EXPRESSION - FREEDOM OF -
HATE SPEECH AND LIMITS ON PROPAGANDA

III. JURISPRUDENCE

CERD

- *L. K. v. The Netherlands* (4/1991), CERD, A/48/18 (16 March 1993) 130 (CERD/C/42/D/4/1991) at paras. 2.1, 3.1, 6.3-6.6 and 6.8.

...

2.1 On 9 August 1989, the author, who is partially disabled, visited a house for which a lease had been offered to him and his family, in the Nicholas Ruychaverstraat, a street with municipal subsidized housing in Utrecht. He was accompanied by a friend, A.B. When they arrived, some 20 people had gathered outside the house. During the visit, the author heard several of them both say and shout: "No more foreigners". Others intimated to him that if he were to accept the house, they would set fire to it and damage his car. The author and A.B. then returned to the Municipal Housing Office and asked the official responsible for the file to accompany them to the street. There, several local inhabitants told the official that they could not accept the author as their neighbour, owing to a presumed rule that no more than 5 per cent of the street's inhabitants should be foreigners. Told that no such rule existed, street residents drafted a petition, which noted that the author could not be accepted and recommended that another house be allocated to his family.

...

3.1 The author submits that the remarks and statements of the residents of the street constitute acts of racial discrimination within the meaning of article 1, paragraph 1, of the Convention, as well as of article 137, literae (c), (d), and (e), of the Dutch Criminal Code; the latter provisions prohibit public insults of a group of people solely on the basis of their race, public incitement of hatred against people on account of their race, and the publication of documents containing racial insults of a group of people.

...

6.3 The Committee finds on the basis of the information before it that the remarks and threats made on 8 and 9 August 1989 to L.K. constituted incitement to racial discrimination and to acts of violence against persons of another colour or ethnic origin, contrary to article 4 (a) of the International Convention on the Elimination of All Forms of Racial Discrimination, and that the investigation into these incidents by the police and prosecution authorities was incomplete.

6.4 The Committee cannot accept any claim that the enactment of law making racial discrimination a criminal act in itself represents full compliance with the obligations of States parties under the Convention.

6.5 The Committee reaffirms its view as stated in its Opinion on Communication No.

1/1984 of 10 August 1987 (*Yilmaz-Dogan v. The Netherlands*) that "the freedom to prosecute criminal offenses - commonly known as the expediency principle - is governed by considerations of public policy and notes that the Convention cannot be interpreted as challenging the *raison d'être* of that principle. Notwithstanding, it should be applied in each case of alleged racial discrimination in the light of the guarantees laid down in the Convention".

6.6 When threats of racial violence are made, and especially when they are made in public and by a group, it is incumbent upon the State to investigate with due diligence and expedition. In the instant case, the State party failed to do this.

...

6.8 The Committee recommends that the State party review its policy and procedures concerning the decision to prosecute in cases of alleged racial discrimination, in the light of its obligations under article 4 of the Convention.

- *Sadic v. Denmark* (25/2002), CERD, A/58/18 (21 March 2003) 132 (CERD/C/62/D/25/2002) at paras. 2.1, 6.2-6.4 and 6.7.

...

2.1 On 25 July 2000, the petitioner was working on a construction site in a public housing area in Randers, Denmark, for the company "Assentoft Painters and Decorators" owned by Jesper Christensen. When the petitioner approached Mr. Christensen to claim overdue payments, their conversation developed into an argument during which Mr. Christensen reportedly made the following comments to the petitioner: "Push off home, you Arab pig", "Immigrant pig", "Both you and all Arabs smell", "Disappear from here, God damned idiots and psychopaths." The argument between the complainant and Mr. Christensen was overheard by at least two other workers, Mr. Carsten Thomassen and Mr. Frank Lasse Hendriksen.

...

6.2 The Committee notes that the petitioner brought a complaint under section 266 (b) of the Criminal Code before the police and the Regional Public Prosecutor and that these authorities, after having interviewed two witnesses and the petitioner's former employer, decided to discontinue criminal proceedings under section 266 (b), as they considered that the requirements of this provision were not satisfied. It has taken note of the State party's argument that, despite the discontinuation of proceedings under section 266 (b) of the Criminal Code, the petitioner could have requested the institution of criminal proceedings against his former employer under the general provision on defamatory statements (section 267 of the Criminal Code). The petitioner does not deny the availability of this remedy, but questions its effectiveness in relation to incidents of racial discrimination.

6.3 The Committee observes that the notion of "effective remedy", within the meaning of article 6 of the Convention, is not limited to criminal proceedings based on provisions which specifically, expressly and exclusively penalize acts of racial discrimination. In particular, the Committee does not consider it contrary to articles 2, paragraph 1 (d), and 6 of the Convention if, as in the State party's case, the provisions of criminal law specifically adopted to outlaw acts of racial discrimination are supplemented by a general provision criminalizing defamatory statements which is applicable to racist statements even if they are not covered by specific legislation.

6.4 As to the petitioner's argument that criminal proceedings against his former employer under section 267 would have been without prospect because the authorities had already rejected his complaint under section 266 (b) of the Criminal Code, the Committee notes, on the basis of the material before it, that the requirements for prosecution under section 266 (b) are not identical to those for prosecution under section 267 of the Criminal Code. It therefore does not appear that the Danish authorities' decision to discontinue proceedings under section 266 (b) on the ground of lack of evidence as to whether the employer's statements were made publicly or with the intention of wider dissemination have prejudiced a request by the petitioner to institute criminal proceedings under section 267 (together with section 275) of the Criminal Code. The Committee therefore considers that the institution of such proceedings can be regarded as an effective remedy which the petitioner failed to exhaust.
...
6.7 The Committee on the Elimination of Racial Discrimination therefore decides:

(a) That the communication is inadmissible...

- *Quereshi v. Denmark* (33/2003), CERD, A/60/18 (9 March 2005) 142 at paras. 2.5, 2.6, 2.8, 2.11, 2.13, 7.3, 8 and 9.

...
2.5 Speeches made at the Progressive Party's annual meeting, held on 20 and 21 October 2001, were broadcast on the State party's public television system, which has a duty to broadcast from annual meetings of political parties seeking election. The petitioner contends that the following statements were made at the meeting from the podium:b/

> Vagn Andreasen (party member): "The State has given the foreigners work. They work in our slaughterhouses where they can easily poison our food and endanger the agricultural exports. Another form of terrorism is to break into our waterworks and poison the water."

Mogens Glistrup (former leader of the party): "The Mohammedans will exterminate the populations of the countries to which they have advanced." On 22 October, an article in the *Dagbladet Politiken* daily quoted this statement as: "Their holiest duty is, in the name of Allah, to exterminate the populations in the countries to which they have advanced."

Erik Hammer Sørensen (party member, commenting on immigration to the State party): "There are fifth columnists about. Those that we have got in commit violence, murder and rape."

Margit Petersen (party member, referring to her earlier conviction under section 266 (b) in the State party's courts): "I'm glad to be a racist. We want a Mohammedan-free Denmark"; "the Blacks breed like rats".

Peter Rindal (party member): "Concerning Mohammedan burial grounds in Denmark, of course we should have such ones. And they should preferably be so large that there is room for all of them, and hopefully in one go."

Bo Warming (party member): "The only difference between Mohammedans and rats is that rats don't draw social benefits." He allegedly distributed a drawing of a rat with the Koran under its arm to journalists present at the conference.

2.6 Upon viewing the meeting, the petitioner requested the Documentation and Advisory Centre on Racial Discrimination (DRC) to file complaints against the above individuals, as well as the members of the executive board of the Progressive Party for its approval of the statements made.

...

2.8 On 25 October 2001, DRC filed a complaint with the Varde police, alleging that the statement made by Mr. Andreasen violated section 266 (b) (1) and (2) on the basis that it insulted and degraded a group of people on account of their religious origin. DRC added that the statement postulated that immigrants and refugees were potential terrorists, thereby generally and unobjectively equating a group of people of an ethnic origin other than Danish with crime. The same day, DRC filed a complaint with the Varde police, alleging that the statement made by Mr. Rindal violated section 266 (b) (1) and (2) on the basis that it threatened a group of people on account of their race and ethnic origin.

...

2.11 On 28 March 2003, the Varde Police Chief Constable forwarded the six cases to the Sønderborg Regional Public Prosecutor with the following recommendations:

...

- The charges against Mr. Andreasen and Mr. Sørensen should be withdrawn under

sections 721 (1) (ii) of the Administration of Justice Act.

...

2.13 After receipt of further information, the Regional Public Prosecutor, on 18 June 2003, made the following recommendations to the Director of Public Prosecutions (DPP), in relation to prosecution of the above; DPP accepted them on 6 August 2003:

...

- The charges against Mr. Andreasen should be withdrawn on the basis that that further prosecution could not be expected to lead to conviction and sentence. DPP observed that the *actus reus* of section 266 (b) (1) required a statement to be directed at a group of persons on account of, *inter alia*, race, colour, national or ethnic origin and religion. In the view of DPP, this requirement had not been met as the concept of "foreigners" employed by Mr. Andreasen was "so diffuse that it does not signify a group within the meaning of the law".

...

7.3 The Committee recalls that Mr. Andreasen made offensive statements about "foreigners" at the party conference. The Committee notes that, regardless of what may have been the position in the State party in the past, a general reference to foreigners does not at present single out a group of persons, contrary to article 1 of the Convention, on the basis of a specific race, ethnicity, colour, descent, or national or ethnic origin. The Committee is thus unable to conclude that the State party's authorities reached an inappropriate conclusion in determining that Mr. Andreasen's statement, in contrast to the more specific statements of the other speakers at the conference, did not amount to an act of racial discrimination contrary to section 266 (b) of the Danish Criminal Code. It also follows that the petitioner was not deprived of the right to an effective remedy for an act of racial discrimination in respect of Mr. Andreasen's statement.

