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FOUNDATION FOR LEGAL AID IN CHILE
(STICHTING RECHTSHULP CHILI)

"THE PROTECTION OF HUMAN RIGHTS AND THE IMPACT OF EMERGENCY SITUATIONS UNDER INTERNATIONAL LAW: THE CHILEAN CASE"

THIRD SPECIFIC REPORT:

"RULE OF LAW"

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This report has been drawn up within the framework of the Foundation for Legal Aid in Chile. This Foundation sets itself to the granting of legal aid - in the broadest sense of the word - to victims of violations of human rights, in particular to political prisoners in Chile.

For this purpose the Foundation undertakes the drawing up of scientific reports concerning the international legal status of political prisoners with particular emphasis on the international protection of human rights. These reports purport to analyse the legal status of political prisoners in Chile under international and chilean law, reviewing the conformity of the treatment of political prisoners in Chile with these standards of law.

The reports are made available to persons and institutions engaged in the defending of political prisoners in particular political prisoners in Chile.

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R U L E O F L A W

A. THE HISTORY OF THE CONCEPT OF RULE OF LAW

The struggle for human rights is as old as history itself, because it is always manifest in the endeavor to protect the individual against the abuse of power by the state.[1]

Human rights have their roots going far back into history. Certainly one cannot ignore the influence of Roman Law. Modinos, in his inaugural lecture at the law faculty of Strassbourg in 1963 traced their philosophical foundations back to ancient Greece, and in another context, to the code of Hammurabi, King of Babylon in the 21st century B.C.[2] One of the first important documents in the development of the concept of rule of law of a more recent date is the Magna Charta, which the English barons wrested from their king in 1215.

This Magna Charta is regarded as the foundation of English liberties. It contains certain basic rights, which are still valid and necessary, including the freedom of the citizen from imprisonment or from dispossession of his property and freedom from prosecution or exile "unless by the lawful judgement of his peers or by the law of his land". It also includes a primitive formulation of the right to a fair trial in the famous words: " to none will we sell, deny or delay rights or justice" [3].

The Magna Charta is regarded as the great symbol of the socio-political forces which established the supremacy of the rule of law in England[4].

During the Enlightenment period, some centuries later, we find the principles formulated in the Magna Charta in the ideas of that age. For this is the time when the historical foundation of rule of law was formulated: Rousseau's "Contrat Social", based on natural law[5]. All people are linked by reason. Fundamental rights exist for everyone, the fundtion of the state should be restricted to protecting the law. The law must be in favour of the citizen[6].

This idea was laid down in the "American Declaration of Independence" of 1776 and in the "Déclaration des droits de l'homme et du citoyen" of 1789. Both declarations proclaimed the principles of natural law, freedom, and rule of law[7]. In both declarations, inalienable rights are granted to the individual.

The raison d'être of the state consists in the protection of these rights. Citizens have the right to resist (ius resistendi) a government which does not respect these rights and abuses its power[8]. Therefore, the preamble of the American Declaration of 1776 reads:

> We hold these truths to be self-evident; that all men are created equal; that they are endowed by their creator with certain inalienable rights; that among these are life, liberty and the pursuit of happiness; that to secure these rights, governments are instituted among men; deriving their just powers from the consent of the governed; that whenever any form of

government becomes destructive of these ends it is the right of the people to alter or to abolish it and to institute a new government.

Laying its foundation on such principles and organizing its powers in such form as to them shall seem most likely to effect their safety and happiness (in the same vein, the considerations of the preamble of the U.D.).

So, we see that already in the beginning of the 20th century the most important powers of that time had made rule of law the basis of their constitutions[9].
In the middle of this century, the principles of rule of law became *universal*.
The end of colonial regimes, the dissemination of education, fast scientific progress, the swift transmission of ideas by the mass media, the reactions to arbitrary governments and the terrors of, particularly, the second world war, caused a profound conviction of the necessity to strive for the protection of human rights under the rule of law. The second world war can be seen as a turning-point in the attitude towards human rights (thus: Röling)[10] Especially the trials of Nuremberg and Tokyo - in their acceptance of the supremacy of the law of nations, and individual responsibility for violations of international law were milestones in the development of international law.
Lord Lawrence (President of the Nuremberg Court), made the following statement with regard to the adoption of the London Charter (Aug. 8, 1945): "no greater step has been taken in the history of the world".
Donnedieu des Vabres[11] spoke of "un oeuvre revolutionnaire". The Nuremberg and Tokyo trials, conducted on the basis of the London Charter, formulated a number of international legal principles[12]:

- Individuals are answerable under criminal law for actions which they have committed as organs of a state, in internal as well as foreign affairs.
- There are international legal obligations which prevail over national obligations. This means that international law (i.e. human rights) is addressed to the individual.
- International legal responsibility is threefold:
  1. crimes against peace;
  2. war crimes;
  3. crimes against humanity;[13]
- The International Commission adds the important principle of fair trial[14].

