

INTERNATIONAL
CONGRESS OF JURISTS

WEST BERLIN 1952

Complete Report

Discourses

Protocols

The first great INTERNATIONAL CONGRESS OF JURISTS for the protection of Right against Systematic Injustice was recently held in West Berlin with the cooperation of Delegates from 43 countries, amongst whom were 31 Ministers and Statesmen, 32 Professors, 35 Presidents, Judges and Counsel in High Courts of Justice. The names of these Delegates warrant that the resolutions were passed by the Congress unprejudiced by political questions of the day and after scrupulous examination of the documentary material and the hearing of witnesses. The publication of this report is being done not for propaganda purposes, but with the object of spreading the truth in order to maintain and defend Law against an imminent danger not yet sufficiently understood by the Free World.

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We take the liberty

*to inform you that the Collection of Documents
often referred to in this report as bearing the
title “Injustice as a System” is in the original
entitled “Injustice the Regime”.*

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PART ONE

**Idea and Preparation
of Congress**

Plenary Meetings of Congress

Idea and Preparation of Congress

The idea of an International Congress of Jurists was born early in the fall of 1951. The activity of the Investigating Committee of Free Jurists had demonstrated the power that can radiate from Law. Law is a precise scale for the measurement of conditions prevailing under a regime of terror. The rulers of the Soviet Zone have shown how vulnerable they are once their system of injustice is revealed with the help of irrefutable facts. It was expected that the effect of the Investigating Committee's activity would be extremely intensified if the revelations were presented to the international public by eminent jurists. Yet even more would be gained. The participating jurists from all countries would unite, through the Congress, to take joint resolutions and joint action. The solid front of injustice established behind the Iron Curtain would be confronted with an equally solid front of the defenders of justice. It was felt it should become a Congress by means of which exiled jurists from all countries behind the Iron Curtain would explain the systems of injustice in their native countries to the Western world, and that the Soviet Zone would become the object of thorough studies based on the material collected by the Investigating Committee.

It was realized very soon that not only speeches should be heard by the Congress, but that the assertions made in the speeches would have to be proved by the hearing of witnesses and the production of original documents, and that four committees — the Committees for Public Law, Penal Law, Civil and Economic Law, and Labor Law — would each have to concern itself with its special field.

The further preparation of the Congress necessitated visits to the European capitals with the double purpose of underlining in press conferences the violation of justice in the Soviet Zone and its countering by the Investigating Committee on the one hand, and the discussion of the Congress' schedule with prominent jurists and the selection of suitable personalities on the other. The press conferences and discussions were held by Dr. T. Friedenau

in Rome on May 12,
in Zurich on May 14,
in Paris on May 16,
in London on May 19,
in Stockholm on May 26,
in Oslo on May 27, and
in Copenhagen on May 28.

Response in the foreign press and in juristic circles was extraordinarily strong.

This European tour was followed by the mailing of invitations to the foreign delegates. A possibly equal number of outstanding jurists had to be found in possibly all countries of the Free World. The foreign representations accredited in Bonn and the great

international jurists' associations were asked to name suitable jurists. This part of the preparations for the Congress kept the entire secretariat, including the interpreters, in suspense until after the beginning of the Congress. Up to July 25, the estimated number of participants changed daily. Several cables were dispatched to the members of the Korean delegation which was two days late and then reported on the adventurous itinerancy of the mail forwarded to the individual delegates who due to the war had changed their residence several times.

The world's attention was aroused by the Congress. On May 26, Dr. von Saher, Chairman of the International Bar Association's Programme Committee, wrote:

"I have noted with interest that you have summoned an International Congress of Jurists to convene. I was asked by several members of our organization how it came that the Berlin Congress collided with our convention in Madrid."

The Congress, originally scheduled for July 18 to 25, was consequently postponed until July 25 to August 1. Thus, the participants in the Madrid Congress of the International Bar Association were given the opportunity to attend the Berlin Congress as well. The IBA let Mr. Leutwein, of the Investigating Committee of Free Jurists, address and inform the assembly of the aims of the Investigating Committee's Congress. A number of IBA representatives attended our Congress and showed a very open mind to our endeavors.

The preparatory discussions of the Investigating Committee of Free Jurists were also attended by Dr. Walter Linse, head of the Economic Department. During the discussion on July 7, 1952, he quoted Platon's Phaidros:

"It is wicked to ignore the Law."

What a symbol! Dr. Linse's last words were a sentence to which he had devoted his existence, for which he had risked his life and freedom. It was a moral law which three weeks later brought men from all parts of the world to Berlin. It was a law of human life in a community which some day will break the Bolshevik system of injustice.

The following morning, on July 8, 1952, at 7:30 a. m. the criminal attack on Dr. Walter Linse was carried out. Was it intended to disturb the Congress by a kidnapping? It is typical of a regime of terror that in all its calculations it overestimates fear and does not know how to insert a moral law as an asset. Maybe one delegate or the other canceled his participation because he deemed Berlin too unsafe. But what role does that play in view of the fact that the crime committed against Dr. Linse has caused a world-wide wave of indignation? In a press conference held during the Congress, Mr. Morris, of the United States of America, found the appropriate formulation: "Dr. Linse's ab-

duction was another Pearl Harbor to us." With great excitement the Congress of the International Bar Association in Madrid took notice of the abduction.

After the arrival of the bulk of the delegates an informal gettogether took place on the eve of the opening in the studio cellar of the Hotel am Zoo.

Hon. J. T. Thorson, President of the Canadian Exchequer Court and Minister of National War Services, was named for the post of President of the Congress. Hon. Thorson agreed and his presidency proved to be of great value to the Congress' success. At the small

tables in the studio cellar jurists from all the world over established their first contact. Merry groups assembled around the interpreters with their red-and-white bows.

On July 25, between 9 and 9:30 a.m. the delegates assembled for the opening ceremony in the flag-decorated hall of the College of Political Science. For seven days it was the place in which jurists from all parts of the world sat as incorruptible servants of the law to pass judgment on arbitrariness and the misuse of power. Their task united people of different races and languages. Doesn't that give hope?

First Plenary Meeting

OPENING

Opening Remarks

by Dr. T. FRIEDENAU, Chairman of the
Investigating Committee of Free Jurists

Your Excellencies, ladies and gentlemen,

On behalf of the Investigating Committee of Free Jurists in which the organizational preparation of this Congress was vested, I welcome you very cordially at the opening of this Congress. I am glad to see that numerous leading jurists from 42 countries of the globe have followed my invitation to come to Berlin. Among them are statesmen and politicians, professors of all judicial fields, court presidents, high-ranking judges and public prosecutors, as well as prominent lawyers and leading exiled jurists from the Soviet Union and its satellite countries. I am also glad to welcome the German delegates and numerous guests from Western Germany. I am welcoming Dr. H. Vockel, the representative of the Federal Government, Mayor Dr. W. Schreiber, the representative of the Berlin Senate, as well as the presidents of several supreme Federal authorities, presidents and judges of the supreme courts, and representatives of the attorneys-general of the Federal Republik and its states.

The purpose of this Congress is revealed by its composition. It is not legal problems that are to be discussed, it is not disputed questions that are to be solved. What we want to do is contribute to the maintenance of law as an entity. Therefore, we have invited not only scholars but also jurists, many of them holding high-ranking positions in political life. Only the cooperation of legal experts and politicians can tackle the task of this Congress, namely to define the minimum guarantees of legal order to make life worth living, and then to examine whether those guarantees are realized in the countries behind the Iron Curtain. Just as people have the duty to aid their fellow-men in distress, to determine where it exists and how it can be overcome, they are obligated to seek people lacking the benefits of law and justice, and to consider effective counter-measures.

That Berlin was chosen as the site of the Congress was for two reasons. Berlin is the city situated closest to the countries in which in our opinion — without intending to anticipate the results of the Congress — the lack of justice is greatest. Besides, the boundary between two worlds is crossing the city located in the center of an area suffering from the absence of justice. From here the development of the legal order behind the Iron Curtain can naturally be observed best.

One of the Congress' fundamentals will be the materials emanating from the Soviet Zone compiled by the Investigating Committee of Free Jurists during

years of hard work. Some 200 visitors per day call on its offices, reporting on breaches of law and asking for advice as to how injustice can be countered. Countless informants in all fields of public life, such as in the courts, the administration, the government-controlled and private economy, among the workers, employees, craftsmen, working women, and housewives, as well as among the peasantry are currently furnishing the Investigating Committee with data on breaches of law in the Soviet Zone.

The instigators of the violations of law will be publicly indicted. Even if legal prosecution is impossible at the present time because the accused stay on Soviet Zone territory, the prerequisites are thus created for future prosecution by the proper judicial bodies. In addition, the branding of the main offenders as law-breakers has stopped countless others from committing evil. People are given individual advice and are collectively enlightened by radio and pamphlets. We believe to have proved law to be a power, too; for the danger of being personally taken to task, not because of a political opinion, but for criminal offenses has impressed many who without a warning against the possible prosecution would carelessly have carried on.

We know with exactitude that the activities of the Investigating Committee of Free Jurists are strongly feared by the rulers of the Soviet Zone because they are compelled to enter into a dispute in which they are inferior from the very beginning. Knowing that they have no counter-arguments, they resort to hideous violence. It is for that reason that they kidnapped our colleague Dr. Linse from West-Berlin. We are far from being intimidated by such terrorism and will not abandon our efforts for the maintenance of law. Whoever is determined to preserve and protect the law must not yield to any violence.

So I think that it is not only the Congress' task to receive objective information, but also to examine in which manner the expansion of injustice can be dammed. I think that the people in the Soviet Zone of Germany and in the East Bloc countries will be grateful to the leading jurists from all parts of the world concerning themselves with their legal problems because they realize that the mere fact of dealing with those matters is helpful to them. Help will be the greater, the more people — not only jurists — are doing the same. Yet it is the jurists in particular who have to take the lead on this road because they can judge best and draw the necessary conclusions.

My opinion of the tasks of the Congress is that it has to waken the conscience of the world, so that law will be enforced the world over by the combined efforts of all men loving right and justice.

Remarks of Welcome

by Dr. H. VOCKEL,
Representative of the Federal Government

Your Excellencies, ladies and gentlemen,

In the name of the Federal Government, and in particular of the Federal Minister of Justice whom indisposition keeps from attending this Congress, I have the pleasure and honor of welcoming you in Germany and in Berlin. We greatly appreciate that you have come in such a large number on your own free will to study and examine justice and injustice. This convention was prepared and is sponsored by a free organization, independently of authorities and offices, but the Federal Government as well as the Senate of Berlin are taking a great interest in your discussions and hope to find new suggestions and new perceptions in them.

I would like to suggest as the general theme of this Congress the motto: "With the weapons of the spirit we shall enforce justice and vanquish injustice."

Ladies and gentlemen, if this Congress is to be a success and if it is to be effective, we ourselves, each of you and each of us, must examine and learn which is the background and which is the situation from which we will approach the question of what is right and what is wrong.

What is right? Radbruch formulates it very simply: "Right is the will to do justice and justice means that judgment is passed without considering the person and that the same legal standards are applied to all."

In our history of the last decades we have many examples of legal principles being applied differently to various groups of the people. We experienced that principles employed against so-called Non-Aryans were not used against Aryans. We know the meaning of Radbruch's thesis that "right is the will to do justice." If justice and genuine common welfare are the aims of a legal order and lead to what we call legal security, which in turn is the goal of any legal order and application of the law, we know that in the reality of our life these things can never be accomplished by Man with perfection.

But what we can do and what we will enforce with an iron will is a possible perfect harmony between justice and common welfare . . . We must try to enforce

the principles of natural law in the execution and the application of law.

Ladies and gentlemen, may I welcome you with these words and wish your discussions a good success.

Remarks of Welcome

by Dr. V. KIELINGER,
Senator of Justice in Berlin

Nobody can be more desirous of the recognition and realization of human rights the world over than the people of Berlin. This city is and will remain linked with the struggle for justice inextricably coupled with freedom, because in the past it was this city in which the miscomprehension and the disregard of human rights resulted in action which deeply hurt the conscience of mankind.

As an outpost of the system of constitutional states, Berlin will not only gain new experiences through the work performed by this Congress, but in turn give the Congress a new idea of the Communist system. May the accomplishments of the Congress contribute to fortifying the rule of justice to the benefit of all peoples and nations.

Dr. T. FRIEDENAU: Thank you very much for your remarks. I regret that the Governing Mayor has not yet returned from abroad. He will, however, most probably speak at the reception held by Federal Representative Dr. Heinrich Vockel.

The agenda now provides for the election of the presidents of the Congress. I will now disclose the names of those delegates who volunteered for this assignment. The Assembly may raise objections, if any, to the nominees or make other suggestions. There are the following candidates for the Board of

Presidents of the Congress

Hon. J. T. THORSON, Canada;
P. FEDERSPIEL, Denmark;
J. NABUCO, Brazil;
TYABJI, Pakistan;
Dr. E. ZELLWEGER, Switzerland.

Dr. T. FRIEDENAU: I see there are no objections. As to the chairman of the working committees, I suggest that they be elected by the committees which will do the major part of the work anyhow.

Second Plenary Meeting

President Hon. J. T. THORSON: The meeting is opened. I thank the Plenary Assembly for the great honor bestowed upon me, for the honor of presiding over these meetings. I promise to all of you that I will

do my best. In the meantime the chairmen of the four working committees have been elected. I would like to announce their names to you:

Chairmen of the Working Committees

Committee for Public Law:

Chairman: Prof. Dr. J. CARABAJAL VICTORIA, Uruguay;
Vice-Chairman: Dr. E. ZELLWEGER, Switzerland;
Secretary: F. TEUPITZ, Berlin.

Committee for Penal Law:

Chairman: Prof. G. BELLAVISTA, Italy;
Vice-Chairman: Prof. Dr. S. BISSISSO, Iraq;
Secretary: W. ROSENTHAL, Berlin.

Committee for Civil and Economic Law:

Chairman: Prof. Dr. EKELOEF, Sweden;
Vice-Chairman: Prof. Dr. F. S. F. LIU, China;
Secretary: Dr. R. BERNDT, Berlin.

Committee for Labor Law:

Chairman: Prof. P. R. HAYS, U.S.A.;
Vice-Chairman: Dr. J. KREHER, France;
Secretary: A. LEUTWEIN, Berlin.

President Hon. J. T. THORSON: I would like to express the general, deep regret of the participants in this Congress over the absence of Dr. Walter Linse. However, we are glad to welcome Mrs. Linse among the guests. I convey to Mrs. Linse and her absent husband the best wishes of the Congress. (Strong applause)

The case of Dr. Linse was discussed also by the International Jurists Congress in Madrid under the chairmanship of Mr. G. Morris, one-time president of the U.S. International Bar Association. I asked Mr. Morris for a brief summary of the Madrid conference. As Mr. Morris is not yet present, I would like to ask Professor Dr. F. Darmstaedter, of Heidelberg, to begin his speech.

Law and Human Society

by Prof. Dr. F. DARMSTAEDTER, Heidelberg

Ladies and gentlemen,

Human society is the battlefield in the struggle for power. In this struggle, power was and is the same as law, and formerly there was no instrument to counter the superiority of power. In this struggle the powerless sought refuge under the protection and the command of the fighting powers. But one day those dominated by power felt that it was oppression. Thus the will to obtain freedom awoke in human society. In this way developed the endless gallery of martyrs and heroes of freedom among humankind; for the will to attain freedom is identical with the struggle against the oppressing power.

The desire for freedom and that for power are basic forces of human nature to which property, health, and life are sacrificed without hesitation. The desire for freedom will develop when provoked by oppression, the desire for power is a spontaneous momentum. However, once the desire for freedom has been stimulated, it may grow until it overcomes all inhibiting factors and becomes almost as strong as the desire for power. In case these instincts remain unbridled, they constitute a danger not only to the individual and his or her existence, but also to human society as a whole. The uninhibited desire for freedom will lead to anarchy, the unbridled desire for power to a rule of terror.

Yet the desire for freedom and that for power, as such, are not destructive to human society. On the contrary, without a large amount of freedom there cannot exist that capability of making decisions which is essential for the guidance of Man in society. Without a certain amount of power Man will lack the essential stimulus to his cooperation in the construction of society. It is difficult to give a general definition of the amount of freedom and power required and permitted by society. It all depends on the specific development of civilization, the ethnic character of a nation, the foreign political constellation, and the geographical situation. Now the question is where the source lies that determines the proportion of freedom on the one hand and of power on the other, both being indispensable for the development and maintenance of human society. It is evident that the desire for freedom is limited by the desire for power, and that the desire for freedom is indispensable and insufficient at the same time for the limitation of the desire for power. In order

that human society can exist, a common basis of both desires must be found and preserved in a permanent relation of mutual imposition and adoption of restrictions. The risk of losing restraining factors must be reduced to a minimum. The realization of this relation is called the legal order or the legal constitution of human society.

This idea finds its clear expression in the modern constitutions of the nations. It is formulated very precisely and definitely in the German Basic Law (constitution). In this Law the desire for freedom is expressed through the definition of basic rights. A permanent relation between the will to attain freedom and that to obtain power is established as an organized order with all its elements. In this way freedom becomes a subjective right and social power an objective order. Freedom is turned into a subjective right by accepting from the objective order standards and limits, securities and guarantees. The subjective desire for power turns into objective order when tied to an objective, permanent purpose. Thus the constitution represents not a polity of power but a polity of law because it limits the subjective rights of freedom on the one hand, but explicitly guarantees them on the other.

We cannot comprehend the opposition between subjective right and objective order within a legal polity if both elements are treated separately. The fundamental desire for freedom and the no less fundamental desire for power form the basis. When these two original impulses are limited by the legal order and impose restrictions upon each other, this does not mean that they undergo a basic change in their natural form. Legal order cannot conquer natural forces; what it can do about the natural forces in Man is not changing but taming them by setting standards and limits. Law cannot make Man good or bad, but only better or worse.

Any sizing up of the relation between the desire for freedom and that for power will necessarily be vague and approximate only. It will be impossible without some degree of contradiction and disharmony. One only has to think of the host of lawsuits occurring under any legal system to understand that this imperfection of legal order, though it may decrease considerably at times, can never be entirely eliminated. In periods of social disunion and turmoil it is bound to become immense. Whether revolution will become imminent and erupt even though all possible technical measures have been taken to prevent them depends on the stability of the legal order.

This shows clearly what attitude human society has to take toward its legal order. Legal order is not an inherited property. It is not a task to be confronted with the even temper of ownership, but with the internal tension its maintenance and preservation gives rise to. It can be properly preserved only by the incessant mobilization of protective forces.

Different materials can be formed into a unit. This can be accomplished in a simple way like pouring water and wine together, or in a complicated way like the melting of iron and carbon into steel. The result will be a body of complete unity. In the life of human society amalgamations and combinations are possible also but they are never a complete unit. Even in the most perfect marriage where union of the will may well suppress the duality of the will it can never overcome it completely. Thus duality is planted directly beside unity in the heart of legal order, and neither can be removed without affecting the other.

So if the goal is the establishment of unity of legal order, this does not mean the elimination of the duality of the rights of freedom and of the power which serves to maintain order. It can only mean the enforcement of the uniform conception of legal order beside and vis-à-vis this duality.

The unity of legal order thus presents itself as a goal that can never be fully attained. An attempt is made to create unity for an indefinite period by issuing general rules which, contrary to the duality of the desire for freedom and that for power, are aimed at the unity of legal order. This is the task the legislator carries out by promulgating laws, ordinances, and similar regulations. In them the mutual restraint exercised by the desire for freedom and the desire for power is somehow presented and formulated in a more specific manner. There is no doubt that the legislator is indispensable to the establishment and maintenance of legal order. But it must be reemphasized that the standards of law as such do not suffice to maintain for all future times the legal order once created.

The consequence is that, in addition to legislation, the unity of legal order requires another, independent system for its continuous maintenance and renewal, unless it is exposed to dictatorial influence. This system, a parallel to legislation in all modern legal orders and constitutions, is the administration of justice.

It is not by accident that wherever dictatorial violations of law occur in a state they begin with aggression against the administration of justice. If the administration of justice is forced out of its functions, the desire for freedom will be deprived of its support in setting a limit to the desire for power. The legal order's maintenance and renewal will then be at the mercy of the desire of power. The duality of the desire for freedom and that for power, duality which is essential to legal order, will vanish. The will to attain power will turn into a rule of terror. If, however, the dictatorial shaping of the legal order begins with an attack on the administration of justice, we should know the point at which such trends can be countered.

The administration of justice must be enabled to offer resistance. The legal order must be linked and merged with the administration of justice, so that the administration of justice itself will develop into the administration of legal order.

The first part of the administration of legal order covers the sphere which is already claimed by the administration of justice, or jurisprudence, and which is allocated to it by the constitutions of all civilized countries. It goes without saying that I, by my remarks, in no way intend an interference with this allocation.

The second part of the administration of legal order consists in the establishment of the unity of the desire for freedom and that for power. It is not only our task to remove negative influences in this respect, but we must also create, by positive nursing, seedlings which will grow into the desire for freedom's effective defense against any infringements by the dictatorial state. This means that we have to take constructive action.

In areas in which the administration of justice is not willing and able to protect the rights of freedom from dictatorial violations, the idea of the administration of legal order, as I have tried to indicate by these remarks, has vital power and despite all dictatorial violations will not be prevented by any obstacles from radiating into those areas as well.

More than ever irresponsibility and fanaticism are infiltrating into human society. More than ever moderation and self-discipline are driven out of human society and put on the defensive. Even the administration of justice, the strongest bastion in the defense against irresponsibility and fanaticism, is about to be deprived of its protective weapons against power and arbitrary action at a moment when such weapons are most urgently needed.

The disunion and turmoil in society make the demand for a proper administration of justice, a justice capable of meeting the increasing needs, an outcry of bitter distress. The call goes out for a clear definition of its task, for a definite categorization and concentration of the required forces, for absolute independence and for freedom of action in carrying out its social functions.

Law and justice are the indispensable pillars of Democracy. If they surrender themselves to arbitrariness and violence, the individual freedom guaranteed by Democracy loses its protection. Whoever has had his confidence in law and justice shaken will turn to the bodies in charge of the administration of justice and will hold them responsible. None of the men in whom the administration of justice is vested will be able to evade responsibility for the task they volunteered to carry out.

Therefore all jurists, regardless of where their residence or office may be, are invited to take a stand on these matters. Without respect to frontiers they are summoned to assemble and consider what is to be done, lest law and justice be impeded.

We assume full responsibility for the creation of the proper protection. We cannot escape this responsibility; no one is going to relieve us from it. Let us avoid the reproach that, though we saw the danger with open eyes, we failed to do our duty.

President Hon. J. T. THORSON: Thank you, Professor, for your really excellent remarks. I am glad to hear that Mr. G. Morris, President of the U. S. International Bar Association, has arrived and I now ask him to give us a brief summary of the Madrid Congress of Jurists held a few days ago.

G. MORRIS, USA: The Congress among its manifold subjects also heard a speech by a West Berlin delegate who immediately attracted general and unanimous attention. The Congress was shocked at hearing that Dr. Linse, who had a very important assignment in the Investigating Committee of Free Jurists, was dragged into an automobile in the open street and abducted into the Soviet Zone. This action violated one of the basic principles of law providing that nobody must be deprived of his freedom without any legal reasons. The jurists gathered in Madrid were appalled at the treatment received from the Communist regime by a man who only did his duty as a jurist. The case immediately called forth intense discussions on what could be done in view of such facts.

Thirty years ago the problem would have been insolvable, for nobody would have known to which organization they should address a protest. Nowadays everybody knows that only the United Nations organization is competent; for it was founded for the exclusive purpose of safeguarding law the world over. The whole progress of international society is expressed by the existence of a body to which protests against a committed evil can be addressed, and the Madrid Congress had not the

slightest doubts even for a moment that the United Nations organization is the proper forum before which that case was to be carried.

Pessimists might say that the organization is working too slowly and that its whole working mechanism is too heavy for effective operation. Still, this protest will not lack effect. That body may be relatively powerless, but only for a limited space of time. Likewise we may cherish the hope that this International Congress of Jurists in Berlin, attended by men and women from five continents, will not remain without effect. The work performed by the Free Jurists in Berlin will stimulate the jurists in the rest of the world to join a movement that cannot be stopped because in the long run justice and its principles cannot be brought to a standstill.

President Hon. J. T. THORSON: I have just received word that Prof. Dr. Ernst Reuter, the Governing Mayor of Berlin, has come here directly from the airport. Before we go on with our meeting we will hear an address by Prof. Dr. Ernst Reuter. It will be followed by Dr. Theo Friedenau's speech.

(Governing Mayor Prof. Dr. E. Reuter enters the hall and is welcomed by lasting and loud applause.)

Remarks of Welcome

by Prof. Dr. E. REUTER,
Governing Mayor of Berlin

Your Excellencies, ladies and gentlemen,

I am very glad about welcoming you here and I hope that we will have ample opportunity to meet again on various occasions. Your presence in this city has a profound meaning for the Berliners. You are the representatives of justice and this city is fighting for it. This city is fighting for it with the full passion of its heart and a persistent will, and it desires to be ruled by justice and not by a power which we despise and which would drag all of us into a precipice once it would succeed in dominating the world. This small insular city with its poor two million inhabitants, full of sorrows, full of poverty, full of grief, almost destroyed, damaged more than any other city, has demonstrated to the world that justice can and must be fought for and that, if it is done, justice will be done in the end. Only those will be victorious in the struggle for life, freedom, and justice who stand on the grounds of law regardless of how the outward situation of power may be.

Your visit to this city, a visit paid by distinguished representatives of foreign countries, is an honor and great help to every Berliner. I have very often stressed on other occasions that this city is not living on a material substance. If we were to compare our material conditions with those of other cities we would say it is little use to carry on. This city, however, lives on a spiritual and moral substance and it will reach its material ends which it deserves by never abandoning the spiritual and moral basis of its existence.

I ask you to believe that everything we in Berlin are saying about these matters is not mere lip-service but that these words are backed by action and by the hope of a brave people aware of their inner dignity and determined to regain their freedom and to rebuild it on the grounds of law. In whatever country we may be, I think that we will always be able to meet on these

grounds, to build bridges across the oceans and continents, to build in freedom and on justice a unified world in which the nations can live in peace with each other.

The Legal Situation in the Soviet Zone of Germany

by Dr. T. FRIEDENAU, Berlin

Describing the legal situation in the Soviet Zone of Germany is a task hardly solvable in a single speech. This report, therefore, can be but an introduction to what will be proved by documentary and testimonial evidence in the meetings of the working committees during the coming days.

It would be wrong to assume that after the occupation of part of Germany by the Soviet forces Germans lacked the will to cooperate in the re-orientation outlined by official Soviet proclamations. In the beginning it actually looked as though the creation of a legal state would at least be tolerated by the Soviet occupying power. Local "kommandaturas" were established and in turn set up local, municipal, and district tribunals. The actual development, however, did not begin until provincial governments were formed. Thus, the traditional organization of District Court (Amtsgericht), County Court (Landgericht), and Supreme Provincial Court (Oberlandesgericht) was restored.

To the provincial administrations judicial departments were attached. In addition to other German central administrations a central administration of justice was formed in Berlin by order of the Soviets; it was, however, not authorized to issue directives to the state administrations of justice. In 1946, the first elections for the municipal, district and provincial representations were held in the Soviet Zone. Afterwards, ministries of justice developed also within the provincial administrations and were headed by ministers of justice. A little later the provincial administrations were converted into state administrations, the provinces were turned into states. The German central administration of justice continued to exist. In 1947, all central administrations were transformed and merged into the German Economic Commission. This was the beginning of central guidance of the zone-wide administration.

The state administrations of justice still remained independent, that is, they were not placed under the control of the central administration of justice. In 1949, the "German Democratic Republic" (Abbreviation: GDR) was founded. The central Ministry of Justice was headed by layman Max Fechner. A Supreme Court and the Office of an Attorney General were created. Then, the central Ministry of Justice was authorized to control the state administrations of justice. Following the elections in October, 1950, the independent ministries of justice were abolished. An exception was made by the state of Thuringia. The formerly independent state ministries of justice were turned into main departments of justice under the supervision of the ministers-president of the states. On July 23, 1952, the Volkskammer pseudo-parliament adopted a law providing for the liquidation of the state governments and parliaments. The law was meant for even stricter centralization.

After the surrender of Hitlerite Germany legislation was suspended. Due to the absence of any legislative powers, legal affairs were settled by orders issued by the occupying power.

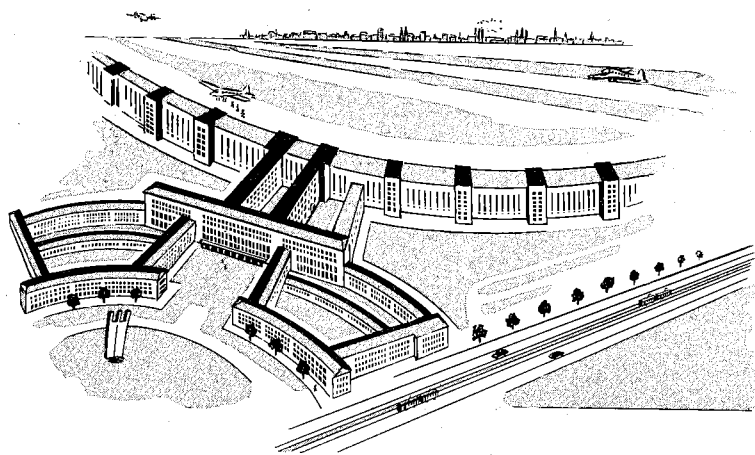
In 1945, the occupying power itself vested the authority for the issuance of legal regulations in the provincial administrations. After the formation of the state parliaments the latter were authorized to pass laws; the Civil Code, Criminal Code, Civil Procedure Code, Criminal Procedure Code, and the Law concerning the Constitution of the Courts were amended on a minor scale. The first major interference with private property was undertaken by the land reform regulations and Order No. 124 of the Soviet Military Administration. Banks and insurance companies were liquidated and their assets transferred to the government-controlled banks and insurance organizations. Thus began the formation of what is called "people's property."

In contrast to Western Germany no immediate measures for the prosecution of war and Nazi criminals were taken. Indiscriminate and arbitrary arrests were made by the Soviet local kommandaturas, the GPU, and Department 5 of the German police. These arrests failed to reveal the extent of guilt. Allied Control Council Directives No. 24 and 38 were not applied. That means that no proper trials took place, but persons were confined to the reestablished concentration camps, which held not only former members of the NSDAP but also opponents of the ruling regime, in particular former Social Democrats. Technicians and specialists were deported. Only by and by Control Council Law No. 10 was applied by the so-called ordinary courts.

The first sentences were imposed in spectacular trials on defendants guilty of partly not very serious offenses, and received immense publicity in the press. Directives No. 24 and 38 were not applied until after the promulgation of SMA Order No. 201, dated August 16, 1947. This order was allegedly meant to restore the civic rights of all nominal members of the Nazi party. In reality, this order opened a wave of arrests and convictions of persons who partly had neither committed any offense, nor had anything to do with the NSDAP or any of its affiliated organizations. Order No. 201 was but another instrument for further expropriations and confiscations. Special criminal chambers were created for offenses violating Order No. 201.

In connection therewith the Economic Penal Code, dated September 23, 1948, deserves mention as an extensive legal regulation. It adopted all provisions of the former National Socialist economic penal code (ordinance on crimes against the war-time economy) and added new ones. The general, flexible version of the Economic Penal Code permits the imposition of severe penalties whenever deemed necessary for politico-economic and general political purposes. The Code provides for expropriation as an obligatory, additional punishment. Expropriations will affect not only the perpetrator but also third persons who have no connection whatever with the offense. It is also worth mentioning that a growing number of proceedings were instituted against absent defendants for the sole purpose of socializing their property or commercial enterprises.

Since 1949, the legislative activities of the states had been lessening and they ceased completely with the foundation of the "German Democratic Republic." The legislative powers have hence been vested in the so-called Volkskammer (People's Chamber).