8. Nevertheless, the Committee considers itself obliged to call the State party's attention (i) to the hateful nature of the comments concerning foreigners made by Mr. Andreasen and of the particular seriousness of such speech when made by political figures and, in this context, (ii) to its general recommendation XXX, adopted at its sixty-fourth session, on discrimination against non-citizens.

9. The Committee on the Elimination of Racial Discrimination...is of the opinion that the facts before it do not disclose a violation of the Convention.

Notes

...

b/ The form of the statements is as reported in the criminal complaints to the police lodged by the Documentation and Advisory Centre on Racial Discrimination.

EXPRESSION - FREEDOM OF - HATE SPEECH AND LIMITS ON PROPAGANDA

- *The Jewish Community of Oslo et al. v. Norway* (30/2003), CERD, A/60/18 (15 August 2005) 154 at paras. 2.1-2.8, 10.3-10.6, 11 and 12.

...

2.1 On 19 August 2000, a group known as the "Bootboys" organized and participated in a march in commemoration of the Nazi leader Rudolf Hess in Askim, near Oslo. Some 38 people took part in the march, which was routed over 500 m through the centre of Askim, and lasted five minutes. The participants wore "semi-military" uniforms, and a significant number allegedly had criminal convictions. Many of the participants had their faces covered. The march was headed by Mr. Terje Sjolie. Upon reaching the town square, Mr. Sjolie made a speech, in which he stated:

> "We are gathered here to honor our great hero, Rudolf Hess, for his brave attempt to save Germany and Europe from Bolshevism and Jewry during the Second World War. While we stand here, over 15,000 Communists and Jew-lovers are gathered at Youngsroget in a demonstration against freedom of speech and the white race. Every day immigrants rob, rape and kill Norwegians, every day our people and country are being plundered and destroyed by the Jews, who suck our country empty of wealth and replace it with immoral and un-Norwegian thoughts. We were prohibited from marching in Oslo three times, whilst the Communists did not even need to ask. Is this freedom of speech? Is this democracy?...
>
> "Our dear Führer Adolf Hitler and Rudolf Hess sat in prison for what they believed in, we shall not depart from their principles and heroic efforts, on the contrary we shall follow in their footsteps and fight for what we believe in, namely a Norway built on National Socialism..." a/

2.2 After the speech, Mr. Sjolie asked for a minute's silence in honour of Rudolf Hess. The crowd, led by Mr. Sjolie, then repeatedly made the Nazi salute and shouted "Sieg Heil". They then left.

2.3 The authors claim that the immediate effect of the march appeared to be the founding of a Bootboys branch in nearby Kristiansand, and that for the next 12 months the city was "plagued" by what the authors describe as incidents of violence directed against Blacks and political opponents. They further state that, in the Oslo area, the march appears to have given the Bootboys confidence, and that there was an increase in "Nazi" activity. Several violent incidents took place, including the murder by stabbing on 26 January 2001 of a 15-year-old boy, Benjamin Hermansen, who was the son of a Ghanaian man and a Norwegian woman. Three members of the Bootboys were later charged and convicted in connection with his

death; one was convicted of murder with aggravating circumstances, because of the racist motive of the attack. The authors state that he and one of the other persons convicted in this case had participated in the march on 19 August 2000.

2.4 The authors state that the Bootboys have a reputation in Norway for their propensity to use violence, and cite 21 particular instances of both threats and the use of violence by the Bootboys between February 1998 and February 2002. Mr. Sjolie himself is currently serving a term of imprisonment for attempted murder in relation to an incident in which he shot another gang member.

2.5 Some of those who witnessed the commemorative march filed a complaint with the police. On 23 February 2001, the District Attorney of Oslo charged Mr. Sjolie with a violation of section 135a of the Norwegian Penal Code, which prohibits a person from threatening, insulting, or subjecting to hatred, persecution or contempt any person or group of persons because of their creed, race, colour, or national or ethnic origin. The offence carries a penalty of a fine or a term of imprisonment of up to two years.

2.6 On 16 March 2001, Mr. Sjolie was acquitted by the Halden City Court. The prosecutor appealed to the Borgarting Court of Appeal, where Mr. Sjolie was convicted of a violation of section 135a because of the references in his speech to Jews. The Court of Appeal found that, at the least, the speech had to be understood as accepting the mass extermination of the Jews, and that this constituted a violation of section 135a.

2.7 Mr. Sjolie appealed to the Supreme Court. On 17 December 2002, the Supreme Court, by a majority of 11 to 6, overturned the conviction. It found that penalizing approval of Nazism would involve prohibiting Nazi organizations, which it considered would be incompatible with the right to freedom of speech. b/ The majority also considered that the statements in the speech were simply Nazi rhetoric, and did nothing more than express support for National Socialist ideology. It did not amount to approval of the persecution and mass extermination of the Jews during the Second World War. It held that there was nothing that particularly linked Rudolph Hess to the extermination of the Jews; noted that many Nazis denied that the Holocaust had taken place; and that it was not known what Mr. Sjolie's views on this particular subject were. The majority held that the speech contained derogatory and offensive remarks, but that no actual threats were made, nor any instructions to carry out any particular actions. The authors note that the majority of the Court considered article 4 of the Convention not to entail an obligation to prohibit the dissemination of ideas of racial superiority, contrary to the Committee's position as set out in general recommendation XV.

2.8 The authors claim that the decision will serve as a precedent in cases involving section 135a of the Penal Code, and that it will henceforth not be possible to prosecute Nazi

propaganda and behaviour such as occurred during the march of 19 August 2000. Following the Supreme Court decision, the Director of Public Prosecutions expressed the view that, in light of the Supreme Court's decision, Norway would be a safe haven for Nazi marches, due to the prohibition on such marches in neighbouring countries.

...

10.3 The Committee has noted the State party's submission that it should give due respect to the consideration of the *Sjolie* case by the Supreme Court, which conducted a thorough and exhaustive analysis, and that States should be afforded a margin of appreciation in balancing their obligations under the Convention with the duty to protect the right to freedom of speech. The Committee notes that it has indeed fully taken account of the Supreme Court's decision and is mindful of the analysis contained therein. However, the Committee considers that it has the responsibility to ensure the coherence of the interpretation of the provisions of article 4 of the Convention as reflected in its general recommendation XV.

10.4 At issue in the present case is whether the statements made by Mr. Sjolie, properly characterized, fall within any of the categories of impugned speech set out in article 4, and if so, whether those statements are protected by the "due regard" provision as it relates to freedom of speech. In relation to the characterization of the speech, the Committee does not share the analysis of the majority of the members of the Supreme Court. While the content of the speech is objectively absurd, the lack of logic of particular remarks is not relevant to the assessment of whether or not they violate article 4. In the course of the speech, Mr. Sjolie stated that his "people and country are being plundered and destroyed by Jews, who suck our country empty of wealth and replace it with immoral and un-Norwegian thoughts". He then refers not only to Rudolf Hess, in commemoration of whom the speech was made, but also to Adolf Hitler and *their* principles, stating that his group will "follow in their footsteps and fight for what (we) believe in". The Committee considers these statements to contain ideas based on racial superiority or hatred; the deference to Hitler and his principles and "footsteps" must, in the Committee's view, be taken as incitement at least to racial discrimination, if not to violence.

10.5 As to whether these statements are protected by the "due regard" clause contained in article 4, the Committee notes that the principle of freedom of speech has been afforded a lower level of protection in cases of racist and hate speech dealt with by other international bodies, and that the Committee's own general recommendation XV clearly states (para. 4) that the prohibition of all ideas based upon racial superiority or hatred is compatible with the right to freedom of opinion and expression. The Committee notes that the "due regard" clause relates generally to all principles embodied in the Universal Declaration of Human Rights, not only freedom of speech. Thus, to give the right to freedom of speech a more limited role in the context of article 4 does not deprive the "due regard" clause of significant meaning, all the more so since all international instruments that guarantee freedom of

expression provide for the possibility, under certain circumstances, of limiting the exercise of this right. The Committee concludes that the statements of Mr. Sjolie, given that they were of an exceptionally/manifestly offensive character, are not protected by the "due regard" clause and that accordingly, his acquittal by the Supreme Court of Norway gave rise to a violation of article 4, and consequently article 6, of the Convention.

10.6 Finally, in relation to the State party's submission that the authors have failed to establish how the remarks of Mr. Sjolie adversely affected their enjoyment of any substantive rights protected under article 5 of the Convention, the Committee considers that its competence to receive and consider communications under article 14 is not limited to complaints alleging a violation of one or more of the rights contained in article 5. Rather, article 14 states that the Committee may receive complaints relating to "any of the rights set forth in this Convention". The broad wording suggests that the relevant rights are to be found in more than just one provision of the Convention. Further, the fact that article 4 is couched in terms of States parties' obligations, rather than inherent rights of individuals, does not imply that they are matters to be left to the internal jurisdiction of States parties, and as such immune from review under article 14. If such were the case, the protection regime established by the Convention would be weakened significantly. The Committee's conclusion is reinforced by the wording of article 6 of the Convention, by which States parties pledge to assure to all individuals within their jurisdiction effective protection and a right of recourse against any acts of racial discrimination which violate their "human rights" under the Convention. In the Committee's opinion, this wording confirms that the Convention's "rights" are not confined to article 5. Finally, the Committee recalls that it has previously examined communications under article 14 in which no violation of article 5 has been alleged.r/

11. The Committee on the Elimination of Racial Discrimination...is of the view that the facts before it disclose violations of articles 4 and 6 of the Convention.