The London Charter adopted by the tribunals is regarded by authoritative lawyers[15], as well as by the tribunals themselves, as "the expression of International Law existing at the time of its creation, and to that extent is itself a contribution to International Law".

During one of its first sessions, the General Assembly of the United Nations confirmed the principles of International Law as recognized in the Charter of the Nuremberg Tribunal and in its verdicts. The Assembly also set up an International Law Commission, charged with formulating these principles. The report which was published by its commission resulted in the adoption (in 1951) of the Convention on the Prevention and Punishment of Genocide, which is based mainly on the Nuremberg Charter (particularly art. 6(c)). The need for the preservation of peace and security and for respect for human rights, which made itself felt particularly after the second world war, led to the adoption of the Charter of the United Nations (U.N.) and of the Universal Declaration of the U.N., (U.D.).[17] Centuries of struggle for the classical freedoms of the individual and a stormly century of struggle for economic, social and cultural rights found their accomplishment in this universal declaration in 1948, which proclaimed these rights and freedoms to be universal[18].

As a member of the U.N., Chile is obliged to respect the U.D. Chile's representative to the U.N. at the time the Declaration was worked out, regarded it as an interpretation of the articles of the Charter, and as such binding for U.N. members.

He maintained that the U.D. described and clarified those fundamental human rights, which all those who signed the Charters had taken upon themselves to respect, to further and to apply. He considered the provisions of the Declaration binding for the states who had adopted it, and this includes Chile[19].

The preamble of the U.D. grants to the individual the rights of man (viz. also U.N. Charter), and it also points out that these human rights must be protected by Rule of Law. Furthermore, it lays "the responsibility to implement human rights" with the states and their governments. This responsibility is so fundamental, that implementation of human rights becomes the only basis of *legitimacy* for a government or for any exercise of power. A systematic lack of implementation in earlier times called tyranny and oppression, strips a government of its right to exist and opens up for the people a right to resist, a ius resistendi[20]

The provisions and ideals of the Charter and of the U.D. have now been reflected in many international Charters, declarations and conventions and in national constitutions and national law[21].

The development tow rds international legal protection of human rights within the framework of the U.N. has resulted, among other things, in the International Covenant on Civil and Political Rights (ICCPR) which came into force on March 23, 1976. The Rule of Law also has a basis in the preamble of the ICCPR.[22] Chile, too, is a party to this treaty, because Chile ratified it already on Febr. 10, 1972 (art. 49.1). It came into force for Chile on March 23, 1976.

A growing tendency towards international legal protection of human rights can also be seen at a regional level. Thus, in the framework of O.A.S., the American Declaration on the Rights and Duties of Man (1948) came into being. The force of law of the declaration for the members of O.A.S., including Chile, is demonstrated by the following:

The 1969 Constitution of the Inter-American Commission on Human Rights, set up in 1959, refers, to the AD in its description of the functions and powers of the Convention when the O.A.S. Charter was amended in 1970, the Commission was given a basis in the Charter (art. 51). The task-description refers to the American Convention. As long as the Conventoon is not in force, the transitional provision of article 150 of the O.A.S. Charter applies : "The present Commission shall keep vigilance over the observance of human rights".

According to Buergenthal, the reference to the "present commission" means that it includes the Statute of the Commission is applicable to the extent that it is compatible with the Charter as long as the transitional provisions are in force. Consequently, the American Declaration, referred to in the Statute, derives its normative authority from the O.A.S. Charter, and therefore has acquired the character of a treaty.[23]

The Rule of Law finds a basis in the Charter, in the A.D. and in the American Convention on Human Rights (A.C.).[24]

The fact that Chile signed the American Convention on Human Rights on Nov. 22, 1969, also shows that Rule of Law must be respected in Chile.