View on Tempelhof Airport

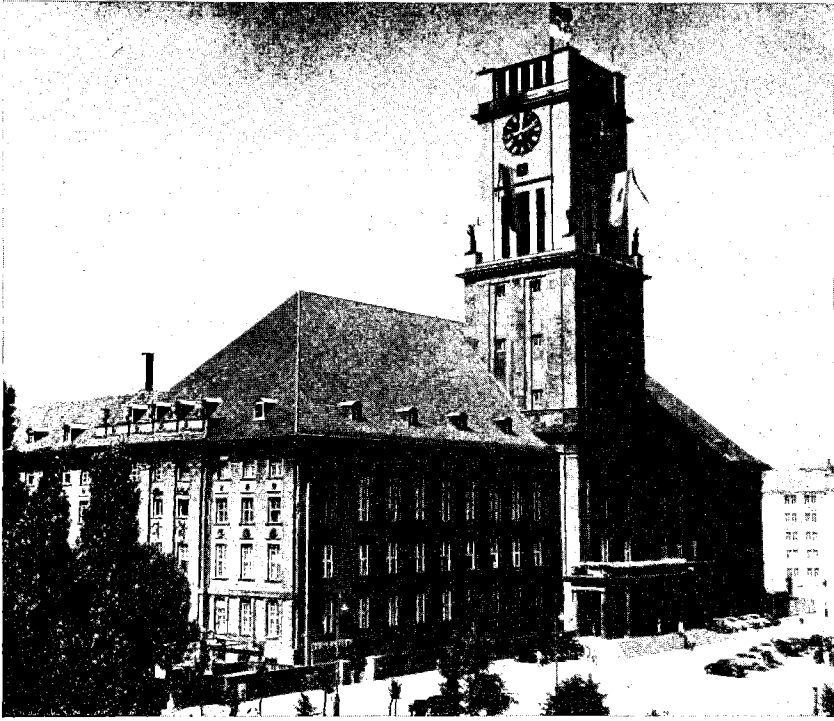


Noted jurists from 43 countries attended the International Congress of Jurists



A plane of the Pan American Airways arrives at Berlin-Tempelhof Airport

OPENING OF CONGRESS



Schoeneberg Town Hall, the seat of the West Berlin Senate

Prof. Dr. Ernst Reuter,
Governing Mayor
of Berlin, during his
opening address



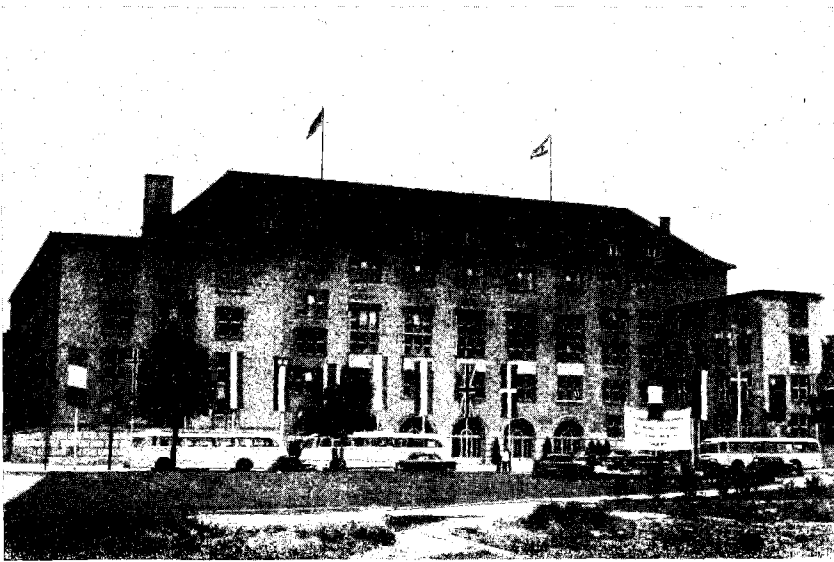
Dr. Heinrich Vockel,
Representative of the
Federal Government,
welcomes the guests
in the name of the
German Federal
Government



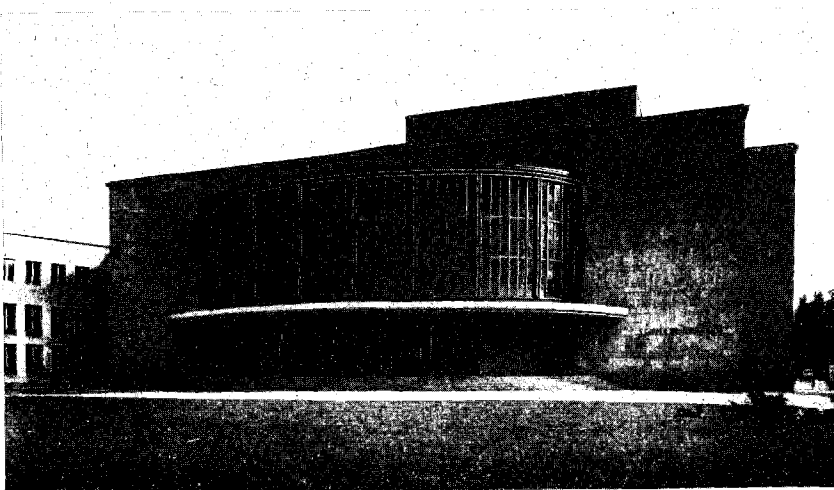
Dr. Valentin Kielinger,
Berlin, Senator of
Justice, welcomes the
delegates on behalf
of the Federal Minister
of Justice



The Congress convened at the College of Political Science
in Berlin-Schoeneberg

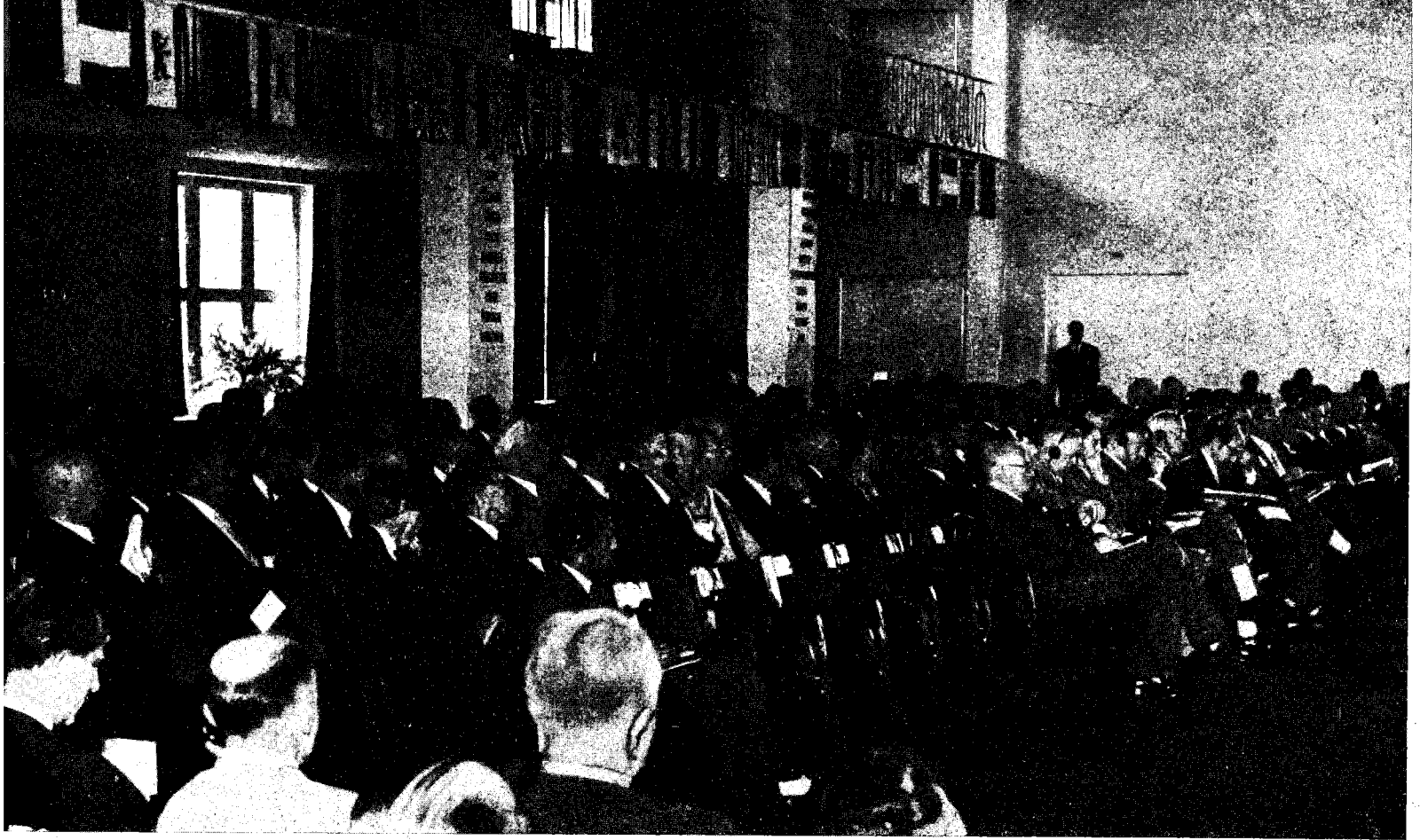


The final ceremony took place in the Charlottenburg
Schiller-Theater, the most modern of its kind in Berlin



Dr. Theo Friedenau,
Chairman of
the Investigating
Committee
of Free Jurists, during
his opening remarks





View of the assembly hall of the College of Political Science during the opening meeting



Hon. J. T. Thorson, Canada, President of the Congress, in conversation with the Pakistan delegate



The Presidents of the Congress: Dr. E. Zellweger, Switzerland; P. Federspiel, Denmark (left of rostrum); Hon. J. T. Thorson, Canada; Tyabji, Pakistan



PLENARY ASSEMBLIES



Prof. Dr. F. Darmstaedter during his discourse
on the principles of freedom and power



Left side, down:

The delegates during the plenary meeting

The U. S. delegates Prof. and Mrs. P. R. Hays,
R. Storey, and G. Morris (f. l. t. r.)

Delegates Hon. L. W. Brockington, J. Estey
(both of Canada); P. Trikamdas, India (standing)

The Danish delegation: J. Buhl, P. Federspiel,
O. Rasmussen (f. l. t. r.)



Mrs. S. Agaoglu, Turkey,
conversing with Prof. J. Graven, Switzerland





Prof. Dr. J. Carabajal
Victoria, Uruguay



Right side, down:

Delegates from the Scandinavian countries in front
of the College of Political Science

T. Matsumoto, Prof. Dr. K. Mori, both of Japan (f.l.t.r.)



J. Nabuco, Brazil, in conversation with
Prof. della Rocca, Italy

Prof. Dr. S. Bissiso, delegate of Iraq,
and Prof. P. R. Hays



S. Pramoj, Thailand, and the Pakistan delegate
during a discussion with Dr. T. Friedenau



COMMITTEE FOR PENAL LAW

The investigations by the Congress were carried out by four working committees divided according to their specific fields

Prof. G. Bellavista, Italy, Chairman of the Committee for Penal Law, hearing a witness. Right to Prof. Bellavista, W. Rosenthal, Berlin, Secretary of the Committee



A witness showing scars on his feet as proof of mistreatment in NKVD custody



View of the conference room of the Committee for Penal Law



In reality, however, even this pseudo-parliament is denied proper legislative functions. Important laws, even such as will amend the constitution, are mostly issued in the form of government ordinances. It is true that the Volkskammer also passes laws but there is not the slightest indication of a parliamentary debate. It only approves what is submitted by the Soviet-controlled SED party headquarters and omits any discussion or even criticism of the bills.

Deputy Premier Walter Ulbricht announced that new laws are in the making by order of the Soviet Zone Ministerial Council. The Civil Code, Criminal Code, Civil Procedure Code, Criminal Procedure Code, and the Law on the Constitution of the Courts are to be reformed. It is frankly admitted that it is not so much a matter of creating new laws than of imbu- ing the old ones with a "new spirit."

Soviet Zone law is not destined to really administer justice, but to find the proper political solutions. The practice of the courts and administrative authorities corresponds to this conception. There is uncertainty in jurisdiction, even in final decisions, because of the possible annulment of the decision, an act due only to the Attorney General of the GDR who, of course, will judge exclusively from a political point of view. Decision is reached by a Senate of the Supreme Court. The latter also acts as the Penal Court of first instance in case the Attorney General brings an indictment directly before the Supreme Court, in view of the paramount importance of a certain case. There is no delictual competency of the courts. The principle that no defendant can be taken away from his competent judge is violated.

Soviet Zone jurisdiction is administered according to the principles of "general prevention". Therefore, spectacular trials are arranged which in official language are called "trials before a larger audience". But such an audience is not as neutral as one might be inclined to presume. Only those persons are allowed to attend the sessions whose political attitude has been thoroughly examined. Trials of defendants to be sentenced without any evidence are held in camera.

Administrative officials and judges are politically biased. Learned jurists are barred from jurisdiction. This development is making headway under the slogan of "democratization of administration and justice". The judges are called "people's judges" (Volksrichter), trained in courses which first lasted six, later eight months, and finally one year. Training courses are now held at a Central Judges' School of the German College of Justice, their duration having been extended to a period of two years. More than half the time spent at such courses is dedicated to the study of what is called "political science" and of Marxism, Leninism, and Stalinism. Common and statute law need not be studied because they contain only "outmoded" capitalist standards.

In the Soviet Zone 72 per cent of all judges are "people's judges"; of the prosecutors only three per cent are genuine jurists. Academic instruction at the universities has also been modeled along the principles of the people's judges training. The studies take four years. In the first two terms only lectures on politics and social science are heard, while the attendance of juristic lectures is forbidden. Contrary to the traditional rules which are still valid in the Federal Republic, there is only one examination which is centered on the subject of political science.

The position of the prosecutor in the Soviet Zone strongly resembles that of the prosecutor in the Soviet Union. This is evidenced by the Law on Public Prosecutors enacted on June 1, 1952. Article 10 of this law is almost a literal translation of Article 113 of the Soviet Constitution. The prosecutor is thus severed from the administration of justice and is supervised directly by the Soviet Zone Council of Ministers. The prosecutors formally have broad power in the entire Soviet Zone, but in reality the Ministry of State Security headed by Minister Wilhelm Zaisser is endowed with the greatest authority. The way in which this organization arrests, tortures, questions, and abducts individuals is generally known. Many of the constitutional basic rights have been practically abolished. Deportations and abductions, even from Western territory, are part of its practice.

Labor law, too, has been thoroughly transformed. The difference between a worker in Western Germany and a worker in the Soviet Zone is greater than between a laborer in the Soviet Zone and a laborer in the Soviet Union. Collective, autonomous labor law has been abrogated. The state unilaterally decides the conditions of work. Works councils have been abolished, the labor unions are part of the state apparatus. The introduction of a disciplinary code, under which workers can be punished for alleged violations of labor discipline, is imminent.

The administration of the Soviet Zone has been strictly centralized and serves the realization of the Communist party's goals. The freedom of coalition and assembly has been abolished, and, as will be proved by this Congress, there are hardly any more basic rights. The administration is tightly linked with the SED party, and the public employees are party functionaries.

Constitution and law are deliberately disregarded by the leading party and government functionaries of the Soviet Zone. There are no genuine relations with law and constitution. The new legislation deliberately refrains from formulating binding legal principles and rather places itself at the disposal of hideous violence. The rights and freedoms of the citizens corresponding to the basic rights proclaimed in the "Universal Declaration of Human Rights" of December 10, 1948, are of no importance to the responsible leaders of the Soviet Zone. They are just a scrap of paper.

All institutions, measures, and the shaping of the Soviet Zone betray Bolshevist goals. Human individuality is to be destroyed and the creation of a human herd, unable to resist its rulers' lust for power, is to be formed.

All the values of freedom and morality which mankind has gained through the thousands of years of its history are doomed to death under Bolshevism. It is not the care for, and the maintenance of, the human rights proclaimed in the Charter of December 10, 1948, but their suppression which Bolshevism needs to reach its ends. The countless sacrifices of freedom and property which mark the way of Bolshevism through Germany, are evidence of its merciless desire for destruction.

During the last four years, 1,718 judges, prosecutors, and administrative jurists fled from the Soviet Zone to the West. Over 900 lawyers' offices in the Zone are empty because, despite the immense shortage

of lawyers, nobody will run the risk of severe punishment for taking the defense of his client seriously. The total of refugees has so far reached about 200,000.

These few figures throw a better light on the legal situation than any further statement. However shocking these findings may be, they must not make the free world resign and watch the development inactively. Part of the injustice happened only because the rulers behind the Iron Curtain succeeded in concealing their real actions and intentions behind the facade of a state allegedly based on law.

President Hon. J. T. THORSON: Thank you, Dr. Friedenau, for your excellent and really informative speech. I suggest that the meeting adjourn till to morrow and that the discussion requested by Mr. Trikamdas, the Indian delegate, be postponed until next week. Mr. Trikamdas would like to address you briefly now.

Mr. P. TRIKAMDAS, India: Although the Congress is meant primarily to give the international jurists an idea of the legal conditions in the East Zone and in the Soviet satellite countries, it must not be overlooked that even in the countries of the Free World violations of legal principles have occurred which deserve equal discussion, and that the resolutions taken by this Congress ought to refer also to those violations. Injustice must be exposed before the eyes of the whole world regardless of the part of the globe in which it is committed. I refer to the racial legislation and discrimination in the Union of South Africa. It is ruled by a European minority whose laws contravene the Charter of Human Rights.

Another question is whether the suppression of human rights in the way of slavery in a country in which someone has power is agreeable with the concept of real freedom. This question refers to the colonial empires in which human rights are very obviously suppressed like, for instance, in Tunisia and other countries.

The third question is to what extent violations of administrative law occur in the legal systems of the democratic governments, thus curtailing the freedom and independence of the peoples. These questions are also subjects for discussion. I hope that the working committees will concern themselves with them and not limit their studies exclusively to the violations of the Soviet Zone constitution. I also hope that the resolutions to be taken in the final meeting will take a stand on the problems I have broached just now. The happenings behind the Iron Curtain are indubitably of primary interest.

Sir G. R. VICK, Great Britain: In my opinion this Congress should adhere to the agenda and concentrate on the legal conditions in the Soviet-occupied and controlled countries. The Indian delegate's good intention is not to be misunderstood. But the desire to achieve too much bears in itself the danger of accomplishing nothing at all.

(A French and an Italian delegate share Sir G. R. Vick's opinion.)

President Hon. J. T. THORSON: So I can close the meeting now.

PART TWO

**Sessions of the four Working Committees
of Congress**

Committee for Public Law

Chairman: Prof. Dr. J. CARABAJAL VICTORIA, Uruguay;

Vice-chairman: Dr. E. ZELLWEGER, Switzerland;

Secretary: Mr. F. TEUPITZ, Berlin.

FIRST DAY

Chairman Prof. Dr. J. CARABAJAL VICTORIA opened the morning meeting expressing his thanks for the confidence demonstrated by his election and asked Prof. Dr. H. Rommen to speak.

The Human Rights as Barriers of the Administration of a Constitutional State

by Prof. Dr. H. ROMMEN, U.S.A.

If a hundred years ago — that is, at a time when the Prussian constitution proclaimed by the king contained already a declaration of human rights — someone had predicted that we would meet here in Berlin, and that a conference would take place on an island of endangered freedom located in an ocean of slavery, his contemporaries would have declared him to be insane. If thirty years ago, when one of the war aims equally acknowledged and realized by both the victors and the defeated was the preparation of the world for democracy, for the self-government of the peoples, and for the international recognition of the rights of the minorities, some pessimist had imagined the horrors of the concentration camps in the heart of Europe, of the forced labor camps, of the renewal of state-controlled slavery in an area covering more than half of the globe (all that in the name of Democracy which pleonastically calls itself "People's Democracy"), this pessimist would have been considered insane as well. Yet even the most sinister forecasts of such a prophet have become reality today.

The "Terrible Simplifiers" to whom Jakob Burkhardt referred have not only introduced this terrorism in their tyranny, but have twisted and misused the great ideas of Democracy, social justice, and human rights to justify that terrorism. There is only one form of political legitimacy, that is the democratic legitimacy. Therefore, the tyrants have to adhere to the forms of the democratic constitutional state not only for reasons of propaganda. In other words: they have to use fraudulently the basic elements of Democracy while at the same time betraying its values.

Since the beginning of the rational political theory the goal of humankind has been the construction of a constitutional government and the limitation of political power in order to prevent the government from depriving the individual of its freedom. From the very beginning, Democracy in its formal sense meant active

participation of the citizens in the government on the grounds of equality, i. e. participation in a government approved by the citizens, created through free elections and freedom of speech, and controlled by the people. Democracy always meant free approval of the government following public discussions, as well as the limitation of any coercion; for, if following a discussion of the media and approval of principles the citizen voluntarily surrenders to the law, then Man is also free under the law.

(Follows a historical summary of the government systems and principles of the state since the Middle Ages. The various Bills of Rights are compared with modern democratic forms of government. The various versions of the Bills of Rights time and again reveal that the government, however great its authority may be, is responsible for the life of the community, that it developed from the social and political qualities of the individual and therefore solely has to serve the individual. The common welfare is the goal of the government; it cannot be realized if the personal rights are sacrificed. Several philosophies agree in this respect.)

The inhuman atrocities committed by the tyrants in the second world war have violated the universally acknowledged rights of Man, and in conjunction with the desire for a better international organization have resulted in the demand for a Universal Declaration of Human Rights. During the war, in 1942, the Big Four (Great Britain, the Soviet Union, the United States and China) demonstrated their determination to have the new international organization (the U.N.) promote the respect of human rights and intellectual freedom, and on December 10, 1948, the United Nations General Assembly, then convening in Paris, finally and unanimously adopted the Charter of Human Rights, with nine abstentions.

In general, the implementation of this Declaration of Human Rights has not been possible to date since it lacked the judicial basis on which the individual states might be obligated to do so. Corresponding preparations are still under way. Thus, the European Council has lately forwarded to the Council of Ministers a motion for the drafting of a respective convention. The basic idea of this recommendation is the creation of a European Tribunal and of a European Commission for Human Rights. The latter is destined to investigate all violations of human rights, to make inquiries, to

mediate, and finally to release a report following which the commission or a member state can file suit with the European Tribunal in case its endeavors have failed.

The moral norms of human rights are of such a convincing character that each member state of the United Nations at least nominally recognizes them in its constitution. This is true even for the satellite states, the German Democratic Republic and the so-called People's Democracies, and also goes for the Stalinist Constitution proclaimed in 1936. Many of them, such as the right to general and parental education, were laid down in the constitutions much earlier than the economic and social rights which practically were not given room in the constitutions until after the first world war. In the various philosophies of law, the freedom of faith and conscience, of thought and speech, and finally the freedom of the press are ranking first.

The basic rights are contained in any constitution, even that of the Soviet Union. Certain restrictions provided on behalf of public order, morals, health and the community as such, however, must be applied in accordance with general, reasonable principles and in no event must represent an arbitrary administrative act in the disguise of legality. The results of contradictory interpretation by the state I experienced in Germany 1933 where the secret police, a typical instrument of the totalitarian state, made the individual thoroughly helpless. There is no legal security in such a state. The very fine Declaration of Human Rights remains completely ineffective in the Soviet constitution because neither the judiciary nor the administration, nor the secret police are bound to it, and because there is no independent court to protect the individual.

It is contrasted by the Habeas Corpus Act which recurs in any constitution in varying forms. No arrest must be made without a proper warrant; a defendant must be regarded as innocent so long as the contrary has not been proved and proclaimed in a proper verdict; immaculate testimony and witnesses must be produced; the right of appeal must be granted, etc. Thus, personal rights are the fundamentals of Democracy, and Democracy is ridiculed unless these rights are actually guaranteed.

Contrary to the personal and civil rights, social and economic legislation rather refers to what the government must not do. Yet it is not necessary, like is done by the Communist Party, to sacrifice personal rights in order that social and economic rights be obtained.

I have always cherished the idea that in countries in which the judge had this strong sense of responsibility vis-a-vis the law and justice, justice and law were safeguarded most effectively. Not only the judge sitting in court and proclaiming the reign of law, but all jurists, lawyers, lecturers, and philosophers have that particular responsibility.

The Citizen's Right to participate in Political Government, especially through Elections

by Prof. H. MIRBT, Berlin

(The content of this report is analogous to that of Documents 200—202 of the Collection of Documents entitled "Injustice as a System.")

After finishing his report, Prof. H. Mirbt asked those present for permission to hear as a witness on the subject ex-Vice-President of the Brandenburg Landtag (state-parliament), Mr. Theiss, who also played a leading role in one of the political parties.

THEISS reported that the CDU (Christian Democratic Union) and LDP (Liberal Democratic Party) strongly favored new elections, as guaranteed in the constitution, after the end of the legislative term in the fall of 1949. But the Soviet occupying power gave orders that the new elections should not be held until October, 1950. The CDU faction agreed to that proposal after five Soviet officers and some MVD officials had urged them to do so. But in public meetings the party took a stand against the unity list. Then, increased pressure started in the spring of 1950. I was ordered to go to Potsdam where Dr. Kolzenburg, the representative of the National Democratic Party, explained to me that the election would not be carried out in accordance with the proportional system, but that a unity list would be drawn up. I was the only one to protest against that proposal. This conference was followed by continuous orders to report at MVD headquarters in Potsdam and by increasingly stern demands that I should agree. Finally, I formally agreed to the proposal, but afterwards fled to West Berlin. Most of my colleagues in the Landtag were subjected to this kind of pressure. It was not so much the SED (Socialist Unity Party), but the Soviet occupying power which forcibly introduced the unity list. Finally the witness quoted Prof. Dr. H. Rommen as citing Lord Acton who said: "Ask the minority whether it feels free, then you know whether a state is a democracy." But in the case of the Soviet Zone, the witness said, this should be altered to read: "Ask the majority whether it feels free."

In reply to the question of a delegate, witness THEISS gave the following figures:

In the Landtag of Brandenburg, the SED in 1949 had 49 representatives, the CDU 31, the LDP 22, and the Farmers' Party 5 representatives. In 1950, however, authorities outlined a system for the distribution of seats giving but 12 seats to the CDU, for instance. According to that system, the Communist Bloc consisting of SED plus FDGB (Free German Association of Trade-Unions), DFD (German Democratic League of Women), NDPD (National Democratic Party of Germany), FDJ (Free German Youth) and BDB (Democratic Farmer's Party) would always have a two-third majority. None of the other parties had any influence in the preparation of that system. As a matter of fact, the candidates were no longer nominated by the parties themselves but were carefully selected by the SED Central Committee. Thus, only new people were nominated for the unity list of 1950, all of them recommended by the Soviet occupying power. And such recommendations were practically identical with orders. But the unity list was indirectly protested by the resignation from office of the State Boards of the CDU and LDP. Some of the board members even fled to Western Germany and West Berlin.

Replying to the question of another delegate as to how the system for the distribution of seats had been motivated, the witness stated that no one had bothered about that and no motivation was given.

The delegate from India, P. TRIKAMDAS, asked whether parties were allowed to operate and which parties.

WITNESS declared that up to the end of 1949 parties were relatively free to work. Afterwards the oppressions started.

P. TRIKAMDAS: I would like to know whether Germans or Russians rescinded the electoral system.

Prof. H. MIRBT replied to the effect that the Russians did not come to the fore very often. But they undoubtedly made their influence felt through Ambassador Semionov.

A former CDU representative of the Landtag of Saxony-Anhalt, Dr. NEGATSCH, added some of his own experiences to Mr. Theiss' reports. He said that eleven of the 23 representatives of the Landtag of Saxony-Anhalt left the conference room when the vote on the establishment of the German Democratic Republic was to be taken. Those eleven representatives were thereupon expelled from the CDU.

Then Prof. MIRBT gave a survey of the electoral committees which were without exception controlled by the National Front and the mass organizations. He said it was the task of these committees to make sure that the election result would at any rate amount to 96.5 per cent.

Dr. M. BUTARIU, Rumania, described the development in Rumania which was very similar to that in the East Zone. Here, too, some freedoms were retained at first, followed by continuously increasing pressure until the Communist Party took over complete control and the other parties were dissolved, by election frauds, and by the purge of bourgeois elements. Here, too, old and respected party leaders like Maniu, who is 80 years old, were arrested.

Prof. H. MIRBT ended his report with a description of the election procedure on October 15, 1950. He demonstrated that the use of polling-booths was made impossible since everyone using a booth was marked as voting "No" before he had even cast his ballot. Many CDU Party members were expelled from the party because they used the polling-booth. Prior to the election, propaganda for "open elections" had been made everywhere. Even an exchange of the ballot for a blank sheet of paper was made impossible because the ballots had a large government seal on the back. — The meeting was interrupted to be resumed at 2 p. m. after lunch.

Chairman Prof. Dr. J. CARABAJAL VICTORIA opened the afternoon meeting.

Prof. H. MIRBT: Before I go on to the next subject, namely the right of free expression of opinion, I ask your permission to show you a document which has been presented to me during the discussion this morning: an original ballot of the October 1950 election used in the city of Leipzig. You can gather from this ballot, better than from words, what the ballot of the unity list looks like:

"Ballot. The candidates of the German people for the Volkskammer (Lower House): Otto Grotewohl (SED), Otto Nuschke (CDU), Johannes Dieckmann (LDP), Vincent Mueller (NDPD), Fritz Weisshaupt (DBD), Ottomar Geschke (VVN, League of Persons persecuted by the Nazi Regime), Erich Honecker (FDJ), Kaethe Selbmann (DFD), Kurt Kuehn (FDGB), Professor Kollet (Cultural Union), Max Zimmermann (VdgB, Farmers' Mutual Assistance Union), Rudolf Blankenburg (Consumers' Co-op)."

I believe that I should not withhold this document from you because it shows most clearly the difficult position of the non-Communists. There was no way of amending these lists. Even if the voter crossed out a name he did not like, this had no influence whatsoever on the evaluation of the ballot.

Now, may I proceed to the next point.

Infractions of the Freedom of Opinion in the Soviet Zone of Germany

by Prof. H. MIRBT, Berlin

Article 9 of the Constitution of the German Democratic Republic reads as follows: "All citizens have the right, within the limits of universally applicable laws, to express their opinion freely and publicly and to assemble for this purpose peacefully and unarmed. This freedom shall not be restricted by any service or employment status. No one may be discriminated against for exercising this right. There is no censorship."

Every-day practices are different. Allow me to show you some documents concerning the freedom of opinion, the right to utter one's opinion without interference, freely and publicly, and some documents pertaining to the freedom of the press. (See Collection of Documents "Injustice as a System," Documents 10, 12, and 13.)

You have before you a sentence pronounced in 1951 by a County Court sentencing someone to five years of imprisonment as an expiation and to confinement in a penitentiary for ten years. The report on this sentence reveals that the defendant said in a public meeting: "We are among ourselves and can speak freely." He said: "We are dissatisfied with the present government, but we cooperate anyway in order to effect a change." Also, he criticized government measures. The report stated that since the defendant also referred to the election maneuvers we talked about this morning, the provisions of Article 6 of the Soviet Zone Constitution were applicable. Article 6 of the Soviet Zone Constitution reads as follows: "Incitement to boycott of democratic institutions or organizations, incitements to attempt on the life of democratic politicians, the manifestation of religious and racial hatred and of hatred against other peoples, militaristic propaganda and warmongering as well as any other discriminatory acts are felonious crimes within the meaning of the Penal Code. The exercise of democratic rights within the meaning of the Constitution is not an incitement to boycott."

Thus, every expression that might be considered critical of the policy of anyone employed in the administration of the German Democratic Republic can be considered, without much ado, as boycott agitation against democratic institutions. This is proved by the wording of the sentence I just told you about: "The defendant carried out boycott agitation by inciting to boycott of the elections with unity lists and of the government of the German Democratic Republic. Although all bloc parties favored the drawing up of a joint list of candidates and thus complied with the wish of the population, the defendant said that one cannot speak of a free election. The election itself has proved that every voter was in a position to refuse the candidates. He boycotted our democratic government which sees its greatest task in safeguarding peace

and constructing a stable economy in order to assure for the population a well-being never before experienced. The defendant supported the agitating propaganda of American imperialism by stating that things will not remain as they are." The report on the sentence then continues to enumerate further statements of the defendant re his attitude towards Russia. On account of these assertions — the defendant admitted to have made the remarks he was charged with — he was sentenced to ten years of penal servitude.

The next documents (to be found at the same place) also contain sentences involving very long terms of imprisonment or penal servitude for similar remarks. Sentences of this kind can be produced by thousands, especially by the Committee for Penal Law.

Through these warnings based on Article 6 of the Constitution, every free expression of opinion on a wider scale is made impossible. Every quiet criticism, even if it is in no way rash, of any of the public institutions means immediate danger for the person expressing it.

P. TRIKAMDAS, India: I would like to know who has violated this Article (No. 9) of the Constitution? What happens to him; are there threats of punishment, and which? That is the question.

Prof. H. MIRBT: I did not quite get the question. The article on freedom of expression cannot really be violated by the citizen, but only by the government authorities.

P. TRIKAMDAS: But a legal procedure would be possible in spite of that?

Prof. H. MIRBT: If the infraction is committed by the authorities there is no way of doing anything about it.

P. TRIKAMDAS: Do I understand you to have said that the judges are not free, nor impartial, and nothing but an instrument of the government? I would like to make sure I got that right.

Prof. H. MIRBT: It is difficult to answer such a far-reaching question in two or three words. In the Constitution of the Soviet Zone there is one section on the independence of courts. The judges are free in the exercise of their judicial functions and bound only by the Constitution and the Law. Nothing can be said against this Article 127. It is known everywhere. But again I have to point to the contrasting practices. What do we understand by independence of courts? It means that the Executive and the Legislative refrain from influencing the passing of individual sentences by the judge, in civil as well as in penal cases.

It is attempted by every possible means to handle all of the civil and penal judicial functions of the courts (in the GDR) in accordance with the wishes of higher authorities. We can read, prior to and during any penal trial, indications as to what the sentence will have to be. In addition, I would like to mention that considerable care is taken in selecting judges so as to get more and more Communists into the judiciary.

A third point: One of the basic principles to assure impartiality of jurisdiction is the rule that no one may be prevented from appearing before his lawful judge but will be tried before the judge provided by the standing orders and assignments of the court. But I know several cases when alterations in the composition of the court took place immediately prior to appointing the day for the trial, in civil as well as especially in penal cases.

A last point (there may be still more points of view): There is an order by a minister of justice saying approximately the following (I can but quote from memory): Since the prosecutor in penal cases already thoroughly considers all significant democratic points of view in his indictment and his suggested sentence, the judges are held to report to higher authorities every time they pronounce a sentence differing from the one suggested by the prosecution. Such an order, which has been pronounced in 1950, as far as I remember, in Saxony, perhaps also in other parts of the GDR, should remove the last doubt as to the impartiality of the courts, especially in penal cases. Allow me to mention another two points, now that you have led me onto the slippery subject of court constitutions:

There is also a so-called Supreme Court. But this Supreme Court only deals with cases brought before it by a direct application of the Attorney General of the Republic himself. Thus the Supreme Court is usually inaccessible. Also, the Attorney General of the Republic is entitled, I believe even within one year after the passing of a sentence, to apply for a quashing.

As a last point, let me mention the greatest judicial murder in recent history, at least in Germany: the Waldheim Trials. When the Russian concentration camps were dissolved in the winter of 1949 and 1950, those prisoners who were not released (about three and a half thousand persons) were simply taken to Waldheim where very severe sentences were pronounced in a Summary Court by judges picked from various courts throughout the German Democratic Republic, and in almost all cases, regardless of numerous regulations, in absence of an attorney. The punishment ranged from, I believe, eight to 25 years of confinement in a penitentiary, plus a number of death sentences. As far as I know, none of the trials lasted longer than 25 minutes.

