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COMMENTS

ON THE THREE DRAFT LAWS PROPOSING AMENDMENTS TO THE CONSTITUTION OF UKRAINE

by

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I. Introduction

1. Three draft amendment laws were submitted to the Constitutional Court to review their compatibility with Articles 157 and 158, submitting inter alia that Constitutional amendments that limit citizens' rights and freedoms, 'liquidate' independence, or violate Ukraine's territorial integrity are impermissible. The Constitutional Court has declared two draft laws satisfactory with regard to the above criteria but not yet pronounced its decision concerning draft law 4105 of 4 September 2003 (CDL (2003) 80), which is almost identical to draft law 4180. Hence the following comments are directed at draft laws 3207-1 of 1 July 2003 (CDL (2003) 79) and 4180 of 19 September 2003 (CDL (2003) 81).

2. The draft law (hereinafter Draft law 4180) "On Amendment of the Constitution of Ukraine", introduced by Members of Parliament S. Havrysh, R. Bohatyriova, K. Vashchuk and M. Hapochka, signed in April by 233 parliamentarians, foresees changes to 28 articles of the Constitution and additions of 16 new statutes. The draft is changing the term of office of the Verkhovna Rada of Ukraine; the position of individual members of parliament, the procedure for electing President of Ukraine, the procedure for forming the Cabinet of Ministers of Ukraine; the tenure of judges and it proposes the procedure for forming the Constitutional Court of Ukraine. It increases the authority of the parliament for five years and envisages the formation of a parliamentary majority that has the right to select a government. The President will get a right to dismiss the Parliament, if the majority is not formed or the coalition government is not created. The person, for who not less than 300 (constitutional majority) parliamentary votes are given, becomes the new President. The voting should be secret. The president is elected by the parliament for a five-year term. According to the transitional statutes, the new procedure for forming the government comes into effect in 2006, when a new parliament is to be elected according to party lists. The next presidential elections must take place in October 2004; however, in 2006 the new parliament chooses a new president. The term of the regular Presidential elections are not postponed, as proposed in draft law 4105.

3. Another draft (hereinafter referred to as Draft law 3207-1 prepared by the Supreme Rada special commission envisions a significant enhancement of the powers of the highest legislative and central executive authorities. The President's rights are to be noticeably limited, but he remains a powerful political player. The authors see no need for changing the presidential election procedure. Draft 3207-1 foresees a direct universal ballot. The Constitutional Court ruled on October 30th that the draft law does not violate human rights or endanger Ukraine's independence or territorial sovereignty.

4. The following comments are an assessment of the purported objective of the draft laws to diminish the power of the President and move to a more parliamentarian system of government with regard to the question of constitutionality and consistency with international standards. Ukrainian authorities have declared that they are striving to meet European standards and criteria that underpin true democracy.[1] The commitment that

[1] Cf., Olexander Lavrynovych, Minister of Justice in a speech presented to the Congress of Local and regional authorities 22. 5. 03.

Ukraine has undertaken by ratifying the European Convention on Human Rights is to do its utmost to achieve the objectives set out in the preamble of that Convention: to enhance an effective political democracy for the further realization of human rights. It must hence be questioned whether the proposed amendments to the 1996 Constitution are a clear commitment to these goals? Furthermore the draft laws' coherence is assessed when considered in the light of the general structure and current situation of the country. It may hence be had in mind when scrutinizing the draft laws and the Constitutional Court's approval that 'constitutional law . . . is not at all science, but applied politics, using the word in its noble sense.'[2]

II. The question of transfer of power?

5. Art. 76 of Draft Law 4180 proposes to increase the term of authority of the Verkhovna Rada five years from the four-year term stipulated at present in Art. 76 (1). This amendment arouses suspicion. It reveals reluctance to place sovereignty in the hands of the people. In most other central and eastern European states the parliamentary term is 4 years where Turkey is an exception with 5 years. The voting turnout of registered votes in Ukraine has gone down from 75.6 % in 1994 to 69.4 % in 2002.[3] The trend is widely so that wide average turnout has in national parliamentary elections been going down although it went up in the former Communist states of central and Eastern-Europe in the 1990s. It is going down again in Ukraine, which means that increasing the term from 4 years to 5 years is more likely to increase political apathy than enhance it. As elections do not imply control over the policies that representatives will support once they are elected, the election promises of the parties are likely to fall further into the background the longer the term between elections. The prevailing authorities may hence buttress their power to the detriment of a delicate process in a developing political system. It should therefore be recommended that the proposed paragraph (5) to Article 76 be withdrawn and Article 76 (1) kept unaltered. Rousseau warned that people is only free during the election of members of parliament. 'As soon as they are elected, slavery overtakes it, and it is nothing.'[4] The remote possibility of the truth of this aphorism renders any prolongation of a period where the 'general will' cannot be expressed objectionable.