With regard to the normative strength of the Convention, the following remarks can be made.

All civilized nations generally recognize the principle, that a state by signing a treaty commits itself to the ratification of that treaty. Furthermore, states who have signed but not yet ratified a treaty, must in the meantime refrain from actions which are contrary to the purpose and object of the treaty, until they have explicitly stated that they will not ratify it.[25]

Moreover, the Convention can be regarded as containing general principles of law, and as a reflection of prevailing legal opinion in the Western Hemisphere.[26]

In view of the above, it is important to note that the Chilean minister of foreign affairs has made known, in telegrams sent to the Inter-American Commission on Human Rights, that Chile will fulfill all obligation resulting from Inter-American agreements.[27]

The declaration of Santiago de Chile (12-18 August, 1959) again formulates the general principles of Rule of Law. This declaration came about during the fifth meeting of consultation of ministers of foreign affairs[29].

The preamble of the European Convention (E.C.), too, states explicitly that rule

of law is necessary "for the collective enforcement of the rights stated in the universal declaration"[29]. The E.C. guarantees fundamental human rights for practically all Western-European states.

The significance of rule of law was judged, by all important lawyers in various countries of the world, to be so great that in 1955 they founded the International Commission of Jurists (I.C.J.). The purpose of the I.C.J. (among other things) is: "the supportment and advancement of those principles of justice which constitute the basis of the rule of law"[30]. About the application of the rule of law, the I.C.J. stated: "the rule of law stands for an universally and timeless applicable set of principles joined by respect for the individual and by abhorrence of any arbitrary rule withdrawn from effective control by the people over whom it is exercised. Its applicability is therefore not limited to a specific legal system, form of government, economic order or cultural tradition, as long as the state is subject to law and the individual assured of respect for his rights and for means for their enforcement"[31].

Furthermore, acceptance of the rule of law as laid down in the declaration of Delhi, means that this principle, laid down in all national and international legislation, is a "general principle of law", recognized by civilized nations, (see art. 38, Ic of the statute of the International Court of Justice).

B. RULE OF LAW AND EMERGENCY SITUATIONS [32]

The impact of emergency situations on fundamental human rights is an important problem. It is a question which is governed by international humanitarian law in a broad sense[33], which includes all rules of international law which safeguard respect for the individual. This part of international law can be classified as follows:

On the one hand, the laws of war in a strict sense, which contains limitations, rights and duties for states with regard to the way the war is conducted, and humanitarian law in a strict sense, directed at the effects of war. Together, these two are called laws of war in a broad sense. On the other hand, there is law concerning fundamental human rights, which grants to the individual at all times his fundamental rights and freedoms.[34]

At first, international law distinguished only between times of war and times of peace[35]. In humanitarian law (in a broad sense) at that time, the state played a major part. But in the life of international relations a number of conflicts arose during the course of time, which could not be classified under the simple dichotomy of war and peace. As an answer to this, international treaties brought about a more elaborate distinction with regard to the various possibilities of emergency situations.

Thus, in 1949, art. 3 common to the four Geneva Conventions[36], declared the Geneva provisions applicable not only to armed *international* conflicts, but also to armed *non-international* conflicts, taking place on the territory of one state[37]. This means that, as a consequence of the adoption of art. 3, the law of war contains important limitations to the sovereignty of states towards their own subjects, in the interest of those subject.

The part of international law concerning human rights is based on the idea that certain minimal rights and liberties are granted under all circumstances, in times of war as well as in times of peace, regardless whether the subject is in conflict with another nation or with his own state. The individual is the starting point in this part of law, and not the state.

The development of international law concerning human rights as described above in the introduction (and the related development of rule of law) has contributed - to say the least - to the addition of an entirely new dimension to international law, if not to a fundamental change of its nature. Here, too, the interests of the individual have come to the fore, where fundamental rights and freedoms are concerned. Above, we have seen that the law of war has broadened its scope from international conflicts to non-international armed conflicts. However, it is not applicable to another emergency situation: the state of internal disturbances. On the other hand, the influence of international law concerning human rights with peace as its starting-point, has broadened its scope to various emergency situations, like the state of internal disturbances. This tendency in international law is manifested on the one hand by the fact that international law no longer leaves to states discretionary powers to proclaim emergency-situations and, on the other hand by the fact that a number of fundamental rights are declared by international law to be applicable even in emergency-situations.