12. The Committee recommends that the State party take measures to ensure that statements such as those made by Mr. Sjolie in the course of his speech are not protected by the right to freedom of speech under Norwegian law.

Notes

a/ The speech was recorded on video by the magazine *Monitor*. It was later used in the criminal proceedings against Mr. Sjolie.

b/ Section 100 of the Norwegian Constitution guarantees the right to freedom of speech.
...

r/ See for example: *Ziad Ben Ahmed Habassi v. Denmark*, communication No. 10/1997, Opinion adopted on 17 March 1999, paras. 9.3 and 10, where the Committee found a violation of arts. 2 and 6; *Kashif Ahmed v. Denmark*, communication No. 16/1999, Opinion adopted on 13 March 2000, paras. 6.2-9, where the Committee found a violation of art. 6; and *Kamal Qureshi v. Denmark*, communication No. 27/2002, Opinion adopted on 19 August 2003, paras. 7.1-9.

ICCPR

- *J. R. T. et al. v. Canada* (104/1981), ICCPR, A/38/40 (6 April 1983) 231 at paras. 2.1-2.9 and 8(b).

...

2.1 The W.G. Party was founded as a political party in Toronto, Ontario, Canada, in February 1972. The Party and Mr. T. attempted over several years to attract membership and promote the Party's policies through the use of tape-recorded messages, which were recorded by Mr. T. and linked up to the Bell Telephone System in Toronto, Ontario, Canada. Any member of the public could listen to the messages by dialing the relevant telephone number. The messages were changed from time to time but the contents were basically the same, namely to warn the callers "of the dangers of international finance and international Jewry leading the world into wars, unemployment and inflation and the collapse of world values and principles".

2.2 The Canadian Human Rights Act was promulgated on 1 March 1978. Section 13 (1) of the Act reads as follows:

> "It is a discriminatory practice for a person or a group of persons acting in concert to communicate telephonically or to cause to be so communicated, repeatedly, in whole or in part by means of the facilities of a telecommunication undertaking within the legislative authority of Parliament, any matter that is likely to expose a person or persons to hatred or contempt by reason of the fact that the person or those persons are identifiable on the basis of a prohibited ground of discrimination."

2.3 By application of this provision in conjunction with section 3 of the Act, which enumerates "race, national or ethnic origin, colour, religion, age, sex, marital status, conviction for which a pardon has been granted and physical handicap" as "prohibited grounds of discrimination", the telephone service of the W. G. Party and Mr. T. was

curtailed. It is alleged that section 13 (1) of the Human Rights Act is clearly in violation of the Canadian Bill of Rights. Section 1 (d) of the Bill of Rights guarantees freedom of speech, and section 2 states that it shall not be abrogated, abridged or infringed unless expressly authorized by Act of Parliament. It is claimed that the Canadian Human Rights Act contains no provision authorizing such restrictions.

2.4 Section 32 of the Human Rights Act enables any individual having reasonable grounds for believing that a person is engaging in a "discriminatory practice" to file a complaint before the Canadian Human Rights Commission. Under this provision, a number of Jewish groups and individual Jews filed letters complaining about Mr. T.'s messages. In consequence, the Canadian Human Rights Commission initiated complaint proceedings against Mr. T. and the W.G. Party on 16 January 1979 for messages recorded on 6 July, 27 September, 17 November, 14 and 19 December 1978 and 9 January 1979, and decided to appoint a Human Rights Tribunal to inquire into the complaints and to determine whether the matters communicated telephonically by the W.G. Party and Mr. T. would be likely to expose persons identifiable by race and religion to hatred and contempt. The hearings of the Tribunal were carried out on 12, 13, 14 and 15 June 1979 and a decision was made on 20 July 1979. The Tribunal found that "although some of the messages are somewhat innocuous, the matter for the most part that they have communicated is likely to expose a person or persons to hatred or contempt by reason of the fact that the person is identifiable by race or religion and in particular, the messages identify specific individuals by name". It held, therefore, that the complaints were substantiated and ordered the W.G. Party and Mr. T. to cease using the telephone to communicate the subject-matter which had formed the contents of the tape-recorded messages referred to in the complaints.

2.5 The Canadian Human Rights Commission sent the decision of the Tribunal to the Federal Court for the purpose of enforcement on 22 August 1979...and it was filed pursuant to Federal Court Rule 201 (1a) (a); the decision thereupon became enforceable in the same manner as an order of that Court...

2.6 On 31 August 1979...the Canadian Human Rights Commission recorded a new message from the telephone service of the W.G. Party, complaining that "we are now denied the right to expose the race and religion of certain people, regardless of their guilt in the destruction of Canada" and adding "those who do not believe there is a preponderance of certain racial and religious minorities involved in the corruption of our Christian way of life will never understand the simple basis of our way of life - the common denominator". In this connection, the Canadian Human Rights Commission instructed its Legal Counsel to write to Mr. T. He warned Mr. T. on 2 October 1979, that if these particular passages were not deleted from the recordings by 10 October 1979, he would make an application to the Federal Court to enforce the Tribunal order. Mr. T. responded by letter dated 10 October 1979 that,

although he did not agree that the passages were in contravention of the order of the Tribunal, he would change the messages.

2.7 Subsequent to Mr. T.'s letter of reply, Mr. T. and the W.G. Party continued to use messages that were deemed to be in contravention of the Tribunal order, and therefore an *ex parte* application was made to the Federal Court, Trial Division, by the Canadian Human Rights Commission to the effect that acts had been committed by Mr. T. contrary to the order of a Human Rights Tribunal. A transcript of the allegedly offensive messages dated 7 and 31 August 1979, 12 October 1979, and 27 November 1979 was placed before the Federal Court. Mr. T. and the W.G. Party were ordered to appear before the Federal Court on 19 February 1980 to hear proof that they had disobeyed the order and to submit a defence.

2.8 The contempt of court proceedings took place before the Federal Court. After hearing the Legal Counsel for the Canadian Human Rights Commission and Mr. T., it concluded that the Commission had established beyond any doubt that Mr. T. and the W.G. Party had disobeyed the order made by the Human Rights Tribunal and had made use of the telephone services to convey the type of messages which they were prohibited from disseminating, namely, that "some corrupt Jewish international conspiracy is depriving the callers of their birthright and that the white race should stand up and fight back". The Court decided on 21 February 1980 that Mr. T. was guilty of contempt of court and sentenced him to one year imprisonment and the W.G. Party to pay a fine of $5,000. The sentences were to be suspended as long as Mr. T. and the W.G. Party did not use telephone communications for the dissemination of hate messages.

2.9 Mr. T. and the W.G. Party appealed against this decision within the required period of 30 days. The suspension of sentences was lifted on 11 June 1980 on the grounds of the nature of an additional message of 3 June 1980, and Mr. T. was committed to the Toronto jail on 17 June 1980...On 24 June 1980, the Federal Court of Appeal ordered that the execution of sentences be stayed pending the disposition of the appeal. On 27 February 1981, the Court dismissed the appeal...An application for leave to appeal to the Supreme Court of Canada was denied by the presiding judge of the Court of Appeal...

...

8. On the basis of the information before it the Human Rights Committee, after careful examination, concludes:

> ...
> (b) As to the author's claim that section 13 (1) of the Canadian Human Rights Act, under which his use of the telephone service has been curtailed, has been applied against him in violation of article 19 of the Covenant...a reasonable effort was indeed made to exhaust domestic remedies in this respect and, therefore, the Committee does not consider that, as to this claim,

> the communication should be declared inadmissible under article 5 (2) (b) of the Optional Protocol. However, the opinions which Mr. T. seeks to disseminate through the telephone system clearly constitute the advocacy of racial or religious hatred which Canada has an obligation under article 20 (2) of the Covenant to prohibit. In the Committee's opinion, therefore, the communication is, in respect of this claim, incompatible with the provisions of the Covenant, within the meaning of article 3 of the Optional Protocol...

...

The Human Rights Committee therefore decides:

> That the communication is inadmissible.

- *Faurisson v. France* (550/1993), ICCPR, A/52/40 vol. II (8 November 1996) 84 (CCPR/C/58/D/550/1993) at paras. 2.1-2.3, 2.5, 9.3-9.7, 10, Individual Opinion by Nisuke Ando (concurring), 97, Individual Opinion by Elizabeth Evatt and David Kretzmer and Eckhart Klein (concurring), 97 at paras. 2-10, Individual Opinion by Cecilia Medina Quiroga (concurring), 100 at para. 2, Individual Opinion by Rajsoomer Lallah (concurring), 100 at paras. 1-13, and Individual Opinion by Prafullachandra Bhagwati (concurring), 102.

...

2.1 The author was a professor of literature at the Sorbonne University in Paris until 1973 and at the University of Lyon until 1991, when he was removed from his chair. Aware of the historical significance of the Holocaust, he has sought proof of the methods of killings, in particular by gas asphyxiation. While he does not contest the use of gas for purposes of disinfection, he doubts the existence of gas chambers for extermination purposes ("*chambres à gaz homicides*") at Auschwitz and in other Nazi concentration camps.

2.2 The author submits that his opinions have been rejected in numerous academic journals and ridiculed in the daily press, notably in France; nonetheless, he continues to question the existence of extermination gas chambers. As a result of public discussion of his opinions and the polemics accompanying these debates, he states that, since 1978, he has become the target of death threats and that on eight occasions he has been physically assaulted. On one occasion in 1989, he claims to have suffered serious injuries, including a broken jaw, for which he was hospitalized. He contends that although these attacks were brought to the attention of the competent judicial authorities, they were not seriously investigated and none of those responsible for the assaults has been arrested or prosecuted...

