposals and the right of humanitarian initiative. The Red Cross has also other clear links to the states. It accepts donations from the governments and the security of its workers is in the hands of the countries. The declining importance of the states within the conflicts has caused a lot of problems to the security of the Red Cross workers.

The mission is fairly similar to amnesty international but they differ in the sense that Red Cross is neutral, it respects the rules within the country and thus cannot criticize the government. This means that they can enter many regions where amnesty is not allowed since they would criticize the governmant. At the same time amnesty is needed to point out these violations of human rights as the Red Cross only helps the victims at the moment of the crises amnesty tries to stop them from happening again.

The Structure of the Movement

The International Committee of the Red Cross (ICRC)

The international Committee of the Red Cross was founded in 1863 and is the origin of the Red Cross and

Red Crescent movement. The Role of the committee is to direct and coordinate the relief activities as well as to prevent suffering by promoting the international human law.

The International Federation of the Red Cross and the Red Crescent (IFRC)

The Federation was founded in 1919 and it works on the basis of the principles of the movement. The Federation directs and coordinates the international assistance of the movement, represents the national societies in the international field and promotes the cooperation between the national societies.

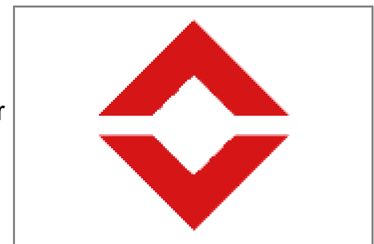
The National Societies

The Red Cross and the Red Crescent have national societies in 178 countries. There can only be one national society per country. The National Societies all follow the principles of the movement but they also differ in several aspects between each other. For example they have divided their experience responsibilities between different countires. Meaning that for example UK is specialized in communication and where as Finland is specialized into building hospitals. When the crises takes place the movement sends the needed expertise from different countries. The national societies also emphasize different aspects in their campaigns.

The Challenges

The Red Cross is suffering from the CNN syndrome, which means that the first organization that is present at the destination of the crises will get most of the publicity and thus most of the donations. People tend to give more money to public crises, which also creates problems. Even thought the Red Cross does not accept earmarked donations it gives the possibility for the donor to make a wish where ICRC can use the money if they have a program in that country. This means that they also need to collect emergency funds in order to get non-earmarked funds.

The emblem of the Red Cross and Red Crescent is one of the most currently known emblem around the world. However it also causes a lot of problems. The cross has always been a sign of Christianity and thus the Muslims wanted to use the crescent. Currently Israel wants to also use the David's star but is not approved by the Geneva Conventions. Currently the Red Cross is thinking about taking a more culturally-neutral emblem, which would be the red chevrons. A cross, crescent or star of David can be placed in the middle of the chevrons. Another problem is that the emblem is often misused which causes problems for the credibility of the Red Cross.



The Red Chevrons (proposal)

Useful Links

- **The International Movement of the Red Cross and Red Crescent** containing general information about the whole movement and links to all the web sites of the international, regional and national societies. http://www.redcross.int
- **The International Committee of the Red Cross and Red Crescent** containing the history and the structure of the ICRC more precisely. Here you can also find more information about the international human law and the Geneva Conventions. http://www.icrc.org
- **The international Federation of the Red Cross and Red Crescent** http://www.ifrc.org
- **The Finnish Red Cross** web sites http://www.redcross.fi

- **The British Red Cross** web sites http://www.redcross.org.uk/homepage.asp

D. Doctors Without Borders

Doctors Without Borders/Médecins Sans Frontières (MSF) is an independent international medical humanitarian organization that delivers emergency aid to people affected by armed conflict, epidemics, natural or man-made disasters, or exclusion from health care in nearly 60 countries.

Each year, MSF doctors, nurses, logisticians, water-and-sanitation experts, administrators, and other medical and non-medical professionals depart on more than 4,700 aid assignments. They work alongside more than 25,800 locally hired staff to provide medical care.

In emergencies and their aftermath, MSF provides essential health care, rehabilitates and runs hospitals and clinics, performs surgery, battles epidemics, carries out vaccination campaigns, operates feeding centers for malnourished children, and offers mental health care. When needed, MSF also constructs wells and dispenses clean drinking water, and provides shelter materials like blankets and plastic sheeting.

Through longer-term programs, MSF treats patients with infectious diseases such as tuberculosis, sleeping sickness, and HIV/AIDS, and provides medical and psychological care to marginalized groups such as street children.

MSF was founded in 1971 as the first nongovernmental organization to both provide emergency medical assistance and bear witness publicly to the plight of the people it assists. A private nonprofit association, MSF is an international network with sections in 19 countries.

MSF is often one of the first humanitarian organizations to arrive at the scene of an emergency. Its large-scale logistical capacity ensures that MSF emergency teams hit the ground with the specialized medical kits and equipment they need to start saving lives immediately.

Custom-designed by MSF for specific field situations, geographic conditions, and climates, a kit may contain a complete operating room, for example, or all of the supplies needed to treat hundreds of cholera patients. MSF kits and medical protocols have been replicated by relief organizations worldwide.

MSF has proven expertise in the field of epidemiology and is often called on to monitor, diagnose, and control outbreaks of diseases, such as cholera, meningitis, and measles.

Independent Humanitarian Action

MSF's decision to intervene in any country or crisis is based solely on an independent assessment of people's needs — not on political, economic, or religious interests. MSF does not take sides or intervene according to the demands of governments or warring parties.

MSF volunteers frequently work in the most remote or dangerous parts of the world. When crises unfold, they make themselves and their skills available on short notice, usually dedicating six to twelve months to each assignment. Their expenses are covered and they receive a modest stipend.

MSF teams are composed of international volunteers and skilled local staff. Together, they work closely with national medical professionals and cooperate with other aid organizations.

Speaking Out to End Suffering

MSF unites direct medical care with a commitment to speaking out against the causes of suffering and the obstacles to providing effective assistance. MSF volunteers raise the concerns of their patients with governments, the United Nations, other international bodies, the general public, and the media. In a wide range of circumstances, MSF volunteers have spoken out against violations of international humanitarian law they have witnessed — from Chechnya to Sudan.

Based on its field experience, MSF is addressing obstacles preventing people in the developing world from obtaining affordable, effective treatments for diseases such as HIV/AIDS, malaria, and tuberculosis. Through its Campaign for Access to Essential Medicines, MSF is advocating to lower drug prices, stimulate research and development of new treatments, and overcome trade and other barriers to accessing treatments.

In the United States and worldwide, MSF raises public awareness of the plight of people at risk. The organization sends field volunteers and staff to speak at international and national conferences, and arranges informational events and traveling exhibitions. Special public education projects have addressed the stark realities of living without access to medicines, the devastation caused by malnutrition, and the hardships of life in a refugee camp.

Financial Independence and Accountability

To maintain its operational independence and flexibility, MSF relies on the general public for nearly 89 percent of its operating funds. The remaining 11 percent of funds come from international agencies and governments. The organization counted more than 3.3 million individuals, foundations, corporations, and nonprofit organizations among its donors worldwide in 2006. In 2006, MSF's worldwide income was $714 million. In the United States, nearly 489,000 private donors contributed more than $118 million to MSF-USA.