Furthermore, other rights can only be suspended under certain conditions. Thus in a state of emergency, a state is allowed to suspend rights and freedom only if the following conditions have been fulfilled:

a. suspension must be absolutely necessary in view of the emergency-situation;
b. and then, only to the extent required by the emergency (the condition of proportionality);
c. Further, the suspension may only be for a short period of time. This is a consequence of the nature and the aims of international humanitarian law, and as such of the concept of emergency. It is also the basis for most national legislations concerning emergency[38].

C. THE CONCEPT OF RULE OF LAW

From an historical point of view, the struggle for human rights goes together with the attempt to curb the possibilities for abuse of power by state bodies

and officers. This can be seen, too, in the Charters, Conventions and Declarations. Thus, Rule of Law must be studied with these two elements in mind. The first element (substantive) can be described thus:[39]

I. - the rule of law that the law itself is based on respect for the supreme value of the human personality;

The second, formal element is to be understood as follows:

II. - without regard to the content of the law, all power in the state should derive from and be exercised in accordance with the law.

I. *The substantive element of Rule of Law*

This element means that the state must serve the individual, the state must be his servant, not his master. The policies of the government and of the legislators, particularly in criminal law, must be based on human rights[40].

It is important to emphasize that such rights may be of two kinds. Broadly spoken, from an historical point of view, the main emphasis has been laid on the right of the individual to assert his freedom from state interference in his spiritual and political activities, a freedom which finds expression in such classic rights such as the right to life, freedom of worship, speech, assembly, etc.

The recognition that rights of this kind without a certain standard of education and economic security may for large sections of the population be more formal than real, has led to greater emphasis on a second kind of individual rights. These latter are concerned with every individual's claim on the state for access to the minimum material means whereby he may at least be in a position to take advantage of his spiritual and political freedom.

Of course, this development of classical human rights towards social human rights can also be seen in the development of the rule of law. It can be traced in the conventions (for instance, I.C.C.P.R., the American Convention, the E.C.), and in the declarations made by the I.C.J. - according to the declarations of Athens.[41]

In 1955 the I.C.J. considered the rule of law to be the following: "We free jurists from eight countries, assembled in Athens at the invitation of the I.C.J., being devoted to the Rule of Law which springs from the rights of the individual developed through history in the age-old struggle of mankind for freedom; which rights include freedom of speech, press, worship, assembly and association and the right to free elections to the end that laws are enacted by duly elected representatives of the people and afford equal protection to all", ...

Four years later, in the Declaration of Delhi (1959)[42], a new concept of rule of law was formulated: it is a dynamic concept for the expansion and fulfilment of which jurists are primarily responsible and which should be employed not only to safeguard and advance the civil and political rights of the individual in a free society, but also to establish social-economic education and cultural

conditions under which his legitimate aspirations and dignity may be realized". The new concept of rule of law has been developed further by the I.C.J. in its congresses and other activities[43].

II. *The procedural machinery of rule of law*

This element means that the state, in utilizing its powers, be they constitutional, legislative, executive or judicial, is bound to the rule of law[44]. The I.C.J., in its Rio resolution (1962), emphasized that the protection of the individual from unlawful or excessive interference by government is one of the foundations of the rule of law[45]. Especially in criminal law, where the life and liberty of citizens are at stake, the essence of the principles of the rule of law - legality - is the limitation on penalization by the state's officials effected by the prescription and application of specific rules[46].

This is a requirement of decent criminal law, that affords protection against possible arbitrary use of government power, constitutes a safeguard for the legal security of citizens, and is a direct consequence of the acceptance of rule of law. This principle of legality, widely known in the adage introduced by Feuerbach in 1850[47]:nullum delictum, nulla poena sine preavia lege poenali, states that an individual may be deprived of his freedom (in a broad sense) only on the basis of reasons mentioned in advance in the law, and only according to legal procedures described in advance[48]. If this principle of legality is to be more than an empty shell, requirements must be made of the legalislator, the executive the judge and the procedure, which leads to the recognition of the following principles:

1) principles of decent legislation
2) prohibition of retroactive legislation for all events in criminal procedure
3) adequate publication of laws
4) requirements regarding the use of methods of interpretation by the judge
5) principles of procedure

These principles will be elaborated below.