It would be going far beyond the purpose of this special committee for me to mention more than these short facts. These are problems of penal jurisdiction rather than of basic rights. Allow me, therefore, to end the discussion of this point.

P. TRIKAMDAS: I would like to put another question. I would like to know whether the Investigating Committee of Free Jurists has managed to influence the judges to a certain degree in the direction of practicing independent justice and of pronouncing independent sentences?

Prof. H. MIRBT: The question whether the Investigating Committee has managed to do that can be answered in the affirmative only in individual cases. It is certain, nevertheless, that the Investigating Committee of Free Jurists has tried to achieve that in numerous cases. I may tell you enough of its work to assure you that in hundreds of cases we wrote individual letters to the judges, lawyers, and officials of all kinds telling them where their duties lie — with general references to the Constitution and the laws, as well as individual references to what the persons concerned may have done already or to the task they are about to perform.

I may say, therefore, that no efforts have been spared. In some cases we were successful. We have saved many people from the penitentiary because neither the prosecutor nor the judge dared decide in accordance with the will of their superiors.

Dr. M. BUTARIU, Rumania: I do not agree with the gentleman that these problems should not be further discussed here. I am of the opinion that this matter should be discussed some more. The independence of judges has been discussed here and I understood the question of the Indian representative. He referred to the democratic principle followed in democracies where three different powers exist in the state, namely the Legislative, the Executive, and the Judiciary. We know that these three different powers naturally check each other and it is normal that in such a system the judge should be free, that he should judge in accordance with the law.

But why should the Communist regime be here judged from this point of view? One cannot refer to the outward appearance only, one has to consider what is deep inside. Speaking of the Soviet Union or the other states, the three different powers are nothing but a camouflage for one power, namely Communism. We must recognize that there is no democracy but an organization: power is absolute, the power of one party, and the Russian party will not let anything exist beside it. This means that actually the judge has no rights. For Communism there is but one power. Therefore, no free justice can exist in such a state.

Actually, justice is but an appendix of politics. Therefore, at first, care was taken to do away with the old courts as well as with the independent judges. All independent judges and independent officials were pushed aside. This was done administratively and they were replaced by people not only completely lacking legal training but being illiterates, too. And the more illiterate they are, the more fit they are to carry out these orders. If they cannot even read, how can they interpret the law! This is also partly true for lawyers, at least in my country, where the Bar Association was practically dissolved since there are not even ten per cent of the former members left in the Association. For the Communist Party, too, attorneys are nothing but appendices of politics.

E. GUEGUETCHKORI, Georgia, USSR: I do not wish so start a general debate. But keeping to the judicial issues, allow me to say the following, i. e. tell you something of the practices of Soviet law. It is not true that the Soviets proceed under camouflage. No, they proceed quite openly. As to the independence of judges, allow me to direct the attention of our Indian colleague to the following: Article 112 of the Soviet Constitution states that the judges are independent and subject only to the law. But Article 17 of the Constitution says that any judge may be dismissed from office, and Article 24 of the same document rules that a judge may be dismissed from office if he digresses even the slightest bit from the policy of the party.

Prof. H. MIRBT: Allow me to proceed to the next subject, namely the last sentence of the Article of the Constitution of the German Democratic Republic on the press:

"There is no Censorship."

Some documents on this subject lie before you. Allow me to draw your attention especially to Documents 231, 232, and 233 in which people having been or still being associated with the press report on the practical results of the alleged constitutional ban on censorship. The statements refer to various papers published in or outside of Berlin. These documents

show the great care taken by the SED as well as the occupation authorities to check every single dispatch in the papers, very often each little sentence, each news dispatch — as far as news appear in the papers at all — and to alter it in numerous cases, or even to delete whole sentences.

The control over such papers as are not directly SED papers is a special feature of the conditions prevailing in the Soviet Zone. This is shown in detail in every one of those documents. Freedom of the press, in a wider sense, also includes the possibility to distribute newspaper material. Numerous decrees to prevent press reactions opposed to the ruling system from reaching the population are also printed in the documents at hand. You will gather from Documents 234, 235, 236, 237 ff. up to 241 how the possibilities of distribution are being restricted and prevented.

P. TRIKAMDAS: Allow me to ask another question. Let me tell you that in India press censorship was instituted between 1942 and 1945. There was a policeman in every newspaper office. He read every little dispatch and announced then whether it might be printed or not. The papers then ran empty spaces in order to show that something had been censored. That happened in the period from 1942 till 1945, when the Indians thus carried out passive resistance.

Prof. H. MIRBT: The method of marking censored passages by leaving empty space on the sheets is as old as press censorship itself and plays a very significant role in the press. I do not know any case in the Soviet Zone, however, where an editor might have tried to criticize in this manner the censorship imposed upon him. But I would like to pose that question to the Soviet Zone citizens here present whether I am wrong in that respect or not. I do not know.

SHOUTS: No!

Chairman Prof. Dr. J. CARABAJAL VICTORIA: To what degree does the Party control the press? Have you been able to find that out? You said that the administration carried out the newspaper censorship.

Prof. H. MIRBT: This question of the chairman in a way touches upon the very core of what we may call public life in the Soviet Zone. This question can only be put by someone living in a free democracy where the difference between Party and People, State and Party still is a reality.

In theory, a distinction can be made between Administration, State, Executive, and SED. But in practice there is no difference between the four. There certainly is no difference in personnel since all somewhat important offices in the government of the GDR are in the hands of the Party, and although Article 3 of the Constitution states that the individual civil servant is a servant of the public and not of a Party, there is not the slightest doubt that this phrase — like so many others — is not worth the paper it is printed on. It is one of the basic principles, not only of the SED but of all Communist parties throughout the world, that party discipline is the supreme law and that other standards of any kind are of secondary importance only. It is, therefore, of no practical interest whether a regulation is issued by the mayor or a minister or by any other authority or whether the wish is expressed by the Secretariat of the SED. There is no practical difference. It is but a question of strategy.

If one reads an unfriendly article on anyone belonging to the SED board today — be he Communist or not — it is a foregone conclusion that the silken cord is being prepared for him and the noose will tighten around his neck in due course. In view of this complete interpenetration of the party and all public institutions your question cannot be answered as clearly as otherwise possible and necessary.

Chairman Prof. Dr. J. CARABAJAL VICTORIA: I understand that in the USSR there are two kinds of censorship, first the state censorship, secondly the censorship by the Department of the Party Secretariat. I would be interested in hearing whether or not this bifurcation exists here as yet or not.

Councillor LIPSCHITZ, Berlin: Some brief information: at the beginning of this week the SED Central Committee issued a regulation in the East Zone ruling that in the future a representative of the Central Committee has to be present during all editors' meetings of every newspaper appearing in the Soviet Zone of Occupation. The paper has also to be laid before him prior to "putting it to bed." In that respect the double censorship you were talking about has really come true.

P. TRIKAMDAS: We would like to know whether you are familiar with the number of newspapers that were actually prohibited. If such a prohibition has existed, I would like to know the exact number of all papers that were prohibited.

Prof. H. MIRBT: After 1945 only a few newspapers were licensed and thus obtained permission to reappear. In the Zone there is no possibility simply to start a newspaper enterprise. A so-called license is required. Until the GDR was founded such licenses were issued by the SMAD (Soviet Military Administration in Germany). Formally, the government of the GDR has been responsible for it since that date. Naturally the latter pursues the same political (Communist) goals as the SMAD on which it depends altogether. At the moment I cannot say whether such licenses have been withdrawn in many cases. Considering the set-up of the whole system, there were enough other means of effecting the required influence to make a direct prohibition superfluous.

Question by a DELEGATE: Is there any private newspaper? I mean a newspaper that does not belong to the State but to a private person.

Prof. H. MIRBT: As far as I know all newspapers except "Taegliche Rundschau" are in the hands of either political parties or individual joint-stock companies created for that purpose, or something similar. One can in no way speak of private newspapers in the sense of your question.

Question by the same DELEGATE: I would like to know who finances these papers?

Exclamation of another DELEGATE: And who buys them?

Prof. H. MIRBT: Those papers need not be purchased any more. They are bought anyway (Laughter). But joking aside: Of course I cannot answer that question because it lies completely outside of my subject. But perhaps you know something about it, Mr. Lipschitz.

Councillor LIPSCHITZ: This question again is connected with the issue of private ownership of the papers. There is no private ownership of papers, which answers the question about financing. Owners and

holders of the newspapers are the parties, the Soviet occupying power, or the so-called mass organizations like trade unions, women's organizations and youth organizations, the Cultural Union, etc. These organizations invest considerable amounts of money in the papers. There is not a single newspaper in the Soviet Zone of Occupation whose expenses are covered by its sale. No one buys them voluntarily. The members of the various parties are forced to subscribe to the papers, just like during the Nazi era people had to subscribe to the Nazi press products. If a member of the SED Party dared not to subscribe to the paper of his party, he would immediately be suspected of being a Trotskyist, an Objectivist, or some other kind of diversionist unfaithful to the party. Large firms, etc., are also forced to subscribe to the papers.

Frau Dr. LUEDERS, Berlin: Permit me to make a general remark. It has been said a little while ago that criticism of the existing things is impossible. But let me tell those who are not very familiar with our conditions here, but may peruse a Soviet-German newspaper, "Neues Deutschland" for instance, or perhaps a youth magazine, that they must not let themselves be fooled by spotting in those papers sometimes very severe criticism of goings-on in the Party, especially at Party congresses. You must not consider this criticism free criticism of the system or of the principle. It never is anything but criticism of symptoms and that makes a lot of difference.

Prof. H. MIRBT: I believe that in connection with the statements on electoral rights we have heard enough to convince ourselves that a free foundation of parties or unions is impossible in the Soviet Zone. I, therefore, suggest that we turn to item IV which belongs to another, namely the cultural, sphere: the right to education and educational training (in accordance with Articles 26/27 of the Charter).

P. TRIKAMDAS: I would like to ask whether trade unions are permitted and whether and to what extent public meetings are possible in the Soviet Zone. Such information would be very valuable.

Prof. H. MIRBT: Every organization still needs a license prior to starting its activities. Therefore, no associations existed in 1945. But licensed associations developed and in the course of time a great number of such organizations, especially cultural associations — be it clubs of philatelists, hiking clubs, or merely cultural associations — were merged with the so-called Cultural Union.

The above-mentioned facts are especially true for all sports associations. Every single organization connected with athletic activities was — one cannot but say — forced, with and without legal means, into a head-organization in such a way that now the basis of the sports organization is not the specific type of athletics but the plant or factory the athlete works in. The old organizations were dissolved and made into sports associations of the individual plants. This is one of the impediments to free association most strongly felt by the people because it concerns a sphere of life that is of an unpolitical nature, but at the same time means a lot to people.

(Delegate P. Trikamdass repeated his question on the trade unions.)

Prof. H. MIRBT: The trade unions are a different chapter. There are no trade unions, but there is one Free German Trade Union. I ask the honorable

colleague to extract more detailed information on this subject from the special Committee for Labor Law.

(The Chairman thanked Prof. H. Mirbt and asked Dr. W. Stegemann, of the Investigating Committee of Free Jurists, to take the floor.)

Dr. W. STEGEMANN: Since I understand that the end of the committee meeting is scheduled for 4 p.m. today, I am afraid I will not be able to finish the explanation of the documents on the basic right to education today. I wish, therefore, to explain to Mr. Chairman and the ladies and gentlemen the new State Security Law and the regulations for its implementation.

On May 26, 1952, the government of the GDR released a decree on measures to be taken along the demarcation line between the German Democratic Republic and Germany's Western zones of occupation. You have learned from the report of the Chairman of the Investigating Committee of Free Jurists that the Volkskammer (Lower House) passed a law giving the Attorney General and all prosecutors great power in the way of turning these officials into the rulers over courts and administrations, as well as over the defects and faults existing in courts and administrations. Dr. T. Friedenau explained that this is but an outward appearance. In reality, the State Security Service possesses the real power in the state. It is, as he put it, a state within the state.

The decree I have just cited is based on the claim that the actions of the U.S., British and French occupying powers and of the Bonn government have forced the government of the German Democratic Republic to institute measures aimed at defending the

interests of the GDR population, and making it impossible for the enemy's agents to infiltrate into GDR territory. Therefore, the government of the so-called GDR ordered the Ministry of State Security to immediately take severe measures to increase the control of the demarcation line between the GDR and the Western occupation zones in order to prevent the further infiltration of diversionists, spies, terrorists, and parasites. Ironically, Section 2 adds that all such measures, rules and regulations to be or having been issued by the State Security Service will be rescinded as soon as an understanding has been reached on all-German free elections to create a united, democratic, and peaceful Germany.

One would think now that the local validity of this ordinance would have caused it to be applied only in the territory along the demarcation line. But that was not so. This decree was followed by another one on further measures for the protection of the GDR. This decree which I will put before the ladies and gentlemen extends the order for the protection of the demarcation line given to the State Security Service in such a way as to rule that the measures to be taken by that Ministry will have to prevent the infiltration of diversionists, etc., into any parts of the GDR. This second decree proves Dr. T. Friedenau's assertion made here before you, Mr. Chairman, ladies and gentlemen, that the State Security Service is the ruler of the GDR, the uppermost power in the state.

Ladies and gentlemen, this is what I wanted to explain to you by means of these two decrees. I beg you to pass along the sheets of paper and to peruse these documents.

SECOND DAY

Vice-Chairman Dr. E. ZELLWEGER: This morning we will talk about items IV and V on our agenda. Dr. W. Stegemann will inform us on the infractions of law which took place in connection with these subjects.

Dr. W. STEGEMANN: Mr. Chairman, ladies and gentlemen. Throughout the civilized world culture means the spiritual forces which are active in a community and mould its spiritual and educational character. In culture, the spiritual forces of the individual as well as of the community are unfolded. The cultural standard of a people depends on the high achievements of some of its leading members and especially on the average level of education of the total population. The means of the State to influence culture are: legislation, administration, and financing. That is why the United Nations stated in Article 26 of the Declaration of Human Rights: "Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages." This finds its parallel, at least on paper, in Articles 34, 35, 37, and 39 of the Constitution of the so-called German Democratic Republic. Article 34 says: "Art, science, and their teaching are free." Article 35: "Every citizen has the equal right to education and to free choice of his vocation." Article 37: "The school educates youth in the spirit of the Constitution to become independent, responsible persons who will be

able and willing to participate in the life of the community." Article 39: "Every child must be given the opportunity to fully develop its physical, mental, and moral capacities. Tuition is free."

(The rest of Dr. Stegemann's remarks are identical with the Introduction to Document 242 in the Collection of Documents "Injustice as a System.")

Dr. W. STEGEMANN: I now turn to the next subject of discussion, the restrictions on free movement and travel. The right to freedom of movement is laid down in the constitutions of many countries. It also appears in Article 8 of the Soviet Zone Constitution which reads as follows: "Personal freedom, inviolability of the home, secrecy of the mail, and the right to live at any place are guaranteed. The state may only limit or revoke these freedoms on the basis of laws applicable to all citizens." It goes without saying that such laws curtailing the freedom of movement may be passed on account of housing or food shortage. All of us will agree to that.

(Dr. Stegemann's further statements are identical with the introduction to Documents 254/255.)

Question by a DELEGATE: I read in the documents: "Tuition fees will have to be paid for all high school and ten-class students not exempted from paying tuition fees." Would you be able to tell me how many students are exempted from paying tuition fees?

Dr. W. STEGEMANN: As far as I know there are no statistics on this matter. I can, therefore, only answer this question for a few schools I know. The great majority of parents of high school students have to pay tuition fees. The proportion runs approximately like this: seven eighth of the parents of high school students in a Soviet Zone city have to pay the fees while one eighth are exempted.

(The Chairman asked Mr. F. Teupitz, of the Investigating Committee of Free Jurists, to take the floor.)

Development of Administration in the Soviet Zone

Report by F. TEUPITZ, Berlin

In accordance with the regulations agreed upon by the Allied Control Council and the Potsdam Conference, local administrations or administrators were created in the Soviet Zone. The first election in the Soviet Zone took place in 1946 — as we learned from Prof. H. Mirbt's report yesterday. Local representatives, state parliaments (Landtage) and county parliaments (Kreistage) were elected. At that time, prior to the election, a so-called Democratic Municipal Code was issued granting as much independence as possible to the lowest organs of government.

Section 1 of this Municipal Code states quite clearly that the municipality, as the smallest and lowest administrative unit, is entitled and obliged to perform, under its own responsibility, all administrative functions coming up in the fields of politics, culture, and social welfare. When the state parliaments met, a District Code was agreed upon ruling that the district administration should carry out all those functions in the political, cultural, social, and especially in the economic field, which cannot be handled by the local government units. This regulation safeguards the local government in the lowest administrative bodies as guaranteed by the Democratic Municipal Code and the District Code.

The constitutions of the states (Laender) adopted by the elected state parliaments in the beginning of 1947 also upheld these guarantees that the lowest administrative units should be independent and that state control must not be exercised by the ministries of the state but only by the elected parliament in a special committee called Committee for District and Municipal Affairs.

But the 1946 October elections had proved to the Communists who, after having been forced to unite with the Social Democratic Party, called themselves Socialist Unity Party (SED), that they would never be able to turn the majority of the population into their followers. At the very moment when they realized that a training in Communist ideology of the Soviet-occupied zone of Germany would be impossible by legal means, an organized infiltration of the Socialist Unity Party into all state agencies began.

Allow me to draw your attention for just a moment to the fact that, according to the Democratic Municipal Code as well as the state constitutions, the highest official had to be provided by the party which gained the largest number of votes.

The first attack against the non-Communist parties began with a very base propaganda campaign against

the party representatives. Slanted newspaper propaganda and the worst personal slander were launched in order to overthrow the individual whom the Communists hoped to replace by their own subjects.

In addition, there was something else: the independence of the parties was restricted by the forcible unification of all parties within the so-called Democratic Bloc. All parties had been forced to declare their readiness to cooperate in the Democratic Bloc and to submit to its decisions. Otherwise they would not have been licensed in 1945.

It was a principle in the discussions of the Democratic Bloc that decisions had to be made unanimously. This had the result that every time a candidate of the bourgeois parties did not please the Communist rulers, this unanimity could not be reached. In other issues, when the non-Communist parties failed to agree with Communist proposals, the meeting was adjourned and the parties were told to delegate such people to the next meeting as would agree to the proposals.

This organized infiltration into the administration started as early as 1947 when the ablest representatives of the bourgeois parties were withdrawn or forced to resign and the remaining mayors and county councillors were continuously attacked. The so-called reconstruction in the Soviet Zone, however, consisted of nothing but the plan to create an almighty state-owned industry and to reduce and finally destroy private property and private business.

No possibilities existed in 1945 to build up a state-owned industry. Therefore, private industry, private business, and the craftsmen were given the chance to work again in order to supply the population with what it needed. In accordance with Soviet Ordinance No. 124, all large enterprises, the armament enterprises and large estates were nationalized or, in the case of the large estates, divided up. Each of these enterprises operated with tremendous losses already a few months after their nationalization. The same was true for the large estates which had become people's property.

Private plants and private firms, on the other hand, had started from scratch after the process of dismantling, but had developed rather fast into a decisive factor in the state. Therefore, it was the next task of the administration after 1947 to endeavor to use these enterprises in order to strengthen the almighty state-owned industry. This was carried out without any legal basis, without the possibility of proper proceedings.

The change in the administration commenced when, without a previous change in the constitutional regulations I mentioned before, agencies were created which were authorized to interfere with the activities of the administration beyond the provisions of the constitutions and the District and Municipal Codes.

The states had already created so-called Economic Penal Codes by way of laws passed by the state legislature. But these laws were deemed insufficient by the Communist rulers, so they ordered the German Economic Commission, to which the Soviet occupation power had transferred part of the legislative power, to issue an Economic Penal Code valid throughout the Soviet Zone. This Code is so all-embracing in its contents that every activity not in line with the prescribed policy can be punished with long terms of penal servi-

tude. In addition, the Economic Penal Code provides for the immediate institution of a trustee in every phase of the investigation, in the beginning, while the investigations are being carried out, or in case of suspicion caused by slanderous insinuations.

People were accused at random, imprisoned for several hours or days, and trustees were appointed for their enterprises who forthwith forbade the owner to enter his plant. But who were those people authorized to by-pass the administration and interfere with the very lives and the work of the population? They were the members of the so-called State Control Commission, of the Central Control Commission for the Soviet Zone as a whole, of the State Control Commissions in the states, and of the so-called District Control Officers in the districts. (See Collection of Documents "Injustice as a System," Document 288.)

Wherever the development was not in line with the plans of the Socialist Unity Party, the District Control Officers were sent to check the plants. They looked around until they believed to have found a legal title or argument for subjecting the plants to trusteeships and then socializing them. There are thousands of plants in the Soviet Zone of Occupation who have been under trusteeships for years, sometimes five years, and on whose destiny no final decision has been made yet.

Another symptom of the destruction of all administrative freedom is the so-called budgetary reform which took away from the municipalities, districts, and states the chance to move freely within their scope.

All employees of the administration, regardless of where they came from, what party they belonged to, what creed or religion they believed in, had to attend several hours of Communist indoctrination every week. This indoctrination was called internal enterprise training. In little groups the employees would sit in front of the Communist rulers, were forced to comment on the daily events, had to pass tests on Stalinist literature, had to produce certificates on participation in seminars, and had at all times to prove the willingness to cooperate with the system unless they wished to face a relentless dismissal.

I now enter upon another subject: Dismissals from the Administration. The Democratic Municipal Code provided for the elected parliament to supervise, through a special committee, the dismissals and organizational changes in the administrations. It also ruled that none of the administrative bodies was entitled to oppose such supervision, to reorganize, or to dismiss personnel. But already prior to the election on October 15, 1950, these committees on personnel matters only convened upon urgent request by the bourgeois parties.

Through various intelligent and tricky means, Communists were sent to every important administrative agency.

After the so-called elections on October 15, 1950, all key positions were in the hands of the Communist Unity Party.

A little later, the committees on personnel matters were dissolved on account of a simple, half-page decree issued by the so-called Ministry of the Interior of the GDR. Neither were the constitutional regulations amended, nor did the parliaments pass a law on the subject.

The Infiltration of the SED into the Administration had gone far enough to allow the SED to declare — though only in an internal resolution of the local state organization of Mecklenburg — in February, 1952: "The Comrades in all administrative bodies have to understand that they are not simple employees but party functionaries." An original copy of that declaration is on display on the table over there.

You will understand that any work of the Résistance, or resistance within the administration was impossible, especially under these circumstances and in view of the numerous arrests and mistreatments the arrestees had to suffer. The only thing that could be done by the decent elements still remaining in the Soviet Zone administration was to contact West Berlin groups.

The administration, thus organized with "administrative employees of a new type", as they were called, naturally was open to any change and ready to fulfil any order given by the Party.

Now I would like to point out to you some details on the administrative work itself, namely: on the control of housing facilities which is so decisive for the population and which we have covered in item VI, called Protection of Private Life; on the secrecy of the mail and the respective activities of the post offices; and later on the activities of individual offices especially created to build up a state-owned industry and to destroy private business.

Question by a DELEGATE: The first phase of the destruction of privately owned industry obviously was the phase of mere control; the second phase was that of the nationalization of industry. During the first phase, the employees and the owners continued to work and were in a position to make a living out of it. What, now, is the meaning of the second phase? Does it simply mean expropriation, or has the State taken over the responsibility while the former owner still is responsible for the administrative side. These are the questions.

F. TEUPITZ: I wish to say in this connection that already in the first phase of control or trusteeship the owner was expropriated since he was neither allowed to profit from his enterprise nor compensated. The only difference was the fact that the name of the proprietor was not yet changed in the books and records. The situation has remained like that to the present day. The proprietor received no money from his enterprise effective the day a trustee was appointed. I wish to re-affirm that a great number of firms are still under the control of a trustee. In many cases, however, a fictitious penal prosecution for economic trespasses was instituted and the owner's property was confiscated. In such cases a transfer in the land registers was ordered.

Dr. J. MIKUS, Czechoslovakia: I would like to know when the Sovietization of the administrative agencies started. The first National Committees were created in all East European countries as early as 1945, and I would like to know when they were established in East Germany.

F. TEUPITZ: In 1948. At first, the Economic Penal Code was issued and a few months later, on September 1, 1948, the regulations for the Code's implementation were passed.

Prof. L. J. CONSTANTINESCO, Rumania: One of the methods used by the Communists is the following: prior to the expropriation of private pro-

perty excessive taxation was imposed on private enterprises. I wish to make that quite clear. I know of a case in my own family where a private enterpriser paid about one million of taxes a year and then was suddenly told he had to pay eleven million the very next year. Naturally, it was completely impossible for the firm to pay such a high amount of taxes, and this impossibility in itself was enough for the owner to give up his enterprise, since failure to pay the taxes is considered an act of sabotage and will be punished with twenty years of forced labor.

F. TEUPITZ: I would like to direct your attention to the Housing Law in the Soviet zone of occupation and to the constant infractions of the secrecy of the mail. After 1945, the housing problem was one of the most difficult issues, and due to concentration on the construction of a state-owned industry in the Soviet Zone, the housing problem could not be eased by the construction of new houses. It is a fact that the restrictions on living space as laid down in Allied Control Council Law No. 18 had to be continued until today in the severest manner.

(See Introduction and Documents 269—279 of the Collection of Documents "Injustice as a System.")

F. TEUPITZ: Systematically, functionaries loyal to the party line were sent to live in the flats of people undesirable to the Regime.

Not in this field alone, but also in the sphere of administration (which I would like to mention in this connection) the spying on people was carried even to private homes. So-called "Unpaid Administrative Assistants" were appointed — one confidant in every street — to keep contact with the administration. The confidants for every street were directly suggested by the authorities of the Socialist Unity Party. The confidants in every house were to be elected by the tenants; but whenever the elected person failed to meet with the approval of the Soviet Zone rulers, the elections were invalidated. In some cases, functionaries loyal to the party line were maneuvered into the houses through changes of residents. Thus every move and every expression of opinion within the house were reported to the administration.

QUESTION: How high are the rents?

F. TEUPITZ: The rents are laid down in uniform regulations; the Price Penal Code, and are supervised by special authorities for rent and price control.

I would like now to ask the witness to speak about the activities of the offices for the protection of people's property and some special incidents.

J. KAELEBER: Ladies and gentlemen,

On December 1, 1948, I started working as a legal adviser in the Office for the Protection of People's Property with the Brandenburg state government in Potsdam.

These offices were created in 1948. It was only within their competence to hold and administer the factories and other enterprises expropriated by the State Sequestration Committees.

The Office for the Protection of People's Property had to classify the expropriated assets, transfer them to certain judicial entities such as the Association of People's-Owned Iron and Metal Industries on behalf of the plants of the metal industry, or to the Associations

for Building Material or for Housing Construction on behalf of the building industries. That practice was employed all the way down to the county and municipal councils. This was the main task of the Offices for the Protection of People's Property at that time. The details added later on, which I would say mark the criminal character of these Offices, I wish to mention later.

Permit me, at first, to give you some examples of expropriations as such:

The arbitrariness of expropriations in the Soviet Zone will be understood when I tell you that in Klein-Machnow near Berlin, for instance, expropriations were carried out in a manner that is beyond description. For instance, a Frau Christa Lauer, nee von Lettow-Vorbeck, was deprived of her property as follows: Frau Lauer's husband had been a nominal member of the Nazi party from 1937 to 1945, however without holding any office. Herr Lauer was a lawyer and notary public. It has been proved that Herr Lauer had to apply for party membership because he suffered serious economic discrimination and losses. The house concerned did not belong to Herr Lauer but to Frau Lauer. It was a five-to-six-room villa. Frau Lauer never belonged to the Nazi party or any of its affiliated organizations.

In the East Zone, there exists a so-called Ambassador Rudi Apelt. He is said to be in Moscow now, representing the so-called German Democratic Republic in Russia. He was looking for a decent house. He came to Klein-Machnow, saw this house, and it had to be expropriated forthwith, of course, simply because Herr Apelt wished to have the house for himself. Therefore, the following justification for the expropriation was constructed: Frau Lauer's husband was but a nominal member, but he most probably profited economically from his membership. As to Frau Lauer, the owner of the house, it was assumed that she favored Nazism. This assumption sufficed to pronounce the expropriation. The application was handed to the council of Teltow district in Mahlow, where county councillor Siebenpfeiler and county official Kucharski favored the expropriation which was finally pronounced by the State Sequestration Committee under ill-famed Mr. Weidenbach.

I would like to mention another example for the expropriation of plants and enterprises: In Brandenburg-on-the-Havel exists a toy factory of considerable size with a little over 200 workers and employees. It had been tried to expropriate this plant, but it had proved impossible because none of the leading employees had been members of the NSDAP or its affiliated organizations. Thereupon, the following was ascertained: In 1943, this plant in Brandenburg had employed young workers from the East, young Russians or Poles aged 16 or 18 to 20, who had been told to help out. Almost all German workers had become soldiers, so foreign labor was used. One of the plant's foremen once slapped one of the youngsters' face because this young worker from the East had picked the foreman's pocket. The foreman was of the very correct opinion that the Secret Police would arrest and liquidate this young man if he, the foreman, reported the incident, while after a simple slap the whole affair would be forgotten.

This slap was taken as proof that the owner — who had not known anything about that slap until the expropriation in 1947 — had mistreated foreign

laborers, and he was thereupon expropriated without any legal argument.

Another case: In Neuenhagen, County of Niederbarnim, a Herr Reimann was deprived of his property. He owned a small house. He had been a nominal member of the Nazi Party which, however, in no way warranted an expropriation. But his property was expropriated. Afterwards, in 1948 and 1950, two so-called proceedings upon invitation were started. In 1948, it was ruled that the house would be returned to Herr Reimann on account of his negligible political incrimination. Its return was approved by the East Zone Minister of the Interior, at that time a man by the name of Dr. Steinhoff. It was also approved by the Soviet Military Administration, now named Soviet Control Commission. Thus, the return had become legally binding.

But the county councillor of Niederbarnim, Herr Paatz, and deputy county councillor Glashagen, who had both been responsible for the expropriation, opposed the return — not for political or factual but for personal reasons only.

The case was delayed for more than a year and a half. Finally, when Potsdam and the East Zone government urged the realization of the return, Herr Reimann one day in 1950 received a letter from Bernau, the capital of the County of Niederbarnim, telling him to report next day to the councillors' office, the State Security Service or K 5. Herr Reimann was smart enough not to go but to take the train to the West Sectors of Berlin, and to stay there. Twenty-four hours later Frau Reimann — who knew that her husband had safely arrived in Berlin — received a written note from the councillors' office saying her husband had died by an apoplectic stroke during his visit with the State Security Police on the preceding day. It was learned from deputy county councillor Glashagen that it had been intended to let Herr Reimann disappear. (He confirmed this before a Walter Voss in the East Zone Ministry of the Interior.)

In addition to its original tasks of 1948, the Office for the Protection of People's Property was given functions, especially in 1949 and 1950, which were contrary to any half-way decent person's ideas of right and justice. It was ruled that any other real property or working capital, and any property of a person leaving the area of the East Zone or East Berlin, be it with or without complying with the police regulations on the registration of persons, be confiscated. This was done by way of creating a curatorship absentis based on a section of the German Civil Code, although this is lawfully impossible. We are talking about the ill-famed Circular No. 39 of the year 1950.

The confiscation of properties was to be carried out by the Office for the Protection of People's Property. The implementation was the task of the district delegates for the protection of people's property in the various counties and municipalities. It was carried out in an indescribable manner. I remember a case in Schwarzheide, district of Kalau, near the Cottbus Forest, i. e. on the Eastern border of the Soviet Zone to Poland. There lived a family by the name of Haensch. The man had been a mayor and a member of the NSDAP. He had been arrested by the Russians in 1945 and died in an internment camp, leaving his wife and four little children. Although dead, he was convicted by a court and his property was confiscated.

Not even a blanket to sleep on the floor was left to the children — one of them only four and a half years old.

Towards the end of 1948, the Office had received orders from Berlin to delegate employees even into minor-important private enterprises for checkups and frameups that would make the nationalization of the enterprises possible.

After the day of Germany's surrender, for instance, machines and materials from vacated or shut-down plants or vacant stores of the Armed Forces were sold through the county councillors or mayors of the respective towns. There even existed a Soviet Military Administration order to perform these sales in order to help the industry, — which was at a complete standstill in the Germany of 1945, — somewhat back on its feet. These sales were rescinded in accordance with a regulation handed down to the Offices for the Protection of People's Property in 1949. Reasons given were: those plants have in the meantime become people's property and a sale of people's property is illegal. Authorities forgot that in 1945 the plants had neither been sequestered nor expropriated, nor nationalized, because that order was not given until later. In spite of that, the machines were returned and the proprietors lost their property without compensation.

Question by a DELEGATE: Could the witness tell me whether the judicial authorities or the legislature agreed to those decisions in the first and the last case? The cases the witness mentioned have made a great impression on us. I would like to know whether all persons concerned accepted those arguments.

J. KAELEBER: The expropriations were acknowledged by SMAD Order No. 63, of April 17, 1948. This order created a new legal situation by giving a legal basis to these cases of expropriation. Allow me to go into detail on the last point, namely the inspection of plants with the aim of nationalizing them. Up to the date of my arrest on November 27, 1950, no legal regulations for these measures existed although they had been started before that time and although in the course of that year dozens of enterprises in the Land Brandenburg — I am only in a position to mention cases from Brandenburg — were nationalized through such measures. No legal basis for them existed.

QUESTION: Was there any legal remedy against this decision?

