

INTERNATIONAL FAIR TRIAL PROTECTIONS IN CRIMINAL TRIALS

*Roger Gamble **

*Noel Dias ***

ABSTRACT

It was in 1948, in the shadow of World War Two, that the United Nations Declaration of Human Rights first expressly recognized the right to a fair trial as a fundamental and universal human right. Since that time, the right has been incorporated into many national, regional and international legal charters. This paper discusses the fair trial protections that are written into two of the pre-eminent ones - the European Convention for the Protection of Human Rights and Fundamental Freedoms ('ECHR') and the International Covenant on Civil and Political Rights ('ICCPR'). Although the fair trial protections under review in this paper are concerned with the specific rights that apply in criminal trials, these are discussed as part of the broad fabric of fair trial jurisprudence where one of the enduring battles is between those who seek to defend and protect fair trial principles from those who seek to neutralise or degrade those principles where they might obstruct the search for truth. We conclude that the specific rights discussed in Article 6 and Article 14 represent 'minimum' fair trial rights, leaving both the HRC and Court free to act expansively on due process issues in any given case. It is clear that neither has done so – rather their inclination has been to act cautiously, allowing states considerable discretion or a 'margin of appreciation' in relation to the way they implement their fair trial obligations.

*Lecturer, Dept of Law and Taxation, Monash University, Melbourne, Australia.

**Senior Lecturer, Faculty of Law, University of Colombo, Colombo, Sri Lanka.