1) *Principles of decent legislation*

The principle of rule of law implies that the legislator himself is bound to law as well[49]. This means that the powers of the legislature must be laid down in fundamental provisions or conventions. The legislature must remain within the limits of the powers designated to it by law.

Every legislator who respects rule of law must enact legislation based on the recognition of the fundamental human rights as laid down in all declarations, conventions and charters [50].

This means that the legislator may not undermine these rights accorded to the

individual and laid down in a constitution, by legislation of poor quality. To prevent arbitrary government and to ensure maximum legality, the law must be clear, strictly construed, and may contain no execessively wide and vague terms. The definition and interpretation of the law should be as certain as possible.[51]

2) *Prohibition of retroactive legislation for all events in criminal procedure*

Underlying the constitution of the Rule of Law are two elements: 1) the formal legality of all action taken in the name of organized society; 2) recognition of certain basic human rights.

Retroactive legislation undermines the certainty of men in their daily activities, which a formal system most ensure. This principle of non-retroactive legislation, which implies that "no person shall be liable to persecution for an act of omission which at the time it took place was not punishable in either national or international law", is therefore applicable to all events in criminal procedure (and thus, also to the proce ure itself.) Robertson[52], Velu[53], Antonopoulos[54], Jescheк[55], Lauterpacht[56], Jerome Hall[57], Morrison[58], Fawcett[59], all add furthermore, that the prohibition of retroactivity also implies that no greater punishment may be imposed for a crime that the maximum penalty according to the law at the moment it was committed.

This prohibition of retroactive legislation is recognized explicitly in all declarations and conventions, and it is also notstandfest in all cases (thus, also in a state of siege):

I.C.C.P.R., art. 15, 1 (Notstandfest);
U.N.D. art. 11, 2;
A.C. art. 9 (Notstandfest;
A.D. art. 25;
E.C. art. 7, 1 (Notstandfest), and
Geneva Conv. 2nd prot. art. 10, 2c.

Furthermore, Resolution nr. 3448 (XXX 9-12-1975) of the General Assembly and the resolution of the Human Rights Commission (19-12-1976) of the U.N. stressed again the prohibition of retroactive legislation as a generally recognized principle of international legislation. These resolutions not only call for implementation of art. 4, 1 and 2 of the I.C.C.P.R. (and thus also art. 15, 1 of the I.C.C.P.R.) but state explicitly that art. 15, 1 must be complied with, which means that no legal proceedings may be carried out retroactively. It goes without saying that the principle of legality, with regard to non-retroactivity, also means that no one can be sentenced according to a law which had been abolished[60].

3) *Adequate publication of laws*

The legislation of all civilized nations provides for a way of publishing laws enacted by the legislature in such a way that citizens can know and understand them[61]. The principle of legality can only function as described above (i.e. protection against arbitrary government and ensuring legality) if citizens are clearly aware in advance of those rules which are in force, so they will know when the government is exceeding its powers and guilty of arbitrary (i.e. without a legal basis) conduct.

Fawcett[62] puts it as follows: The rule of nullum crimen sine praevia lege requires that the offence be defined and commonly known as such".

International treaties, too, always provide for their publication. These treaties must first be ratified, .. proclaimed and published by the states involved before they can have validity in malam partem - i.e. against individuals; if treaties which have been concluded but not yet ratified contain provisions clearly in favour of the defendant, they must be put into practice in view of the protective function of the principle of legality.

These requirements are prescribed explicitly in:

I.C.C.P.R.: art. 52 and 53

A.C. : art. 74-78 and

E.C. : art. 63.

Another aspect related to publication is mentioned only briefly here: the possibility of defense and fair trial. An adequate defense against an accusation on the part of the government is of course impossible if the nature of the accusation and the legal norm involved are unknown.