J. KAELEBER: Practically none. Theoretically, there existed the possibility of filing a complaint with the higher authority, namely the Central Office for the Protection of People's Property in the East Zone Ministry of the Interior in Berlin. In practice, the complaint was transferred from the Berlin Central Office to the state offices, i. e. the Offices for the Protection of People's Property with the five state governments in the East Zone, which either drafted the reply and handed it over, or even made their own decisions. I do not know of a single case where private owners were successful with their appeals.

Chairman Prof. Dr. J. CARABAJAL VICTORIA opened the afternoon meeting and gave the floor to Mr. F. TEUPITZ.

F. TEUPITZ: Through the statements made by the witness this morning the Committee is informed of the practices employed by special offices of the Soviet-German administration. Now I would like to report

on the activities of the government boards dealing with industrial management and judicial matters. In every Soviet Zone county, district, and municipal administration there exists an authority called Board of Industrial Management, but the expression Industrial Control Board would be more adequate. Upon the resumption of local government after 1945, both the industrial and trade police and the Industrial and Trade Inspection Board resumed their activities. In accordance with special ordinances, especially those based on orders of the occupying power, a first screening of trade and industry was carried out which I do not have to detail before this Committee. The Committee for Civil and Economic Law will thoroughly discuss that problem. But it was of importance for the population of the Soviet Zone that the Industrial Code did not remain valid and that, in general, all tradesmen and craftsmen not subject to the screening of active Nazis and war criminals were allowed to continue to work as best they could. I already pointed out this morning that even in the Soviet Zone private initiative was not hampered in the first months after the surrender in 1945.

In consideration of the desired Sovietization of the economy it is understandable that the SED did not tolerate the normal development of any branch of East Germany's economy. Simultaneously with the creation of a people's-owned industry and of special control authorities, therefore, sharp political pressure began to be exerted on the government trade boards and the parliamentary Committees for Trade and Economy. State-operated trade being introduced at the same time, including a tricky system of distribution for the scarce amount of materials available, the Soviet Zone tradesmen soon found themselves in difficulties. The consumer's cooperatives and the state-operated trade obtained the largest amount of goods while private enterprises were allotted not even the most essential materials. It was especially difficult to obtain spare-parts for instruments and machines. In this situation began the deleterious activities of the state control organs which I mentioned before. The Trade Control Commissions sent the district control officers into those shops and enterprises which were earmarked for nationalization. In thousands of cases those functionaries loyal to the party line appeared, accompanied by a group of policemen, in the shops of craftsmen, tradesmen, and retailers and thoroughly checked everything. They managed to find everywhere some slight infringement of the rigorous rationing regulations. We are not referring to the actual black-marketeers here, but to the numerous people who on account of negligible irregularities or due to slanted reports were deprived of the means to make a living. Revocation of the trade license had to be and was made by the administration. Up to the time of the so-called election in 1950, i.e. as long as the Trade Committees still existed, the SED tried to maneuver party functionaries especially loyal to the party line into the government trade boards. They succeeded almost everywhere. These employees loyal to the ruling system ordered the revocation of the trade license immediately after they had received a slanderous report, and also provided for a trustee to be appointed in case the enterprise was to be continued as such. Through remonstrations which lasted several months the persons concerned tried to annul those decisions. But even in the face of strongest support from the Trade Committees, which often opposed the

withdrawal of a license, the owners had their property returned to them only in very rare cases. After October 15, 1950, the Trade Committees were reorganized but formally. This time they were composed in such a political way, however, that no opposition against the trade policy of the SED was to be expected from that side. The Committees in some areas failed to convene for over a year, in some states they were even dissolved in the meantime. The government trade boards operated solely on the basis of unpublished regulations, and the Industrial Code thus became ineffective without being repealed.

The speaker continued by detailing the contents of Document 292 and discussing some different cases laid down therein. Several delegates asked questions which were answered by the speaker. He then went on dealing with the activities of the judicial authorities in the administration and said:

The Economic Penal Code of September 23, 1948, has transferred a considerable amount of the penal jurisdiction from the judiciary to the administrative authorities throughout the Soviet Zone, going as far as authorizing the administrations to decide in a considerable number of cases how they will be dealt with. Thus, side by side with the penal jurisdiction developed a penal practice of the administrative authorities in accordance with exclusively political points of view. The executive authorities are, on the whole, the judicial departments of the district and local governments.

The speaker then elaborated on Document 293 and explained the duties and the practices of the government's judicial boards by means of the minutes on the second meeting of the chiefs of the judicial offices of the counties and the ministries of Saxony-Anhalt on February 14, 1952. (Document 294.)

F. Teupitz then went into the problem of remonstrations against administrative acts and thoroughly dealt with jurisdiction of the administrative courts in the Soviet Zone of occupation:

A special expression, let me say the climax, of all legal ideas is the jurisdiction of the administrative courts. The citizen has the right to accuse the state whenever he believes to be unduly burdened by the state's decrees and measures. An independent court examines the statements of the plaintiff and especially the disputed administrative act. The court is entitled to annul the decrees issued by the administration. In the Federal Republic and in West Berlin any decision of an administrative authority can be contested before an administrative court. The General Clause is the basic principle. But even where a decision of an administrative authority may not be contested before an administrative court, an effective protection can be safeguarded. It only depends basically on the range of competency. Although administrative courts were also created in individual Soviet zone states, their competency was limited to an extent that made positive activities impossible. In Saxony and Saxony-Anhalt, no administrative courts were created — but Saxony boasts a president of such a court who draws his salary. Administrative courts were created in Brandenburg, Mecklenburg, and Thuringia. They developed a limited activity but were unable to effectively aid the population. Before I go into the subject of the individual laws on administrative courts in the three states and their application, I would like to explain the development in Thuringia, where such a law was

passed even prior to the publication of Control Council Law No. 36 of October 10, 1946, which reorganized the administrative judicature throughout Germany. The newly elected state parliament of Thuringia had issued a law on administrative courts which provided for the General Clause and for the possibility of a court examination of every administrative act. But when the large-scale oppression of the population began, the SED demanded a new law on administrative courts for Thuringia wherein the authority of the court should be duly limited. This motion resulted in very lively arguments. The bill brought in by the SED faction had to be withheld for a considerable time until, on October 7, 1948, the state parliament, upon pressure from above, passed the new law on administrative courts. Thus, the administrative courts had become ineffective in Thuringia as well.

The speaker then dwelt on the subject of the various laws on administrative courts in the Soviet zone states, pointing to the numerous limitations of competency and giving a number of details. The speaker in particular dealt with the Thuringian law of September 22, 1951, whereby the decisions of the housing authorities of this state are no longer under the jurisdiction of the administrative courts.

The speaker answered various questions put by delegates. When no more questions were asked, the Chairman gave the floor to Mr. E. Brandt.

E. BRANDT, of the Investigating Committee of Free Jurists, reported on fiscal policies, revenue laws, and tax administration in the Soviet Zone, stressing that the anti-private-ownership tendencies have increased during the past years. Taxation is being deliberately misused in order to effect and speed up considerable changes in the economic set-up of the Soviet Zone. The unshakable, although often cleverly camouflaged, aim is the Bolshevization of the East Zone by systematically exploiting and destroying private business. Financial losses caused by the blocking of accounts, the dismantling, and the currency reform after 1945 are not recognized as losses as far as taxation is concerned. The owners of economic enterprises, therefore, have to pay taxes for purely fictitious profits. While the plant's actual economic losses are not deductible from taxes, actions that have nothing to do

with the enterprise (for instance the sale of personal property at the exorbitant prices customary after 1945) have to be treated, with regard to taxes, like transactions of the enterprise — which again will result in the fixing of fictitious profits. In every one of these cases the taxes cannot be paid from the income but solely from the substance. Thus, the fiscal administration turned into the hangman of private business in the Soviet Zone.

According to the Soviet Zone Constitution, legislation is the task of the Volkskammer (People's Chamber). But actually, legislation has been handled by the administrative authorities for a long time. Among approximately 640 official publications, the 1951 Law Bulletin of the German Democratic Republic contains there are but six (!) Volkskammer laws. All the other publications derive from the supreme administrative authorities. In the field of tax legislation, the Soviet Zone Ministry of Finance orders amendments of the existing law and issues new legal regulations, in many cases without the necessary legal authorization or in defiance of the limits of such authorization. The Soviet Zone taxpayers are unable to protect themselves against this arbitrary regimentation since the Ministry of Finance has not yet established the courts to deal with taxation problems which were solemnly promised in a Volkskammer law of February 9, 1950. Thus, the taxpayers were deprived of their legal protection against undue taxation which was guaranteed by law.

Chairman Prof. Dr. J. CARABAJAL VICTORIA thanked the speaker, then asked for questions and a full discussion of the items on the agenda.

A lively discussion developed, almost all delegates and guests participating. Some speakers demanded that the injustice here proved be uncovered to the Free World and that the goal of Communism be continuously condemned.

After a lengthy discussion, Vice-Chairman Dr. E. ZELLWEGER finally declared: The Soviet-German system corresponds to that of the Soviet Union and ultimately leads to tyranny unlimited by law. Law in the Soviet Zone is but a subordinate means for the realization of the Communist political goals. It is infringed whenever it stands in the way of their realization.

THIRD DAY

The Development of Jurisdiction in Albania by N. KOTTA, Albania

We belonged to the West. Since the 19th century we have had a Constitution. Our legislation was closely connected with that of the Western Constitutions, part of our jurisprudence tended toward France, our penal law resembled that of Italy. All our customs were closely related to the West, though we maintained the traditions of our own country. We sent our students to Western countries and in 1939 some 90 per cent of our judicial administration officials were trained in the West. There was no possibility whatsoever for the executive to intervene in matters of jurisprudence.

This development was interrupted in 1939 by the invasion of the Italian Fascists. The Albanians defended themselves against this occupation, as was their right.

Then came the German occupation. The resistance against the occupation cost us 25,000 dead. That is a great part of a nation numbering but one million citizens. Unfortunately, the Communists succeeded in taking over the leadership of the resistance movement so that, after the liberation, they also took over the government. In horrible mock trials they murdered the real patriots. Afterwards they tried to legalize their deeds by holding elections for a National Assembly. There was but one ticket, the Communists', which was comprised of only a very few candidates. The voters had to throw their ballots into a deep box. One of these boxes indicated, by help of a special apparatus, how many ballots had been thrown in and the outcome was as could have been expected.

The National Assembly which emerged from such elections adopted on March 15, 1945, a Constitution which very much resembled that of the Soviet

Union. A new currency was introduced and named "Money of the Albanian Republic." The coins bore a Moscow stamp and the date of issue of the preceding year. The Constitution guaranteed the right of private property which right, however, is ignored all the time. Freedom of religion was also guaranteed, but the representatives of the three faiths existing in the country — the Moslems, the Catholics and the Greek-Orthodox — were imprisoned or killed. The Moslems, in particular, had to suffer mistreatment.

Regarding religious problems, I should like to add that monasteries and nunneries were closed; their priests were murdered or imprisoned. In November, 1951, the Catholic Church was socialized. This appears to be an attempt made by the Soviets to annihilate completely the ten to 15 per cent Catholic minority in Albania.

In agriculture, great efforts were made to enforce collectivization; yet this attempt has been abortive to date.

Another often violated article is that on the freedom of speech. Last May, the parliament introduced a new Penal Code which is closely connected to that of the Soviet Union. It contains a clause providing for retroactive power of this Code. All of the so-called war agitators, as well as all those persons not fulfilling their duty to work, are liable to prosecution. Almost all of the judges presently in office are illiterate, because almost all of the former judges were liquidated. Today all judges are Communists. I would have liked to report on the trials which resulted in the annihilation of our intelligentsia, but I will tell you only that much: in seven years of Communist domination over Albania, more than 10,000 people were executed, with or without having had a trial. 20,000 to 30,000 people out of a total population of one million are in concentration camps.

Mr. Chairman, allow me to make some remarks on the future of our country: Tito left the Cominform and since that time the liberation of Albania appears to be possible in the near future. The Cominform countries no longer have any common borderline with Albania. Nevertheless, an invasion of Stalin's forces into Yugoslavia would result in an international conflict.

The Chairman asked the next speaker to give his report.

The Development of Public Law in Latvia since 1945 under the Soviet Regime

by M. CAKSTE, Latvia

After having reconquered Latvia during World War II, the Soviet government found that the Soviet system and the socialist economic order it had established in the first year were completely destroyed. Everything had to be sovietized and nationalized anew. The situation in the flat country was particularly difficult. A new agricultural reform had to be carried through. This was done in 1945 and 1946. Almost 70,000 farms were organized and handed to the farmers for usufruct.

The Constitution was not changed in the beginning. According to the Soviet principles of public law, the Constitution, just as jurisprudence, is but a superstructure. The decisive point, however, is the basis,

i. e. the whole of the production conditions which give contents to jurisprudence. They set its tasks and determine its operation. Thus justice cannot develop into an obstacle to the basis nor to the developments deemed necessary by the Party according to the principles of the Communist theory and the current party policy. Jurisprudence and superstructure can but follow these developments and turn the newly established order into legal principles.

The Constitution had granted to the farmers the free and unlimited use of the soil and had acknowledged the private farms. The Party, however, held the collectivization of agriculture necessary. Under such circumstances, the regulations of the Constitution were no obstacles in the party's road to the materialization of its political aims. The Party collectivized agriculture in open contrast to the regulations of the Constitution.

Hardly had the peasants taken over the soil for use, when the Party's Central Committee, as early as 1946, sent thousands of Communists from the towns into the country to force the farmers into kolkhozes. The Party committees in the districts and municipalities as well as the basic organizations of the Party in the rural areas were authorized to handle the collectivization. There is no doubt whatever that force had to be used in doing so.

As late as 1948, the Soviet-Latvian Constitution was changed. Article 5 now reads: "The socialist property in the Soviet Republic of Latvia exists in the form of state property (property of all of the people) and in the form of co-op/kolkhoz property." One single word had been added, the word "kolkhoz." Yet how much innocent blood, how many bitter tears, and what unlimited human distress does that word stand for!

The brutal superiority of the party and the government found no trouble in breaking the desperate resistance of the peasants. In 1948, the Party registered the organization of 1,090 kolkhozes comprising 235,000 individual farms. What the policy of the liquidation of the kulaks as a class actually meant was proved by what happened soon after. Late in March of the year 1949, mass deportations of farmers were carried through. Several tens of thousands of them were reported to have been displaced in the most brutal manner from their homesteads to Siberia.

Following these actions of force, the collectivization of agriculture no longer met with opposition. On October 1, 1949, a total of 4,035 kolkhozes were organized, i. e., 90 per cent of all private farms were done with.

Those 4,035 kolkhozes of October 1, 1949, were re-organized by the end of the year 1951 into 1,513 greater kolkhozes, comprising 229,000 individual farms, i. e. 98.4 per cent of the grand total. The Constitution had as little power to protect the kolkhozes against the Party as it had had in previous times to protect the private farmers.

One of the basic articles of Stalin's Constitution which is repeated in the Constitutions of all republics of the Soviet Union is Article No. 126, the second part of which rules that "the active and conscious citizens from the ranks of the working class as well as from all other strata of the working population will unite in the All-Union Communist Party of the Bolsheviks which is the vanguard of the working people in their fight for the consolidation and further development

of the Socialist system, and which represents the leading core of all social and state organizations of the working people."

This article embodies the whole meaning of Stalin's party doctrine. The leading role of the Party, according to Stalin, means that no particular decision of the Soviets and other organizations will ever be made without the Party, that the Party supervises the state organs and, with their help, carries through the resolutions taken by the government.

That is why Article No. 126 of Stalin's Constitution fixes some sort of a guardianship of the Party over the working people. It has to be carried through everywhere to prevent the workers from expressing their immature will. The workers are but the tool to express the will of the Party. Wherever and whenever workers do not comply with this principle of Stalin's Constitution, they are considered enemies of the regime. This regulation of the Constitution gave the legal foundation for the rape of Man in the Soviet Union.

Since 1945, the Communist Party of the Soviet Union has extended its power to more and new fields of life so that today it dominates all spheres of life in the country. This force is being guided by the influence of the new doctrine of "the leading role of the great Russian people" exerted in the spirit of extreme Russian nationalism.

The Party has spread its organizations all over the country though in itself being but a comparatively small group of 33,000 members, mainly Russians and Russified Latvian Communists coming from Russia to Latvia. But the Party has representatives of its basic organizations in all important offices, agencies, enterprises, plants, institutions, associations, etc., so that the net of Party organizations covers the whole country.

Latvia's administrative division into districts and communities was not adjusted to the Party state whose statutes were shaped after the administrative division of Russia. To overcome this divergence and thus to build up an efficient organization, the Supreme Soviet of Latvia decided on December 31, 1949, to introduce a new administrative division in Latvia. The former 19 districts upheld by the Constitution were changed into 58 Rayons. On April 8, 1952, the Presidium of the Supreme Soviet of the Soviet Union decided to turn these 58 Rayons into three large districts, the so-called Oblasti, the Riga, the Libau, and the Duena-burg Oblasti. Thereby Latvia was made equal to Russia as far as the administrative division of the country was concerned.

That meant, for Latvia, a considerable increase in the number of civil servants who today staff three District Soviets, 58 Rayon Soviets, 60 Town Soviets and 1,300 Municipality Soviets. The individual Soviets have up to ten departments occupied by civil servants drawing fixed salaries. Parallel to the Soviet system, Latvia has the Party apparatus which, at all places where Soviets exist, has its committees with the same departments as the Soviets. Adding to this apparatus of Party and Soviets the officials of other state agencies and various economic enterprises and kolkhozes, one gets an impression of the gigantic bureaucratic monster heavily burdening the population.

As early as November, 1940, the Soviet legal codes were introduced in Latvia with retroactive power, including the Penal Code with its lunatic Article No. 58.

The Soviet penal law was immediately used even in pending trials. Soviet tribunals gave order, on the grounds of that Penal Code, for the execution of no less than 1,355 persons during the first year of the occupation alone. The defendants were not even granted the opportunity to defend themselves.

Another proof was the mass deportation carried through by the Soviets in Latvia in the years of 1941, 1945 and 1949. In 1941, more than 35,000 men, women and children were deported from their homes. The figure of deportations during 1945 and 1949 ran up to several tens of thousands. Every single mass deportation was a crime against humanity because completely innocent persons were deported. Their alleged guilt was neither demonstrated nor confirmed by any legal process.

Regarding the exploitation of Man, it can be stated that the kolkhoz peasant may not leave the kolkhoz without the permission of its chairman, not even for a short trip to the neighboring town. There are but three reasons for finally leaving the kolkhoz: the expulsion which for the person concerned means the confinement in a forced labor camp; the transfer to work in another economic area; and the transfer to another kolkhoz. In the latter cases, permission must be obtained from both the old and the new enterprise.

The payment of the kolkhoz farmer consists in the income of the kolkhoz after the state taxes and the contributions to the various funds have been deducted. This surplus to be distributed to the farmers in most cases is so small that they would starve unless they had their tiny personal property.

All of these measures have contributed to make the kolkhoz peasants virtually unfree and economically exploited. This is the significant characteristic of the legal position of all the Latvians under Soviet dominance: they are given duties but no rights. There is no such thing as human rights in Latvia under Soviet-Russian rule, since the Soviet power, in harmony with its inner structure, is in open contrast to human rights.

Chairman Prof. Dr. J. CARABAJAL VICTORIA:

We are very grateful to Mr. M. Cakste for his speech which later will be the subject of questions and discussions of the committee members. Prior to that, however, I beg to ask Mr. H. Mark to report on the development in Estonia.

Illegal Actions of the USSR in Connection with and during the Soviet Occupation of Estonia

by H. MARK, Estonia

The territory of the Estonian Republic was occupied by the Armed Forces of the USSR on June 17, 1940. This occupation was not preceded by any warlike actions. Estonia was incorporated in the USSR following a decision of the Supreme Soviet. The occupation was carried through without considering the fact that (1) on February 2, 1920, the government of the USSR in the Tartu peace treaty had unconditionally acknowledged Estonia's independence and had renounced voluntarily and for all times "Russia's right of domination over the Estonian people and their country on the basis of the legal situation in the past and on the basis of international

conventions"; (2) in the non-aggression pact signed by Estonia and the USSR in 1932 both these powers had committed "themselves to renounce any arbitrary act directed against the independence of the partner, regardless of whether such an aggression or similar action be launched alone or in connection with other countries, and regardless of whether or not such an act would be preceded by a declaration of war"; (3) according to the mutual assistance pact dictated by the USSR to Estonia in September 1939, "the implementation of the pact must in no way touch upon the sovereign rights of the partner"; and (4) Estonia publicly declared its neutrality on September 1, 1939.

By occupying the three Baltic states the Soviet Union broke the treaties it had signed and thus committed an international crime. To camouflage before the eyes of the world the fact of forcible annexation, the USSR attempted to stage a "voluntary" incorporation of the Baltic states, trying to make it appear an act in line with the right of political self-determination. In reality that right was never used in this connection. Thus, for example, no plebiscite was ever held on this matter.

The elections did not result in the establishment of a legal parliament, nor did they indicate a popular demand for an incorporation which had never been expressed during the elections. The decision of the Estonian pseudo-parliament which emerged from these illegal "elections" to plead for this incorporation is invalid in two respects: (1) because it was made by an illegal body that cannot be taken as a constitutional organ authorized by the Estonian people, but only as an organ of the Russian occupation; and (2) because this decision overruled the constitutional power of the Estonian parliament. For the decision for union with another nation was one of the inalienable rights of the people which could not be referred to any of the governmental organs. Nevertheless, a plebiscite as such has never been held.

I myself took part in these elections as a candidate of the coalition opposing the Communists. Yet, before the actual elections I was proclaimed an enemy of the people and crossed off the ticket, as were all the other candidates of the opposition. In each election district one single candidate — the Communist one — remained on the ticket.

That the Soviet forces, when occupying Estonia and the other Baltic states, pursued but Soviet war aims has now been admitted by the USSR itself. In the official Historical Report on Falsifications of History issued by the USSR Information Office in 1948 in answer to the U.S. State Department's collection of documents on Nazi-Soviet Relations, the allegedly voluntary union of Estonia with the USSR was not mentioned any more. The report simply stated that the Soviet forces entered Estonia to form the Eastern front. Therefore, the Soviet regime which the Russians imposed on Estonia is illegal and exclusively based on military seizure.

The principles that "everybody is entitled to participate in the government of his country", and that "the will of the people shall be the foundation of the governmental authority" were violated by the Soviets in Estonia in 1940.

Most probably it is unnecessary to mention that up to date nothing has changed and that the will of the people has no influence whatsoever on elections or other governmental activities.

The Communist Party is the institution steering all actions of both the state and the municipalities. The Party organizes the elections, appoints all civil servants, all enterprisers and employees of the industries and kolkhozes. None of these persons is independent, they all have to obey orders and to carry through regulations given by the Politburo. On the other hand, the Estonian Communist Party is strictly subordinated to the All-Union Communist Party and its Politburo which gives orders to, appoints the leading functionaries of, and carries through purges in the Estonian Party.

Available figures reveal that to date some 1,200,000 persons are living on Estonian territory, 700,000 to 800,000 of whom belong to the original population, i. e. two thirds of the pre-war population. The rest of them were killed, deported, arrested, or somehow managed to escape to the Free World. At least 400,000 Russian soldiers and civil servants, as well as workers imported from Russia and employed in the major industries, have to be added. There is sufficient evidence at hand to prove that the majority of the Communist Party members belong to the latter group. Thus the Estonian People's Democracy is governed by, at best, two per cent of its population.

Freedom of the press, of assembly and of speech, as well as other rights and freedoms do not exist in Estonia. Everything is done by order of the Communist Party and its affiliated organizations that exact censorship. I assume, however, that all this is absolutely clear to all of you, and that I need not give any more details.

Allow me to conclude by expressing the hope that the resolutions to be taken by this committee will condemn this gross violation of international law of which the Soviet Union is guilty by occupying Estonia, and will state that the Estonian people have the right of independence and of self-determination by free elections, as well as the right to the freedoms which forcibly were taken from them by the Soviet Union.

The Chairman thanked the speaker and opened the discussion.

P. TRIKAMDAS: We have heard many reports from Communist-dominated countries, but I think that for those among us who know Communism nothing new came out of them. If you know the picture once you can say that it is repeated time and again, and that the Soviets in all cases attempt to win dominance. In all of these countries the Constitutions are but a scrap of paper. The actual conditions look different, in the Soviet Union as well as in the satellite states. Yet it is necessary to understand all this to be able to fight it. It does not make any sense to say: "Human rights were violated." No attempt to maintain them has ever been made. The Constitution is but a facade to mislead the world. I am sorry to admit that it was just the intellectuals and the jurists who were fooled by it. It is important to inform the people in the countries which are still free.

Regarding the criticism brought forth from different sides to the effect that the Soviets wish to create a new, or reform the existing, social order, I can but comment that such an idea does not trouble me. What I am asking myself is this: have the Soviets really created a new social order, a new paradise? All those

who know the Soviet Union also know that what they have there is state capitalism, not a change of the social order. Only very few people benefit from it.

If people complain that all properties are taken away, I do not complain. They will be expropriated anyhow as soon as the new social order is introduced. But this new social order must be a people's order so to speak, a democratic order where there is no dictatorship by a single party.

It is a pity that in the Free World there is no unity. Some people are longing for a return of the golden age of free enterprise. To be sure, it will never return. Other people want a centralized socialist order, others, e. g. the Indian Socialists, want a socialist order organized in a decentralized way so that the democratic rights are guaranteed. We should attempt to come to a single viewpoint in order to be able to fight. Without being unrespectful I want to state that we have heard here nothing but complaints on what is going on in Rumania, Albania, etc. All this is true. But complaining will lead us to nothing. It is up to us to suggest and propose means and methods to be used by the people in the oppressed countries. Hatred of a regime alone will not do. It must be backed by the will to resist. If the people living in these territories are given suitable directives they will be able to resist. Here, in this meeting, the will to resist must be created — not only for the people in Germany, but for those living in any country under oppression.

I have given you my idea on the question of resistance. This resistance was also displayed in my country against a major power. We did not take any forcible measures. We resisted peacefully. A great many of us were imprisoned. Hundreds and thousands were beaten and shot by the police and military police. But we continued our resistance, for the population was on our side and so were, actually, the police. Now we are told that the people in the Soviet-dominated countries are against the Soviets: that it would pay to resist the Soviet power should be beyond any doubt. We had to deal with the British power. The British were a liberal power. This may be different with the Russians.

Only because the population was on our side could we take to the method of civil resistance. This method should be attempted wherever there is oppression. Or else, must we wait until World War III breaks out to destroy the Stalin regime? Today we are living in a world that cannot be half free and half enslaved. That means that we must build up one free world.

E. GUEGUETCHKORI, Georgia, USSR: The thirty years of Soviet domination my country had to suffer are proof enough that the Indian delegate is right: the people have not yet understood the necessity to unite. I recognized that when I visited friends in the Baltic states back in 1924. They deeply regretted the unhappy fate of my country but that was about all they would do — having no power to assist us at that time. France was the only country to pay us any attention. For twelve years this country guaranteed our international status, which was a unique act in history. All the other countries, however, left us in the lurch.

Today when danger is steadily increasing, when one country after the other is being crushed underfoot, it is only right to say that we should concern ourselves

with the nations mostly endangered. If the countries which are still free do not have this attitude I no longer believe in civilization. For we have suffered a fate which will also come over the other countries. I have seen the birth of the Soviet regime and have fought this regime for quite a time. I, for instance, know Stalin personally and that is why I have the right to warn you that Communism does not know any borders. If the West is not willing to defend itself by all possible means, then the whole world will be endangered.

C. VAN RIJ, Netherlands: The words of this gentleman have touched me deeply. With great interest I also heard the words of Mr. Trikamdas. But I would like to recall what the very wise Brazilian delegate told the first Plenary Assembly: We should keep to the purpose for which we have here assembled and which was written in our invitation, i. e. to listen to evidentiary material on the conditions in Germany's Eastern Zone and give our judgment as jurists. I believe every single word spoken here by citizens of nations behind the Iron Curtain. In our resolution we should only speak of those things we know exactly and of which we have seen proofs.

In our resolution we should first declare that certain human rights must never be violated, neither by legislation nor by administration. Then we may state facts that have been proved here, facts about the existing situation in the East Zone of Germany; and in the end we may draw our conclusions.

I myself want to draw one conclusion: I deem it necessary, (1) to tell all people the world over that these human rights as such must be guaranteed, and (2) that there must be independent legislation everywhere and an independent judiciary that could oppose even the state power if necessary. If we make such a statement we shall exercise a real influence on German unity and freedom in East Germany. Today this is not only a German but a European problem.

Prof. L. J. CONSTANTINESCO, Rumania: I should like to answer one of the questions of the Indian delegate. He approves of the idea of changing the social order. I do not think social changes would be bad, but they should be democratic changes in order to strengthen democracy and human rights and not to destroy the dignity of man. Society must adjust laws to man, not vice-versa.

The delegate from India spoke of resistance and of different methods used in India. I should say one also needs faith. Many people have proved their faith in prisons. The delegate from India spoke of the civil resistance used by Mahatma Gandhi. He spoke of the effects this civil resistance has had even on the British police. I should like to believe that, but I also think that there is a fundamental difference between the British and Soviet police. I do not think we can compare the two. The fact that the Indian delegate, in spite of what he suffered from the hands of the British police, is among us here and now, is proof enough of this difference.

Prof. F. DELLA ROCCA, Italy: After all we have heard I think we should draw conclusions now that will be of use. We should express ourselves in as dignified a manner as possible and should emphasize human values. In view of the sufferings of men in some parts of the world certain principles of a general character should be established. The Indian delegate

said we should not limit ourselves to judicial principles but should suggest counter-measures. That is what we should do: make suggestions about how to realize those principles.

In our resolution we should deal with the problems the world of today has to face, i.e. the issues of justice, freedom and natural evolution. We should also deal with the problem of an organization, perhaps a permanent one. To make this organization work we would have to create an international judicial conscience. Such a conscience has not existed so far. But we should also work out something of practical value, something like a structure that will guarantee the judicial principles.

I do not think that there will be any language difficulties involved in such a task, nor any difference in views or attitudes. We should overcome all possible differences and present the world which is interested in our work with a document that truly corresponds to the facts.

My friends and I have gained the impression that this is a significant judicial Congress which has to treat not only some difficult basic problems but also general issues. When we leave Berlin we will have increased our responsibility in the Western world.

Chairman Prof. Dr. J. CARABAJAL VICTORIA: By all that I have heard I have come to know the logical fruit of the Soviet regime: the individual has no rights whatsoever. The very principles of life and of creation have been suppressed in the individual. This is an attitude which holds as significant only the end, not human life. Unlimited authority is the sole and final source of that kind of jurisprudence.

The United Nations Economic and Social Council has been established to strengthen the defense of human rights; that is why we have a Universal Declaration of Human Rights. Whoever opposes the U.N. Declaration in this way more or less commits a crime and breaks the law. I believe that every member nation of the U.N. must maintain these rights. This means that there must be something like a general conscience, an international conscience. I have always stated that an international law guaranteeing the basic rights of Man and the fundamental freedoms of mankind is possible. Every U.N. member organizing a dictatorial regime would contradict the principles of the U.N. It would be a system of tyranny violating those principles.

All defenders of human dignity, all who hold the opinion that we should cooperate in the fight against tyranny, should do something. We should, therefore, give our report an even more exact form and should draw international conclusions in order that we may raise our voices against the proved violations of human rights and refer them to the U.N. We must defend the human rights so that some day this Declaration will be realized. We must establish international organizations which not only complain but actually make charges in legal fashion so that at any time the conditions prevailing in any country can be investigated.

Vice-Chairman Dr. E. ZELLWEGER in conclusion suggested the members of the Sub-Committee for the Drafting of the Resolution; the delegates approved of his proposals. The Sub-Committee was composed of the Chairman, Prof. Dr. J. CARABAJAL VICTORIA, Uruguay; the Vice-Chairman, Dr. E. ZELLWEGER, Switzerland; Prof. H. MIRBT, Berlin; M. CAKSTE, Latvia; C. VAN RIJ, Netherlands; and F. TEUPITZ, Berlin.

FOURTH DAY

Chairman Prof. Dr. J. CARABAJAL VICTORIA opened the meeting and asked the reporter of the sub-committee to read the draft resolution. The draft was read section by section and discussed by the Committee members. After clearing some language difficulties, correcting some translation

mistakes etc., unanimity was finally reached on the text of the resolution.

(Text of the Resolution see Part Four "Resolutions of the Working Committees.")

With the passing of the resolution, the Committee for Public Law ended its work.

Committee for Penal Law

Chairman: Prof. G. BELLAVISTA, Italy;
Vice-Chairman: Prof. Dr. S. BISSISSO, Iraq;
Secretary: W. ROSENTHAL, Berlin.

FIRST DAY

Chairman Prof. G. BELLAVISTA opened the morning session and gave the floor to Prof. J. Graven.

Human Rights limit the State's punitive Power

Report by Prof. J. GRAVEN, Switzerland

When on December 10, 1952, the United Nations Plenary Assembly proclaimed the Universal Declaration of Human Rights it aroused great hopes all over the world. This Declaration, in accordance with the experiences of the war years, drew the consequences of a totalitarian state doctrine; it was inspired by a philosophy of law which considers man as the center of all legal thinking. The role we jurists will have to play in this Congress will be to investigate whether and, if so, to which extent these human rights are being guaranteed by the legislation and the penal institutions of the states we are going to deal with.

There is no doubt that, besides its obligations, the State also has rights, including that to exert a certain compulsion in order to maintain domestic peace and social order in the interest of the community. In this sense penal law is absolutely necessary for the preservation of any state. The above-mentioned compulsion, however, must be executed in the interest of law and not in that of brutal force, nor in that of the arbitrariness of political organs. Prof. Graven then quoted the general principles of a legal state, principles which have been proclaimed by the U. N. Declaration of Human Rights.

