

REPORT NO. 4 OF THE SECTION OF INDIVIDUAL RIGHTS AND RESPONSIBILITIES

RECOMMENDATION*

Be It Resolved, That a special committee of the American Bar Association be formed to review alleged violations of human rights involving lawyers in their capacities as lawyers;

Be It Further Resolved, That representatives of the Section of International Law and the Section of Individual Rights and Responsibilities be included among the initial members of the special committee; and

Be It Further Resolved, That

1. The American Bar Association shall refer to the special committee all communications, petitions and other written documents received by the American Bar Association on alleged violations of human rights of attorneys in their capacities as attorneys;

2. The special committee shall have discretion on whether to review each communication and shall within sixty days of receipt of a communication report on whether it will review such communication;

3. The special committee shall attempt to ascertain, on those communications it reviews, the facts of the situation through inquiry, investigation and other methods deemed desirable by the special committee;

4. Upon conclusion of such review of the communication by the special committee, the committee shall draft a report of its findings as to facts, noting areas where the special committee believes it does not have all the relevant facts and where the facts have not been confirmed;

5. The report may also contain a list of principles of international law relevant to, or raised by, the factual situation and any findings or decisions of any local, regional or international organization on the same or similar subject matter;

6. The report may be released as a matter of public record in the discretion of the President of the Association and may also be directed to appropriate agencies or departments of the United States Government.

REPORT

In February, 1975, the American Bar Association adopted a resolution affirming its support for the rule of law in the interna-

tional community, recognizing the need for an independent judiciary and for the independence of lawyers and noting with concern the reported arrest, detention and sentencing of lawyers in an increasing number of foreign countries because of their representation of individual clients. The reso-

*The House referred this matter to the Section of International Law. See page 652.

lution further provided that the American Bar Association urge the United States Government, where appropriate, to bring to the attention of foreign governments the concern expressed in the resolution.

At the 1975 Annual Meeting of the Association, the House of Delegates adopted a resolution in which the Association recognized that the increasing complexity of world problems required nations to become more interdependent, especially in such matters as human rights and world order under law. Further, it stated that the American Bar Association will consider and recommend ways by which the United States can contribute to resolving the problems of an interdependent world in the coming decade, understanding that effective solutions require recognition by all nations of legitimate interests in one another.

The resolution accompanying this report provides for the American Bar Association to take an active part in contributing to solving problems of an interdependent world. In addition, the accompanying resolution further implements the American Bar Association policy on human rights of lawyers in other countries.

Articles 8 and 10 of the Universal Declaration of Human Rights [adopted by General Assembly Resolution 217 A (III) on December 10, 1948] provide an effective remedy for acts violating the fundamental rights granted to an individual. Further, they state that an individual is entitled to a fair and public hearing by an independent and impartial tribunal in the determination of his rights and obligations regarding any criminal charge against him. In Article 14 of the International Covenant on Civil and Political Rights [adopted by General Assembly Resolution 2200 A (XXI) on December 16, 1966, and not now in force], it is provided that in the determination of criminal charges, the accused shall be entitled to certain minimal guarantees including the right to have communication with counsel of his own choosing and to defend himself through legal assistance of his own choosing. Thus, it is recognized in international law that an individual has the right to representation where legal counsel is available. To infringe or violate the human rights of an attorney because of the matter he is handling or the person he is defending is to violate the rights

of the individual requiring representation as well.

There are at present numerous examples of lawyers in other countries who are denied certain rights because they carried out their professional duties. "Lawyers in Prison," a report by Amnesty International, sets forth many specific cases of lawyers being imprisoned as a direct, identifiable result of their professional activities.

Because the American Bar Association is a professional association of attorneys it has a responsibility in this interdependent world to be concerned with the rights of attorneys located in other countries. This does not mean that in each country attorneys should be able to enjoy the same rights and privileges as attorneys enjoy within the United States. Rather, it means that an attorney with certain rights and privileges as defined by the country he is in should not be denied those rights and privileges on the basis of who or what he represents nor should he be subject to recrimination, imprisonment, detention, arrest or other types of punitive action based upon such representation.

The recommended special committee will examine the facts of each case and, where necessary, draw attention to certain principles of international law which may be involved.

Finally, it is to be noted that the concern with the protection of human rights within a country is not purely a domestic matter in the absence of a treaty. Resolution 1503 (XLVIII) of the United Nations Economic and Social Council recognizes that the United Nations may examine violations of human rights regardless of whether there is a treaty authorizing such examination. In addition, the United States itself has continually shown its concern for violations of human rights in other countries as evidenced recently by the Development Assistance Act (Pub. Law 94-161, December 20, 1975) which provides that under certain circumstances no assistance may be provided to the government of any country which engages in a consistent pattern of gross violations of internationally recognized human rights.

CAROLE KAMIN BELLOWS
Chairperson