4) *Methods of interpretation*

As we have demonstrated, the most important notion of the principle of legality is the protection which the law accords to individuals against the government. This clearly has consequences for the methods which a judge may use in interpreting the law, and criminal law in particular, because this is the sphere where the citizen is most in need of protection, since his life or freedom may be at stake here. This implies the force of the rule "in dubio pro reo": in case of doubt about the application of a law, or about the mode of application, those provisions most favourable to the defendant must be applied.[63] This also means that fundamental rights, explicitly accorded to the individual, must be interpreted as broadly as possible (extensively) and that the exceptions mentioned in the many conventions must be interpreted restrictively. This is the internationally recognized rule of strict construction, also mentioned in legal doctrine[64]. Therefore, no legal text may be interpreted or extended in malam

partem - to the disadvantage of the defendant. This means that, in a case not explicitly mentioned in the law, it is not allowed to apply provisions made for similar cases which are mentioned in so many words. This implies a prohibition of (analogous) interpretation in criminal law.

The International Commission of Jurists[65], has expressed this as follows: "It is not admissable to created accusations and sanctions on the simple basis of analogy with other penal provision".

Gaps in the law may be filled only by the legislature, not by the judiciary.[66]

The European Commission for human rights: The nullum crimen, nulla poena rule particularly forbids extensive application of criminal law by way of analogy (...). The Commission, in regard to art. 7 E.C. holds that it precludes any extension of punishability in malam partem and therefore prescribes a restrictive interpretation of criminal law."

In the same vein, Scheuner[67]: "The interpretation of less well-defined terms must not be extended in case of punishability".

Fawcett [68]expresses the same view and adds, that an usual term of imprisonment is irreconcilable with the principle of legality. The most important provisions on world-wide and regional levels respectively can be found in:

U.N.D.: art. 30;

A.C.: art. 29(a), (b) and (d);

I.C.C.P.R. art. 5 and

E.C. art. 17.

5) *Procedure*

The principle of rule of law not only implies that no conduct is punishable except after a previous legal sanction, it also extends to the criminal procedure.

The rules to be observed by the state when investigating, prosecuting and trying defendants and delinquents, as well as executing verdicts, must be mentioned clearly and in advance in the law.

The procedure shall be conducted only in the way prescribed beforehand, unless later provisions are of greater advantage to the defendant. If this is not the case, the principle of legality remains an empty shell.

In practically all international and national legislations, the applicability of the principle of legality to the procedure is recognized, as is shown by the fact that words like "according to law", "in accordance with the law", "lawfully", etc. figure many times in all treaties, conventions and laws. This also implies a prohibition of setting up of ad hoc extraordinary tribunals, put together for particular crimes. This prohibition was expressed by the European Commission for human rights in 1961. The way in which this principle is worked out in the procedure is discussed in separate papers on fair trial, defense, arbitrary arrest and

habeas corpus.

U.N.D. art. 9 (exclusion of arbitrary behaviour) cf."particularly paper on arbitrary arrest";

I.C.C.P.R.: art. 9;

A.C. art. 7 and 8.1;

E.C. art. 5,

The rule "ne bis teb principale in idem" is internationally recognized. It means that, when a judge has passed verdict and no possibility of appeal is left, the verdict becomes final and there can be no more prosecution for the same fact. Otherwise, the state could go on forever. The certainty provided by the principle of legality must ensure that no one shall be liable to be tried or punished for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

I.C.C.P.R.: art. 14,7;

A.C.: art. 8,4.

Above, the requirements made by the principle of legality of the legislator were already discussed. The principle requires, in all laws and legal doctrines, of the judge that he be at least independent and impartial. A judge who depends on the state cannot be impartial, in which case there can be no effective protection against arbitrariness.[70]

U.N.D.: art. 10

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13) Crimes against humanity: Murder, extermination, enslavement, deportation and other inhuman acts done against any civilian population, or persecutions on political, racial or religious grounds, when such acts are done or such persecutions are carried on in execution of, or in connexion with any crime against peace or any war crime (art. 6c of the Charter of Nuremberg Tribunal).

14) Cf note 6.

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18) Cf note 8.
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20) Cf note 8.

21) United Nations Action in the field of human rights, twenty fifth Anniversary of the U.D. United Nations New York 1974, p. 17.
Evidence of the impact of the Universal Declaration may be found in texts of various national constitutuons which were enacted after the adoption of the Universal Declaration (For the text of the human rights provisions contained in these constitutions see the volumes of the Yearbook of Human Rights for 1950-1969). Several of these constitutions expressly refer, either in their preambles or in their operative provisions, to the Universal Declaration. In addition, many other constitutions contain detailed provisions on a number of human rights, most of which are inspired by, or often modelled on, the text of the articles of the Declaration. Several constitutions drafted with the assistance of United Nations experts, such as those of Libya (1951) and Eritrea as an autonomous unit of Ethiopia (1952), show the marked influence of the Universal Declaration.