2.3 On 13 July 1990, the French legislature passed the so-called "Gayssot Act", which amends the law on the Freedom of the Press of 1881 by adding an article 24 bis; the latter

makes it an offence to contest the existence of the category of crimes against humanity as defined in the London Charter of 8 August 1945, on the basis of which Nazi leaders were tried and convicted by the International Military Tribunal at Nuremberg in 1945-1946. The author submits that, in essence, the "Gayssot Act" promotes the Nuremberg trial and judgment to the status of dogma, by imposing criminal sanctions on those who dare to challenge its findings and premises. Mr. Faurisson contends that he has ample reason to believe that the records of the Nuremberg trial can indeed be challenged and that the evidence used against Nazi leaders is open to question, as is, according to him, the evidence about the number of victims exterminated at Auschwitz.

...

2.5 Shortly after the enactment of the "Gayssot Act", Mr. Faurisson was interviewed by the French monthly magazine *Le Choc du Mois*, which published the interview in its Number 32 issue of September 1990. Besides expressing his concern that the new law constituted a threat to freedom of research and freedom of expression, the author reiterated his personal conviction that there were no homicidal gas chambers for the extermination of Jews in Nazi concentration camps. Following the publication of this interview, eleven associations of French resistance fighters and of deportees to German concentration camps filed a private criminal action against Mr. Faurisson and Patrice Boizeau, the editor of the magazine *Le Choc du Mois*. By judgment of 18 April 1991, the 17th *Chambre Correctionnelle du Tribunal de Grande Instance de Paris* convicted Messrs. Faurisson and Boizeau of having committed the crime of "*contestation de crimes contre l'humanité*" and imposed on them fines and costs amounting to FF 326,832.

...

9.3 Although it does not contest that the application of the terms of the Gayssot Act, which, in their effect, make it a criminal offence to challenge the conclusions and the verdict of the International Military Tribunal at Nuremberg, may lead, under different conditions than the facts of the instant case, to decisions or measures incompatible with the Covenant, the Committee is not called upon to criticize in the abstract laws enacted by States parties. The task of the Committee under the Optional Protocol is to ascertain whether the conditions of the restrictions imposed on the right to freedom of expression are met in the communications which are brought before it.

9.4 Any restriction on the right to freedom of expression must cumulatively meet the following conditions: it must be provided by law, it must address one of the aims set out in paragraph 3 (a) and (b) of article 19, and must be necessary to achieve a legitimate purpose.

9.5 The restriction on the author's freedom of expression was indeed provided by law i.e. the Act of 13 July 1990. It is the constant jurisprudence of the Committee that the restrictive law itself must be in compliance with the provisions of the Covenant. In this regard the Committee concludes, on the basis of the reading of the judgment of the 17th *Chambre*

correctionnelle du Tribunal de grande instance de Paris that the finding of the author's guilt was based on his following two statements: "...I have excellent reasons not to believe in the policy of extermination of Jews or in the magic gas chambers...I wish to see that 100 per cent of the French citizens realize that the myth of the gas chambers is a dishonest fabrication". His conviction therefore did not encroach upon his right to hold and express an opinion in general, rather the court convicted Mr. Faurisson for having violated the rights and reputation of others. For these reasons the Committee is satisfied that the Gayssot Act, as read, interpreted and applied to the author's case by the French courts, is in compliance with the provisions of the Covenant.

9.6 To assess whether the restrictions placed on the author's freedom of expression by his criminal conviction were applied for the purposes provided for by the Covenant, the Committee begins by noting, as it did in its General Comment 10, that the rights for the protection of which restrictions on the freedom of expression are permitted by article 19, paragraph 3, may relate to the interests of other persons or to those of the community as a whole. Since the statements made by the author, read in their full context, were of a nature as to raise or strengthen anti-semitic feelings, the restriction served the respect of the Jewish community to live free from fear of an atmosphere of anti-semitism. The Committee therefore concludes that the restriction of the author's freedom of expression was permissible under article 19, paragraph 3 (a), of the Covenant.

9.7 Lastly the Committee needs to consider whether the restriction of the author's freedom of expression was necessary. The Committee noted the State party's argument contending that the introduction of the Gayssot Act was intended to serve the struggle against racism and anti-semitism. It also noted the statement of a member of the French Government, the then Minister of Justice, which characterized the denial of the existence of the Holocaust as the principal vehicle for anti-semitism. In the absence in the material before it of any argument undermining the validity of the State party's position as to the necessity of the restriction, the Committee is satisfied that the restriction of Mr. Faurisson's freedom of expression was necessary within the meaning of article 19, paragraph 3, of the Covenant.

10. The Human Rights Committee...is of the view that the facts as found by the Committee do not reveal a violation by France of article 19, paragraph 3, of the Covenant.

...

B. Individual Opinion by Nisuke Ando (concurring)

While I do not oppose the adoption of the Views by the Human Rights Committee in the present case, I would like to express my concern about the danger that the French legislation in question, the Gayssot Act, might entail. As I understand it, the Act criminalizes the negation ("*contestation*" in French), by one of the means enumerated in article 23 of the Law

on the Freedom of the Press of 1881, of one or several of the crimes against humanity in the sense of article 6 of the Statute of the International Military Tribunal of Nuremberg (see para. 4.2). In my view the term "negation" ("contestation"), if loosely interpreted, could comprise various forms of expression of opinions and thus has a possibility of threatening or encroaching the right to freedom of expression, which constitutes an indispensable prerequisite for the proper functioning of a democratic society. In order to eliminate this possibility it would probably be better to replace the Act with a specific legislation prohibiting well-defined acts of anti-semitism or with a provision of the criminal code protecting the rights or reputations of others in general.

C. Individual Opinion by Elizabeth Evatt and David Kretzmer and Eckart Klein (concurring)

...

2. Any restriction on the right to freedom of expression must cumulatively meet the following conditions: it must be provided by law, it must address one of the aims set out in paragraph 3 (a) and (b) of article 19, and it must be necessary to achieve that aim. In this case we are concerned with the restriction on the author's freedom of expression arising from his conviction for his statements in the interview published in *Le Choc du Mois*. As this conviction was based on the prohibition laid down in the Gayssot Act, it was indeed a restriction provided by law. The main issue is whether the restriction has been shown by the State party to be necessary, in terms of article 19, paragraph 3 (a), for respect of the rights or reputations of others.

3. The State party has argued that the author's conviction was justified "by the necessity of securing respect for the judgment of the International Military Tribunal at Nuremburg, and through it the memory of the survivors and the descendants of the victims of Nazism." While we entertain no doubt whatsoever that the author's statements are highly offensive both to Holocaust survivors and to descendants of Holocaust victims (as well as to many others), the question under the Covenant is whether a restriction on freedom of expression in order to achieve this purpose may be regarded as a restriction necessary for the respect of the rights of others.

4. Every individual has the right to be free not only from discrimination on grounds of race, religion and national origins, but also from incitement to such discrimination. This is stated expressly in article 7 of the Universal Declaration of Human Rights. It is implicit in the obligation placed on States parties under article 20, paragraph 2, of the Covenant to prohibit by law any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. The crime for which the author was convicted under the Gayssot Act does not expressly include the element of incitement, nor do the statements which served as the basis for the conviction fall clearly within the boundaries of incitement, which the State party was bound to prohibit, in accordance with article 20, paragraph 2.

However, there may be circumstances in which the right of a person to be free from incitement to discrimination on grounds of race, religion or national origins cannot be fully protected by a narrow, explicit law on incitement that falls precisely within the boundaries of article 20, paragraph 2. This is the case where, in a particular social and historical context, statements that do not meet the strict legal criteria of incitement can be shown to constitute part of a pattern of incitement against a given racial, religious or national group, or where those interested in spreading hostility and hatred adopt sophisticated forms of speech that are not punishable under the law against racial incitement, even though their effect may be as pernicious as explicit incitement, if not more so.

5. In the discussion in the French Senate on the Gayssot Act the then Minister of Justice, Mr. Arpaillange, explained that the said law, which, *inter alia*, prohibits denial of the Holocaust, was needed since Holocaust denial is a contemporary expression of racism and anti-semitism. Furthermore, the influence of the author's statements on racial or religious hatred was considered by the Paris Court of Appeal, which held that by virtue of the fact that such statements propagate ideas tending to revive Nazi doctrine and the policy of racial discrimination, they tend to disrupt the harmonious coexistence of different groups in France.

6. The notion that in the conditions of present-day France, Holocaust denial may constitute a form of incitement to anti-semitism cannot be dismissed. This is a consequence not of the mere challenge to well-documented historical facts, established both by historians of different persuasions and backgrounds as well as by international and domestic tribunals, but of the context, in which it is implied, under the guise of impartial academic research, that the victims of Nazism were guilty of dishonest fabrication, that the story of their victimization is a myth and that the gas chambers in which so many people were murdered are "magic".

7. The Committee correctly points out, as it did in its General Comment 10, that the right for the protection of which restrictions on freedom of expression are permitted by article 19, paragraph 3, may relate to the interests of a community as a whole. This is especially the case in which the right protected is the right to be free from racial, national or religious incitement. The French courts examined the statements made by the author and came to the conclusion that his statements were of a nature as to raise or strengthen anti-Semitic tendencies. It appears therefore that the restriction on the author's freedom of expression served to protect the right of the Jewish community in France to live free from fear of incitement to anti-Semitism. This leads us to the conclusion that the State party has shown that the aim of the restrictions on the author's freedom of expression was to respect the right of others, mentioned in article 19, paragraph 3. The more difficult question is whether imposing liability for such statements was necessary in order to protect that right.

