

The Police and Protection of Human Rights

A United Nations Seminar

A Seminar organised by the United Nations in co-operation with the Commonwealth Government on the subject of the Role of the Police in the Protection of Human Rights was held in Canberra between 29th April and 13th May, 1963.

Invitations to attend the Seminar were issued to all countries and territories within the geographical scope of the Economic Commission for Asia and the Far East and, in fact, apart from Australia, there were representatives from Cambodia, Ceylon, China, Federation of Malaya, Hong Kong, India, Indonesia, Iran, Japan, New Zealand, North Borneo, Pakistan, The Philippines, Republic of Korea, Republic of Viet Nam and Singapore. Observers also attended the Seminar from France, Thailand, Guam, American Samoa, the Trust Territory of the Pacific Islands, and Papua and the Trust Territory of New Guinea. In addition, there were a number of non-governmental organisations represented, these being organisations which have consultative status with the Economic and Social Council, such as the World Veterans Association, the Anti-Slavery Society for the Protection of Human Rights, The Catholic International Union for Social Service, The Co-ordinating Board of Jewish Organisations and some eighteen other organisations which would be too lengthy to list here. However, of immediate interest to the Bar is the fact that the International Bar Association was represented by Toose Q.C.; the International Commission of Jurists by Davoren Q.C.; and the International Law Association by the Solicitor-General for N.S.W. (Snelling Q.C.). The International Society for Criminology was represented by Sir John Barry.

When the Seminar assembled Sir Garfield Barwick, the Attorney-General and Minister for External Affairs of the Commonwealth, was elected President, and the Solicitor-General for the Commonwealth (Sir Kenneth Bailey) was unanimously elected Chairman. The Vice-Chairmen came from Cambodia, Hong Kong, India, Iran and Japan, and Mr. J. O. Ballard the Assistant Attorney-General of North Borneo was appointed Rapporteur.

The programme comprised a large number of individual subject matters some of which were given considerable prominence in the daily press and included a discussion of finger-printing, the limits of Police powers of interrogation and detention, the general subject matter of confessions and admissions, the general problem of the "third degree", and the training of Police Forces.

From most of the countries represented only two or perhaps three persons visited Australia but the Australian Delegation, as might be expected was a very much larger one. In addition to the Attorney-General and Solicitor-General for the Commonwealth, the official participants were Mr. S. H. W. C. Porter (Chief Com-

missioner of Police of Victoria); Professor Zelman Cowan (Professor of Public Law and Dean of the Faculty of Law at the University of Melbourne); and Mr. Justice McClemens of the Supreme Court of N.S.W. As alternative participants, there were appointed Mr. R. W. Whitrod (Commissioner of the Commonwealth Police Force); Snelling Q.C. (Solicitor-General of N.S.W.); Professor K. O. Shatwell (Challis Professor of Law and Dean of the Faculty of Law at the University of Sydney); Mr. S. H. Good Q.C. (Solicitor-General of Western Australia); and Mr. N. T. W. Allan (Commissioner of the N.S.W. Police Force). As official observers, there were Mr. W. J. Delderfield (Commissioner of Police of the Tasmanian Police Force); Mr. W. A. N. Wells Q.C. (Assistant Crown Solicitor of South Australia); Mr. F. Palethorpe (Inspector of Police from Queensland); Mr. E. J. Hooke of the Commonwealth Attorney-General's Department and Mr. M. G. M. Bouchier of the Department of External Affairs.

Conduct of Seminar

Each item on the agenda was discussed by those participants or alternates who wished to offer their comments. In each instance the discussion was led by a person appointed for the purpose by a steering committee comprised of the Chairman, Vice-Chairmen and Rapporteur, and there was no limitation on the number of times that any participant could speak nor did they speak in any particular order. When it appeared that all participants who wished to say anything had finished the leader of the discussion was invited to reply and sum up the discussion.

Observers were permitted to speak at the invitation of the Seminar, but, in order to receive such an invitation, they were required to hand in their names, and later were given a specified time at which they were required to speak if at all. In this manner, it was obvious that the observers were unable to contribute to the discussion on any particular point as it arose, and were therefore in no position to influence the discussion or make any substantial contribution to it. It is noteworthy that at the conclusion of the Seminar, the official report did not include any reference to matters put forward by any of the observers.