In the period between 1948 and 1964 the Constitutions of the following States had expressly referred to the Universal Declaration. The peoples of Algeria (1963), Burundi (1962), Cameroon (1960), Chad (1960), Democratic Republic of the Congo (1964), Republic of the Congo (1964), Gabon (1961), Dahomey (1964), Guinea (1958), Ivory Coast (1960), Madagascar (1959), Mali (1960), Mauritania (1961), Niger (1960), Senegal (1963), Sudanese Republic (later Mali) (1959), Togo (1963) and Upper Volta (1960), solemnly affirmed their devotion and adherence to the principles and ideals of the Universal Declaration.

In the years between 1949 and 1971 Constitutions of the following States were enacted which, although they do not expressly refer to the Universal Declaration, were clearly inspired by its provisions and very often reproduce its phraseology: Federal Republic of Germany (1949), Cyprus, Nigeria (1960), Sierra Leone (1961), Jamaica, Morocco, Tanganyika and Tobago, Uganda (1962), Dominican Republic, Yugoslavia, Zanzibar (1963), Afghanistan, Central African Republic, Haiti, Malawi, Malta, Syria (Provisional Constitution, United Arab Republic (1964), Gambia, Guatemala, Honduras, Romania, Singapore (1965), Bolivia, Brazil, Ecuador, Guyana and Nigeria (1967), Mauritius and Naura (1968), Ghana, Kenya, Libya, provisional Constitution of Syria (1969), Fiji, the Gambia, Iraq and Madagascar (1970), Bulgaria, the Arab Republic of Egypt, Mexico (the organic Law of the Territory de la Baja California Sur), Yugo-

slavia (amendments to various articles of the Constitution) (1971).

22) Cf preamble I.C.P.R.

23) Th. Buergenthal: The revised O.A.S; Charter and the protection of Human Rights, American Journal of International Law, vol. 69 (1975), p. 828 e.v. Professor of the law faculty of hhe University of New York.

24) Préambles Charter, Declaration, Convention of the O.A.S.

25) Art. 18 Convention of Vienna on Treaty Law.

26) Inter-American Commission on Human Rights, Report on the state of Human Rights in Chile.
Findings "On-the-spot", Observation in the Republic of Chile, July 22, August 1974 O.A.S. Off. Rec. O.E.A./Ser. L./11.34, Doc. 21 (eng.) Corr. 1 (1972), pp. 2-3.

27) Enclosure.

28) Reproduced in Inter-American Commission on Human Rights, Basic Documents, O.A. S.O.P., O.E.A. / Ser. L/V/1-4, Rev. art. 31-33 (1963).

29) Preamble E.V.

30) International Commission of Jurist (I.C.J.): The Rule of Law in a free society, a report on the I.C.J. congress, New Delhi, India 1959, Geneva Switzerland, Pp. 191-194.

31) Jean-Flavier Lalive: The Rule of Law in a free society, a report on the I.C.J. congress New Delhi.
Attorney-at-law: Secretary General I.C.J. 1959.

32) This subject was taken integrally from: The protection of human rights and the impact of emergency situation under International Law. Foundation for legal aid in Chile. Utrecht, the Netherlands, Jan. 1977.

33) J. Pictet: Humanitarian Law and the protection of War Victims.

34) This definition reflects the distinction usually made in the law of human rights between civil and political rights on the one side and social and economic rights on the other side.

35) L. Lauterpacht: International Law a Threatise, London 1958.

36) See note 32 p. 11.

37) The conventions have at this moment been ratified by 142 States, including the follow Latin American States: Argentina, Brazil, Chile, Colombia, Ecuador, Gyana, Paraguay, Peru, Uruguay and Venezuela. See treaties Force, Department of State 1976, Publication 8847, pp. 405, 410, 418. See the common article 2 of the Geneva Conventions which reads as follows: "in addition to the provisions which shall be implemented in peace time, the present convention shall apply to all cases of declared war, or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them".

38) 12 Yearbook of the European Convention: "The Greek Case" (1969), p. 76.

39) Jean-Flavier Lalive: see note 31.