8. The power given to States parties under article 19, paragraph 3, to place restrictions on

freedom of expression, must not be interpreted as license to prohibit unpopular speech, or speech which some sections of the population find offensive. Much offensive speech may be regarded as speech that impinges on one of the values mentioned in article 19, paragraph 3 (a) or (b) (the rights or reputations of others, national security, public order, public health or morals). The Covenant therefore stipulates that the purpose of protecting one of those values is not, of itself, sufficient reason to restrict expression. The restriction must be necessary to protect the given value. This requirement of necessity implies an element of proportionality. The scope of the restriction imposed on freedom of expression must be proportional to the value which the restriction serves to protect. It must not exceed that needed to protect that value. As the Committee stated in its General Comment 10, the restriction must not put the very right itself in jeopardy.

9. The Gayssot Act is phrased in the widest language and would seem to prohibit publication of bona fide research connected with matters decided by the Nuremburg Tribunal. Even if the purpose of this prohibition is to protect the right to be free from incitement to anti-Semitism, the restrictions imposed do not meet the proportionality test. They do not link liability to the intent of the author, nor to the tendency of the publication to incite to anti-Semitism. Furthermore, the legitimate object of the law could certainly have been achieved by a less drastic provision that would not imply that the State party had attempted to turn historical truths and experiences into legislative dogma that may not be challenged, no matter what the object behind that challenge, nor its likely consequences. In the present case we are not concerned, however, with the Gayssot Act, *in abstracto*, but only with the restriction placed on the freedom of expression of the author by his conviction for his statements in the interview in *Le Choc du Mois*. Does this restriction meet the proportionality test?

10. The French courts examined the author's statements in great detail. Their decisions, and the interview itself, refute the author's argument that he is only driven by his interest in historical research. In the interview the author demanded that historians "particularly Jewish historians" ("*les historiens, en particulier juifs*") who agree that some of the findings of the Nuremburg Tribunal were mistaken be prosecuted. The author referred to the "magic gas chamber" ("*la magique chambre à gaz*") and to "the myth of the gas chambers" ("*le mythe des chambres à gaz*"), that was a "dirty trick" ("*une gredinerie*") endorsed by the victors in Nuremburg. The author has, in these statements, singled out Jewish historians over others, and has clearly implied that the Jews, the victims of the Nazis, concocted the story of gas chambers for their own purposes. While there is every reason to maintain protection of bona fide historical research against restriction, even when it challenges accepted historical truths and by so doing offends people, anti-Semitic allegations of the sort made by the author, which violate the rights of others in the way described, do not have the same claim to protection against restriction. The restrictions placed on the author did not curb the core of

his right to freedom of expression, nor did they in any way affect his freedom of research; they were intimately linked to the value they were meant to protect - the right to be free from incitement to racism or anti-Semitism; protecting that value could not have been achieved in the circumstances by less drastic means. It is for these reasons that we joined the Committee in concluding that, in the specific circumstances of the case, the restrictions on the author's freedom of expression met the proportionality test and were necessary in order to protect the rights of others.

D. Individual Opinion by Cecilia Medina Quiroga

...

2. I would like to add that a determining factor for my position is the fact that, although the wording of the Gayssot Act might, in application, constitute a clear violation of article 19 of the Covenant, the French court which tried Mr. Faurisson interpreted and applied that Act in the light of the provisions of the Covenant, thereby adapting the Act to France's international obligations with regard to freedom of expression.

E. Individual Opinion by Rajsoomer Lallah

1. I have reservations on the approach adopted by the Committee in arriving at its conclusions. I also reach the same conclusions for different reasons.

2. It is perhaps necessary to identify, in the first place, what restrictions or prohibitions a State party may legitimately impose, by law, on the right to freedom of expression or opinion, whether under article 19, paragraph 3, or 20, paragraph 2, of the Covenant; and, secondly, where the non-observance of such restrictions or prohibitions is criminalized by law, what are the elements of the offence that the law must, in its formulation, provide for so that an individual may know what these elements are and so that he may be able to defend himself, in respect of those elements, by virtue of the fundamental right to a fair trial by a Court conferred upon him under article 14 of the Covenant.

3. The Committee, and indeed my colleagues Evatt and Kretzmer...have properly analyzed the purposes for which restrictions may legitimately be imposed under article 19, paragraph 3, of the Covenant. They have also properly underlined the requirement that the restrictions must be necessary to achieve those purposes. I need not add anything further on this particular aspect of the matter.

4. In so far as restrictions or prohibitions in pursuance of article 20, paragraph 2, are concerned, the element of necessity is merged with the very nature of the expression which may legitimately be prohibited by law, that is to say, the expression must amount to advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility

or violence.

5. The second question as to what the law must provide for, in its formulation, is a more difficult one. I would see no great difficulty in the formulation of a law which prohibits, in the very terms of article 20, paragraph 2, the advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. The formulation becomes more problematic for the purposes of article 19, paragraph 3. Because, here, it is not, as is the case under article 20, paragraph 2, the particular expression that may be restricted but rather the adverse effect that the expression must necessarily have on the specified objects or interests which paragraphs (a) and (b) are designed to protect. It is the prejudice to these objects or interests which becomes the material element of the restriction or prohibition and, consequently, of the offence.

6. As my colleagues Evatt and Kretzmer have noted, the Gayssot Act is formulated in the widest terms and would seem to prohibit publication of bona fide research connected with principles and matters decided by the Nuremberg Tribunal. It creates an absolute liability in respect of which no defence appears to be possible. It does not link liability either to the intent of the author nor to the prejudice that it causes to respect for the rights or reputations of others as required under article 19, paragraph 3 (a), or to the protection of national security or of public order or of public health or morals as required under article 19, paragraph 3 (b).

7. What is significant in the Gayssot Act is that it appears to criminalize, in substance, any challenge to the conclusions and the verdict of the Nuremberg Tribunal. In its effects, the Act criminalizes the bare denial of historical facts. The assumption, in the provisions of the Act, that the denial is necessarily anti-Semitic or incites anti-Semitism is a Parliamentary or legislative judgment and is not a matter left to adjudication or judgment by the Courts. For this reason, the Act would appear, in principle, to put in jeopardy the right of any person accused of a breach of the Act to be tried by an independent Court.

8. I am conscious, however, that the Act must not be read *in abstracto* but in its application to the author. In this regard, the next question to be examined is whether any deficiencies in the Act, in its application to the author, were or were not remedied by the Courts.

9. It would appear, as also noted by my colleagues Evatt and Kretzmer that the author's statements on racial or religious hatred were considered by the French Courts. Those Courts came to the conclusion that the statements propagated ideas tending to revive Nazi doctrine and the policy of racial discrimination. The statements were also found to have been of such a nature as to raise or strengthen anti-Semitic tendencies. It is beyond doubt that, on the basis of the findings of the French Courts, the statements of the author amounted to the advocacy of racial or religious hatred constituting incitement, at the very least, to hostility

and discrimination towards people of the Jewish faith which France was entitled under article 20, paragraph 2, of the Covenant to proscribe. In this regard, in considering this aspect of the matter and reaching the conclusions which they did, the French Courts would appear to have, quite properly, arrogated back to themselves the power to decide a question which the Legislature had purported to decide by a legislative judgement.

10. Whatever deficiencies, therefore, which the Act contained were, in the case of the author, remedied by the Courts. When considering a communication under the Optional Protocol what must be considered is the action of the State as such, irrespective of whether the State had acted through its legislative arm or its judicial arm or through both.

11. I conclude, therefore, that the creation of the offence provided for in the Gayssot Act, as it has been applied by the Courts to the author's case, falls more appropriately, in my view, within the powers of France under article 20, paragraph 2, of the Covenant. The result is that there has, for this reason, been no violation by France under the Covenant.

12. I am aware that the communication of the author was declared admissible only with regard to article 19. I note, however, that no particular article was specified by the author when submitting his communication. And, in the course of the exchange of the observations by both the author and the State party, the substance of matters relevant to article 20, paragraph 2, were also mooted or brought in issue. I would see no substantive or procedural difficulty in invoking article 20, paragraph 2.

13. Recourse to restrictions that are, in principle, permissible under article 19, paragraph 3, bristles with difficulties, tending to destroy the very existence of the right sought to be restricted. The right to freedom of opinion and expression is a most valuable right and may turn out to be too fragile for survival in the face of the too frequently professed necessity for its restriction in the wide range of areas envisaged under paragraphs (a) and (b) of article 19, paragraph 3.

F. Individual Opinion by Prafullachandra Bhagwati

...The question is whether the conviction of the author under the Gayssot Act was violative of article 19, paragraph 2, of the International Covenant on Civil and Political Rights.

Article 19, paragraph 2, declares that everyone shall have the right to freedom of expression which includes freedom to impart information and ideas of all kinds through any media, but restrictions can be imposed on this freedom under article 19, paragraph 3, provided such restrictions cumulatively meet the following conditions: (1) they must be provided for by law, (2) they must address one of the aims enumerated in paragraph 3 (a) and 3 (b) of article

19 and (3) they must be necessary to achieve a legitimate purpose, this last requirement introducing the principle of proportionality.

...The Gayssot Act...provided restriction on freedom of expression by making it an offence to speak or write denying the existence of the Holocaust or of gas asphyxiation of Jews in gas chambers by Nazis. The author was convicted for breach of the provisions of the Gayssot Act and it was therefore breach of this restriction on which the finding of guilt recorded against him was based. The offending statements made by the author on which his conviction was based were the following:

> "...No one will have me admit that two plus two make five, that the earth is flat or that the Nuremberg trial was infallible. I have excellent reasons not to believe in this policy of extermination of Jews or in the magic gas chamber..."
>
> "I would wish to see that 100 per cent of all French citizens realize that the myth of the gas chambers is a dishonest fabrication ('*est une gredinerie*'), endorsed by the victorious powers of Nuremberg in 1945-46 and officialized on 14 July 1990 by the current French Government with the approval of the Court historians."