From an examination of the report, it may reasonably be stated that the discussions at the Seminar tended to disregard the title of "The Role of the Police in the Protection of Human Rights" and concentrated on exchanging ideas on police methods. Some discussion certainly centred on whether such methods infringed human rights or whether any infringement of human rights in particular types of cases was justified in order to combat crime. Most of the participants expressed the view that the methods they used, really did not infringe human rights, but, if in some circumstances they did,

such infringements were justified in the community interest. Some of the Australian police officers expressed dissatisfaction with some of the limitations imposed upon their interrogations as for example those imposed by the "Judge's Rules". It is, however, noteworthy that the participants from a number of the Asian countries accepted such limitations, which, in their countries, had become part of the statute law.

If comment be needed it is that the attendance at the Seminar was too heavily weighted in favour of senior police officers, permanent law officers and their assistants. The only other participants were two Judges and two Professors. One of the two Judges, who was from Iran, was in fact Assistant to the Attorney-General of that country in addition to being a Judge. No laymen or practising members of the profession participated, with the result that the discussions were somewhat one-sided. It is suggested that the discussion and the resulting report would have been of much greater value if practising members of the profession had been included in the delegations from all participating countries.

In saying this, it is not suggested that the discussion was of little value, but it is desired to stress that its value was limited quite unnecessarily.

Subject Matters Discussed

Confessions: There was a substantial discussion at the Seminar of the circumstances in which statements by an accused person should be admitted in evidence. The Judges' Rules applying in the United Kingdom were discussed at considerable length and there is no need to make any reference to them in this report. However, it is noteworthy that under the provisions of the Criminal Procedure Code and the Evidence Act which apply in India, it is laid down that no confession made to a Police Officer shall be proved as against a person accused of any offence and furthermore that no confession made by any person whilst he is in the custody of a Police officer, unless it shall be made in the immediate presence of a Magistrate, shall be proved as against such a person. Similar provisions to this also apply in Singapore concurrently with the Judges Rules but, as a matter of practice, the Police there appear to prefer the practice of having confessions made before Magistrates.

Fingerprinting: There was a lengthy discussion as to whether there should be a national compulsory fingerprinting of all persons and whether such compulsion would offend human rights. In this regard, it must be borne in mind that in some countries identity cards are provided for and compulsory fingerprinting for the issue of these cards is already in force. In some countries (such as Japan), although there is no national compulsory fingerprinting, in some prefectures a voluntary fingerprint registration system operates. Some of the participants in the Seminar felt that, if the fingerprinting was required for other than investigation of crimes, it might be regarded as interfering with a person's right to security and liberty, or it might injure his reputation or dignity, or interfere with his right to privacy and freedom of movement. The majority of participants, however, thought that much of the objection to compulsory fingerprinting arose from prejudice because of

the historical association of fingerprinting with criminality, and that compulsory fingerprinting could be of valuable aid to identification and serve useful social purposes. Human rights could not be infringed so they thought, when action was taken for the good of all people and compulsory fingerprinting should not create uneasiness in law-abiding citizens, because its only effect would be in the end to assist them. The majority view therefore was that there was no objection in principle to national compulsory fingerprinting of all citizens, and that fingerprinting should not be associated only with crimes, and that there was no infringement of any human right of the person whose fingerprints were taken, because the protection of the rights of the society and his own interest required certain limitations of his rights.

The Ombudsman: The Seminar heard detailed statements concerning control of police action by the Parliamentary Commissioner in New Zealand, and by the Civil Liberties Commissioners and Bureaux in Japan. Both the New Zealand and Japanese legislation on the subject stem from the Ombudsman systems which are well established in Scandinavian countries, and while several participants expressed their interest in such an institution, particularly if it could be used to combat corruption within the Police, others took the view that the Attorney-General or Public Prosecutor established in various countries within the geographical area of the Seminar might be considered as performing, with independence and impartiality, some of the functions of the Ombudsman or Civil Liberties Bureaux in relation to excess Police powers.

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What has been set out above is not, and is not intended to be, a summary of what appears in the report of the Seminar. The subject matters dealt with ranged far and wide over police activities and were of course not limited to police methods in Australia but covered all the countries whose representatives attended the Seminar. However, the matters discussed are of such importance that it is felt that members of the Bar should familiarise themselves with what actually took place at Canberra and should read the report when it becomes available for general publication. The Association has written to the United Nations and asked them to make available to the Association as early as possible a number of copies of the report and when these become available in Sydney, notices will be posted on the various floor notices boards as to their availability in the Association's library.

Reading Lectures and Reading in Chambers

The system is proving of substantial benefit.

Lectures are of a high standard and are shortly to be roneoed and made available to the Queensland and Victorian Bars.

Compulsory reading is additionally proving of substantial use in assisting those commencing at the Bar in both practical and ethical problems.

A meeting will shortly be held of all members of the Bar who have men reading with them to discuss any current problems.