It is not sufficient that a humane penal code may exist and be applied. A second fundamental principle of penal law in a state based on justice is that of the existence of certain guarantees for the implementation of penal procedures such as arrest, investigation methods, and appeal. Above all it is our task here to study and examine one specific penal system which, by help of law texts and other documents, will be explained to us.

What is the purpose and use of our studies and resolutions? It may be mentioned here that the U. N. Commission of Human Rights has just completed a comprehensive report and two draft conventions on these problems. It appears that the hopes of the year

1948 have been betrayed and that today there is general discouragement with respect to the practical application of the rights laid down in the Declaration. Nevertheless, respect for and application of these principles are indispensable and the protection of human rights against permanent violations by the state has been demanded in uncounted complaints directed from all sides to the U. N. Secretariat. Last year alone the number of such complaints ran up to more than 25,000. Now it is up to us jurists, the natural guardians of law, to raise our voices. Otherwise the great cause of justice will suffer the same fate as the ideals of disarmament and international solidarity.

It is our task to examine and to state whether or not the state system and the legal order do correspond to the principles of right and justice, to direct public attention to possible violations and, finally, to recommend juridical means and guarantees safeguarding those principles. At this point our task is finished and it is up to the statesmen to fulfill theirs.

Chairman Prof. G. BELLAVISTA: On behalf of all Committee members I thank Prof. J. Graven for his brilliant report. Now I give the floor to Mr. W. Rosenthal to describe the development of penal law in the Soviet Occupation Zone of Germany with respect to Articles 19, 18, 17 and 5 of the Declaration of Human Rights.

W. ROSENTHAL, of the Investigating Committee of Free Jurists, began with a description of the Constitution of the Courts and the tasks of the Public Prosecution in the Soviet Zone of Occupation.

(The contents of his report are identical with the Introduction to Documents 1 ff. of the Collection of Documents "Injustice as a System.")

W. Rosenthal then dealt with the free expression of opinion, same Documents.

W. ROSENTHAL: Now, allow me to speak on the next subject, that of the

Freedom of Conscience and Religion.

(W. Rosenthal quoted Article 18 of the Declaration of Human Rights.) At the present time it is not yet possible to state that either of the two Churches in the

Soviet Zone have been persecuted systematically, though certain details in this respect have been observed already. Systematic persecution, however, has been applied to another denomination.

W. Rosenthal then reported on the persecution of Jehova's Witnesses in the Soviet Zone of Occupation. His report did not add any new aspects to the Introduction and Documents 17—25. W. Rosenthal presented the Committee with photostatic copies of individual documents.

W. ROSENTHAL: I am in a position to introduce to the Committee a witness, a leading official of the sect of Jehova's Witnesses, who may report to you on the experiences which he himself has had during the persecution of his sect.

WITNESS: Statistics of July 25, 1952, give the total of arrested persons as amounting to 1,602, including 1,039 men and 563 women. Out of this number of arrestees quite a few have been released during the period of persecution after having been held for a time. At present a total of 792 people still are in prison, 210 of them women.

Out of those 792 a total of 696 were given either penal servitude or prison terms amounting to a grand total of 4,598 years, five months and two weeks. Another fourteen persons were sentenced to life-terms.

W. ROSENTHAL: Are there also youths among the sentenced Jehova's Witnesses?

WITNESS: There are, but we cannot establish a statistic for them, since we have not registered the birth dates of the arrestees. Yet I can give you a particular strong case: One of our brethren, his name is Lothar Duda, who is still under 17 years of age, was arrested and a little later sentenced to eight years of penal servitude. He is a resident of Bernburg and is serving his term now at the Magdeburg penitentiary.

W. ROSENTHAL: Have any members of your sect been sentenced to death?

WITNESS: None of them, but so far ten persons have died in prison, five men and five women, mostly — as could be ascertained — from violence, i. e. they were beaten to death during the hearings.

W. ROSENTHAL: How do you know that?

WITNESS: In three cases, for instance, we know from eye-witnesses who saw the corpses, as well as the blood-stained, pierced and torn clothes.

W. ROSENTHAL: Allow me, please, to insert the following: The Investigating Committee of Free Jurists received an exact and detailed report on the murder committed on Herr Poppe, of Meissen, member of the sect of Jehova's Witnesses. Herr Poppe's wife was informed that her husband had hanged himself in his cell. Yet we received a report of an eye-witness who succeeded in seeing the dead man. Herr Poppe was beaten to death. His head was completely smashed and disfigured.

The Supreme Court stated that the sect of Jehova's Witnesses had committed espionage. The charge was based on the assumption that members of the sect had prepared territorial maps upon which they had marked objects of strategic importance. They were further charged with sending those maps to the U. S.

WITNESS: I am able to reject this charge in detail and beyond all doubt. I know all about it myself. Following my liberation from a Nazi concentration camp I worked in the East Zone from 1945 until the persecution started, i. e. a total of five years, in the Magdeburg branch office of the Watch Tower Bible and Tract Society. There I represented the interests of the sect in the Soviet Zone. As many of you certainly will know, the rites of our services are somewhat different.

The witness then gave a description of the religious customs, the propaganda and the organization of Jehova's Witnesses. His report did not add anything new to the Commentary of the Watch Tower Society, Document 20 of the Collection of Documents "Injustice as a System."

W. ROSENTHAL: What about the prohibition of Jehova's Witnesses by Minister of the Interior Steinhoff? At that very moment they realized that their sect was forbidden. Why, then, did they continue their services after they were condemned by the Supreme Court, why did the defendants not stop their activities?

WITNESS: Well, besides the fact that Jehova's Witnesses are active Christians who will always defend the freedom of conscience and religion, we had no information at all on the ban until on August 30, 1950, our branch office was closed and the State Security Service began immediately to arrest our brethren. The prohibition was made known by Minister of the Interior Dr. Steinhoff only after the action had been started. We never received a written copy of the ban which only later we read in the papers.

W. ROSENTHAL: The witness just said the mass arrest was started on August 30, yet this ban was dated August 31.

WITNESS: Yes, of course, that confirms what I just told the Committee.

W. ROSENTHAL: The verdict against Jehova's Witnesses said that one of the defendants was found in possession of the map of an airbase which he obviously planned to send to the U. S. The verdict further said that another defendant had with him a technical drawing. How is it that Jehova's Witnesses have such things?

WITNESS: These two documents did not come from our office and were not found there but were the private property of two persons. In the one case, that of the technical drawing, the man concerned was a technical designer in an industrial plant and it is not unusual that he possessed technical drawings. I cannot take a stand regarding the assumption that he planned to send this blue print to the U. S. I do not know what he was planning, but I do not believe in the truth of this charge.

As far as the map is concerned, it was no drawing, but — as stated in the verdict itself — a normal map from the Nazi era upon which an airbase was marked. We know that, in the days of the collapse of the Reich, maps were left in numerous cellars and under the roofs of houses, maps with signs for airbases in some cases which, however, did not show anything in connection with the Soviet Zone Administration.

Question by a DELEGATE: Could the witness give us a rough figure on how many people belong to Jehova's Witnesses so that we may know the percentage of those arrested?

WITNESS: There is no such thing as membership in the legal sense of the word. Our sect is a voluntary union based only on common religious belief. Statistically we can only register those who regularly cooperate in the Evangelization Services in connection with the Watch Tower Bible and Tract Society. The total of those active Evangelists hardly exceeded 20,000 throughout the Soviet Zone when the persecution started. This number included, however, men, women and children.

Question by a DELEGATE: Was the Christian Science sect also forbidden in the East Zone, were the homes of Christian Scientists also searched?

WITNESS: I do not know anything about that.

W. ROSENTHAL: Nor have I ever heard of a single case of a sentence imposed on any of its members. We know, however, that some homes were searched, but at the present time it can be stated that a persecution as sharp as that of Jehova's Witnesses has not taken place.

(The witness was dismissed.)

W. ROSENTHAL: I have cited the verdicts and laws pertinent to the subject of political penal codes as well as to the freedoms of thought, conscience, religion and expression of opinion. Let me conclude this subject by presenting to you a document which, I think, will appear somewhat strange after what you have heard. It is Circular No. 125 issued by the Soviet Zone Ministry of Justice on September 5, 1951. It reads as follows:

"The Fascist tyrants in Germany threw tens of thousands of upright anti-Fascists into prisons, penitentiaries and concentration camps. In order to be persecuted or robbed of one's freedom, it was sufficient to have a different opinion, to reject Fascism, to be a member or functionary of the workers' movement. These victims of Fascism are known under the name of political prisoners. Today nobody will be arrested on account of his opinion. He, however, who attacks our anti-Fascist-democratic order or interferes with the construction of our peace economy, commits an action liable to punishment and will therefore be sentenced on account of his criminal actions. Prisoners of that category are not political prisoners, but mean criminals. To call those prisoners 'political prisoners' is therefore forbidden. If in individual cases it is necessary to identify the prisoner in detail, concrete titles will be given, such as 'criminal according to Article No. 6 of the Constitution', 'according to Order No. 201', etc."

Chairman Prof. G. BELLAVISTA opened the afternoon session and asked Mr. W. Rosenthal to speak again.

W. ROSENTHAL at first dealt with the Universal Declaration of Human Rights, Article No. 17, establishing Man's right to private property. He reported on expropriation in the Soviet zone of occupation but stressed that this Committee will discuss only those kinds of expropriations which were carried out by means of penal law. W. Rosenthal emphasized the practical use of Order No. 201 and in that connection gave a detailed description of the Itting case. (See Introduction and Documents 130 and 139 ff. of the Collection of Documents "Injustice as a System.")

W. ROSENTHAL further dealt with the Economic Penal Code of the Soviet occupation zone and with Order No. 160 issued by the Soviet Military Government. His statements on the subject did not add anything new to Documents 130 to 199 of the collection "Injustice as a System."

W. ROSENTHAL: Now I turn to the Charter of Human Rights, Article No. 5, which in part reads: "No one shall be subjected to brutal, inhuman or degrading punishment." Since I always referred to the degree of punishment when I spoke of politico-economic trials I will not deal with that subject again. Article No. 5 of the Charter gains great importance, however, when we come to speak of the penal prosecution of juveniles. In the totalitarian state, as in every dictatorship, there is a constant fear of internal opposition and in particular of resistance of the youth. That is why Soviet Zone jurisdiction hits hard at juveniles.

(The following statements on the Persecution of Youth did not add anything new to the Introduction and Documents 48 ff. of the collection "Injustice as a System.")

W. ROSENTHAL gave a detailed description of the Flade case, and in that connection introduced to the Committee the defense counsel of the convicted high-school boy Hermann Josef Flade, Dr. Bohlmann.

Dr. BOHLMANN: At night Hermann Joseph Flade used to paste anti-Communist posters on house doors. When he was trapped by a People's Policeman who tried to arrest him, Flade stabbed the police in the back with his pocketknife. Flade was not charged with and sentenced for resistance against the state nor for bodily injury or serious bodily injury, but the death sentence was imposed on him on the grounds of Article No. 6 of the Soviet Zone Constitution which was quoted here on previous occasions. Agreement was reached on the verdict in a closed session attended by the State's Attorney, the court members, the head of the State Security Service and SED officials, but without the defense counsel. At this session the verdict was fixed at 15 years confinement in a penitentiary. The real reasons why in the trial Flade was sentenced to death would be difficult to find out.

After the trial I was ordered to go and see the chief of the SSD, Herr Gutsche, who expected me to persuade Flade to confess that he had wanted to kill the policeman on duty. In this conversation Gutsche told me that with the death sentence he had made a mistake. When I asked Gutsche what verdict he deemed right, he answered that he would modify it to 15 years. When I argued that according to the general practice in the Zone a verdict of five years would be the utmost, Gutsche banged on the table, yelling: "Then I can resign from my post!" The final revision of the sentence to 15 years confinement in a penitentiary was imposed in gross violation of the German Penal Code. I was only granted one day and a half to substantiate my arguments for the revision.

The alteration of the sentence by the Supreme Provincial Court at Dresden was also a gross violation of the German Penal Code, since the Court was not entitled to pass a new sentence but only to refer the case back to the County Court for a new trial and decision.

In violation of this provision the Supreme Provincial Court ignored the law and decided that the County Court could not come to another decision than 15 years confinement in a penitentiary, since there was no other penalty than death or confinement for life. The 15 years could consequently also be imposed by the Supreme Provincial Court.

Prof. J. GRAVEN: What means of defense were available to you and under what circumstances were you allowed to talk with the defendant?

Dr. BOHLMANN: I was allowed to talk with the defendant only half an hour and in the presence of a People's Policeman, immediately before the beginning of the trial.

Question by a DELEGATE: What do you think was the real reason for the modification of the death penalty?

Dr. BOHLMANN: I believe that the sole reason for the change of the death penalty was the protest expressed by the Free World.

B. W. STOMPS, Netherlands: May I add that we in the Netherlands were informed on the verdict by cable whereupon the resistance fighter associations in Belgium, the Netherlands, Luxemburg and other countries became concerned with the case and immediately sent a huge number of protest to the government of the Soviet Zone.

W. ROSENTHAL then referred to other trials of juveniles all of which are reprinted in the Collection of Documents.

Question by a DELEGATE: Are the verdicts you mentioned here the usual ones or are sentences generally milder?

W. ROSENTHAL: I have tried to extract from our Collection of Documents the average verdicts.

Question by a DELEGATE: Does a regulation exist providing for a release on parole for juveniles?

W. ROSENTHAL: According to the present Juvenile Court Law, such a regulation exists theoretically. But in fact such a release on parole of a youth sentenced on a political or an economic charge has never been heard of.

Question by a DELEGATE: Is a granting of clemency possible in economic penal cases?

W. ROSENTHAL: There actually have been cases of clemency, but there has never been such thing as return of properties, of business or other confiscated items. Nor have I ever heard of clemency in one of the cases on which reports were given here.

Question by a DELEGATE: Are the living conditions in the political prisons better than in the normal ones?

W. ROSENTHAL: I would like to answer this question only by saying that the treatment is horrible. Next Wednesday afternoon you will be given the opportunity to meet people who have lived in such prisons.

Question by a DELEGATE: Are there any regulations on the use of punitive flogging or on any limitations to such flogging?

W. ROSENTHAL: There are no regulations permitting punitive flogging. In spite of that, inmates of the prisons are being beaten. Generally, the bastinado is being used during the imprisonment before the trial and during investigations, but not during the execution of the sentence.

Question by a DELEGATE: Here in West Berlin I have seen Communists inscriptions on house walls. What punishment are the authors given if West Berlin agencies apprehend them while pasting up such hand-bills?

W. ROSENTHAL: Generally they will not be punished at all. In individual cases they will get a minor term or a small fine.

SECOND DAY

Chairman Prof. G. BELLAVISTA opened the morning session and asked Mr. W. Rosenthal to speak.

W. ROSENTHAL: Ladies and gentlemen, I will speak today on Article 9 of the "Universal Declaration of Human Rights" saying that no one shall be subjected to arbitrary arrest, detention or exile.

In the Soviet-occupied zone of Germany such arrests are being made every day and night, mostly after the suspect has been spied on and watched. The cases of arbitrary arrests can be divided into those where the people concerned are abducted or kidnapped, sometimes even from West Berlin, and those cases where the arrested persons are ordered to come to some governmental office from which they never return. Most of the arrests are made at night and are carried out by officials of the Ministry for State Security, by the State Security Service, the SSD. This State Security Service has been mentioned here rather often. It was founded in February 1950, and may be looked upon as a successor organization of the Nazi Gestapo. As to its quality, I would call the work of the State Security Service inferior to that of the

Gestapo. In one respect the State Security Service is better, namely as far as secrecy and impenetrability are concerned. All of its officials are particularly reliable and trained SED functionaries. They are blind tools and obedient servants of the Soviet Zone system.

These State Security Service officials never present to the arrested person any warrant for arrest signed by a judge. They are entitled to order arrests all by themselves and they never think of seeking the support of a judge to legally order arrest. Theoretically there is a regulation that, to safeguard democratic legality, every arrest must be legalized by a warrant signed by a judge. The facts, however, are that either the State Security Service does not care about such warrants or that former people's judges who now are State Security Service officials, sign and issue such warrants on the premises of the Security Service under the pretext that they are professional judges.

Allow me, please, to present to you some witnesses who will report to you on these arbitrary arrests and detentions. First Mr. Toni Schmitz. When was the witness arrested?

WITNESS: On December 12, 1951.

W. ROSENTHAL: Where?

WITNESS: In Gross-Glienicke, near Potsdam.

W. ROSENTHAL: Does the witness know why he was arrested?

WITNESS: No.

W. ROSENTHAL: Who arrested the witness?

WITNESS: The SSD.

W. ROSENTHAL: At what place? At the station, in the street, at home?

WITNESS: In my home.

W. ROSENTHAL: At what time?

WITNESS: Around 10 a.m.

W. ROSENTHAL: Now, please, can the witness describe how he was treated from the moment of his arrest.

WITNESS: Over there in the Zone the Potsdam District Court in its capacity as Surrogate Court had appointed me curator of an estate and curator absentis. They used a case of curatorship to lure me to Potsdam. While in the car they put handcuffs on me and in Potsdam took me to the No. 2 Prison. I was checked there for which purpose I had to undress completely. Then I was photographed, enface, in profile and from behind. They took prints of all ten fingers and of the whole hand. Then I was taken to my cell. For some time I had a one-man cell, for the rest of the time I shared a cell with another man.

W. ROSENTHAL: Was the witness taken before a judge for hearing?

WITNESS: No.

W. ROSENTHAL: Did the State Security Service show the witness a proper warrant of arrest?

WITNESS: No.

W. ROSENTHAL: What was the witness asked and how often was he taken to hearing?

WITNESS: At first I was questioned twice by a Russian, once in the daytime and again the following night.

W. ROSENTHAL: And what then?

WITNESS: Then I heard nothing for two full weeks, i. e. over Christmas and New Year. Later I was questioned by two State Security Service officials. On other occasions there were even three or four of them, again with a Russian and an interpreter who questioned me. It was then that I was told what the charge was, namely being the member of an underground movement and having protected West Berliners from expropriation in my former capacity as chairman of a local committee.

W. ROSENTHAL: Did they explain to the witness what was meant with that underground movement in detail?

WITNESS: They did. I was confronted with a man I knew slightly and who maintained I had told him of my membership with that underground movement. Later they tried to talk me into working for the SSD in which case I would be released at once. But I refused to do that.

W. ROSENTHAL: Had the witness really anything to do with any underground movement — or with any efforts directed against the official opinion in the Soviet Zone?

WITNESS: No. It would be against my very principles because I would not like to endanger my relatives.

W. ROSENTHAL: For how long was the witness imprisoned by the Security Service?

WITNESS: I was released on January 30, 1952, i. e. after a total prison time of seven weeks and one day.

W. ROSENTHAL: Was the witness given any certificate on this prison time?

WITNESS: No.

W. ROSENTHAL: Was the witness informed that the charges against him had turned out to be wrong and unfounded?

WITNESS: No.

W. ROSENTHAL: What reason was the witness given for his release from prison?

WITNESS: No reason.

W. ROSENTHAL: Has the witness filed any claim for indemnification for his unfounded arrest?

WITNESS: No, immediately afterwards I moved from the Zone to West Berlin.

W. ROSENTHAL: I now introduce to you the witness Fritz Franke. Where did the witness live?

WITNESS: In Halle/Saale.

W. ROSENTHAL: What did the witness do in March, 1951, in West Berlin?

WITNESS: I spent my school vacations here with my sister.

W. ROSENTHAL: Please, can the witness tell us what happened on his trip home?

WITNESS: On April 1, 1951, I used the through-train to Halle. During the ride, somewhere near Bitterfeld, I think, a People's Policeman checked my identification papers whereupon he looked through my things, my suitcase and my portfolio. Therein he found some food which caused closer investigation. Then some news-papers were found. So I was taken to a special compartment where my clothes were searched. There the leaflets were found whereupon I was arrested.

W. ROSENTHAL: What sort of leaflets were they?

WITNESS: Various leaflets against different public institutions, mainly against the People's Police, and also some information material on expropriations as well as on people's-owned enterprises, etc.

W. ROSENTHAL: So, that is what was found on the witness. Well, and then he was arrested?

WITNESS: Yes.

W. ROSENTHAL: How long had the witness to wait until he was taken before a judge?

WITNESS: I was never taken to any judge.

W. ROSENTHAL: How long was the witness in prison?

WITNESS: Until November 9, 1951.

W. ROSENTHAL: That was slightly over seven months. Was there a warrant of arrest against the witness?

WITNESS: No.

W. ROSENTHAL: How often was the witness questioned?

WITNESS: Early in April, I was questioned four times and late in July another five times.

W. ROSENTHAL: In April and in July? No more hearings after that?

WITNESS: No.

W. ROSENTHAL: Was the witness allowed to receive visitors?

WITNESS: One single time shortly before I was released, i. e. late in October, I was allowed to see my mother.

W. ROSENTHAL: That means no visitors from April to October?

WITNESS: No.

W. ROSENTHAL: Was the witness allowed, during his arrest or later when he was in prison, to inform his relatives?

WITNESS: Not at all.

W. ROSENTHAL: How old was the witness when he was arrested?

WITNESS: 17 years.

W. ROSENTHAL: What was the witness told upon his release?

WITNESS: I was not given any reason at all. I was told I would be released on the grounds of an amnesty. I was never given any detailed reasons.

W. ROSENTHAL: Was the witness in a one-man cell or together with others?

WITNESS: At first I was held with some other arrestees but from April 5 to September 8, I was completely alone in a one-man cell, and from early to late in June in a cellar.

W. ROSENTHAL: What was the size of the cell?

WITNESS: It measured about 20 to 10 feet.

W. ROSENTHAL: Was the witness beaten or mistreated?

WITNESS: With the exception of some slaps in the face I was not beaten.

Question by a DELEGATE: Why was he slapped in the face?

WITNESS: Once when I did not feel so good and repeatedly asked for a doctor I was told, more often than once, that there was no doctor or the doctor was not in. So I reported sick the next morning, as I had been advised to do, but without success. After several questions I was slapped and thereupon renounced any further attempts to see a doctor.

Chief Prosecutor Dr. KRAEMER, Cologne: The witness told us in the beginning that he was not allowed to inform his relatives on his arrest. Later he reported that in the end of his prison time he was visited by his mother. How did she come to know of his arrest?

WITNESS: She did not learn it from me. All of a sudden I was called to come down-stairs, half an hour before I could see my mother. I was told I could see her in about half an hour if I wanted to.

Dr. KRAEMER: Didn't she tell you afterwards how she came to know about your arrest and where you were kept?

WITNESS: My mother told me she was informed on the very same day. There came a car. Somebody alighted and told her she might go to see me. So she went with the car to the prison where we then had our conversation.

Prof. J. GRAVEN: Was this conversation attended by criminal police or was the witness alone with his mother?

WITNESS: There was an SSD official around.

W. ROSENTHAL: Please, permit me now to inform you on a special case of arrest. The question has very often been raised whether in the Soviet Zone there is such a thing as kinsfolk responsibility. That means, is it possible that in case the man to be arrested has somehow managed to escape they will arrest instead his wife or some other relative? In general the answer is: No. But there are exceptions.

Such an exception is the case of the wife of veterinarian Dr. Griesse. This Dr. Griesse was to be used as an informer in the service of the SSD but he fled to West Berlin. On November 2, his son appeared at his new home to tell him that he and his mother had been taken to the NKVD, the Soviet police, where they were questioned and that his mother had not returned from this hearing. The son had a letter from his mother directed to his father. May I circulate a photostat of the letter.

In this letter Dr. Griesse was urged by his wife to return to the Zone by all means, otherwise she would have to stay in prison. The son had been promised a reward if he succeeded in bringing back his father, otherwise measures would be taken against the whole family. The father did not return. The son was sharply reprimanded and sent again to West Berlin under the threat of reprisals. This trip had no better result. Thereupon Mrs. Griesse was released from prison without having suffered any chicaneries or mistreatment.

Now I come to Article No. 5 of the 'Universal Declaration of Human Rights' which says that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

A great number of people have escaped or have been released from custody by the Security Service. They have reported what they had to suffer during their detention. Some of them were tortured and mistreated without giving the confessions or statements wanted. They knew that the tortures would not end when they signed such a confession. Many others, however, who became weak — if I may say so — signed everything, be it as a defendant or as a witness, necessary for a trial of some other defendant. They signed everything they were asked to sign.

We know about official juridical directives issued by Soviet Zone authorities to obviously harden detention by the Security Service. For instance, Circular No. 7, dated February 13, 1951, rules that relatives of SSD arrestees must not be allowed to come to see them. We have heard this in both latter cases: not earlier than at the very end of his time in prison the son was allowed to see his mother. The lawyers and defense-counsels are forbidden by Circular No. 7 to look into the documents of such proceedings.

Not only in political but also in economic penal cases we find such general regulations regarding people arrested before trial. Circular No. 726 of the state government of Saxony rules that no economic criminals must ever be released, whether they are under arraignment or already convicted. Investigating authorities, courts or authorities for the execution of a

sentence which might be inclined to approve of a request for release have to submit the documents, together with a certificate by a government physician, to the Ministry for final decision. That means that the judges and public prosecutors are not entitled to decide such issues by themselves. Judges and State Attorneys who, in contradiction to that regulation, order the release of a prisoner have to expect, according to Circular No. 726, a trial before a Soviet military tribunal on account of sabotage.

Please allow me to present to you some witnesses on the problem of torturing and mistreatment of arrestees. These three witnesses have no objections to being photographed by newsreel or press photographers. First the witness Guenther Hertling. May I give you a short background information on this witness. After his release from French PW camps he worked in Schleswig-Holstein, Federal Republic. In October 1948, his mother living in Leipzig fell seriously ill. So he went, with a regular interzonal passport, to Leipzig where he reported to the police station. Shortly before his pass expired he was asked to come to the police station again. What was the witness told there?

WITNESS: I was asked whether I, though being born in Saxony, wanted to return to West Germany. I answered yes. They asked me then what I was going to do there. I had worked there, I said, and I was going to resume my job. That was why I would return. Thereupon I was told I could also work here, and my interzonal pass was taken from me. I said I did not want to stay in the Zone because I enjoy more freedom in West Germany. Then I tried to cross the zonal border illegally. But I was caught and taken back to Leipzig. When I arrived there they had already a registration card from the government doctor. After the examination I was conscripted for work in the Aue uranium mines.

W. ROSENTHAL: How came it, that the witness was arrested later?

WITNESS: I did not like to work for the Russians in the mines, so I pretended to be sick. I was told they would give me a better job. I was ordered to continue working. One evening I lost from the pocket of my working suit a piece of ore the size of an egg. I do not know, how it had gotten into my pocket. It was Christmas and I wanted to go home for leave. There I spent a nice Christmas. On December 27, at 6 a. m., criminal police knocked at the door. They had no documents whatsoever. I was taken to a car where they handcuffed me. When I asked why I was taken away they answered I would learn that. They took me to the Zittau prison. Later I was moved to Chemnitz.

W. ROSENTHAL: What did they do with the witness in Chemnitz?

WITNESS: I was turned over to the NKVD and taken to a one-man cell. A considerable time later, early in January, I was questioned for the first time by NKVD officers. The room was bare with only a table in the middle and two spotlights in front of me. The questioning officer stood at the other wall. I was too blinded to know what was going on. I was only expected to sign a protocol I had never read and never given.

W. ROSENTHAL: Did they read the protocol to the witness? In what language was it written?

WITNESS: It was in German.

W. ROSENTHAL: What was its contents?

WITNESS: I could not read it. I did not know what all this meant. Nor did I know that they had found this piece of ore.

W. ROSENTHAL: Had the witness left the ore at home?

WITNESS: No, I left it in the pocket of my working suit in Oberschlema.

W. ROSENTHAL: Was the witness questioned in the NKVD prison?

WITNESS: I was not. I was only asked to give my signature. Nothing else. They asked me what U.S., British or French authority had sent me to East Germany? I said I had come here to see my sick mother. It was assumed that because I had been in West Germany I wanted to take something back with me.

W. ROSENTHAL: Did the witness sign?

WITNESS: No. My feet were whipped, then I was carried back to the cell, picked up the next day, this time not to be questioned, but down to the cellar. A guard stood at the staircase. I had to stand there bare-footed. All of a sudden water poured into the cellar, so much that it reached my knees; thus I had to stand three to four hours. Then I was taken out for another hearing. I was asked to sign. I said: "No." Whereupon they started giving me the works. With red-hot ironrods they burned my feet.

W. ROSENTHAL: How was this done?

WITNESS: The skin was like fur. Bare-footed I had to climb on a chair. I was shown the rods and told to confess. They wanted to force me to sign. Then they burned my feet. I did not confess anything. They broke my nasal bone. I was taken back to the cell. My feet ached so that I writhed with pain in the cell. They came in again. I crawled to the hearing room on my hands and feet, near a collapse. I was told "You sign — everything okay." I answered: "I won't sign." I got nothing to eat for three days. Then they came again. I was placed in front of a table laden with nice food. There was the document. I had only to sign it to get the food. I said: "I won't sign and I won't eat." I felt not guilty. They took me back again.

In mid-March there was the court session. I was told why I was arrested. The charge was espionage for the Western powers. I did not know anything about it. I was shown the ore which in the meantime had pierced the cloth. I said I didn't commit espionage. I was given six months juvenile imprisonment without being allowed to defend myself. After the verdict was pronounced I had no more mistreatment to suffer. On June 27, 1950, I was released to Leipzig. When I left the prison there was a car outside. I was to be arrested again. This time they had a warrant of arrest. Thereupon I said I wanted to see a doctor for physical examination. I was too weak to stand another arrest. They led me to the doctor and later took me home to Leipzig. Twice every day a policeman came to see whether I was still there. After that I had to report at the police station. When my feet were rather well again I fled to West Berlin.

Question by a DELEGATE: Are the injuries of the witness still visible?

WITNESS: They are.

Another question by a DELEGATE: Is the witness willing to show these injuries?

WITNESS: I am. (He showed them.)

W. ROSENTHAL: Has the witness shown these scars to a doctor?

WITNESS: Yes.

W. ROSENTHAL: What did the doctor say about them? Are they scars from burning?

WITNESS: He said they are.

Question by a DELEGATE: Is it possible that somebody put the ore out of ill will into the pocket of the witness?

WITNESS: I don't believe that.

Question by a DELEGATE: Has the witness ever heard anything about such cases?

WITNESS: I have not.

Question by a DELEGATE: At what place of the suit was the pocket where the ore slipped in?

WITNESS: Originally there was no pocket at all on the suit. But since we always had to have our identification papers on us, I myself made a pocket outside.

Question by a DELEGATE: What job did the witness hold in West Germany?

WITNESS: I worked in a paper mill in Holstein.

Question by a DELEGATE: The witness said that he was to be arrested again immediately after his release from prison. Does he know what the charge was this second time?

WITNESS: I suppose I was to be arrested for sabotage because I was absent for 150 work shifts due to alleged sickness.

Question by a DELEGATE: Was the whole procedure carried through by Russians on that second arrest?

WITNESS: It was, until my release. After that I met for the first time with German officials.

Question by a DELEGATE: Does the witness recall whether upon the first arrest he was shown any legal document, a warrant of arrest, or the like?

WITNESS: No. There was only the protocol I was expected to sign.

Question by a DELEGATE: The protocol was in the German language?

WITNESS: It was.

Question by a DELEGATE: Does the witness recall what was written in the protocol? Some words at least?

WITNESS: Nothing.

Question by a DELEGATE: Was there any defense in the court?

WITNESS: No. There was only one Russian, two assessors, an interpreter and the witnesses around, nobody else. I had no defense-counsel.

Question by a DELEGATE: How long did the court session last?

WITNESS: Two hours and a half.

Question by a DELEGATE: Did the witness express the wish during all those hearings to read the protocol? Did he succeed in reading the protocol, in whole or in part, the protocol he was to sign?

WITNESS: No. I suffered too terrible pain. I felt so bad I could think of nothing else.

Question by a DELEGATE: How long has the witness been in prison?

WITNESS: For six months.

Remark by a DELEGATE: A verdict of six months is mild in an espionage case.

WITNESS: Why, I was acquitted on lack of evidence.

Question by a DELEGATE: What was the witness sentenced for?

WITNESS: For illegal possession of ore.

Question by a DELEGATE: Will the witness give the weight of the ore in grams?

WITNESS: Between 80 and 100 grams.

Question by a DELEGATE: There was no other charge against the witness?

WITNESS: No.

Dr. FRANK, a judge who fled from Czechoslovakia: I came from Czechoslovakia and somewhat know the customs of Soviet and Communist courts. If someone has been arrested for six months he cannot be acquitted, because even there they have a law ruling that indemnification must be granted for unjustified detention on remand. That means: He has not confessed a thing. We have not been able to prove a thing. He will be sentenced in spite of that and the term will be just the time he has been detained on remand. The term was served by the arrest. So he is to be released. I suppose that this practice also goes for the Soviet-German courts.

W. ROSENTHAL: The next witness was arrested by criminal police on Potsdam station while going by train from Berlin to Magdeburg. He carried a rather big food package with him, food that he intended to take to his friends in Magdeburg. He was obviously suspected of having leaflets in this package. That is why he had to go to the Potsdam border police station. While looking through his papers the police found a German-English questionnaire from Hamburg where the witness had been employed until 1946, an SPD party identification paper from Hamburg, and a personal letter directed to him by Prof. Dr. E. Reuter, Governing Mayor of Berlin. This letter and the documents were the reason why the commanding officer of the guards called him the worst of names at first. As far as this, the witness has put down his statements in a protocol which, however, is not included in the Collection of Documents. The protocol was put down but recently. Now I want to open the hearing. How was the witness received and what names was he called by the criminal police?

WITNESS: On the station where I was arrested I was received with the words: "At long last we got one of those Reuter swines."