These statements were clearly in breach of the restriction imposed by the Gayssot Act and were therefore plainly covered by the prohibition under the Gayssot Act. But the question is whether the restriction imposed by the Gayssot Act which formed the basis of the conviction of the author, satisfied the other two elements in article 19, paragraph 3, in order to pass the test of permissible restriction.

The second element in article 19, paragraph 3, requires that the restriction imposed by the Gayssot Act must address one of the aims enumerated in paragraph 3 (a) and (b) of article 19. It must be necessary (a) for respect of the rights or reputations of others or (b) for the protection of national security or of public order (*ordre public*) or of public health or morals. It would be difficult to bring the restriction under paragraph 3 (b) because it cannot be said to be necessary for any of the purposes set out in paragraph 3 (b). The only question to which it is necessary to address oneself is whether the restriction can be said to be necessary for respect of the rights and reputations of others so as to be justifiable under paragraph 3 (a).

Now if a law were merely to prohibit any criticism of the functioning of the International Military Tribunal at Nuremberg or any denial of a historical event simpliciter, on pain of penalty, such law would not be justifiable under paragraph 3 (a) of article 19 and it would clearly be inconsistent under article 19, paragraph 2. But, it is clear from the submissions made by the State party and particularly, the submission made on 3 July 1996 that the object

and purpose of imposing restriction under the Gayssot Act on freedom of expression was to prohibit or prevent insidious expression of anti-Semitism...

Thus, according to the State party, the necessary consequence of denial of extermination of Jews by asphyxiation in the gas chamber was fuelling of anti-semitic sentiment by the clearest suggestion that the myth of the gas chamber was a dishonest fabrication by the Jews and it was in fact so articulated by the author in his offending statement.

It is therefore clear that the restriction on freedom of expression imposed by the Gayssot Act was intended to protect the Jewish community against hostility, antagonism and ill-will which would be generated against them by statements imputing dishonest fabrication of the myth of gas chamber and extermination of Jews by asphyxiation in the gas chamber. It may be noted, as observed by the Committee in its General Comment 10, that the rights for the protection of which restrictions on the freedom of expression are permitted by article 19, paragraph 3 (a), may relate to the interests of other persons or to those of the community as a whole. Since the statement made by the author, read in the context of its necessary consequence, was calculated or was at least of such a nature as to raise or strengthen anti-Semitic feelings and create or promote hatred, hostility or contempt against the Jewish community as dishonest fabricators of lies, the restriction imposed on such statement by the Gayssot Act was intended to serve the purpose of respect for the right and interest of the Jewish community to live free from fear of an atmosphere of anti-Semitism, hostility or contempt. The second element required for the applicability of article 19, paragraph 3, was therefore satisfied.

That takes me to a consideration of the question whether the third element could be said to have been satisfied in the present case. Was the restriction on the author's freedom of expression imposed under the Gayssot Act necessary for respect of the rights and interests of the Jewish community? The answer must obviously be in the affirmative. If the restriction on freedom of expression in the manner provided under the Gayssot Act had not been imposed and statements denying the Holocaust and the extermination of Jews by asphyxiation in the gas chamber had not been made penal, the author and other revisionists like him could have gone on making statements similar to the one which invited the conviction of the author and the necessary consequence and fall-out of such statements would have been, in the context of the situation prevailing in Europe, promotion and strengthening of anti-Semitic feelings, as emphatically pointed out by the State party in its submissions. Therefore, the imposition of restriction by the Gayssot Act was necessary for securing respect for the rights and interests of the Jewish community to live in society with full human dignity and free from an atmosphere of anti-Semitism.

It is therefore clear that the restriction on freedom of expression imposed by the Gayssot Act

satisfied all the three elements required for the applicability of article 19, paragraph 3, and was not inconsistent with article 19, paragraph 2, and consequently, the conviction of the author under the Gayssot Act was not violative of his freedom of expression guaranteed under article 19, paragraph 2. I have reached this conclusion under the greatest reluctance because I firmly believe that in a free democratic society, freedom of speech and expression is one of the most prized freedoms which must be defended and upheld at any cost and this should be particularly so in the land of Voltaire...

- *Ross v. Canada* (736/1997), ICCPR, A/56/40 vol. II (18 October 2000) 69 at paras. 2.1-2.3, 3.2-3.6, 4.1-4.8, 6.2, 6.8, 10.5, 10.6 and 11.1-11.7.

...
2.1 The author worked as a modified resource teacher for remedial reading in a school district of New Brunswick from September 1976 to September 1991. Throughout this period, he published several books and pamphlets and made other public statements, including a television interview, reflecting controversial, allegedly religious opinions. His books concerned abortion, conflicts between Judaism and Christianity, and the defence of the Christian religion. Local media coverage of his writings contributed to his ideas gaining notoriety in the community. The author emphasises that his publications were not contrary to Canadian law and that he was never prosecuted for the expression of his opinions. Furthermore, all writings were produced in his own time, and his opinions never formed part of his teaching.

2.2 Following expressed concern, the author's in-class teaching was monitored from 1979 onwards. Controversy around the author grew and, as a result of publicly expressed concern, the School Board on 16 March 1988, reprimanded the author and warned him that continued public discussion of his views could lead to further disciplinary action, including dismissal. He was, however, allowed to continue to teach, and this disciplinary action was removed from his file in September 1989. On 21 November 1989, the author made a television appearance and was again reprimanded by the School Board on 30 November 1989.

2.3 On 21 April 1988, a Mr. David Attis, a Jewish parent, whose children attended another school within the same School District, filed a complaint with the Human Rights Commission of New Brunswick, alleging that the School Board, by failing to take action against the author, condoned his anti-Jewish views and breached section 5 of the Human Rights Act by discriminating against Jewish and other minority students. This complaint ultimately led to the sanctions set out in para 4.3 below.
...
3.2 ...Individuals concerned about speech that denigrates particular minorities may choose

to file a complaint with a human rights commission rather than or in addition to filing a complaint with the police.

3.3 The complaint against the School Board was lodged under section 5(1) of the New Brunswick Human Rights Code ...

3.4 In his complaint, Mr. Attis submitted that the School Board had violated section 5 by providing educational services to the public which discriminated on the basis of religion and ancestry in that they failed to take adequate measures to deal with the author. Under section 20(1) of the same Act, if unable to effect a settlement of the matter, the Human Rights Commission may appoint a board of inquiry composed of one or more persons to hold an inquiry. The board appointed to examine the complaint against the School Board made its orders pursuant to section 20 (6.2) of the same Act ...

3.5 Since 1982, the Canadian Charter of Rights and Freedoms ("the Charter") has been part of the Canadian Constitution, and consequently any law that is inconsistent with its provisions is, to the extent of that inconsistency, of no force or effect.... Provincial human rights codes and any orders made pursuant to such codes are subject to review under the Charter. The limitation of a Charter right may be justified under section 1 of the Charter, if the Government can demonstrate that the limitation is prescribed by law and is justified in a free and democratic society ...

3.6 There are also several other legislative mechanisms both at the federal and provincial level to deal with expressions that denigrate particular groups in Canadian society....

4.1 On 1 September 1988, a Human Rights Board of Inquiry was established to investigate the complaint. In December 1990 and continuing until the spring of 1991, the first hearing was held before the Board.... The Board found that there was no evidence of any classroom activity by the author on which to base a complaint of discrimination. However, the Board of Inquiry also noted that

> "... a teacher's off-duty conduct can impact on his or her assigned duties and thus is a relevant consideration... An important factor to consider, in determining if the Complainant has been discriminated against by Mr. Malcolm Ross and the School Board, is the fact that teachers are role models for students whether a student is in a particular teacher's class or not. In addition to merely conveying curriculum information to children in the classroom, teachers play a much broader role in influencing children through their general demeanour in the classroom and through their off-duty lifestyle. This role model influence on students means that a teacher's off-duty conduct

> can fall within the scope of the employment relationship. While there is a reluctance to impose restrictions on the freedom of employees to live their independent lives when on their own time, the right to discipline employees for conduct while off-duty, when that conduct can be shown to have a negative influence on the employer's operation has been well established in legal precedent".

4.2 In its assessment of the author's off-duty activities and their impact, the Board of Inquiry made reference to four published books or pamphlets entitled respectively Web of Deceit, The Real Holocaust, Spectre of Power and Christianity vs. Judeo-Christianity, as well as to a letter to the editor of The Miramichi Leader dated 22 October 1986 and a local television interview given in 1989. The Board of Inquiry stated, *inter alia*, that it had

> "...no hesitation in concluding that there are many references in these published writings and comments by Malcolm Ross which are prima facie discriminatory against persons of the Jewish faith and ancestry. It would be an impossible task to list every prejudicial view or discriminatory comment contained in his writings as they are innumerable and permeate his writings. These comments denigrate the faith and beliefs of Jews and call upon true Christians to not merely question the validity of Jewish beliefs and teachings but to hold those of the Jewish faith and ancestry in contempt as undermining freedom, democracy and Christian beliefs and values. Malcolm Ross identifies Judaism as the enemy and calls on all Christians to join the battle.
>
> Malcolm Ross has used the technique in his writings of quoting other authors who have made derogatory comments about Jews and Judaism. He intertwines these derogatory quotes with his own comments in a way such that he must reasonably be seen as adopting the views expressed in them as his own. Throughout his books, Malcolm Ross continuously alleges that the Christian faith and way of life are under attack by an international conspiracy in which the leaders of Jewry are prominent.
>
> ...The writings and comments of Malcolm Ross cannot be categorized as falling within the scope of scholarly discussion which might remove them from the scope of section 5 [of the Human Rights Act]. The materials are not expressed in a fashion that objectively summarizes findings and conclusions or propositions. While the writings may have involved some substantial research, Malcolm Ross' primary purpose is clearly to attack the truthfulness, integrity, dignity and motives of Jewish persons rather than the

presentation of scholarly research."