6. Art. 78 which states that members of parliament shall fulfil their authority on full time basis, states in paragraph (2) that Members of Parliament may not have another representative mandate or be in the civil service and the requirement concerning incompatibility with other types of activity shall be required by law. Both draft laws 4180 and 3207-1 enumerate in details the requirement of incompatibility in Art. 78 (2). They also list exceptions to this requirement. Draft law 3207-1 submits 'except for lecturing, scientific and creative one'**.** Draft law 4180 allows the exception that members of parliaments can be chief executives of central bodies of executive power as well as cabinet ministers. Many parliamentary systems require ministers to serve in parliament so that exception is not conflicting with a parliamentary system. Making an exception for Members of Parliament to be chief executives of central bodies of executive power infringes the distinction made between

[2] Frankfurter, 'The Zeitgeist and the Judiciary', a 1912 address, quoted by J. Doyle and B. Wells in P. Alston (ed.) *Promoting Human Rights Through Bills of Rights* (1999) Oxford University Press, 17.

[3] IDEA, International Institute for Democracy and Electoral Assistance.

[4] *The Social Contract* (Everyman's Library ed., London, 1913) 78.

executive power and legislative power. The apparent restriction of the above proposal does not seem to be coherent as it grants an exception that seems highly controversial. The proposed amendment is guardedly detailed. It might be recommended that such details should be regulated by special law. Constitutions are concerned with matters of substance, they embody general principles and the text is usually rigid. It hence applies with regard to the above amendment as many others that it seems more appropriate that details of ineligibility or incompatibility with the office of national deputy are defined by general law.

7. It may, however, given the atmosphere of political distrust, be advisable that incompatibilities are regulated in detail by the Constitution. Disputable exceptions, encroaching on legislative power, should be excluded.

8. The proposal in both Draft Laws in Art. 81 (8) in 3207-1 and Art. 81 (10) in 4180 that a deputies mandate would be terminated on his or her leaving, or being dismissed from the parliamentary faction from which he or she was elected, pursuant to a decision of the highest steering body of the respective political party or terminated prematurely by a court of law, has already been described as a "dangerous amendment".[5] The Venice Commission has also emphasized that to link the mandate of a national deputy to membership of a parliamentary faction or bloc infringes the independence of the deputies and might also be unconstitutional (for instance with regard to Articles 5 and 79), bearing in mind that Members of Parliament are supposed to represent the *people* and not their parties. The authority of the members of parliament commences with the oath and a refusal to take it results in loss of the mandate, as stipulated in Art. 79. The right to vote by the representatives should be personal.[6] Members of parliament are representatives of the whole people and ought hence not to be bound by orders and instructions but be subject only to their conscience.

9. In representative systems sovereignty lies with the people. The proposed procedure as pointed out in CDL (2003) 41 would also give the parties the power to annul electoral results. It would put the parliamentary bloc or group in some ways above the electorate which, in return, is unable to revoke individually a parliamentary mandate conferred through election for four years. The doctrine of the mandate is that government programme is the implementation of election promises that have received the consent of the electorate

10. The draft laws propose that the operational rules of the procedure of the Verkhovna Rada is no longer established by law as stipulated in Art. 82 (5) of the present Constitution. Draft law 4180 omits paragraph 5 of Art. 82 and submits in Art. 83 (5) that the 'working procedure of the Verkhovna Rada of Ukraine shall be established by the Constitution of Ukraine and by the Rules of Procedure of the Verkhovna Rada of Ukraine.' Draft law 3207-1 changes the wording in Art. 82 (5) and omits the word law.

11. The departure from establishing by law the rules of procedure of the Rada during a period of political instability may deprive the national representative body of real power. The rules of procedure of Verkhovna Rada ought to continue to be determined by law.