W. ROSENTHAL: What happened then?

WITNESS: I was then taken to police headquarters where I had to sit from Saturday, at 8:30 p. m. to Sunday, 9:30 p. m., in a locked room without receiving any food or drink. It was the police headquarters' guard-room the door of which was locked. On Sunday night I was taken to the No. 2 Police Prison in Potsdam. There I was put in a cell together with two others. On Monday morning, about 8 o'clock, I was ordered to come out to be questioned by a Russian. He said I had worked for the West. I had committed espionage for the British and Americans, he charged,

adding that this was absolutely clear from my documents. I was expected to admit where I got my information. He said it was proved by the questionnaire which I had filled in Hamburg, when I applied for a job with the city administration. I had this questionnaire still in my pocket.

The questioning officer then asked whether I would not become an informer for the Russians. He promised me food ration card category I and good pay. In the beginning he was very friendly but when I refused he slapped my face twice.

W. ROSENTHAL: Who did?

WITNESS: The Russian. I was so excited that, not minding the consequences, I attacked him with a stool. I was thereupon confined to a dark cell in No. 2 Police Prison four 24 hours.

W. ROSENTHAL: What did the cell look like?

WITNESS: I could not see a thing. But it must have been very primitive. I could feel a so-called cement-bed.

W. ROSENTHAL: What was the approximate size of the cell?

WITNESS: Five feet long, two feet wide. The following morning I was taken upstairs where I shared cell No. 24 in the attic with another 14 political prisoners. We had a place to sleep there but only one blanket and the food was very scarce; we had bread and jam for breakfast and supper, and soup for dinner.

W. ROSENTHAL: Was the witness beaten again or otherwise mistreated during his detention?

WITNESS: Two weeks later about 11 p. m. I was taken to State Security headquarters at No. 2 Bahnhofstraße for further questioning. I was handcuffed and marched through the streets accompanied by two People's Police; we had about 20 minutes to go. I was taken to room No. 8, or 5, on the first floor where I met a civilian who received me with the words: "Now we'll finish you off."

I had to sit down and he asked me several questions, the same questions put already by the Russians: whence I received my information; how much I got for it; why I did though we were so well off in the German Democratic Republic. I was urged to confess and to disclose names. When I refused he called the two master-sergeants who let me into the cellar. I was kicked by a police commissioner and shoved into a cell. The cell was locked and after two minutes, or three, water poured into the cell and soon reached up to my hips. I think I stood in it for two or three hours.

Back upstairs I had to sit on a stool which stood on only one firm leg; the others were loosely put underneath. The stool toppled over and I had to undergo questioning in the position into which I had fallen without being allowed to get up. About 1 or 2 o'clock I was led to the police prison where I was held excommunicado. On December 2, or 3, I was again fetched for questioning about 2 p. m. There was another man at the same place. Later I learned that he was Polizeirat Polenz. I had to sit in a corner. Two kerosene lamps were lighted. The interrogator sat in the dark, so I could not see him. I sat under those lamps for about one hour and a half without being addressed. Whenever I closed my eyes he roared: "Look at me."

I could not see the man in the dark corner. He then asked me the same questions. When the lamp

treatment was over I had to rise and keep my head close to the wall and with every question he battered my head against it. He told me I would confess what I had committed and that they had means to make me talk. He also said he would draw up a protocol, then question me again, and he was sure I would sign it then. He warned me that something would happen to me if I refused. When I replied that I had not committed any crime he said: "We have methods that will make you talk."

I returned to prison where I stayed until noon on December 2. At half past one — it was Friday by then — I was handed over to the border police, but taken to another hut than the one I had been arrested in. There I sat until a quarter to four on Saturday afternoon. Then, a protocol was submitted to me according to which I admitted that I had been engaged in espionage for the West. I declined to sign it and thereupon was told by my guard that I would be questioned again by the Russians.

Shortly before four o'clock I was moved into another room. A Russian civilian came and lectured to me on the political aims of the Soviet Union, etc., and told me to admit I had committed a crime. I had had a newspaper on me and certainly had intended to circulate it among my relatives. When I denied that and said I had got it only for myself, he invited me to work for the Russians. But when I cited a saying I had heard once, "the Russian loves treason but despises the traitor," he immediately declared: "You are a good German. You may go." Twenty minutes later I was back in the police barracks and was released.

Question by a DELEGATE: How long was the witness detained?

WITNESS: Five weeks and a half.

Question by a DELEGATE: Did the witness ever see an arrest warrant?

WITNESS: No.

Question by a DELEGATE: Was the witness ever sentenced?

WITNESS: No, I was released quite suddenly. I presume it was because in former times I had helped a lady of Jewish descent. She gave me a letter of recommendation that was among my papers. That Russian, I guess, was also a Jew, calling himself Michaelis, or the like. I think this was why I was set free.

Question by a DELEGATE: Was the witness held in Russian custody?

WITNESS: No.

W. ROSENTHAL: This witness was detained by the State Security Service while the former witnesses were held in Russian custody. Let us now proceed and hear the witness Hans Regel. — When and where was the witness arrested?

WITNESS: I was arrested on November 30, 1951, at Bergen on the island of Ruegen in the Soviet Zone.

W. ROSENTHAL: Why was the witness arrested?

WITNESS: Proceedings had been instituted against me on charges of economic offenses. I had been the deputy director of a construction department for land reform construction projects in the Ruegen district.

W. ROSENTHAL: Was a warrant for the arrest of the witness issued?

WITNESS: About four months and a half later, after I had been taken from the Schwerin SSD prison back to Bergen court prison, I learned that shortly after my arrest on November 30, 1951, an arrest warrant had been issued by the Bergen district court.

A few hours after my arrest and a hearing by the Ruegen district attorney I managed to escape. I made up my mind to run away because I had concluded from the conversation conducted by the criminal police and the attorney that my arrest had been ordered by high-level government authorities. The police and the attorney could not agree on the cause of my arrest. The district attorney told the two police officers that there was no report on my arrest and that the investigation which so far had disclosed nothing that was incriminating did not justify my detention.

W. ROSENTHAL: Was the witness released?

WITNESS: I was not released. The police officers left and the district attorney telephoned with the prison to have me collected. In the meantime I rose and ran out of the room. My destination was West Berlin.

A week later when I tried to reach Berlin by train — I had hidden for several days — I was arrested in the Berlin-bound train from Stralsund. The train was suddenly halted at a small station right after Stralsund. The whole train was searched. There was no chance to flee once more. Thus, I was transported back to Bergen by the criminal police on December 8. There I spent a few hours in the police jail. On a Saturday morning I was suddenly fetched out of my cell, my hands were shackled on my back, a blanket was thrown over my head, and off we went to SSD headquarters at Bergen on Ruegen island.

W. ROSENTHAL: Where was the witness taken then?

WITNESS: I stayed at Bergen until December 23 and during that time was exposed to uninterrupted questioning.

W. ROSENTHAL: Uninterrupted questioning? What is it like?

WITNESS: I was led to the interrogator. First I was cautioned that I would be shot if I made the slightest attempt to escape. Then I was locked into a dark cell for several hours; there was no inventory in it, nor was there any food. Then I was taken to an examination room and the questioning began. As far as I can remember — I had lost any feeling for time — the examination lasted a little over 10 days. During the questioning I realized that no criminal charges could be preferred against me, nor could any criminal offense be proved.

So I was accused of having tried to establish on Ruegen, in conjunction with another group of witnesses whom I saw during the further examinations, an illegal organization aimed at overthrowing the GDR regime and at undermining the good relations between the People's Police and the Red Army.

W. ROSENTHAL: The witness says the uninterrupted questioning lasted for about ten days. Was the witness actually questioned for ten successive days?

WITNESS: It may have been eighth or nine days as well — but not less. The unpleasantness of my situation was that I wore tight boots. My feet were swollen.

In the beginning I had to stand up during the examinations. When I answered in a rather aggressive tone definitely rejecting any charges connected with the illegal organization, I had to stand with my knees bent at times. When I could not stand up any longer I was allowed to sit on a stool. The questioning officers took turns every two or three hours. The examination continued by day and by night. My meals, breakfast, dinner, and supper, were served in the examination room; I was permitted to sit down and eat, and then the questioning went on.

W. ROSENTHAL: Was the witness subject to any other ill-treatment after this examination?

WITNESS: On December 23, 1950, I was transferred to Schwerin in a passenger car, again with my hands tied on my back and a blanket thrown over my head. Having left the island of Ruegen, the blanket was taken from my head. The many people on the island whom I knew were not supposed to see me. By dusk I was turned in to the Schwerin prison.

During the first examinations in Schwerin I was not maltreated. However, on January 20 or thereabouts I was questioned by Russian NKVD officers in mufti. The examining officers time and again accused me of the same offenses and when I pleaded not guilty over and over again I was beaten just where I stood. One of the interrogators stepped up and slapped my face. Partly, the happenings were really turbulent, one officer stood before, another one beside me and they altogether beat me and hit each other, not me, on the head.

One night I was fetched from my cell and marched into a courtyard surrounded by a high wall in which many police officers formed a cordon around me. In a passenger car I rode to the Russian prison. The same two officers who had questioned me already in SSD detention told me that my examination would from now on be different. They said I was a stubborn character and they would find ways and means to make me talk. I was re-confined to my cell, stayed there for two or three days and was questioned again for about four or five.

W. ROSENTHAL: Was the witness otherwise mistreated?

WITNESS: During this uninterrupted questioning the following happened: I was immediately asked the same question and advised to finally confess all about my activities and the members of that illegal organization.

When I failed to confess I was taken into the cellar. There I had to strip completely — this was in January and the temperature was 22 or 24 — and I was led into a cell in the basement fitted only with a gridiron door through which came a mighty draft. The floor was all tiles.

W. ROSENTHAL: Was the window open?

WITNESS: It was opened. In that room I had to stand starknaked in a corner. At the door stood a Russian, threatening that the slightest attempt at warming myself up would be punished by beating or something else. This lasted for two hours. I knew it was two hours from the clock in the court building I had to pass. In the following examination they told me that the torture would be repeated unless I ceased denying my offenses so persistently. In this state — I hardly could keep my limbs quiet — I was led back



DR. WALTER LINSE



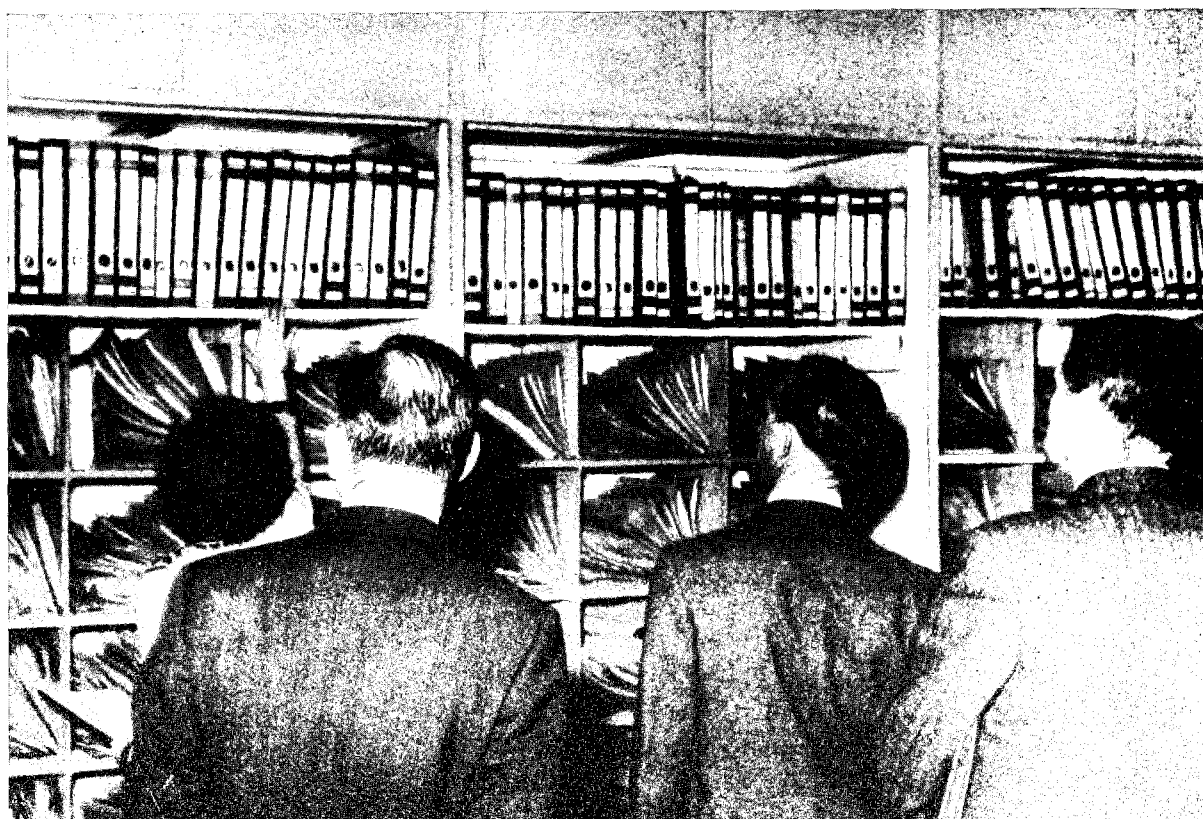
The delegates visited the Investigating Committee of Free Jurists and had an opportunity for direct contact with Soviet Zone residents

Right side, down:

The building of the Investigating Committee of Free Jurists

Visitors from the Soviet Zone are first registered, then referred to the special consultants

Delegates viewing the registration office in which ordinances, secret directives, court sentences, and other documentary material from the Soviet Zone are evaluated





Delegates studying documentary material in the office of the Investigating Committee. Among them W.H. Hoyt, U.S.A.; Sir G. R. Vick, Great Britain; G. Duffy, Ireland; A. J. M. van Dal, Netherlands

Delegates viewing the 38,000-name file containing detailed judgment and background material of Soviet Zone functionaries and persons having committed injustice in the Soviet Zone



In front of the building of the Investigating Committee, during an introductory briefing. Among the delegates G. Duffy, P. Feder-spiel, B. Bonsal, Sir G. R. Vick, J. Nabuco, G. Morris, A. Slavov



to my cell. I heard I would be questioned again the following night and that then we would come to terms. That night I was taken downstairs again and had to endure four hours in the cold cell.

Finally I was returned and questioned without interruption, but an interval had to be spent in the cold cell for another six hours. I would like to remark that there were many blood-stains in this so-called "Cold Cell". So I was afraid I would be beaten till I bled. But nothing like that happened.

W. ROSENTHAL: How did the witness succeed in leaving detention? Was he sentenced?

WITNESS: I was finally confined to the Bergen court prison, expecting that new proceedings would be opened because of the economic offense.

W. ROSENTHAL: What kind of an economic offense was it?

WITNESS: At that time we used to buy nails in West Berlin because none were available here. To play safe we obtained a permit for the shipping of aluminium. We had the permit but were held responsible nevertheless. I spent another six months at Bergen without questioning and without reading any indictment. There, however, I had the opportunity to hire a lawyer.

My counsel doubted that a judge would be able to effect my release since my case had to be referred back to the State Security Service and any further steps were subject to SSD approval. My experiences with the SSD had been so bad that I made up my mind to escape. Well, I succeeded. I made friends with a prison guard strongly opposed to the regime and fled with him to West Berlin the night preceding September 21, 1951.

Prof. Dr. R. MAURACH, Munich: It is very seldom that a person endures such a procedure a-standing for 10 days without fainting. Was the witness allowed to sleep?

WITNESS: No, I was formally not allowed to sleep. In that relatively small SSD office about eight officers took turns. There were only two who took their assignment seriously and tortured me considerably. But all the others who questioned me — there were about five — were very reasonable and humane and apparently did not believe in the accusations themselves. They locked the door to the examination room and then let me sit on a stool and get a little sleep. Some gave me a cigarette, some of their food and a little beer.

Question by a DELEGATE: Did the witness sign the usual promise not to disclose anything on his detention to anybody, did he sign it under pressure, or did he not sign it at all?

WITNESS: I signed. I had no choice. I did not even try to refuse the signature.

B. W. STOMPS, Netherlands: Was the witness Hertling ever convicted by a normal German court?

WITNESS: No. I was drafted to the home guard (Heimatwehr) at the age of 16 and a half. After my discharge in 1948, I worked in Western Germany until I received the cable on my mother's illness.

Prof. Dr. R. MAURACH: I move that the witness be heard, for I consider the question of uninterrupted examination is a flexible term and is hard to prohibit under the 1948 Declaration.

W. ROSENTHAL: I introduced these three witnesses as examples of ill-treatment, torture, and tormenting by means of red-hot irons and the Cold Cell. We can produce another witness on the uninterrupted questioning.

Question by a DELEGATE: Is it possible for the Committee to learn a few data on the witness?

WITNESS: I can give the Committee all the information, except my name.

W. ROSENTHAL: What is the age of the witness?

WITNESS: I am 38 years old and I am a jurist. I was detained by the NKVD and the State Security Service for nine successive months at Schwerin, that is from March 28, 1950, until Stalin's birthday on December 21. So I experienced both methods of questioning.

W. ROSENTHAL: Was the witness also subject to uninterrupted questioning?

WITNESS: After having been questioned during the preceding months four or five times, usually from 11 or 12 at night until 3 or 4:30 in the morning, I was transferred to another, severer department where I was told right in the beginning that I would be beaten unless I confessed the counter-revolutionary crimes I allegedly committed under Section 58 of the Soviet Penal Code. The proceedings were conducted partly in German, partly with the help of interpreters, but I was not questioned and beaten in the evening.

I underwent another nocturnal examination by three Russians — a fourth joined them occasionally — one of whom spoke very good German and among other things tested my knowledge of Lessing and other German authors such as Spinoza, while the others spoke only broken German and monotonously repeated the questions submitted to them in writing and I, like a gramophone record, repeated the answers I had made up in my mind. So the first night was physically endurable.

The second night I was occasionally hit in the face and kicked, but it was no actual beating. In the examinations the German-speaking, intelligent NKVD commissar questioned me till about 11:30 and then turned me over to the others. I was lucky that one of them was somewhat humane and allowed me to sit for a little while in the second night, and even lie down for half an hour in the third. However, he chased me up immediately when someone appeared in the prison corridor or steps were heard.

The questioning lasted till the morning of Whitsunday, 1950. I am not sure whether I owed my release to that holiday, or whether I was considered a hopeless case. When the examination teams were relieved they would converse in Russian and their talk would end with a depressed "Nichevo". They did not allow me to eat or drink. You know that hunger hurts during the first 24 or 30 hours while thirst commences only then and is most painful. To quench my thirst I invented a trick which I applied so long as it was possible and I still could control myself; that means, when I was ushered to the toilet I quickly, before it could be prevented, put my head under the water tap so I would get some water on my nose and mouth or even into my throat. This, however, was all I obtained during the first two days. The third morning I received a little food from the sympathetic NKVD officer who spoke so little German. I would like to add in conclusion that I was advised as follows:

"You will confess and say everything. You will tell us everything. Some it took 60 hours, others it took 80 hours, others 100. But they all spoke." This is what I can say about being questioned a-standing. It is in common use in the Soviet Union in the great "Konveyas." The State Security functionary before whom I was led later on employed the same method. He and others had been trained in Soviet captivity.

Question by a DELEGATE: I am from Korea and would like to put a few questions that might have been asked already while I was absent. To what kind of treatment is the family of a man exposed who flees to West Berlin and leaves his relatives behind in the Soviet Zone? Also, I was told that anybody fleeing to West Berlin forfeits his property.

W. ROSENTHAL: Generally the next of kin of persons fleeing to West Berlin still remain unharmed. The refugee's property is confiscated, but the families have not been pestered so far.

WITNESS: May I add that the Soviet Penal Code actually provides for kinsfolk responsibility as far as military, security, and civil matters are concerned.

Question by a DELEGATE: Can the witness tell the Committee whether minutes were kept during the examinations or whether his statements were heard without being written down?

WITNESS: After some questioning the interrogator would take pen and paper. The Russians used to keep the minutes in Russian, and in the other language the statements, alas, very often sounded different from their original meaning. Toward the end of the examination — this was mostly about 3:30 in the morning when the victim's eyes would fall shut and the examining officer would keep himself awake by a cigarette — he would, if capable, read the protocol in German.

It is very important to listen attentively and, despite blows and other action, to refuse signing a page containing statements that might be used against the person examined. Later on when I was handed over to the Soviet Military Tribunal, when I was no longer in the hands of the NKVD, and when I was confronted with officers who, in contrast to the NKVD, wore distinguished war decorations and judged the case with more objectivity and composure, I made the experience that an examining officer sat down and re-wrote the whole page in his own hand so it would be in line with the questions and answers. Naturally, I remarked that this was the first time that I was treated in such a correct manner. A difference must be made between the examining methods of the NKVD on the one hand and those of the Soviet Military Tribunals on the other which — this is my impression — lived in a certain fear of the NKVD. Yet everything was much more humane there.

Question by a DELEGATE: Was the witness sentenced on account of a corrected or faked protocol?

WITNESS: I was not convicted at all. This perhaps is due to my good nerves, or perhaps to the fortunate fact that I was alone and could in no way become involved in contradictory testimony by fellow-prisoners. I could very carefully prepare my defense in prison, rehearse in my mind the answers to all the questions that might be put, and behave accordingly in the tapped cell to which I obviously was confined for some time.

Question by a DELEGATE: Can the witness explain the meaning of the word "tapped cell"?

WITNESS: This is a presumption which I cannot prove. After a while I was put into a cell into which wires led from outside but had no counterpart inside. The electric light cable was visible on the ceiling, but there were also wires going inside for no apparent purpose. I supposed that a second prisoner would join me because generally nobody will talk to himself. A short time later I actually received company and we conversed in a manner which, if the talks were actually intercepted, would have made people say "Damn it, we got the wrong one".

Question by a DELEGATE: Since I can see that the witness is a good jurist, I would like to put another question. Could the witness tell us what he has learned in general, whether he heard what happened to the other arrestees?

WITNESS: As to the examinations with beatings, I remember that about four or five days after my arrival the iron doors to an air-raid shelter obviously were open. I heard crying like I never heard before or again in all my life. The crying of a man mingled with the Russian word for "lie" and again the horrible crying.

Question by a DELEGATE: The witness said he was not punished. Does that mean that he was acquitted or was he simply sent home by the police?

WITNESS: First of all I was "preserved" in a cell, that is, while other prisoners changed cells I stayed there without further questioning. After a certain time I was re-discovered during an inspection of the prison and once more turned over to the Military Tribunal. They could not do anything with me, so one day I received a small package containing my property and was handed over to the German prosecutor. I was questioned again but luckily knew the charges exactly.

I managed to wriggle through those examinations very quickly. One day I was handed a sheet of paper and I had to commit myself in writing to keep silent about all the happenings I had heard and experienced in prison.

Question by a DELEGATE: I would like to ask the witness whether, while detained, he heard of women being mistreated and how the female prisoners were guarded.

WITNESS: I forgot to relate the stirring case of a woman which I heard from the adjacent cell. She was guarded by men, but the male and female prisoners were kept separately. One morning I heard terrible crying in the neighboring cell. It was not beating or the like but apparently madness. The woman kept crying "Let me out. My mother is gone. I have to see the police. Sergeant, please, go to the police." And again "My mother is here. I saw her signature." All I could take from this was that she had seen her mother's signature under a protocol and consequently fell into a fit. Finally she was taken out of her cell, again and again shouting "My mother is gone."

Question by a DELEGATE: Can the witness say something about the food?

WITNESS: With the Russians — once you got used to it and rationed the bread carefully — it was still sufficient. There was a sort of pap in the morning.

For half a year, depending on the season, we had beets or potatoes with a little meat for dinner every day. There was the same without meat for supper. We divided the food by cutting the bread with our spoons and reserved a few pieces for eating prior to certain events.

Question by a DELEGATE: Did the witness notice differences in the treatment of prisoners on suspicion and that of penal prisoners serving their terms? What does the civilian population in the Zone think of what it learns from those released?

WITNESS: I can give a brief answer to question number one: I am unable to judge the feeding of the penal prisoners because I was just detained on suspicion. I only know that the political prisoners who by accident got among the criminal prisoners were enthusiastic about the treatment. The answer to question number two is that the happenings in the zonal prisons have become known despite the person's commitment to keep silent. The public sympathies are very definitely on the side of the released and the prisoners.

(The meeting adjourns.)

Chairman Prof. G. BELLAVISTA: The afternoon session is opened. Mr. Rosenthal will now submit to the committee his report on the administration of penal law in the Soviet Zone. He will deal today primarily with three points: the anticipation of the sentence, the right to defense, and finally the right to hearings before independent and unbiased courts. Mr. Rosenthal will produce further witnesses who will relate their personal experiences and answer questions put by the delegates.

Referring to Article 11 of the "Universal Declaration of Human Rights", Mr. W. Rosenthal analyzed the so-called

Waldheim Trials

The contents of his statement is analogous to the Introduction to Documents 57 ff. in the Collection of Documents "Injustice as a System". W. Rosenthal produced two witnesses to the Committee, Mrs. Gerda Bergling and Mrs. Gertrud Milke, both having been court clerks in the Waldheim trials. Their testimony is analogous to Documents 57 and 58. The interrogation of witness Milke revealed new facts in addition to those contained in Document 58; excerpts are reproduced hereafter.

WITNESS MILKE: The bill of indictment was generally served on the defendants 24 hours before the trial, but there were also cases in which the defendant did not receive the indictment until the morning of the day on which the trial was to open at 11 a.m.

The penal chamber worked alternately, one day the court was in session, the other day the sentences were drawn up. The great penal chamber consisted of a president, an assessor, the prosecutor, three laymen, and the court clerk. The small penal chamber comprised a president, sometimes an assessor, two laymen, the prosecutor, and the court clerk. A certain "quota" had been prescribed. Each chamber had to judge ten cases per day. Each trial was supposed to last one hour, but in most cases it did not last so long. I myself have taken the minutes of trials which lasted no longer than fifteen minutes. The duration of the trial had to be recorded in the minutes, and very often I was shocked at a man being sent to prison for

20 years within 15 minutes. The defendants were ushered into the court-room, fettered with iron shackles leaving red and blue marks on their wrists.

Having been ushered in by two guards, the defendant was briefly heard on his identity. Then the prosecutor read the indictment. The defendant was allowed to state his point but time and again was admonished to brevity. This was followed by the pleading of the prosecutor, and the court withdrew for the consideration of the sentence, the latter being a mere formality.

On the eve of the trial the president of the penal chamber was furnished with a roster of defendants to go on trial the next day. The prosecutor for those trials met the president for a prior discussion of the sentences. They nearly always agreed. If the president said twenty years, the prosecutor would promise to demand twenty years, so the judge could go down to eighteen. Thus, on the list of defendants which the president had on his desk during the trial the term of imprisonment or penal servitude was already written behind the name of the respective defendant. I saw those lists very often and the penalty very often differed by only a few years.

Once the prosecutor had demanded ten years of penal servitude for a woman. But, while defending herself, the woman — in the judge's opinion — had gone too far and in her excitement had used words which otherwise would not have come over her lips. So the court agreed on 20 years just because of her impulsive demeanor.

Before pronouncing the sentence, the prosecutor and the court clerk were ushered out and the judges considered the sentence, which was a mere formality. The lay-assessors simply had to agree to anything. The defendant was then briefed on the possibility of legal remedy. He was told that the sentence was valid and final, that an appeal could not be lodged against the sentence but only against possible infractions of the rules of procedure, if he thought there were any. Many refused to acknowledge the sentence, but many were so depressed that they accepted.

W. ROSENTHAL: Could the witness specify the type of defendants? Had the accused committed crimes against humanity as defined by Allied Control Council law, or could it be proved that they committed any other indictable offenses?

WITNESS MILKE: I know that among the 220 cases I recorded there was not even one in which any of the charges could be proved. All of those who were accused of mistreating prisoners of war or of supporting the National Socialist regime were sentenced on the principle of so-called collective guilt.

I once discussed with Dr. Hilde Heinze the reasons why those people were sentenced at Waldheim and told her I was convinced that there were "bigger fish" among those released from the concentration camps than among the "small fry" sentenced at Waldheim. Heinze replied that this problem must be seen from a different angle. "If those people are released," she said, "they are not for but against us and will immediately go to the West. So they must be kept aloof from human society for some time because one cannot afford to send those people home."

W. ROSENTHAL: Could the witness tell the Committee something about the health of the Waldheim defendants?

WITNESS MILKE: It was terrible. Many suffered from any form of tuberculosis, others from dropsy.

A woman partly paralyzed was carried into the courtroom on a stretcher and sentenced to death.

Another defendant suffered from a contagious skin disease. He was held at a distance of about the length of this room and was bandaged from head to foot. He, too, was accused of maltreating foreign laborers. He owned a cafeteria at Dessau in which foreigners worked as waiters. He named 18 witnesses including a lawyer from the West, and was mockingly told that those witnesses were out of question. The man held the indictment in his bandaged hands and I had to take it from him with a pincette, escorted by two guards carry it into the courtyard and burn it. I then had to write a protocol on the destruction of the bill of indictment.

W. ROSENTHAL: Can the witness tell the Committee whether other defendants also tried to produce witnesses for the defense?

WITNESS MILKE: Yes. Very frequently, however, the defendants did not remember the exact addresses of the witnesses, whereupon the court immediately argued that witnesses who could not be called could not be questioned. But even if the witnesses' addresses were available, they were not summoned to appear.

On the other hand, it happened that witnesses for the prosecution were heard. The procedure was as follows: all the People's Judges were former bricklayers, carpenters, turners, even a former garbage man was among them. Among them were also some who knew the defendants from their former activities. In such cases they were very willing to appear as Mr. and not as prosecutor Nagel and to describe, for instance, the director of a large firm as a slavedriver, and accuse him of all kinds of incredible things.

W. ROSENTHAL: Can the witnesses tell the Committee about the possibilities of defense? What possibilities had the defense counsel?

WITNESS MILKE: Any defense was excluded from the beginning. Each defendant had to be his own counsel. Only in case a death sentence was probable the defendant was allowed to employ the only defense counsel available. His regular position was that of a People's Prosecutor. He was allowed to study the case for five to ten minutes before the opening of the trial. All he did later was stammer a few words asking for consideration of the defendant's youth, or underlining that the defendant acted under a certain strain. The whole defense was a farce.

W. ROSENTHAL: Can the witness tell the Committee details of the possibilities of appeal against the Waldheim sentences?

WITNESS MILKE: I can, because I also worked in the revision branch for some time to learn everything. In practice no appeal was ever allowed in favor of the defendant, but any appeal by the prosecutor resulted in an increase of the penalty by five to ten years.

W. ROSENTHAL: Can the witness tell the Committee what penalties were imposed in those trials?

WITNESS MILKE: In my penal chamber eight years of penal servitude were the minimum. Other sentences imposed 15, 18, 20, 25, and 30 years, life terms and capital punishment. The 220 sentences I recorded amounted to a total of 2,200 years of penal servitude. Seven life terms and eight death sentences were imposed. There was a basic principle according

to which any defendant who, once having been a jurist, had pronounced a death sentence during his career was to be sentenced to death also even if at one time he had imposed capital punishment for malicious murder. One defendant who had not been a Nazi while being judge in a court-martial in Holland had pronounced a death sentence against a marauding German deserter who had murdered a married couple. He was sentenced to death for it.

(See also speech by B. W. Stomps, Netherlands, delivered during the Final Ceremony in the Schiller-Theater, Part Three of this report.)

Question by a DELEGATE: Can the witness tell the Committee whether those trials were held in public or behind closed doors?

WITNESS MILKE: The doors were locked double or even thrice. Of all those trials ten were arranged as spectacular trials with much ballyhoo, radio and newsreel reporters, and with invitations extended to distinguished activists and especially active political students. In the spectacular trials those defendants were sentenced who could actually be charged with offenses.

Otherwise the trials were held in so strict seclusion that even the personnel belonging to the court had to identify themselves at three or four doors. The minutes, however, bore the remark "Tried in Public."

Question by a DELEGATE: Can the witness remember capital punishment imposed on women?

WITNESS MILKE: I referred to the case of the paralyzed woman. I was in the audience of another case, of the wife of East German Minister of the Interior Bechler. She appeared in court and was sentenced to death under her maiden name. Later on the death sentence was commuted into a lifetime.

W. ROSENTHAL: I know that case exactly and would like to give the Committee a brief summary. In 1943, Mrs. Bechler had reported a man to the police. He had advised her to listen to the Moscow radio because her husband, Major Bechler, would speak every night on behalf of the Free German National Committee. Mrs. Bechler denounced the man with the remark that her husband was too much of a convinced National Socialist to do something like that. She added she considered this atrocious propaganda. The messenger was thereupon arrested, sentenced to death, and executed.

Mrs. Bechler was detained on those charges after the marching-in of the U.S. Forces, but when the Americans vacated Thuringia, Mrs. Bechler was handed over to the Russian forces under agreement.

Bechler himself, as P. W. in Russia, was a member of the Soviet-sponsored "National Committee Free Germany" and was flown from Moscow to Berlin where he took over the post of Minister of the Interior for Land Brandenburg. Though knowing that his wife was held by the Russians in the Dresden penitentiary, he requested a declaration of death which he enforced by means of his authority of Minister of the Interior and Chief of the Police. The living Mrs. Bechler was declared to be dead.

Some time later Mrs. Bechler was released from prison and went to see her children. She was seen by her husband who immediately caused her re-arrest by the NKVD. Once again she disappeared behind prison walls in a concentration camp. Early in 1950, she was among those whom the Russians turned over to the

German jurisdiction for trial, and thus was brought before the German tribunal at Waldheim. As she had been declared dead, she was tried and sentenced to death under her maiden name of Dreyborn. She is now one of six out of 38 whose death sentence was commuted into a lifetime of penal servitude. She is still held at Waldheim under her maiden name.