4.3 The Board of Inquiry heard evidence from two students from the school district who described the educational community in detail. *Inter alia*, they gave evidence of repeated and continual harassment in the form of derogatory name calling of Jewish students, carving of swastikas into desks of Jewish children, drawing of swastikas on blackboards and general intimidation of Jewish students. The Board of Inquiry found no direct evidence that the author's off-duty conduct had impacted on the school district, but found that it would be reasonable to anticipate that his writings were a factor influencing some discriminatory conduct by the students. In conclusion, the Board of Inquiry held that the public statements and writings of Malcolm Ross had continually over many years contributed to the creation of a "poisoned environment within School District 15 which has greatly interfered with the educational services provided to the Complainant and his children". Thus, the Board of Inquiry held that the School Board was vicariously liable for the discriminatory actions of its employee and that it was directly in violation of the Act due to its failure to discipline the author in a timely and appropriate manner, so endorsing his out-of-school activities and writings. Therefore, on 28 August 1991, the Board of Inquiry ordered

> (2) That the School Board
>
> (a) immediately place Malcolm Ross on a leave of absence without pay for a period of eighteen months;
>
> (b) appoint Malcolm Ross a non-teaching position if,... , a non-teaching position becomes available in School District 15 for which Malcolm Ross is qualified.
>
> (c) terminate his employment at the end of the eighteen months leave of absence without pay if, in the interim, he has not been offered and accepted a non-teaching position.
>
> (d) terminate Malcolm Ross' employment with the School Board immediately if, at any time during the eighteen month leave of absence or of at any time during his employment in a non-teaching position, he (i) publishes or writes for the purpose of publication, anything that mentions a Jewish or Zionist conspiracy, or attacks followers of the Jewish religion, or (ii) publishes, sells or distributes any of the following publications, directly or indirectly: *Web of Deceit, The Real Holocaust (The attack on unborn children and life itself), Spectre of Power, Christianity vs Judeo-Christianity (The battle for truth)*."

4.4 Pursuant to the Order, the School Board transferred the author to a non-classroom teaching position in the School District. The author applied for judicial review requesting that the order be removed and quashed. On 31 December 1991, Creaghan J. of the Court of Queen's Bench allowed the application in part, quashing clause 2(d) of the order, on the ground that it was in excess of jurisdiction and violated section 2 of the Charter. As regards clauses (a), (b), and (c) of the order, the court found that they limited the author's Charter rights to freedom of religion and expression, but that they were saved under section 1 of the Charter.

4.5 The author appealed the decision of the Court of Queen's Bench to the Court of Appeal of New Brunswick. At the same time, Mr. Attis cross-appealed the Court's decision regarding section 2(d) of the Order. The Court of Appeal allowed the author's appeal, quashing the order given by the Board of Inquiry, and accordingly rejected the cross-appeal. By judgement of 20 December 1993, the Court held that the order violated the author's rights under section 2 (a) and (b) of the Charter in that they penalised him for publicly expressing his sincerely held views by preventing him from continuing to teach. The Court considered that, since it was the author's activities outside the school that had attracted the complaint, and since it had never been suggested that he used his teaching position to further his religious views, the ordered remedy did not meet the test under section 1 of the Charter ... To find otherwise would, in the Court's view, have the effect of condoning the suppression of views that are not politically popular any given time. One judge, Ryan J.A., dissented and held that the author's appeal should have been dismissed and that the cross-appeal should have been allowed, with the result that section 2(d) of the Order should have been reinstated.

4.6 Mr. Attis, the Human Rights Commission and the Canadian Jewish Congress then sought leave to appeal to the Supreme Court of Canada, which allowed the appeal and, by decision of 3 April 1996, reversed the judgment of the Court of Appeal, and restored clauses 2(a), (b) and (c) of the order. In reaching its decision, the Supreme Court first found that the Board of Inquiry's finding of discrimination contrary to section 5 of the Human Rights Act on the part of the School Board was supported by the evidence and contained no error. With regard to the evidence of discrimination on the part of the School Board generally, and in particular as to the creation of a poisoned environment in the School District attributable to the conduct of the author, the Supreme Court held

> "... that a reasonable inference is sufficient in this case to support a finding that the continued employment of [the author] impaired the educational environment generally in creating a 'poisoned' environment characterized by a lack of equality and tolerance. [The author's] off-duty conduct impaired his ability to be impartial and impacted upon the educational environment in which he taught. (para. 49)

> ...The reason that it is possible to 'reasonably anticipate' the causal relationship in this appeal is because of the significant influence teachers exert on their students and the stature associated with the role of a teacher. It is thus necessary to remove [the author] from his teaching position to ensure that no influence of this kind is exerted by him upon his students and to ensure that educational services are discrimination free." (para 101)

4.7 On the particular position and responsibilities of teachers and on the relevance of a teacher's off duty conduct, the Supreme Court further commented:

> "...Teachers are inextricably linked to the integrity of the school system. Teachers occupy positions of trust and confidence, and exert considerable influence over their students as a result of their positions. The conduct of a teacher bears directly upon the community's perception of the ability of the teacher to fulfill such a position of trust and influence, and upon the community's confidence in the public school system as a whole.
>
> ...By their conduct, teachers as 'medium' must be perceived to uphold the values, beliefs and knowledge sought to be transmitted by the school system. The conduct of a teacher is evaluated on the basis of his or her position, rather than whether the conduct occurs within the classroom or beyond. Teachers are seen by the community to be the medium for the educational message and because of the community position they occupy, they are not able to 'choose which hat they will wear on what occasion'.
>
> ...It is on the basis of the position of trust and influence that we can hold the teacher to high standards both on and off duty, and it is an erosion of these standards that may lead to a loss in the community of confidence in the public school system. I do not wish to be understood as advocating an approach that subjects the entire lives of teachers to inordinate scrutiny on the basis of more onerous moral standards of behaviour. This could lead to a substantial invasion of the privacy rights and fundamental freedoms of teachers. However, where a 'poisoned' environment within the school system is traceable to the off-duty conduct of a teacher that is likely to produce a corresponding loss of confidence in the teacher and the system as a whole, then the off-duty conduct of the teacher is relevant." (paras. 43-45)

4.8 Secondly, the Court examined the validity of the impugned Order under the Canadian Constitution. In this regard, the Court first considered that the Order infringed sections 2(a) and 2(b) of the Charter as it in effect restricted respectively the author's freedom of religion

and his freedom of expression. The Court went on to consider whether these infringements were justifiable under section 1 of the Charter, and found that the infringements had occurred with the aim of eradicating discrimination in the provision of educational services to the public, a 'pressing and substantial' objective. The Court further found that the measures (a) (b) and (c) imposed by the order could withstand the proportionality test, that is there existed a rational connection between the measures and the objective, the impairment of the author's right was minimal, and there was proportionality between the effects of the measures and their objective. Clause (d) was found not to be justified since it did not minimally impair the author's constitutional freedoms, but imposed a permanent ban on his expressions.

...

6.2 The State party submits that the communication should be deemed inadmissible as incompatible with the provisions of the Covenant because the publications of the author fall within the scope of article 20, paragraph 2, of the Covenant, i.e. they must be considered "advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence". In this regard, the State party points out that the Supreme Court of Canada found that the publications denigrated the faith and beliefs of Jewish people and called upon "true Christians" to not merely question the validity of those beliefs but to hold those of the Jewish faith in contempt. Furthermore, it is stated that the author identified Judaism as the enemy and called upon "Christians" to join in the battle.

...

6.8 As to the merits of the communication, the State party first submits that the author has not established how his rights to freedom of religion and expression have been limited or restricted by the Order of the Board of Inquiry as upheld by the Supreme Court. It is argued that the author is free to express his views while employed by the school board in a non-teaching position or while employed elsewhere.

...

10.5 The Committee notes that the State party has contested the admissibility of the remainder of the communication on several grounds. First, the State party invokes article 20, paragraph 2, of the Covenant, claiming that the author's publications must be considered "advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence". Citing the decision of the Committee in *J. R. T. and W. G. v Canada*, the State party submits that, as a matter of consequence, the communication must be deemed inadmissible under article 3 of the Optional Protocol as being incompatible with the provisions of the Covenant.

10.6 While noting that such an approach indeed was employed in the decision in *J.R.T. and W.G. v Canada*, the Committee considers that restrictions on expression which may fall within the scope of article 20 must also be permissible under article 19, paragraph 3, which lays down requirements for determining whether restrictions on expression are permissible. In applying those provisions, the fact that a restriction is claimed to be required under article

20 is of course relevant. In the present case, the permissibility of the restrictions is an issue for consideration on the merits.

...

11.1 With regard to the author's claim under article 19 of the Covenant, the Committee observes that, in accordance with article 19 of the Covenant, any restriction on the right to freedom of expression must cumulatively meet several conditions set out in paragraph 3. The first issue before the Committee is therefore whether or not the author's freedom of expression was restricted through the Board of Inquiry's Order of 28 August 1991, as upheld by the Supreme Court of Canada. As a result of this Order, the author was placed on leave without pay for a week and was subsequently transferred to a non-teaching position. While noting the State party's argument (see para 6.8 supra) that the author's freedom of expression was not restricted as he remained free to express his views while holding a non-teaching position or while employed elsewhere, the Committee is unable to agree that the removal of the author from his teaching position was not, in effect, a restriction on his freedom of expression. The loss of a teaching position was a significant detriment, even if no or only insignificant pecuniary damage is suffered. This detriment was imposed on the author because of the expression of his views, and in the view of the Committee this is a restriction which has to be justified under article 19, paragraph 3, in order to be in compliance with the Covenant.