12. Draft law 3207-1 proposes a change in Art. 85 (3) adding to the power of the Verkhovna Rada of adoption of laws '*and their interpretation'*. Legislative authority is the power to

[5] CDL Inf (2001)11.

[6] *Cf.,* Article 27 French Constitution

make law and legal interpretation may be expressly provided by the legislator. It is a truism that legislation requires explanation. Bills put before national assemblies contain not only the proposed legal text, but also the legislator's motive for the proposal. These motives, together with discussions in the parliament and its committees can be of significance in a subsequent interpretation of the act when passed. The proposed amendment seems superfluous and might infringe on the sphere of the judiciary as Courts of law do not operate in a valueless vacuum. Judges use statutory interpretation to protect rights, for example by interpreting 'value-laden' expressions in statutes; secondly by the use of presumptions. The greater bulk of legislation consists of statutory instruments, which parliamentary committees may endeavour to supervise, but which national assemblies cannot hope to consider. Much legislation in today's world emanates from the permanent bureaucracy rather than from elected representatives of the people.

13. The risk of oppressive exercise of power by the political branches of government is grave enough without granting these branches tools for absolution as entrenching in the Constitution, in the hands of the legislator, the instrument of the third branch of government, that of 'interpretation'. At the end of the litigating day, the translation of political, social and ethical values into legal principles must be articulated by the judge.

III. Parliament, President and the Government

14. As the Venice Commission has repeatedly stated, the choice between a presidential and a parliamentary system is a political issue, to be decided by the country in question.

15. The government must however be according to the Constitution with separation of powers and popular sovereignty. The government must be democratically accountable to its own people. An effective safeguard in this respect is provided in Art. 113 (2) in both draft law 3207-1 and 4180 submitting that the Cabinet of Ministers of Ukraine shall be responsible before and controlled by the Verkhovna Rada of Ukraine, and be accountable to it within the limits provided for by the Constitution.

16. Art. 85 (12) in draft law 3207-1 provides that following a proposal of the President of Ukraine, the Verkhovna Rada will appoint the Prime Minister, dismissal from the office and acceptance of resignation and approve appointments of members of the Cabinet of Ministers by proposal of the Prime Minister, and termination of his/her authority and 'approval of appointment and dismissal for the office of some members of the Cabinet of Ministers.' According to Art. 106 (11) of draft law 3207-1 the President appoints to and dismisses from the offices, by proposal of the Prime-Minister and upon consent of the National Assembly, Head of the Antimonopoly Committee of Ukraine, Head of the State Border Guarding Service, Head of Security Service, Head of State Committee for Television and Broadcasting. According to Art. 114 (7) the appointments of Ministers of Foreign affairs, Home affairs and Defense must be preliminarily agreed by the Prime Minister with the President.

17. Draft law 4180 proposes in Art. 85 (12) that the President nominates the Prime Minister, Minister of Defense, Minister of Foreign Affairs along with the head of the National Security Service. The same provision the National Assembly appoints to office other members of the Cabinet as well as the head of the Antimonopoly Committee, the Chairman of the State Committee of Television and Radio Broadcasting following their nomination of the Prime Ministers.

18. Political power is accordingly highly centralized. If the President's nominations of key ministers of the government, i.e. that of Minister of Defense and Foreign Affairs is to underline the division between his power of being in charge of foreign affairs while the National Assembly is in charge of internal affairs, it clashes with this principle that the President is also nominating key figures within the political system, such as Head of Security Service and Head of the State Committee for Television and Broadcasting and the Minister of Home Affairs (Art. 114 (7) draft law 3207-1).

19. The result of the proposed reforms is an ambiguous regime. The draft amendments seem to hide more than they illustrate about the distribution of political power. The political institutions do not seem parliamentary. The state administration does not seem in the hands of individual ministers as the President appoints and dismisses chief executives of central bodies of executive power (who may also be members of the National Assembly according to Art. 78 (2) of draft law 4180 see above III. 2). The President has much more real power than the Prime Minister, which, may be a question of political choice of the relevant country as long as it is not in variance with international democratic standards. It is however hard to assess whether the government is according to the Constitution if the separation of powers is not absolutely clear as well as popular sovereignty and democratic governance.