Question by a DELEGATE: I have another question although not a juristic one. I have read in the press that the special teams at Waldheim which lived under a strong nervous strain received immense quantities of alcohol and similar stimulants.

WITNESS MILKE: As to the food, we were actually over-fed at Waldheim. I gained 12 kilos of weight in three months. Karl Kennecke, one of the ill-famed East Berlin prosecutors, for instance, is a notorious alcoholic. At 5 a.m. he had been picked up drunk from a ditch and at 8 a.m. he pleaded for death. While the court had withdrawn to consider the sentence, he raved in the corridor, shouting "his head must come off!"

Prof. J. GRAVEN: Can the witness tell the Committee the difference between the great criminal chamber and the small criminal chamber? What was the difference of their procedure?

WITNESS MILKE: There were great criminal chambers and small criminal chambers just as the criminals were categorized as offenders and major offenders. Correspondingly, the penalties imposed were different, but there was no difference between the procedures.

Question by a DELEGATE: Can the witness tell whether the term of the defendants' detention for arraignment was deducted from the penal term?

WITNESS MILKE: The defendants time and again asked for the deduction of the past five years from their terms. The answer always was that so far they had been internees of the Soviet occupying power and had been in German police custody only since the day of their transfer from the concentration camp to the penitentiary in February or March. That day was regarded as the beginning of arraignment.

Dr. KRAEMER: I would like to counter a possible doubt of the witness' trustworthiness by clarifying two points. How did the witness know that the prosecutor and the judge conferred on the sentence on the eve of the trial, and how did the witness learn of the issue of the trial the judge sentenced to death had instituted against the marauding soldier in Holland?

WITNESS MILKE: Replying to the first question I must point to the accommodation of prosecutors, judges and other personnel. To reach my dormitory I had to pass the room of the judges and prosecutors. Since we all were on rather close terms as is the use among comrades, it was easy to see and hear what was being discussed in the evening.

Regarding the second question, I would like to mention that the trials of jurists were extended in length where possible in order to convey the impression that the trial was conducted by a proper court. The accused jurists were allowed to plead at length for their own defense. Thus I learned the cause of his sentence from the defendant himself.

Question by a DELEGATE: I would like to hear how the court reacted on that judge's defense.

WITNESS MILKE: His defense was heard but considered as an excuse. He was told that a deserter unwilling to serve in the Nazi army was not to be sentenced to death. The murder committed by the soldier was ignored.

Prof. Dr. J. ANDENAES, Norway: I would like to hear a few details on the witness' political attitude, whether she was a member of the SED party before being assigned to the Waldheim tribunal.

WITNESS MILKE: I joined the SED party in 1948 because otherwise I would not have found employment. I had to look after my mother and my ten-year old daughter. In Dresden, where I was in the employ of the state revenue office, I received the Waldheim assignment from the party. My political attitude toward the regime was absolutely negative and I proved it by helping several persons in the way of letting incriminating documents disappear. When I realized what the assignment was I was anxious to learn as much as possible.

The Waldheim assignment ended on June 17. Afterwards I was granted a week-long leave to recover from the nervous strain and I used it to flee to the West with my kin.

W. ROSENTHAL: I think we can conclude the Waldheim case. We have already seen the exclusion of any possibility of defense in those and the other political trials we discussed on Saturday. Allow me, Mr. Chairman, to introduce to the Committee a lawyer who left the Zone a short while ago. He will throw more light on the

Possibilities of Defense before Soviet-German Courts

WITNESS: I know in particular the situation in Thuringia. At first the area was occupied by the Americans and the major part of the lawyers continued functioning. Then the Soviet forces relieved the American troops and under the still effective influence of the American occupation no limitation of the profession was felt during the first post-war years. The newly-appointed People's Judges and People's Prosecutors were still rather inexperienced and after all the harsh sentences imposed under Nazi law they tended to more lenient judgment.

Early in the summer of 1951, the lawyers' situation changed. From that time on the criminal chambers were manned with chairmen most of whom were members of the SED party and followed a corresponding political line. They began by criticizing statements made by the defense counsels in favor of the defendants. The lawyers had to participate in briefings during which they were advised to adhere strictly to the valid principles. The conduction of an economic or political trial was extremely difficult for the counsel because the details of the alleged crime had been fixed beforehand. The counsel's arguments were branded as an attack on the fundamentals of Democracy.

W. ROSENTHAL: I would like to mention in that connection an article written by Mrs. Hilde Benjamin. Mrs. Benjamin, as mentioned before, is the Vice-President of the Soviet Zone Supreme Court. Her article dealt with questions of the defense and the defense-counsel. It was published in the latest issue of the official periodical "Neue Justiz" ("New Justice"). It said among other things: "Many defense-counsels — I am not speaking of the individual ones who in their

activity more or less visibly present themselves as opponents of our policy and therefore no longer ought to be defense-counsels — are still internally unstable.” In Mrs. Benjamin’s opinion a lawyer with his own thoughts on politics should no longer be a defense-counsel.

WITNESS: The evidentiary material of economic and political cases was held by the investigating police authorities for an extraordinarily long time. It was then forwarded to the prosecution which adopted the final police report without further study of the evidentiary material. Investigations for the defendant’s defense were principally not conducted. The prosecutors set very short deadlines by which the proceedings had to be concluded. But just in the economic cases such matters were involved as required a longer period of preparation. This limitation of time alone was a gross restriction of movement which the defense-counsel needed on behalf of his client. If obligatory counsels were employed the court chose lawyers not resident in its area; as the case documents were no longer mailed, their study became even more difficult.

Finally it was ruled that no more copies were to be made of experts’ opinions. Only brief notes were allowed to be made in the bureau of the criminal chamber. Of course, this was impossible in huge economic cases when the material reached a volume of up to 80 pages.

W. ROSENTHAL: Can the witness tell the Committee whether the counsels were permitted to talk with their clients in prison without supervision?

WITNESS: No. In the political trials the defense counsels were not allowed to see their clients until after the date of the trial had been set. The interval before the trial was always very brief. If permission was granted, the counsel was allowed to speak to his client in the presence of two Peoples’ Policemen. The Committee can imagine that under such circumstances it was very difficult to extract information from the defendant. Only very seldom did the lawyer obtain a clear idea of the case. I also remember cases in which the counsels talked frankly with the defendants and their conversation was immediately brought to the attention of the prosecution.

W. ROSENTHAL: Would the witness explain to the Committee the case which caused him to leave the Soviet zone?

WITNESS: A man came from Western Germany to settle down in the Soviet Zone. He was in possession of Western currency. Having reached the Soviet Zone where he stayed with a friend, the money was stolen from him. He reported the theft. The thief was arrested, while he himself was charged with illegal possession of Western currency, i.e. West marks of the Federal Republic, and his car in which he rode from the West to the Soviet Zone was seized for having been used as a medium for the transfer of the Western currency. My client was sentenced to three months imprisonment by a jury. The prosecution interposed an appeal against the sentence.

Question by a DELEGATE: What does the witness think was the purpose of that appeal?

WITNESS: The jury had failed to confiscate the car which was operated under a Western license. The prosecutor had obtained the vehicle from the police and kept it in the court of the prosecutor’s head-

quarters. He was eager to acquire the car for himself. The appeal resulted in the confiscation of the car. The accused had already served one month and a half of his term; I had requested his release.

The hearing of the case on appeal was attended by the chief prosecutor who afterwards asked whether the defendant would lodge an appeal. I answered in the affirmative because I considered the confiscation of the vehicle an injustice. Thereupon the chief prosecutor asked me to inform the defendant that he might be released within one hour and a half if he revoked his appeal. Despite my contrary advice, the defendant agreed because he was certain that no justice would be practiced anyhow. In fact he was released after two hours and a half. As a result of this trial I received a letter from the Muehlhausen chief prosecutor barring me from the area of the Muehlhausen county court.

W. ROSENTHAL: I can have the letter from the Muehlhausen chief prosecutor read to the Committee. The whole procedure is typical of the manner in which lawyers in the Zone are being restricted in their proper activity. (The letter is read.)

Having concluded the study of this subject the Committee can now proceed with hearing a witness on Article 10 of the Universal Declaration of Human Rights under which every accused is entitled to a proper and public hearing before independent and unbiased judges. The Committee has already heard to what extent this right is not guaranteed in the Soviet Zone. I would like to limit the investigations to the question as to whether the courts in the Soviet Zone are independent and unbiased.

(The following outline is analogous to the Introduction and Documents 74 ff. of the Collection of Documents “Injustice as a System.”)

I would like to introduce to the Committee a witness who was employed as a judge at a Soviet zone district court. He is in a position to report on a number of cases in which the

Independence of the Judge

was disregarded or abolished.

The witness practiced in the Soviet Zone until October 31, 1950. One of his experiences was the following: his court had settled a dispute over a tractor. The case had been concluded, the tractor had been allotted to one of the litigants. The supreme court of the province had finalized the decision after an appeal had been lodged by the losing party. Some time after the valid judgment, four persons called on the witness. What followed will be related by the witness himself.

WITNESS: Three of the four persons identified themselves as instructors of the National Front (the National Front is a Communist propaganda movement with a nationalistic tendency, transl.), the fourth as a criminal police officer from the county capital. The four declared they had gotten wind of the tractor affair and said the decisions reached by the various courts were pure nonsense. The tractor, they said, was not due to either of the parties but to the municipality which owned no tractor.

I referred to the valid judgment, but a fifth man who had joined the group in the meantime urged me make up my mind to quash the sentence, since other-

wise a lot might happen. I feared that the criminal police officer might use his right, under Soviet law, to suspend me from my post. As I could not quash the sentence, I decreed that the tractor be allotted to the municipality pending final decision by the competent ministry of justice.

I would also like to report on the case of a coat-hanger manufacturer. It was taken as an offense that such an enterprise was still in private hands. Representatives of the so-called Land Control Commission at Potsdam came for an inspection. They tried to find something to get rid of the manufacturer the cold way. They invented fictitious economic sabotage and unskilled processing of the wood, that means undue waste. The Control Commission caused the man's arrest. He was thoroughly examined by the police and it was very soon determined that the evidence collected by the Control Commission was not correct.

Investigations having been abortive, the police held the man in custody for several days since a commission was supposed to arrive from the county capital for re-investigation of the case. The result being negative also, I released the man. A few days later other Control Commission representatives called on me, very indignant about the release of what they considered an economic saboteur. They threatened that the case would have consequences for me, since it was an obvious case of abetment. The very same day I learned that court employees had been directed to spy on me. The Control Commission ordered the man's re-arrest, but he had fled in the meantime.

W. ROSENTHAL: As the last of the witnesses I would like to introduce to the Committee a former prosecutor from the Soviet Zone.

The witness will report on a trial in which the defendant was at first sentenced to a lifetime of penal servitude on charges of alleged economic crimes. Following an appeal the sentence was quashed. In the new proceedings, judgment was postponed countless times and finally ended with the imposition of a four-year term of penal servitude. During his detention the defendant's health was ruined in a manner that caused his death a few days ago. One day before his death he was released so that, having been held prisoner in the basement of a hospital, he was moved to the first floor of the hospital where he could die as a free man.

Eight successive medical certificates issued by the court doctor had described the man as completely unfit for detention.

WITNESS: In the spring of 1950 I received an assignment as chief prosecutor in Potsdam because my successor had been detailed to Waldheim. At that time a huge economic trial was pending of a former banker who had run a bank in Potsdam. That man still enjoyed a standard of living which greatly displeased the party members and other circles; so it was agreed to liquidate him.

The day before the trial I was informed that a conference would be held in my room in the evening to discuss the spectacular trial scheduled for the following day. There appeared the president of the criminal chamber, his assisting woman judge, the medical expert of the land government, the co-plaintiffs of the ministry of economics, several representatives of the parties, including the head of the People's Judge College at Babelsberg. I witnessed a scene I have never experienced in all my life.

The head of the SED legal department stressed that the case should be made a universal example and that the court could consider only a lifetime of penal servitude. In order to make the trial impressive, each phase of the proceedings was discussed with the prosecutors, judges, and experts. They agreed on specific questions to be put to the defendant and laid down specific answers to which the prosecutors, the co-plaintiffs, the judges, or the experts had to react. The whole trial was pre-arranged in detail to avoid any mishap.

I would like to emphasize that I had nothing directly to do with the trial. It was intended to employ me as the second prosecutor, but I feigned illness and declined the offer.

The trial was carried out as agreed. The defense counsel had expected two or three years of penal servitude. It could not have occurred to him that from the very beginning the man was doomed to a lifetime.

W. ROSENTHAL: I refer again to the circular decree (Document 80). It confirms what has been proved by witnesses in the Hechler case and what we know anyhow, namely that at the Supreme Court any trial is pre-arranged in detail by the prosecutor and the judges.

Question by a DELEGATE: I would like to ask the witness what would have happened if the jurists involved had refused to carry out the directives received from the SED party.

WITNESS: I would like to call the Committee's attention to the fact that no professional judges took part in that trial; for the president of the criminal chamber and his assistants were People's Judges who underwent only a relatively short training.

As all the judges and prosecutors were members of the SED party their demeanor was simply a matter of party discipline. Any actual resistance in that group certainly would have resulted in the removal of the person concerned.

Besides, the Land Control Commissions interfered very often. In talks with them one had the feeling that those people were so mighty and authorized to issue directives that the prosecutors were just people receiving orders.

W. ROSENTHAL: Can the witness tell the Committee whether the prosecutors gave in to the Control Commission's proposals?

WITNESS: In most cases I talked with the judges before the trial, telling them that the representatives of the Control Commission considered a minimum of so-and-so many years necessary. The judge then, with only minor deviations, imposed the penalty demanded by the commission.

Regarding the circular directive mentioned by Mr. Rosenthal, I would like to remark that I had to sign a statement acknowledging the study of the directive.

Question by a DELEGATE: I would like to make it easier for the Committee's foreign guests to understand the behavior of judges and prosecutors, and therefore ask the witness to tell the Committee about the nature of the existing guarantees of independence of the judges, that is, whether they were under contract for a life-time, or whether they could be dismissed at any time?

WITNESS: In 1951, a regulation on notices of dismissal was issued for all employees in public service,

including the judges and prosecutors. According to that regulation, two-week notice could be given for dismissal at the end of the month.

W. ROSENTHAL: I see that all judges and prosecutors are dismissable at any time under a system corresponding to that in the Soviet Union.

Question by a DELEGATE: Can the witness tell the Committee about the consequences of non-compliance with the directives and instructions?

W. ROSENTHAL: I refer to Circular Directives No. 141 and 726, both reprinted in the Collection of Documents. In one, the Saxon Ministry of Justice named several cases which caused the dismissal of judges for imposing unsatisfactory sentences and releasing persons, or which resulted in the arrest of the judges on charges of abetment.

Question by a DELEGATE: Can Mr. Rosenthal tell the Committee whether party membership is a prior condition for the employment of judges and prosecutors?

W. ROSENTHAL: Judges and prosecutors in the Soviet Zone are said to be under compulsion to join the SED party, but that is not correct. In this room

we have several judges from the Soviet Zone who practiced without being members of the SED party. Of course, it is true that 80 per cent of the judges and even 96 per cent of the prosecutors are members of the SED.

In addition to this analysis of the situation of penal law in the Soviet Zone of Germany, I would like to mention that in 1950 a total of 78,293 defendants were sentenced in the manner revealed before this Committee. The total of the penalties imposed amounted to 15,712 years of penal servitude and 42,461 years imprisonment. In 1951, the development was even worse; 30,000 years of penal servitude were imposed against 10,000 defendants.

Sir G. R. VICK, Great Britain: We have heard of a situation in which I would not like to find myself under any circumstances and in which an experienced veteran judge changes a sentence because he has orders. God have mercy upon a country in which experienced judges can be involved in such action. I thank God for women like Mrs. Milke. I have no reason to be proud of my sex this afternoon.

THIRD DAY

Chairman Prof. G. BELLAVISTA: The morning session is opened. Before the Committee proceeds I would like to announce the formation of a sub-committee for the drafting of a resolution to be adopted by this Committee. I suggest that the following gentlemen be elected into the panel: Prof. J. GRAVEN, Switzerland; Prof. Dr. J. ANDENAES, Norway; B. W. STOMPS, Netherlands; Ambassador KYU HONG CHYUN, Korea; and Sir G. R. VICK, Great Britain.

I would like to ask the Committee whether there are any objections to the composition of the sub-committee. I see there are none, so the sub-committee is constituted.

Now I ask Prof. Dr. J. Stransky to speak.

The Development of Penal Law and the Administration of Justice in Czechoslovakia since 1945

by Prof. Dr. J. STRANSKY,
former Minister of Justice in Czechoslovakia

The Czechoslovakian exile government was recognized during the war by the Eastern and Western nations and in the spring of 1945 was confronted with the task of leading the re-created Czechoslovakian state toward a peaceful, democratic development.

However, that task could not be carried out. Just like the coalition governments in Poland, Hungary, and Rumania, it was prevented from realizing its objective by the Communists whose participation in the government could not be avoided. You will understand why I have not only the right but the duty to mention here the fatal collaboration with the Communists. Someone who like I shares responsibility for numerous miscarriages of justice that occurred in Czechoslovakia

during the period from 1945 to 1948 would not be entitled to attend this Congress were he not in a position to explain how the democratic politicians, by participating in the miscarriages of justice, succeeded in alleviating injustice which otherwise would have been worse.

Prior to the Communist coup d'etat the administration of law was at least a struggle for justice. Right at the beginning a few people at Brno were sentenced and hanged by a People's Court for having denounced or caused the death of others for personal reasons or from pure meanness during the period of (German) occupation. When present State President Gottwald visited Brno after that incident, he declared in a public meeting: "You in Brno have hanged Hitler's domestic servants, we in Prague will hang his ministers!" He referred to the members of the so-called Protectorate Government who were awaiting the trial the end of which was so carelessly predicted in Gottwald's address.

Some of the former ministers of the Protectorate Government were not accused at all, others were acquitted, others were sentenced to imprisonment, but none of them was sentenced to death. But within the government a struggle was going on to save them from death which might have become the fate of all the prisoners. This struggle had to be decided in the government and not before a tribunal. The People's Tribunals were composed from partisan viewpoints.

You have a right to wonder why the democratic ministers and the democratic state president did not resign. I can reply to this question only by referring to the basic changes that took place in the administration of justice when we were finally forced to resign and yield to the Communist coup d'etat. Nevertheless I am convinced that the protection we were able to give in some fields of judicature by collaborating with the Communists could not compensate the moral damage which necessarily is the result of any compromise.

Speaking about the period from 1945 to 1949, I have to mention the Czechoslovakian Reprisal Law, in particular its retroactive force. The Reprisal Law affords the opportunity to vindicate a number of political crimes committed during the years of 1938 till 1945. The very same law also created brand-new offenses which could be retroactively punished by severe penalties, including capital punishment. At the same time a People's Tribunal was established against whose judgment no appeal could be lodged. Under the chairmanship of a professional judge, four laymen representing each of the four parties passed judgment.

I am the last to defend the retroactivity of a law in the selected company of judges, lawyers and jurists. Yet, whoever wishes to understand why such a kind of legislation and application of law was considered not only possible but necessary, should recall the events of the past. The massacre of all male inhabitants of a village, including boys only fourteen years of age, the execution of 15-year old girls who had committed no other offense than failing to denounce their parents, the extermination of a quarter of a million Czechoslovakian Jews — all this has not been justified by a retroactive legal principle; in fact there was no such legal principle at all.

The makers of the retroactive Reprisal Law made the following considerations: if the Czechoslovakian legislator had been able to imagine the present situation, what a legal situation would he have created and for what penalties would he have provided? Thus we considered ourselves entitled, no, we considered ourselves obliged — today I would like to say doomed — to give such a legal situation and punishment retroactive power. The entire Nuremberg trial was based on retroactive determination of punishment. It should be borne in mind that it were primarily Anglo-Saxon jurists who were responsible for that trial, that means, men in whose thinking and sense of justice the natural law was an essential factor.

As to the severeness of the Reprisal Law, I may say that evil was caused by its varying and unjust application rather than by its harshness. Under the political pressure exerted by the Communists the Reprisal Law degenerated to one of the most heinous means of the class and party feud. Industrialists, businessmen, and officials who had collaborated with the occupying power with almost no exception were branded as criminals, while the workers who had performed more than the usual work in the armament industries in order to receive bonuses and extra leave were not affected. The worst collaborationists did not flee abroad but into the Communist Party which offered a much more reliable asylum.

About 1946, the government also buttressed its Two-Year Plan by penal regulations under which everybody not complying with the general duty to work was convicted. The penalty was relatively small, but after having served his term the accused could be confined by the administrative authorities to a labor camp in which he had to perform slave labor until the end of the Two-Year Plan.

This measure was already a minor prelude to the large number of confinements to hard labor camps which took place shortly after the completion of the Communist coup d'état.

In the period from 1945 till 1948 a law promulgated in 1946 deserves special mention. It provided for

exemption from punishment of all offenses committed during the period from September 1, 1938, until October 28, 1945, with the intent of liberating the country, combating the occupying power, or liquidating collaborationists. The law was applied in so liberal a manner as to make offenses committed from the basest motives and cruelty free of punishment. The law legalized the wild, pseudo-revolutionary terrorism unleashed and employed by the Communists for certain ends.

The development of penal law and the administration of justice will be described in a brief, special lecture by Dr. Frank. It was and remains a descent into the deepest darkness of night.

In conclusion, a few incidental remarks on the solution to all the complications, complaints and claims resulting from the monstrous injustice which is gaining ground in Czechoslovakia today. Complete restitution of the wrong which the nations and individuals inflicted on each other is hardly possible. Nobody can wake the dead, or restore the health of a cripple.

The decisive question of the present time is not: "What may I do?", but: "What must and should I do in my distress?" Just as "freedom" has become the catchword of the tyrants, "people" developed into the catchword of the national oppressors, and "peace" became the slogan of the destroyers of peace. Yet, this should not intimidate and prevent us from recognizing the task and the condition under which alone our culture can prosper again.

Chairman Prof. G. BELLAVISTA: Dr. Frank will now add details on the development of the administration of justice in Czechoslovakia.

The Development of the Administration of Justice in Czechoslovakia

Additional Remarks

by Dr. FRANK, Czechoslovakia

Allow me to introduce myself briefly. Until the summer of 1951 I was employed as a judge in Prague. In July, 1951, I was summoned to appear before the court's works council. I and another 20 judges were informed that we had ceased to be judges and should seek a job as auxiliary workers in a factory. In August, 1951, I crossed the border illegally and reached West Berlin where I have been living as a refugee since.

In 1945, I was arraigning judge at a Prague penal court. The building was used at that time by the ill-famed "People's Tribunal" of which Prof. Dr. Stransky has given the Committee an idea.

In November, 1945, a German who had spent several years in a German concentration camp was brought before the Prague Tribunal. The defendant had been in a field hospital in which a number of former concentration camp inmates believed to have identified him as a notorious "Kapo" (guard) from Mauthausen concentration camp, and they contended that he had committed atrocities against their fellow prisoners. A physician of the hospital composed a sort of protocol with the accusing prisoners, forwarding it to the People's Tribunal. The accused former concentration camp inmate was moved to Prague and brought before the Tribunal as soon as he was fit for transport.

From the very beginning he had maintained that his prosecutors were wrong, and had denied having committed the crimes they had charged him with. His defense-counsel requested that the former concentration camp inmates who had charged the accused appear as witnesses in the trial. Rejecting this request, the People's Court heard the reading of the report written by the physician, sentenced the defendant to death and had him executed on the gallows two hours after the verdict was pronounced. Had there been any possibility of an appeal or a revision, one could have been certain that the verdict would have been canceled because the statements of the former concentration camp inmates made to the physician would not have sufficed as evidence.

Things were not different in the courts of other towns. A Brno judge once told me that he had to preside over a People's Court trial of a German resident of Landskrone. The whole prosecution collapsed during the trial. The accused had not denounced anyone, he never had been a member of the SS elite guard nor of the SA storm-troopers, he had never inflicted damage at anyone's expense. When the appellate judge said during the discussion that the prosecutor had been unable to prove his charge, the jurors stated flatly: "All this may be true, but the man must be given 15 years of hard labor." — "But what for?" the professional judge asked them, adding, "he did not do anything that could be proved." — "Our Party, to which we are responsible, said so," the jurors answered, "and you, judge, are not in a position to see things as they do." The defendant received his term of 15 years of hard labor.

I have reported extensively on this regrettable chapter because it contains the reasons for the following one which is still more regrettable. All this contained the seeds of what led, after 1948, to an even more horrible development: the political infiltration of jurisprudence, the introduction of People's Judges explicitly ordered by the Party not to act in good faith, not to speak of acting objectively. Then there was the intimidation of the professional judges who were told time and again that they knew nothing of the handling of these kinds of penal charges and were reminded of the undisturbed life they had lived under the Nazi regime. Finally, there was the eccentric uncompromising severeness with which such political cases were judged — all these things opened the way to the State Court, i. e. the political murder machine of Communist Czechoslovakia.

The gentleman speaking prior to me told you about the law which states that all those unwilling to work are to be confined to forced-labor camps. In defense of the honor of Czech professional judges I wish to say that they circumvented this law by acquitting most of those "unwilling to work." After the Communist coup d'état this was no longer simple. The practice of confining political prisoners to forced-labor camps was systematically refined after late in 1948. The first step was an Ordinance dated February 1949, which compelled the courts to give, immediately after the verdict had become effective, the names of all those convicted of political crimes or offenses to the local confinement commissions. This method, however, turned out to be somewhat ineffective. Many a political delinquent slipped through this net because the confinement commissions often forgot to pick them up at the prisons after they had served their terms. For this reason another directive was issued directing the courts to

inform the confinement commissions by letter of the coming release of the prisoner exactly one week prior to the termination of the term. Nevertheless it sometimes happened that the commissions read these information letters after the convicted person had already been released.

That is why the Ministry of Justice decided to hold the judges themselves responsible for the confinement to a forced-labor camp of the political delinquent who had served his term. The new Penal Code of August 1, 1950, provided for the establishment for all County Courts of a special chamber to collect all material regarding all legally terminated political cases. These chambers must decide whether and for how long (up to five years) the political delinquent is to be confined to a forced-labor camp, i. e. to a concentration camp, after he has served his term. I want to call your attention to the fact that not even the Nazi state went that far.

The previously mentioned law on the punishment of those who collaborated with the enemy promulgated with retroactive power, a law which had lost its validity on May 31, 1947, was put into force again in March 1949. This act was a hard blow to legal security, but even worse was the regulation which all of a sudden declared those verdicts which had been given until the last day of May, 1947, provisional and changeable. Everyone acquitted by a final judgment could be sentenced, without investigation, indictment and re-trial, for the same act for which he had been acquitted under the old law. Every convict could be imposed a severer penalty without re-trial.

How were the necessary professional judges recruited for the State Courts, this terror organization responsible for so many murders and false imprisonments? At all Prague courts, the judges were called before the presiding judge. I was called too. The judge told us it was our "patriotic duty" to do our part in this new and thorough clean-up. At the same time, he promised a wonderful professional career, big premiums in cash and a higher category food ration card to every judge declaring his readiness to cooperate. Though only those judges who regarded their positions as a means to get their ration cards declared their readiness, it is a shame to report that there were enough to occupy all the chairmen's seats of the People's Courts.

Late in 1948, the People's Courts discontinued operations and the "food ration card men" were accepted by the new administration of the powerful Communist dictatorship as professional judges with the State Courts.

A judge who late in 1949 refused to obey an official order — his name was Dr. Jaroslav Zolnar — was arrested, put on trial and sentenced to six years imprisonment. How did it happen? He was ordered to come to the Ministry of Justice in November 1949. Presenting him with the documents on a political penal case an official told him: "You will take care of this case as the chairman of the court. The accused is to be sentenced to death." Dr. Zolnar thumped the document down and answered: "No. That would be a legal impossibility. I cannot sentence this man to death." Thereupon the official, named Gloss, said: "You know what your refusal means?" Zolnar retorted: "I don't care what it means, I cannot sentence this man to death. The law which you yourself promulgated would not justify a death sentence."

Zolnar left the room. Even before reaching his home he was arrested. When questioned by the political police, he admitted that he had once explained another case he had to handle to his brother, a professor of penal law at the Prague University, and that he had discussed the judicial aspects of this case with his brother. This fact was used as a pretext to sentence him to six years imprisonment on the charge of violation of official secrets and, having served his time he was sentenced to forced labor on the construction of a road near Prague.

As a matter of course, the list of experts was purged, leaving in office only those experts who knew what they were expected to do, who blindly obeyed the Communist Party and held right only what was deemed right by the Party. The following cases will illustrate the work of the experts today admitted to advise the courts:

A judge of the Prague People's Court had sentenced former lawyer Dr. Lippmann to three years confinement in a penitentiary for assisting several people in fleeing to foreign countries. The sentence was handed down by an official order of the Ministry of Justice. The defendant lodged an appeal. But in accord with an ordinance issued by the Ministry early in 1950, a convicted person must start serving his term, regardless of possible request for appeal, immediately after a verdict has been pronounced by the court. In the case I am describing to you the man was sent to the Joachimsthal uranium mines immediately after the verdict was handed down. Four weeks later, the Joachimsthal prison doctor cabled that the lawyer was seriously ill: hypertrophy of the thyroid gland. The judge had two physicians examine the lawyer to ascertain whether he should stay in prison. Both the doctors stated that he should not. Thereupon the judge released the lawyer.

After a few days the judge himself was arrested and charged with having misused his official power and with having accepted gifts. He was put to trial together with one of the doctors who was similarly charged. The other doctor and the prison physician, who, by the way, had made the same statement, were not tried, in open disregard of the principle of equality. Two other medical experts, both agents of the Communist Party, called the first statement wrong and said the doctors who had made it, as well as the judge, should have been aware of that incorrectness because the thyroid gland of the lawyer was not swollen! Judge and doctor were given long prison terms. The judge confessed to the court that he had had a love affair with the wife of the lawyer and that he had accepted money from her. I know that man and I would put my hand into fire that this self-accusation was forced from him, and that it is wrong. This colleague of mine, before he was arrested, had said to his wife who told me of his words: "No matter what you may hear me confess, nothing will be true." He opened his mouth and she saw the bare gums where before his arrest there had been teeth.

In October 1948, the "Law for the Protection of the Republic" which meted out diabolical punishment for any political activity not authorized by the Communists, was passed. Any "meeting of two or more people preparing attacks on the People's Democracy" was liable to capital punishment. This regulation enabled those in power to hang two people — two! — for printing and distributing an anti-state leaflet. It would

have been taken as a matter of course that those two people would be sentenced for activities whose indicated punishment is imprisonment, e. g. for "agitation against the state power," for "spreading disquieting news," etc., but section No. 1 of the "Law for the Protection of the Republic" concerning "attacks on the Republic" enabled the authorities to murder these people. This also applies to everyone who illegally crosses the border into the West, or from the West into Czechoslovakia, and who is caught committing this trespass; for such acts, this rubber section of the law provides capital punishment. The law was interpreted that way, because it was assumed that he who goes to the West is seeking connections with circles plotting against the state, and he who comes from the West has already established such connections.

I will give you a few significant examples of indictments based on this law. I do not know the sentences, unfortunately. I, myself, did not pronounce any, because I never had such indictments. Fellow-judges who had to do this are keeping silent. But a public prosecutor showed me some of those indictments. The following remarks were reasons to sentence people for "incitement against the People's Power":

One woman told another: "Today when I left home I took 1,000 crowns with me. I spent all of that money, now look into my market-bag — there is as much as nothing in it."

One woman told another: "Look at the prices for the goods on display in that show-window. Can you afford to buy anything — I cannot."

The fellow-judge who had to decide that both these women were guilty told me that the official reason for the verdicts was that they had made remarks apt to "incite hatred against the regime" which "fixes the prices on all goods in an absolutely just manner"!

The "Law for the Protection of the Republic" provides punishment for the spreading of disquieting news even if the news are correct. In accordance with this provision a man was tried and sentenced for talking in a restaurant about a railroad accident in which he was injured. No news of the accident had been officially published.

The statement once made by an instructor explaining the results of individual factors needs no further comment: "The more you obey the official orders regarding the interpretation of laws and meting out of punishment, i. e. orders you are given by both the Party and the Ministry of Justice, the greater will be your independence as judges. That is, your superiors will be satisfied with your work and will not even think of interfering with your independence."

The prisons are filled with victims of legal regulations on so-called "machinations" occurring during the nationalization of private business.

When I was a penal judge, which office I held until August 1, 1950, I once had the case of a butcher who had his shop taken away and was admitted as administrator in his own socialized shop. When his administration was checked a deficit appeared. The man was tried at once. In trial he told me: "When my shop was socialized, it was appraised at a value of 300,000 Crowns. Now when it is checked, there is a deficit of 20,000 Crowns. Where are my 280,000 Crowns?"

If you should ask me whether I myself ever received such orders, I would tell you that I did so twice. The first time was when I held the position of a

penal judge and had to preside over a murder case. I was called by the Ministry of Justice and informed that the Minister of Justice did not want to see the defendant sentenced to death because he belonged to the working class. I obeyed this order. Why should I allow this man to be killed? I was not in the least interested in such a sentence.

My second official order came to me when I was a civil judge. An activist wanted to be divorced from his wife. It was on a Thursday, I remember it as if it were today, I was ordered to come to see the president who said to me: "Tomorrow by 1 p. m. this case must be through." I said: "Mr. President, can you also tell me how?" — "You know that yourself." — So I had court convened, i. e. by the usher of the Court. I obeyed the orders. The case was finished the next day by 1 p. m., though the decision was different from what the President had expected it to be: I turned the plea down.

Chairman Prof. G. BELLAVISTA: I thank Mr. Frank and Mr. Stransky for their extraordinarily interesting reports. After a short recess Prof. Dr. N. Dolapchiev will report on the development in Bulgaria and then Dr. M. Butariu will report on what has happened in Rumania.