11.2 The next issue before the Committee is whether the restriction on the author's right to freedom of expression met the conditions set out in article 19, paragraph 3, i.e. that it must be provided by law, it must address one of the aims set out in paragraph 3 (a) and (b) (respect of the rights and reputation of others; protection of national security or of public order, or of public health or morals), and it must be necessary to achieve a legitimate purpose.

11.3 As regards the requirement that the restriction be provided by law, the Committee notes that there was a legal framework for the proceedings which led to the author's removal from a teaching position. The Board of Inquiry found that the author's off-duty comments denigrated the Jewish faith and that this had adversely affected the school environment. The Board of Inquiry held that the School Board was vicariously liable for the discriminatory actions of its employee and that it had discriminated against the Jewish students in the school district directly, in violation of section 5 of the New Brunswick Human Rights Act, due to its failure to discipline the author in a timely and appropriate manner. Pursuant to section 20 (6.2) of the same Act, the Board of Inquiry ordered the School Board to remedy the discrimination by taking the measures set out in para 4.3 *supra.* In effect, and as stated above, the discrimination was remedied by placing the author on leave without pay for one week and transferring him to a non-teaching position.

11.4 While noting the vague criteria of the provisions that were applied in the case against

the School Board and which were used to remove the author from his teaching position, the Committee must also take into consideration that the Supreme Court considered all aspects of the case and found that there was sufficient basis in domestic law for the parts of the Order which it reinstated. The Committee also notes that the author was heard in all proceedings and that he had, and availed himself of, the opportunity to appeal the decisions against him. In the circumstances, it is not for the Committee to reevaluate the findings of the Supreme Court on this point, and accordingly it finds that the restriction was provided for by law.

11.5 When assessing whether the restrictions placed on the author's freedom of expression were applied for the purposes recognized by the Covenant, the Committee begins by noting8/ that the rights or reputations of others for the protection of which restrictions may be permitted under article 19, may relate to other persons or to a community as a whole. For instance, and as held in *Faurisson v. France*, restrictions may be permitted on statements which are of a nature as to raise or strengthen anti-semitic feeling, in order to uphold the Jewish communities' right to be protected from religious hatred. Such restrictions also derive support from the principles reflected in article 20(2) of the Covenant. The Committee notes that both the Board of Inquiry and the Supreme Court found that the author's statements were discriminatory against persons of the Jewish faith and ancestry and that they denigrated the faith and beliefs of Jews and called upon true Christians to not merely question the validity of Jewish beliefs and teachings but to hold those of the Jewish faith and ancestry in contempt as undermining freedom, democracy and Christian beliefs and values. In view of the findings as to the nature and effect of the author's public statements, the Committee concludes that the restrictions imposed on him were for the purpose of protecting the "rights or reputations" of persons of Jewish faith, including the right to have an education in the public school system free from bias, prejudice and intolerance.

11.6 The final issue before the Committee is whether the restriction on the author's freedom of expression was necessary to protect the right or reputations of persons of the Jewish faith. In the circumstances, the Committee recalls that the exercise of the right to freedom of expression carries with it special duties and responsibilities. These special duties and responsibilities are of particular relevance within the school system, especially with regard to the teaching of young students. In the view of the Committee, the influence exerted by school teachers may justify restraints in order to ensure that legitimacy is not given by the school system to the expression of views which are discriminatory. In this particular case, the Committee takes note of the fact that the Supreme Court found that it was reasonable to anticipate that there was a causal link between the expressions of the author and the "poisoned school environment" experienced by Jewish children in the School district. In that context, the removal of the author from a teaching position can be considered a restriction necessary to protect the right and freedom of Jewish children to have a school system free from bias, prejudice and intolerance. Furthermore, the Committee notes that the author was

appointed to a non-teaching position after only a minimal period on leave without pay and that the restriction thus did not go any further than that which was necessary to achieve its protective functions. The Human Rights Committee accordingly concludes that the facts do not disclose a violation of article 19.

11.7 As regards the author's claims under article 18, the Committee notes that the actions taken against the author through the Human Rights Board of Inquiry's Order of August 1991 were not aimed at his thoughts or beliefs as such, but rather at the manifestation of those beliefs within a particular context. The freedom to manifest religious beliefs may be subject to limitations which are prescribed by law and are necessary to protect the fundamental rights and freedoms of others, and in the present case the issues under paragraph 3 of article 18 are therefore substantially the same as under article 19. Consequently, the Committee holds that article 18 has not been violated.

_____

Notes

...

8/ As it did in General Comment No. 10 and Communication No. 550/1993, *Faurisson v. France*, Views adopted on 8 November 1996.

_____

For dissenting opinion in this context, see Ross v. Canada (736/1997), ICCPR, A/56/40 vol. II (18 October 2000) 69 at Individual Opinion by Hipólito Solari Yrigoyen (dissenting), 87.

- *Zündel v. Canada* (953/2000), ICCPR, A/58/40 vol. II (27 July 2003) 483 (CCPR/C/78/D/953/2000) at paras. 2.1-2.5, 8.4, 8.5 and 9.

...

2.1 The author describes himself as a publisher and activist who has defended the German ethnic group against false atrocity allegations concerning German conduct during World War II. His communication originates from a case before the Canadian Human Rights Tribunal in which he was held responsible under the Canadian Human Rights Act of exposing Jews to hatred and contempt on an Internet website known as the "Zundelsite". From the materials submitted to the Committee by the parties it transpires that, for instance, one of the author's articles posted on that site, entitled "Did Six Million Jews Really Die?", disputes that six million Jews were killed during the Holocaust.

2.2 In May 1997, after a Holocaust survivor had lodged a complaint with the Canadian Human Rights Commission against the author's website, the Canadian Human Rights Tribunal initiated an inquiry into the complaint. During the hearings, on 25 May 1998, the

Human Rights Tribunal refused to permit the author to raise a defense of truth against the complaint by proving that the statements on the "Zundelsite" are true. The Tribunal did not consider it appropriate to debate the truth or falsity of the statements found on the author's website since this would only "add a significant dimension of delay, cost and affront to the dignity of those who are alleged to have been victimized by these statements".2/

2.3 Shortly thereafter, the author obtained a booking from the Canadian Parliamentary Press Gallery, a non-governmental and non-profit organization to which the day to day administration of the Canadian Parliament's press facilities has been delegated, to hold a press briefing on 5 June 1998 in the Charles Lynch Press Conference Room in the Centre Block of the Parliament buildings. According to the author, he met the criteria for booking this conference room. In the press release announcing the press conference, dated 3 June 1998, the author indicated that he would discuss the interim ruling of the Human Rights Tribunal refusing to admit the defense of truth. In its pertinent parts, the press release reads:

> "The New Inquisition in Toronto! Government tries to grab control of the Internet!
>
> Ernst Zündel is told by the Canadian Human Rights Commission and its tribunal:
>
> - Truth is not a defence
>
> - Intent is not a defence
>
> - That the statements communicated are *true* is *irrelevant!*
>
> The interim ruling was rendered after one year of CHRT hearings, on May 25, 1998 by a Canadian Human Rights Tribunal now sitting in judgment over an American based website called the Zundelsite at http://www.webcom.com/ezundel
>
> (For the complete decision see attached pages.)"3/

2.4 On 4 June 1998, after several Members of Parliament had been contacted by opponents of the author's views who had protested against the author's use of the Charles Lynch Press Conference Room and, after the Press Gallery had refused to cancel the booking of the room, the House of Commons passed the following unanimous motion: "That this House order that Ernst Zundel be denied admittance to the precincts of the House of Commons during and for the remainder of the present session."

2.5 As a result of this motion, the author was banned from the parliamentary precincts and prevented from holding the press conference in the Charles Lynch Press Conference Room.

He held an informal press conference outside the Parliament buildings on the sidewalk.

...

8.4 With respect to the alleged violation of article 19, paragraph 2, of the Covenant, the Committee observes that the State party does not contest the author's claim that domestic remedies are exhausted in respect of the decision to exclude the author from the precincts of the House of Commons "during and for the remainder of the present session", with the consequence of preventing the author from holding the press conference he had announced. Consequently, the author's claim under article 19, paragraph 2, is not inadmissible under article 5, paragraph 2(b), of the Optional Protocol.

8.5 However, and despite the State party's willingness to address the merits of the communication, the Committee considers that the author's claim is incompatible with article 19 of the Covenant and therefore inadmissible *ratione materiae* under article 3 of the Optional Protocol. Although the right to freedom of expression, as enshrined in article 19, paragraph 2, of the Covenant, extends to the choice of medium, it does not amount to an unfettered right of any individual or group to hold press conferences within the Parliamentary precincts, or to have such press conferences broadcast by others. While it is true that the author had obtained a booking with the Press Gallery for the Charles Lynch Press Conference Room and that this booking was made inapplicable through the motion passed unanimously by Parliament to exclude the author's access to the Parliamentary precincts, the Committee notes that the author remained at liberty to hold a press conference elsewhere. The Committee therefore takes the position, after a careful examination of the material before it, that the author's claim, based on the inability to hold a press conference in the Charles Lynch press Conference Room, falls outside the scope of the right to freedom of expression, as protected under article 19, paragraph 2, of the Covenant.

...

9 The Committee therefore decides:

(a) That the communication is inadmissible under articles 2, 3 and 5, paragraph 2 (b), of the Optional Protocol;

...

_____

Notes

...

2/ Canadian Human Rights Tribunal, *Citron v. Zundel*, interim decision of 25 May 1998.

3/ Italics, bolds and underlines as used in the original press release.

_____