40) Eberhard Schmidhäuser: Strafrecht 1970 J.C.B., Mohr Tübingen, Prof. at the Law Faculty of the University of Hamburg.

41) Cf Act of Athens of I.C.J. 1955.

42) Cf Declaration of Delhi I.C.J. 1950.

43) Séan Mac. Bri e: The Rule of Law and Human Rights. Principles and Definitions, as elaborated at the congresses and conferences held under the auspices of the I.C.J. 1955-1966 (pp. 1-4). I.C.J. Geneva Switzerland 1966. Function: Secretary General of the I.C.J. 1966, Degelate to the council of Europe from Eire since 1954, President council of Foreign Ministers, Council of Europe 1950, European Criminal Law, congrès organisé.

44) I.C.J.: Act of Athens no. 1.
J. Velu: les 7, 8, 9 nov. 1963 Institut d'Etudes Européennes, Université Libre de Bruxelles. Bruxelles Press Universitaire 1970.
Function: Proc. du Roi, Brussels. Director of the centre for Legal Studies, Council of Europe.
Knitel: La protection du détenu, et notamment du détenu politique en droit international des droits de l'homme. Institut International des droits de l'homme (fondé par Renée Cassin) septième session d'Enseigementt 5-30 juillet 1976, Vienne (Austriche).

45) Resolution of Rio (1962) of the I.C.J.
The Rule of Law and Human Rights I.C.J. Geneva Switzerland 1966.

46) Cf note 30.

47) Cf note 40.

48) Cf note 4.

49) Burdeau: I.C.J. Congress te Delhi, cf. note 30.
Professor of Law, University of Paris, and Institut d'études politiques de Paris.

50) 1st. Committee (with two members from Chile), of the Delhi Congress of I.C.J. cf note 30.

51) Cf. note 4 and note 30.
D.W. Elliot and J.C. Wood: a casebook on criminal law, 2nd ed. London, Sweet and Maxwell 1969.
D.W. Elliot is solicitor of the Supreme Court of England, Professor of Law in the University of New-Castle-upon-Tyne.
J.C. Wood is L.L.M. of Gray's Inn, Barrister at law. Professor of Law in the University of Sheffield.
Fuller: The Morality of Law. New Haven 1971.
Jescheck: cf note 7, p. 97.

52) Robertson: cf. note 10.

53) Velu: cf note 44.

54) Antonopoulos: La jurisprudence des organes de la convention Européenne des droits de l'homme. Leiden Sijthoff 1967. Function: Docteur en droit/advokat auprès de la Cour de Cassation de Grèce/ Member of the European Commission for Human Rights.

55) Jescheck: cf note 7.

56) Lauterpacht: International Law and Human Rights, Archa 1968. Professor of International Law in the University of Cambridge, fellow of Trinity College of Cambridge, Associate of the Justitute of International Law.

57) Cf note 4.

58) Morrison: The Developing European Law of Human Rights. A. Sijthoff, Leyden 1967. Published under the auspices of the Council of Europe.

59) Fawcett: The application of the European Convention on Human Rights. Oxford, Clarendon Press 1969.
Barrister at Law. Member of the European Commission for Human Rights, formerly General Council, International Monetary Fund; Associate of the Institute of International Law.

60) European Commission (Yearbook 190 1063 / 61:5)
Fawcett: cf note 59. Velu: cf note 44. Antonopoulos: cf note 54.

61) Fuller: cf note 51.

62) Fawcett: cf. note 59.

63) Jescheck: cf note 7 pp. 101-103.

64) Jerome Hall: cf note 4.

65) Cf note 30.

66) Jescheck: cf note 7. D.W. Elliot and J.C. Wood, cf note 51.

67) The European Commission 217/56 An 1, 239 and 1169/61 An. VI 587-588.

68) Robertson/Scheuner:
U. Scheuner: Confrontation de la jurisprudence des tribunaux nationaux avec la jurisprudence des organes de la convention en ce qui concerne les droits autres que les droit judiciaires.
Prof. à la Faculté de Droit de l'Université de Bonn.
- Le droit de l'homme, Presses Universitaires de Bruxelles 1968.
A.M. Roberston: Chef de la Direction des Droits de l'homme du Conseil de l'Europe, Strasbourg.

69) Fawcett: cf note 59.

70) I.C.J.: cf note 36.