IV. Election of the President by the National Assembly

20. Article 103 in force submits that the President of Ukraine is elected by the citizens of Ukraine for a five-year term, on the basis of universal, equal and direct suffrage, by secret ballot. Draft law 4180 proposes in a new Art. 103 that the President of Ukraine is elected by the National Assembly if not less than two-thirds of the constitutional composition of the Assembly has voted in his/her favour by secret ballot. The Constitutional Court did not consider this change to contradict the constitutional guarantees since the bearer of power in Ukraine are its citizens who exercise this right through its elected bodies.

21. The government is to be according to the Constitution. Art. 5 of the Constitution submits that the people are the bearers of sovereignty and the only source of power in Ukraine, they exercise their power and through bodies of state power and bodies of local government. The right to determine and change the constitutional order in Ukraine belongs *exclusively* to the people and shall not be usurped by the State. No one shall usurp state power. Art. 69 states: 'The expression of the will of the people is exercised through elections, referendum and other forms of *direct democracy*. Art. 38 specifies that the citizens have the right to participate in the administration of state affairs, in All-Ukrainian and local referendums, to freely elect and to be elected to bodies of state power and bodies of local self-government. Art. 71 envisages that elections to bodies of state power and bodies of local self-government are free and held on the basis of universal, equal, direct and secret ballot. Voters are guaranteed the free expression of their will.

22. The proposal to elect the president in the Verkhovna Rada does not seem to comply with these provisions. The people (the exclusive source of state power) are being deprived of their constitutional right to elect one of the state power institutions in a free and direct election. This, in turn, infringes on another constitutional right - the right to participate in public administration. Articles 38 and 71 both stipulate the citizens' right to take part in electing the state power institutions. As per the Constitution, there are two institutions of this kind: the Supreme Rada and the President. If the National Assembly elects the President, there will be

only one institution directly 'accessible' to the people. Therefore, not only does the draft contradict the spirit of Article 157 but its letter as well. This amendment is not desirable; in particular not in the context of another proposed amendment in the same draft law (see III. (1) above). The President as Head of State should be elected directly by the citizens of Ukraine.

V. Prosecutor's Office

23. The draft laws in question propose an amendment to vest the Prosecutor's office with supervision over the observance of human and citizens' rights and freedoms, compliance with the laws on such issues by the bodies of state power, bodies of local power and their offices and civil servants (Art. 122 (5)).

24. The powers of the Prosecutor's office vest it with considerable authority, but they only become a source of power if they are abused. The establishment of administrative watchdog procedure to encourage good government, to oversee that public authorities respect the laws and do not violate human and citizens' rights should be independent from the executive branch of government, and mandated by the legislature. Hence it would be better if such supervision was consigned to an Ombudsman-type of institution as a protector of justice and citizens' rights that would communicate criticism to public authorities and to the media. Such an institution could also be vested with prosecutorial powers. In a state like Ukraine where the purported aim is to enhance an effective political democracy, it is important that the institution that supervises compliance with the rule of law is non-political in order to re-educate the public sector to do things in a different way, as compared with the past. Such a task implies confrontation with other societal institutions and hence requires independence from the executive branch of government.

25. As supervision over the observance of human and citizens' rights entails the un-rewarding task of criticizing those in power it is pointless to consign such a role to somebody proposed by the Head of State or 'who is appointed to office and dismissed from office, with the consent of the Verkhovna Rada of Ukraine, by the President of Ukraine' as proposed in draft law 4180 (Art. 122).

VI. Justice

26. Art. 126 (4) in force states that judges hold offices for permanent terms, except judges of the Constitutional Court of Ukraine, and judges appointed to the office of judge for the first time. Draft law 4180 in Art. 126 (2) proposes that 'judges are elected to their offices for a period of ten years, except for justices of the Constitutional Court of Ukraine, and judges appointed to the office of judge for the first time.' The other draft law 3207-1 proposes that Art. 126 (4) be excluded and that Article 128 (1) instead shall provide that the first appointment to the position of professional judge for the period of five years shall be done by the President of Ukraine. All other judges, except for judges of the Constitutional Court, shall be elected by the National Assembly for the period of 10 years, with a right to re-election in line with a procedure established by law.

27. These amendments seem unconstitutional as Art. 126 in force submits that the independence and immunity of judges are guaranteed by the Constitution. Establishing the independence of the judiciary and co-equality with other branches of government helps to guarantee a system based on the supremacy of the rule of law envisaged by Art. 8 of the Constitution.

28. The Constitutional Court of Ukraine remarked in its reasoning that the election of judges by the Rada for 10 years is a significant change compared to the present Constitution which establishes that judges are elected for permanent terms.

29. Life tenure assures judges that they will not lose their jobs in the event of an unpopular decision. This change is hence a threat to the independence of the judiciary and goes up against the practical demand of moving towards a democratic rule of law.

30. The impact of these amendments is not to establish the credibility of the court system as well as the respect due to the judiciary. The impact will be to impair the capacity of the judges to perform their role.

VII. Media

31. Given the pre-eminent role of the press in democratic society any proposed amendment in the draft laws that may have an impact on the performance of the media, without which democracy is hardly perceivable, must be scrutinized meticulously.

32. There is no section in the Constitution or a provision, which protects press freedom. Art. 34 guarantees everyone the right to freedom of thought and speech, and the expression of his or her views and beliefs. Everyone has the right to freely collect, store, use and disseminate information in written or other means of his or her choice. Unlike Art. 10 of the European Convention the right to receive, which in Convention jurisprudence has become a general principle confirming the public's right to receive implying a positive state obligation to guarantee an independent and responsible press, the Ukrainian Constitution does not guarantee the right to receive. The instrumental aspect of freedom of expression underpinning the press as the public watchdog, recognized widely in other member states of the Council of Europe, is not affirmed in Art. 34 of the Constitution. The enforcement mechanisms of the European Convention have succeeded in enhancing its significance within the member states as it represents a kind of European *ius commune*. Press performance in the member states of the Council of Europe must measure up to the principles of Article 10 and the relevant case-law. The free and unhindered exercise of journalism is enshrined in the right to freedom of expression and is a fundamental prerequisite to the right of the public to be informed on matters of public concern.

33. 'Ukraine has the worst record in Europe for violence against journalists', according to the Reporters sans Frontiers.[7] On July 9, 2003, the Verkhovna Rada adopted a new law, condemned by the International Federation of Journalists, which allow that journalists suspected of revealing State secrets may be detained. This law will apparently give excessive levels of power to the Ukrainian Secret Service, including the investigation of 'illegal' usage of special technical means (recording telephone conversations, use of information

[7] BBC news, 17. 7. 01 on the murder of chief of TV Ihor Oleksandrov, the eleventh journalist murdered in Ukraine in five years. Another journalist's death (H. Gongadze) in November 2000 sparked the largest demonstrations post-Soviet Ukraine has seen, with thousands demanding the resignation of President Leonid Kuchma.

technologies, etc.) to get information from anonymous sources. Such laws seem in conflict with European Convention jurisprudence. [8]

34. In light of the above described situation, regard must be had to the fact that (see IV. (4) above) the President nominates the Head of the National Security Council and the Chairman of the State Committee on Television and Broadcasting (Art. 85 (12) draft law 4180 and Art. 106 (11) of draft law 3207-1), albeit with the issuance of consent by the National Assembly.

35. Draft laws 3207-1, further recommend that Art. 85 (20) is changed so that the Verkhovna Rada has the authority to appoint and *dismiss* all 8 members of the National Council of Broadcasting.[9] It is furthermore proposed that the National Assembly can issue a vote of no confidence to persons appointed to their position upon consent of the Assembly, which leads to their resignation from the position (Art. 85 (37) draft laws 3207-1).

36. Incompatibilities or conditions for dismissing members of national broadcasting councils are usually not specified in the law of the older member states of the Council of Europe.[10]

37. Based on the law on National Television and Broadcasting Council of Ukraine[11] a declaration of no confidence can be made by the Supreme Council to a member of the National Council appointed by it or by the President of Ukraine to a member of the National Council appointed by him/her. The Chairman may be dismissed during his/her term of office by a Resolution of the Supreme Council on the basis of an application of the President of Ukraine. Conditions for dismissing a member of the authority before the end of his/her term are apt to wide interpretation, such as 'if a member fails to carry out his duties or turns out professionally inadequate'.[12]

38. Most Council of Europe member countries have one broadcasting regulatory authority that supervises and regulates all kinds of broadcasting: television, radio, cable and so forth. In others, there are two different bodies, one issuing licenses and dealing with the more technical aspects of broadcasting, the other supervising the content of programmes and dealing with complaints. The National Council for Television and Broadcasting in Ukraine is the body that deals with the technical aspects of broadcasting and issues licenses but it is also responsible for the development and quality of Ukraine's television and radio broadcasting, as well as for an increase of the professional, creative, and ethical level of radio and television programs and broadcasts of TV/radio organizations.

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[8] Council of Europe Committee of Ministers Rec (2000) 71 on the rights of journalists not to disclose their sources.

[9] Draft law 4180 does not recommend changes with regard to these provisions.

[10] *Cf.,* Austria, Denmark, Finland, Iceland, Ireland, Luxembourg, Malta, Norway, Sweden, Switzerland. The members' terms are staggered in France but there they can only be dismissed by the Council itself, which is appointed by President, Senate and National Assembly.

[11] Of 23 September 1997 (VR No. 538/97); as amended by Law of 30 September 1998 (VR No. 134-XIV (134-14)).

[12] The Law of Ukraine on Television and Radio Broadcasting, Art. 5. (VR No. 319-97).

39. The State Committee of Television and Radio Broadcasting[13] supervises the contents of programmes and adherence to relevant laws (Law on Television and Radio Broadcasting, Law on Advertising etc.). According to the final provisions of the Law on Television and Radio Broadcasting chapter IX (1), in the period of general or partial mobilization and/or state of martial law in Ukraine or in its separate regions, a special regime of TV/radio broadcasting shall be introduced, under which only TV/radio organizations of the State Committee of Television and Radio Broadcasting shall be allowed to broadcast using only channels of enterprises subordinated to the State Communications Committee of Ukraine and to the specifically authorized central body of executive power for television and radio broadcasting.

40. It is not inconsistent with European Convention jurisprudence that states are permitted to regulate by licensing system the way in which broadcasting is organized in their territories, particularly in its technical aspects but also with regard to other considerations but the compatibility of such interference must be assessed in the light of its necessity in a democratic society.[14] The public interference reflected in the proposed amendments, taken on the whole, with regard to broadcasting authorities seems to conflict with Convention jurisprudence and directly with the Committee of Ministers' recommendation that: 'Member states should ensure the establishment and unimpeded functioning of regulatory authorities for the broadcasting sector by devising an appropriate legislative framework for this purpose. The rules and procedures governing or affecting the functioning of regulatory authorities should clearly affirm and protect their independence.'[15]

VIII. Concluding remarks

41. The home of contemporary constitutional adjudication is post-authoritarian systems. One thing that such systems have in common is the judges that are still on the bench are implicated to some extent, in the practices of previous regimes. The citizenry in such circumstances have every sociological reason to be suspicious of how those officials would go about their business. There exists a characteristic circumstance of distrust of the lawmakers as well as the judges. The model of parliamentary sovereignty – one in which the parliament is superior both to the judiciary and executive where acts of the legislature are the supreme expression of the people's general will, has been the dominant model of constitutionalism throughout the world.[16] Apparently it is the wish of the Ukrainian authorities to gradually move to parliamentarianism where the proposed amendments to the Constitution are an incremental step. Regard must however be had to the fact that there are differences in legal values between unlike systems although that should not stand in the way of finding measures to improve the legal framework and give to the people of Ukraine what 'the people are entitled to against every government on earth'.[17] International legal standards

[13] In the text of the Law of Ukraine on Television and Radio Broadcasting, the words 'The State Committee for Television and Radio Broadcasting of Ukraine' shall be replaced with the words 'the specially authorized central body of executive power,' as stated in the preamble to the law.

[14] *Cf., Tele 1 Privatfernsehgesellshcaft Mbh* v. *Austria*, 21. 9. 2000, para. 25 and 30.

[15] Council of Europe Committee of Ministers Rec (2000) 23.

[16] *Cf.*, Stephen Gardbaum, *The New Commonwealth Model of Constitutionalism*, 49 Am. J. Comp. L. 713 (2001).

[17] Thomas Jefferson, Letter of 1787, in Ford (ed.), *Writings of Thomas Jefferson* (1892), vol. 4, 477.

require states to have appropriate national constitutions.[18] A society where rights are not secured and the separation of powers established has no constitution at all.[19]

[18] M. Reisman, 'Introductory Remarks', (1994) 19 *Yale Journal of International Law*, 190.

[19] Article 16 of the Declaration of the Rights of Man and the Citizen 1789.