Development of Jurisdiction in Bulgaria since the Country's Occupation by the Soviets

by Prof. Dr. N. DOLAPCHIEV, Bulgaria

There were three main periods of the development: the first period saw the temporary use of the then existing legal system with gradual Communist infiltration; it started immediately after the coup d'etat on September 9, 1944, and lasted until December 4, 1947, when the old liberal and democratic Bulgarian Constitution was replaced by the new Soviet Constitution. The second period began on this day and lasted until November 20, 1951, when the old laws existing before the Communists seized power were declared invalid. This period was marked by the establishment of a new legal system drawn along Soviet lines and by the complete abolition of all non-Communist laws. The third period, which followed, is still in progress and consists of the further refinement and the completion of the process of the introduction of a Soviet legislation.

Immediately following the coup d'etat on September 9, 1944, the Communists rooted their political adversaries out of the Patriotic Front, and then turned against their own allies in the government coalition. To reach this goal they proclaimed, on October 6, 1944, the "Directive on People's Tribunals" which they used with unheard-of brutality.

The first sessions of the two Main People's Tribunals began in Sofia on December 22, 1944. On February 2, the three former regents, including the brother of the late king, Prince Cyrill, 22 ministers, 68 former members of the Parliament, and eight advisers to the late king were sentenced to death and executed the same night. These main trials were followed by other trials against generals, administration officials, businessmen, journalists, and other representatives of the old regime. Most of them were sentenced to death.

I had the hollow honor to be the defense-counsel to the very first of the defendants in the Main Trial — he was Prince Cyrill — and am, for this reason, in a

position to report to you personally on all excesses committed by this "People's Jurisdiction."

To begin with, the "Directive on People's Tribunals" was an unconstitutional act in itself.

1. It represented an open breach of the general principle of non-retroactivity of criminal law, i. e. the actions of the defendants were not liable to punishment at the time these alleged crimes were committed.

2. It violated the principle of non-exceptionality of the criminal history. According to the Bulgarian Constitution, no special court must ever be set up. The People's Tribunals, however, were nothing but special courts. They were set up for a special category of crimes.

There were also other violations of the general principles of criminal procedures.

3. Among other things, the principle of the "impartiality of judges" was wholly ignored since the members of the jury were "elected" by people obviously seeking revenge instead of justice.

4. The principle of "independence of judges" was also violated, i. e. the verdicts of the Tribunals were mostly made by "People's Assemblies" convening prior to the courts' decisions.

5. There were no first hearings of the accused, no information on the indictment and, consequently, no chance to gather counter-evidence and to prepare a regular defense.

6. Though the defendant was under arrest, i. e. at the disposal of the courts, he was brought to the Tribunal as late as some six weeks after the trial had opened so that the largest part of the trial was held in "absence of the defendant."

7. Even after the defendant appeared in court his defense-counsel was not allowed to contact him. Only after the hearing the lawyer succeeded in talking to the prisoner. During the whole trial, the defense-counsel was prevented from talking to the defendant.

8. During the trial the defendant as well as his defense-counsel were exposed to incessant coercion, threats and provocations by the militia and by "People's Assemblies."

9. Though the whole trial lasted for about two months, the defense-counsel was granted only the very short speaking time of 20 minutes.

10. The whole legal process against Prince Cyrill was nothing but a spectacular trial. The fate of the defendant was decided long before the legal procedure.

After the coup d'etat a great number of political and criminal prisoners were released from prison and used by the Communist Party to provoke terror among the population. For this reason many decrees of amnesty were needed on September 19, and in the following period.

On October 10, the "Amendment to the Law on Public Education" was passed. As an expression of the beginning anti-religious attitude, it deleted religion and history lessons from the class schedules. This amendment was followed by the "Directive on the Purge of the Faculties," the first blow dealt to anti-Communist professors and teachers. The purge progressed through several stages until all universities and schools were completely bolshevized.

On January 20, 1945, the "Directive on Labor Reform Institutions for politically dangerous People" was released. This meant the official introduction of concentration camps. The Minister of the Interior was given power to confine to those camps all persons "dangerous to state security and order." Since that time some 10,000 people are constantly being confined and ruthlessly exploited in those slave labor camps.

On March 17, 1945, the "Directive for the Defense of the People's Power" was introduced enabling the government to annihilate all those opposing its policy. This was the directive under which many a well-known Bulgarian politician was liquidated, including Pastukhov, Petkov, Lulchev, General Stanchev, and many others.

To win power over the trade unions the Communists issued the "Directive on the Abolition of the Law on Vocational Organizations" on April 9, 1945. Though, according to this directive, the organization of vocational representations had to be on a voluntary basis, it was really compulsory and admitted only the Communist-dominated trade unions.

A highly important reform was introduced on April 25, 1945, by the "Directive for Co-operative Agricultural Working" which aimed at the collectivization of the farms and at the socialization of the agricultural production. Theoretically, membership in a kolkhoz was still voluntary, yet actually, it was obligatory.

One of the main aims of the Communists was the undermining of the economic stability of the bourgeois who were to be made proletarians without any possessions of their own, thus being made dependent on the Party organizations. Following a partial weakening of their financial strength by common looting and various "public loans," a law was passed on the confiscation of property earned either by speculation or other illegal methods. This was a camouflaged form of open expropriation. It supplemented the "Law on Income Taxation" of October 12, 1946. The encroachments on the properties of the rural population were carried out in 1946 by the "Law on the Property of the Rural Population."

On April 30, 1946, an amendment to the "Directive on the Defense of the People's Power" was released, as well as an amendment to the Press Law. Both these amendments aimed at increasing the pressure on the opposition. The latter was not only directed against the papers, but also against those individuals and groups of persons who were "spreading distrust in the authority of the state," who "made untrue statements," who "reported on facts and conditions in such a way as to disturb good relations with friendly states," or "to undermine the prestige of such a state, i. e. Russia."

In the following year, i. e. 1947, these laws were the most important ones to be put into force: a Law on a Currency Reform and a Law on Cashless Payments and the Use of Bank Deposits. Both these laws were meant as another blow against the existing saving accounts.

Other laws promulgated were the "Law for the Supplementation of Criminal Procedure," the "Law for the Supplementation of the Criminal Code," and the "Law on Lawyers," which created a Soviet organization of lawyers.

The new Constitution was put into force on December 4, 1948, i. e. ten days before the Soviet occupation forces left Bulgaria after having fulfilled their task of sovietizing the country. The new Constitution being officially the "Constitution of the Bulgarian People's Republic," but in Soviet style, the Communists have termed it the "Dimitroff Constitution," same as the Russian one is called "Stalin Constitution."

All the essential marks of the Soviet Constitution are also contained in the Bulgarian Constitution. As in Soviet basic law, the Bulgarian Constitution includes one meaningless, merely decorative section. Thus, Article No. 2 of the Soviet Constitution reads: "Established and consolidated as the result of the abolition of the power of the big real-estate owners and capitalists and by the victory of the Dictatorship of the Proletariat." Its Bulgarian counterpart (Article No. 1, Part 2) reads: "Established and consolidated as the result of the heroic fight of the Bulgarian people against the monarcho-Fascist dictatorship, and as the consequence of the victorious revolution of the people on September 9, 1944." But were the things called by their proper name, this article would read: "Bulgaria is a Soviet Republic under the dictatorship of the Communist Party, brought to power and strengthened by the imperialist conquest and subjugation of Eastern Europe by the occupation forces of the Soviet Union."

The dominating position of the executive in Bulgaria in its relation to the legislative is obvious. Formally, the "National Assembly" is the supreme organ of state power. But, as in Soviet Russia, the supreme state power in Bulgaria is vested in the executive, i. e. the Ministerial Council and its president, the Prime-Minister. It is generally known that the real leader of Bulgaria was George Dimitroff, backed by the Kremlin, and not the legislative nor its presidium, nor even its unknown president.

Though Article No. 2 rules that "all representative organs of the state authority shall be elected by the citizens in general, equal, direct and secret elections," such elections in Bulgaria are a complete farce. held under coercion and yielding false returns. One single list of candidates is allowed. The right to nominate candidates is restricted to the Communist Party.

As far as the judiciary is concerned, the power of the executive in Bulgaria is no less dominating. The inalienable basis of judicial independence, the guarantee of the term of office of the judge, was abolished. The few professional judges may be dismissed, suspended or transferred to any other place, at will. In fact, they are elected and put into office by the Communist Party. The courts are flooded with lay judges elected for a relatively short term by their local Party organizations. The judges have to act according to orders by the executive.

The other trait of the Soviet system, the complete centralization of administration, also fully applies to Bulgaria. According to Article No. 48 of the Bulgarian Constitution, "the Town and District People's Councils are the agencies of state power." Their decisions are controlled, and can be changed, by the higher central administrative authorities of the state. But what is much more important is the fact that the whole state apparatus from top to bottom is virtually controlled by the Communist Party which stands behind and above all state authorities. Thus, behind every admini-

nistrative agency there is the Party authority, the so-called "Patriotic Committee" led by the Communist Party.

Bulgaria is also a socialist state after Soviet pattern. All means of production are socialized, all industries and bank institutes are nationalized, agriculture is almost completely collectivized, big real-estates have been expropriated and private property sharply reduced. Thus, all means of production belong, according to Article No. 6, to the State (as people's property), to cooperative associations, private or judicial persons.

The difference between the Bulgarian and the Soviet Constitutions in respect to this is that private property has been largely abolished in the USSR, but small properties are allowed as exceptions, while in Bulgaria private property is, by and large, acknowledged, but greater properties are not allowed. In both countries the means of production are State property. So it is a fact that there is but a slight difference between those two systems.

The same relation exists between the two Constitutions regarding real-estate. All soil in the USSR belongs principally to the state which, in turn, refers it to the state-owned farms (kolkhozes). Small landed property is allowed, as an exception. The Bulgarian soil is principally private property belonging to those who cultivate it. But there is one exception: greater farms are not allowed, such land is property of the state farms.

One could easily continue these examples indefinitely. There are more instances of complete conformity. To give but a few examples: Article 15 of the Bulgarian Constitution corresponds to Articles 30 and 31 of the Soviet Constitution, Article 16 of the Bulgarian Basic Law corresponds to Article 32 of the Soviet one, Article 35 is the same as Article 49, Article 38 is Article 64, Article 40 is the Bulgarian version of Article 65.

The only difference between the next articles of the Bulgarian Constitution and those of the Soviet Constitution is the fact that Bulgaria has a one-chamber, while the USSR has a two-chamber parliament. As far as the rights and the prerogatives of the national assemblies are concerned, there is a complete similarity between both of these constitutions. The legislative bodies of both the USSR and the People's Republic of Bulgaria have the right to elect the collective leading board of the state, the Presidium.

Exactly as in the Soviet Constitution (Section 10, Articles 118—133), the Bulgarian Constitution contains a special section No. 10 (Articles 71—94) dealing with the protection of basic human rights. But, as in Soviet Russia, these regulations have in Bulgaria but a decorative function of no real importance. In all Communist countries there is a wide contrast between words and facts. In the realm of hypocrisy the Communists are unsurpassable. To cite an example, the real meaning of the concept of freedom of conscience in Article No. 78 of the Bulgarian Constitution is the complete suppression and annihilation of political adversaries. "Freedom of religion" (Article 78) is nothing but the complete subjugation of the Church to the Communist Party by the persecution of Christians.

"The right to work" (Article No. 73) means compulsory conscription for labor, even slave labor in con-

centration camps. The "right to education" (Article 79) means mass expulsion of non-Communist students from schools and universities, as well as admission to studies of only those people who are sponsored by politically reliable persons, etc.

The "equality of all people before courts" (Article 71) means great material and moral privileges for all leading members of the Communist Party and for high-ranking officials, while for the rest of the nation there is but misery. "Freedom and the inviolability of Man" (Article 82) is in reality the absolute subjugation of Man under the State, i. e. under the Communist Party.

"No one shall be arrested or detained for more than 48 hours without a court order or a warrant for his arrest" (Article 82, para 2) means that anyone may be at any time and without any limitation arrested arbitrarily by the police without leaving a trace.

"No one shall be sentenced and punished except by a legal verdict pronounced by a court" (Article 82) means in fact that everyone may be sentenced or confined in a concentration camp by order of the Communist Party, for the "independence of judges" is nothing but their complete subjugation under the Communist Party. Article No. 82, para 3 reads: "Verdicts shall only be imposed on the grounds of existing laws." But the reality, as in the Petkov case, is that one may be convicted and executed only for reasons of political expediency and strategy.

"Freedom of the press, speech, assembly, meeting and demonstration" (Article 88) means the suppression of all publications, right of free speech, and assembly of the opposition, etc., and the coercion of the population to participate in so-called "spontaneous" public meetings, demonstrations, marches, etc.

"The home is inviolable" (Article 85) means that any home is open at any time to any police or Party agent, that all property may be confiscated, while its owner or he who rented the property may be sent to any other place by the police. "All State authority emanates from the people" (Article 2) means that it emanates only from the small minority of the Communist Party.

After the new Constitution was put into force, the government sped up the process of nationalization of the main economic resources. This process began as early as April 28, 1947, when the "Law on the State Tobacco Monopoly" was passed, and continued with the "Law on the Nationalization of Private Industries and Mines" and the "Law on the Nationalization of the Banking Institutions" of December 27, 1947, the "Law on the State Monopoly on Oil Products" of March 9, 1948, the "Law on the Expropriation of big Estate Owners and House Owners in Cities" of April 15, 1948. These nationalization laws, which by far were the most drastical Communist measures in Europe, made all plants and workshops state properties. Nationalization was but a confiscation of all private properties and the liquidation of the middle classes. (The speaker then enumerated other new laws dealing with the People's Councils, the Civil and Criminal Procedure Code, the Administrative Courts, the Prosecution, the People's Courts, the Military Penal Code, the Criminal Code, the Notaries Public, and the Lay Judges.

During the next year, i. e. in 1949, the following laws were put into force: the "Law on the first Five-Year Plan," and in January the "Law on the Relations between

Church and State" by which the Communist oppression of the churches was finally given a "legal" basis. Immediately after the law was put into force the well-known trial against the 15 Protestant clergymen was opened, the verdict of which was pronounced on March 18.

The next was the "Law on the Bulgarian Academy of Science," of October 11, the provisions of which show how much the freedom of thinking is being ignored in modern Bulgaria, and prove that the Communist doctrine has infiltrated even into the highest research and scientific institutes. According to Article 2 of the law the primary aim of the Academy is "the study and promotion of Soviet scientific thinking in order to build up socialism in Bulgaria."

On October 26, a law was introduced empowering the Supreme Court to open trials against members of the government. This was a preparatory measure for the trial against the then Deputy Premier and Communist T. Kostoff who was sentenced to death and executed on December 16, 1949, for alleged Titoism. This phantastic trial ended with Kostoff's defense-counsel completely adopting the prosecutor's view regarding the guilt of the defendant and conceding that "in a socialist country it is the duty of the defense-counsel to assist the public prosecutor in his noble task." What an unbelievable viewpoint! But this is typical of the so-called "people's democratic jurisdiction".

After Kostoff's execution which was followed by a new country-wide wave of terror, the Communist masters thought the time fit for general elections which had been scheduled for November 27, but were deliberately postponed to December 18, i. e. two days after the execution.

Article No. 2 of the new Penal Code defines a crime as a "punishable, socially dangerous action (either by committing a certain act or by failing to perform it) if the committing or failing is punishable by law or by an analogous interpretation of the law." This means that the basic principle of "Nullum crimen sine lege" is being violated, and that penal law may be exercised by analogy.

The attempt to commit a crime is, according to Article 16, as liable to punishment as the crime committed. All accomplices in a crime — main criminal as well as accessories — are to be punished on the same basis, under Article 19 which corresponds to Article 14, Military Penal Code. The first chapter of the special part of the Penal Code consists of a reproduction of the "Law on the Defense of the People's Power." Completely new are Chapter 3 — "Crimes against Socialist Property" — and Chapter 4 — "Crimes against National Economy". As a whole, the new Bulgarian Penal Code is closely related to its Russian pattern.

In the same year — 1951 — the "Labor Code" was issued. According to Article 2 of this Law, the vocational organization of workers and social officials is voluntary, but in fact it is compulsory. This is not only confirmed by the use of the Code, but even by its detailed provisions.

Article 39 fixes the normal duration of a working day to eight hours, Article 42 prohibits its prolongation, and Article 46 adds that overtime work is not allowed. The reality is quite the contrary: the working day is being prolonged under various pretexts, such as

"socialist competition," "vanguard work," "stakhanovism," etc. But there is also, and this is of high importance, an extensive system of slave labor in concentration camps where thousands of Bulgarians slowly but inevitably are dying from starvation or exhaustion. Only recently, a U. N. Special Committee officially confirmed the news that the number of slave labor camps in Bulgaria amounts to 30, while the number of their inmates is as high as 62,000.

In 1951, the "Property Law" was passed, Article 2 of which rules that all properties belong to the State, the co-ops or other social organizations (socialist property) and private persons (personal or private property). The Law in particular rules how much soil may be owned by private persons, and decides the cases in which non-farmers may own arable land. Private ownership of large farms is not allowed. Co-operative farms will be supported by the State and enjoy its particular protection. The State is entitled to establish state farms.

The legislative activities of the Communist regime in 1951 were concluded with a parliamentary decision which terminated the second stage of the development of Bulgarian jurisdiction under the Communists. This is the "Law on the Annulment of all Laws existing before September 9, 1944," i. e. prior to the coup d'etat. This decision was made on November 20, and canceled all former non-Communist laws after they had been replaced by new directives after the Soviet pattern.

Thus, early in 1952, Bulgaria found itself in the third and last period of the development of jurisdiction which may be called the period of consolidation and further completion of the Stalinist legislation.

On February 2, a new Civil Procedure Code was passed which was shaped completely after Soviet pattern. The civil court procedures lost a great part of their civil character, since the prosecutor was entitled to interfere with any case at any time and to turn it into an issue between the omnipotent State and the helpless private litigant. There is no longer a Court of Cassation.

On February 5, 1952, a new Penal Code was passed which is made up after the Soviet pattern and contains, among other things, several regulations which are but words without any value or practical importance. Thus, e. g. Article 41 reads: "The defendant shall not be forced to make any confessions by either promises, intimidations or other acts of coercion." The reality is quite the contrary: medieval torturing and other inquisition methods with the main evidence being the so-called "confession".

There is, for instance, the case of Peter Koeff, a leading follower of N. Petkoff. He made a statement wherein he described the physical and psychological tortures he had to suffer during his prison time, a statement which was read by N. Petkoff to the Bulgarian National Assembly. Peter Koeff said: "I deem it my duty to state that nine tenths of my confessions were prescribed to me and have not emerged from my own free will ... If new confessions of mine should appear, I tell you now and here that I will have made them under absolutely unbearable conditions."

The third and last phase of the development of Bulgarian jurisdiction under the new regime is still going on. All Bolshevist interpretations and methods

of use to the so-called "Socialist Legality" were imitated. This is but a cynical and merciless servant of the political aims of the Communist Party.

The Development of Penal Law and Jurisdiction under the Communist Regime of Rumania

by Dr. M. BUTARIU, Rumania

There is hardly such a thing as a development of Penal Law and Penal Jurisdiction under the People's Democratic Regime in Rumania. It would mean judging the situation from the Communist viewpoint if one admitted that there are any progressive principles regarding the new Penal Law or the organization of the new Penal Courts. If we take all the new penal laws and the way they were enforced in Rumania we must state, even under the most neutral of aspects, that they mean a complete negation of all rights. So-called "progressive" principles of law do not actually strengthen law and justice, but give way to the arbitrariness of the regime and support the most blood-stained dictatorship.

According to the Communist doctrine, the penal laws in Rumania have been created to "support the class dictatorship and to destroy any political opposition to the government." That is why one really cannot speak of a "development" of penal laws and jurisdiction in Rumania.

In the new Constitution of April 13, 1948, the principle that any prosecution should be based upon a penal clause was maintained only formally. This constitution prohibits the judges to pronounce verdicts contradicting the existing laws, but it does not prevent the legislative bodies from issuing unjust laws.

Such a scandalous law was passed earlier than was to be expected. On April 30, 1948, Directive No. 187 annulled the whole Penal Code of January 1, 1937. Article 1 of this Directive reads: "The Penal Code aims at the defense of the rule of justice established in the R. P. R. (Rumanian People's Republic) against such actions as might endanger society, by using measures of social defense against those who commit such actions."

According to the preceding article, all actions may be considered dangerous to society which "are directed against the economic, social, and political structure as well as against the security of the R.P.R., or which are apt to disturb the rule of justice established by the people under the leadership of the working class."

"Actions considered dangerous to society are liable to punishment even if the law does not interpret them as crimes. The principles and the limitations of responsibility will be decided in any individual case in correspondence with the measures provided for by the law in cases of similar offenses."

The abolishment of capital punishment and of the confiscation of property were both established by the Constitutions of 1866 and 1923. The Communist Constitution of 1948 contained no regulations concerning these items. Thus, after the Peace-Treaty between Rumania and the Allied had been signed, a special law was promulgated on August 12, 1950, providing capital punishment for crimes against public security, democratic liberty or national independence, which were all considered as actions of treason.

Conditions in the R.P.R. being like that, every citizen who commits an act not put down in the law may be sentenced to death or expropriation by help of the clause on the so-called "analogy of offenses." This is but one of the so-called "progressive legal principles."

The 1948 Constitution does not contain the idea of irremovability of judges. Article 88 of this Communist Constitution rules that "People's Judges" shall preside over all cases, except those which are to be handled by the Supreme Court, and Article 93 rules that the judges are subject to the law without being granted any immunity.

The new "Law on the Organization of Jurisdiction" of April 2, 1949, and of June 2, 1950, expressed that it is the duty of the judges in the R.P.R. to "(a) defend the social-economic structure of the state, (b) strengthen the People's Democracy, (c) guarantee the education of the population, and (d) safeguard the reputation of the laws in the R.P.R." That means that the judges in the R.P.R. are advised now to exercise class jurisdiction, and that it is their minor task to guarantee the respect of the laws.

Regarding the educational process of the Communist jurisdiction it may be stated that this is a novelty. The old Rumanian Constitution provided that every person was to be brought before his or her proper judge.

In the framework of people's jurisdiction every judge is entitled to return verdicts even outside of his legal scope "... if he deems them necessary for the educational tasks of the judicature ..." and every superior court may at any time take a case from a minor court to deal with it or to refer it to any other court "... if the (superior) court deems it necessary."

One of the most important novelties introduced by the people's jurisdiction is that of the People's Judges. According to a law of 1949, the People's Judges are "elected" for one year. Same as in the political elections, a person becomes a candidate for the position of a People's Judge by nomination by the Workers' Party, the People's Assembly, or other mass organizations. That is why only he can become a candidate who is admitted by the Communist Party. To better control the elected People's Judges, the law provides that they have to lay open account before their electorate on their activities; that they have to keep their jobs and to draw their wages from the enterprise they have worked in prior to their election.

In the past, the public prosecutor was a representative of the Crown or the State and had no greater rights than the defendant or the defense-counsel. According to the latest law of June 2, 1952, the prosecutor in the R.P.R. should be considered the "guardian of social justice." He is elected by the Great National Assembly for a term of five years and his superior is the Military Attorney General. He has far-reaching powers. He is the authority in charge of prosecution and trial, controlling all civil servants and guaranteeing the adjustment of the verdicts and execution of the sentences. The law provides that every citizen has to give to the prosecution all information, documents and statements he is asked for. Under such circumstances, the citizen who falls into the hands of the Attorney is completely helpless.

The Rumanian Jurists' Association once enjoyed real autonomy, but today it is but a simple tool of the

Communist Party. By and by the Communist Government has thrown the best and ablest lawyers into prison. By the law of 1947, the government changed the "law on Jurists' Associations" and, consequently, abolished the Association and admitted to the new organization only those lawyers who proved to be devoted servants of the new regime. Finally, this law was changed again on February 14, 1950, the new organization being called "Collective of Lawyers".

The freedom of discussion, the authority of reason and the priority of conviction are no longer the means of defense. That is why the so-called lawyers under the regime of the R. P. R. have to do nothing but fulfill a formal duty and thus carry through the orders given them by the Communist masters.

Chairman Prof. G. BELLAVISTA: On behalf of the Committee I thank Mr. N. Dolapchiev and Mr. M. Butariu for their extraordinarily extensive and informative reports.

FOURTH DAY

Chairman Prof. G. BELLAVISTA: I herewith open today's morning. At first we will hear Mr. A. Grantskalns, one-time Presiding Judge with the Riga District Court, on the general situation of law in Latvia. Following his report, Mr. P. Poom, one-time judge with the Estonian Supreme Court, will speak on the development of jurisdiction in Estonia under the Bolshevik regime, and finally we will hear and discuss the draft resolution.

The Development of Law in Latvia

Report by A. GRANTSKALNS, Latvia:

I had intended to give you a short summary of the general situation of law in Latvia. But after yesterday's plenary session this is no longer necessary since Professor Guins gave you a detailed description of the real conditions in Soviet Russia. The Baltic States Latvia, Estonia, and Lithuania being no satellite states in the usual sense of the word, but, after the Russian conception, being states incorporated in the Soviet Union, the general picture in the Baltic states is very much the same as in Soviet Russia.

(See Part Three "Plenary Sessions of Congress", Third Plenary Session.)

If nevertheless I take the opportunity to speak to you I do so because I want to point to some Soviet methods being in use wherever the Communists have gained a firm footing and wherever they believe to be unobserved. However, I want to restrict myself to the field of penal law.

When observing the development of jurisdiction, or rather the systematic destruction of law in the Communist-dominated countries, you will recognize a similar method which doubtlessly is being directed from a central board according to firm regulations.

The only important difference, however, is the speed. The more a country is exposed to the eyes of the international public the slower is the speed, and vice-versa. In that respect the Baltic States are far ahead. Contrary to most of the other Communist-dominated countries in which jurisdiction follows the local penal codes, though supplemented by amendments, the Russian Criminal Code and Criminal Procedure Code were introduced in Latvia immediately after the occupation in 1940 and, to be sure, with immediate and unlimited retroactive validity. These measures resulted in the fact that uncounted people, retroactively back to 21 years were sentenced to death for "crimes"

which in no other penal code are considered to be crimes. It goes without saying that in most cases the well-known chapter of the Russian Penal Code was used which has no heading but is known only as "No. 58".

When in 1941 the Russian were driven out of our country they left behind documentary material which I studied thoroughly to find out that it revealed details on the hearings of prisoners by the Cheka. I inspected Cheka prisons, opened mass graves and assisted in the exhumation of thousands of dead. I found out that no witnesses of the defense were ever heard in the trials, that most of the trials were held behind closed doors. The verdicts mostly consisted of one sentence based on the investigation report given by the police.

I am quoting some reasons for death sentences: (1) "He sang Latvian folksongs", (2) "He is of bourgeois descent", (3) "He exploited the labor of others", (4) "He was a member of a students' corps", (5) "He is a former police officer", (6) "He was awarded a Latvian decoration", (7) "He has relations with foreign countries", and (8) "He was disrespectful to the Red Army".

Incredible as this may sound, it is true. I did not extract these from the documentary files, but from copies of the verdicts which I found in the pockets of victims executed by shots in the neck.

We asked ourselves: "How is that possible? What is the reason for such cruelty, what is its aim?" And we found the answer. Pages 23 to 25 of the Manual for NKVD Officers published in Moscow in 1939 listed the categories to be liquidated. This list starts with the Trotskyists and ends with par. 16, point 5: "People of the Past".

Here I have a document that was found in the Volmar Cheka cellars in 1941. It contains a list of 38 groups of people who in Latvia are to be considered "People of the Past", namely industrialists, businessmen, owners of many houses, rich merchants, shipowners, proprietors of hotels and restaurants, big farmers, refugees, mayors, former parliamentarians, judges, public prosecutors, policemen of all branches, border guards, people whose relatives are living in foreign countries, members of the farmers' association, members of the students' corps, etc.

This reveals that whole categories of the population were doomed to complete annihilation.

It was prescribed what categories were to be rooted out and liquidated. The courts were but tools in the hands of the Soviet state apparatus. Without asking whether these people were guilty of something the courts had to sentence them to death.

Permit me now to report on the Riga Cheka cellars. I checked them, inch by inch, sometimes even with a magnifying glass, for names or messages that might be scratched into the walls. The cellars were used as prisons for prisoners on remand, they contained at least ten one-man cells of one square meter floor size at best, illuminated by 300-watt bulbs.

The methods used by the Cheka are known, I presume, from many publications.

But the Riga Cheka cellars had a special room for torturing. This room measured seven by seven meters and had a door leading to a garage for a truck to carry away the dead. The walls were covered with wooden panels and a washable rubber coating to prevent retouchettes and to make it easy to wash off blood stains. The cement floor was sloped towards one corner with an outlet pipe. In this room the prisoners were flogged and, if the questioning Cheka man lost his patience, they were shot. I saw countless bullet holes in the wooden wall panels and removed 120 cartridges from the pipe. If you are interested in them I can show you photographs which I took myself.

The question may arise whether the Cheka men were allowed to murder the prisoners. The answer is: "Yes, they were." Not only individual prisoners were killed by the Cheka, but even whole groups of them were murdered. I have here a photostat of a list of 78 names on which the Cheka chief, a man named Schusting, put the remark on June 26, 1941: "All of them to be shot in view of social danger". This list was found in another prison and, some time later, the grave containing the 78 corpses was opened. During my official activities I photographed this mass grave and identified the persons murdered by shots in the neck. I referred the corpses to the relatives for decent burial.

In conclusion, I have to report here on the deportations. In Latvia mass deportations were carried through in three phases, in 1941, 1945, 1949. All the people, men, women, and children, were arrested by night without knowing why, and were deported to unknown places, men and women in different directions. The women and children were carried to Central Siberia where they were distributed to kolkhozes, while the men were taken up North into labor camps wherein the majority, if not all of them, have died in the meantime.

I have a book here containing nothing but names. There are photostats of name lists which we made up during the first wave of deportations and which we referred to the International Red Cross. They are names of women and children. I presume this topic was already dealt with on other occasions. But since this was one of the most brutal crimes against humanity I deem it right to discuss this problem here also. I am convinced that these names do not only accuse, but also ask for help.

Soviet Justice in occupied Estonia

Report by P. POOM, Estonia:

Let me give you a short report on the principles of legal order of the Estonian Free State that were mercilessly destroyed when the country was occupied by the USSR. Generally, the same legal order was prevailing in the other Baltic states, too.

According to its basic laws, Estonia stood unshakably on democratic and parliamentary fundamentals, i. e. (1) on general, equal and secret parliamentary elections, (2) on the principle of the division of state powers, (3) on all freedoms of its citizens (freedoms of speech, press, religion, etc.), and (4) on the independence of the courts.

The judges in the Estonian Free State were appointed by the President of the Republic, though exclusively selected from among the candidates named by the Supreme Court. Judges had to be persons with academic training and long court experience who corresponded to the moral standards in question. In the course of the two decades of Estonia's independence objectivity, thoroughness, impartiality and justice had become unshakable traditions of the country's jurisdiction.

From the moment of the forcible occupation by the Soviets, a sharp reorganization began to take place in the whole of state life, including jurisdiction. In the latter, too, Lenin's principle that the present jurisdiction and everything belonging to it should be destroyed and swept away completely was carried through.

In the beginning, in the summer of 1940, the judges were still left in office and jurisdiction continued to be handled for some time in line with the laws valid at that time. As early as August 1940, however, the People's Commissar of Justice gave order for a translation of the Russian laws of the USSR into Estonian so that on January 1, 1941, the Soviet penal and civil laws, the procedure laws, the family and guardian laws as well as a Soviet law concerning judicial organization were introduced in Estonia.

Late in December 1940, all courts of the time of independence were liquidated and all judges were dismissed. They were replaced by People's Courts, District Courts and the Supreme Court of the Estonian Socialist Soviet Republic (ESSR). As to their operation and organization, these courts were to correspond to the Constitutions of the USSR and the ESSR, i. e. from the People's Court up to the Supreme Court they were to be created by universal, equal and secret elections.

Actually, the judges were appointed in a highly simplified procedure. The personnel office of the People's Commissariat of Justice, in accord with the Communist party, stated what politically reliable persons might become judges. Then the lists, composed correspondingly, were referred to the local executive committee of the town or county which, in turn, was compelled to "elect" those candidates.

At the same time, numerous judges and other civil servants were arrested by directive of the People's Commissariat for Internal Affairs (NKVD) for so-called counter-revolutionary activities. They were given hard labor terms ranging from five to 20 years by a military tribunal for having held offices as judges or high-ranking state officials during the period of Estonia's independence. The newly "elected" judges were mainly young people from the ranks of industry workers and low-ranking officials who in their overwhelming majority had nothing but an elementary school training, not to speak of any juristic experiences.

The Office of the Soviet State's Attorney in Estonia was directly supervised by the USSR Attorney General in Moscow. It consisted of a large number of Communists imported from Russia who did not speak any-

thing but Russian. Even among the judges there were many Russians who did not understand a single word of Estonian.

The Bolsheviks constantly emphasize that Lenin's greatest merit lies in the fact that he freed true Marxism from the last remnants of Hegelian idealism. The Russian juristic thinking is based on mere considerations of what is useful. It does not know anything about an interpretation of justice as an independent reality or an idealistic demand. One of the most remarkable qualities of the Soviet courts is their subordination under politics which is proved by the fact that the courts are constantly under the influence of Communist party organs, and hence it is decisive whether the people concerned belong to the Communist party or not, and which is their social background.

The task of Soviet jurisdiction is the fight against the "enemies of socialism and of the working people", i. e. against all non-Communists. Consequently, the judges are less expected to have juristic knowledge, experience or high ethic standards, than to have thorough knowledge of the theory of Marxism-Leninism and of the Soviet policy. In jurisdiction, the "revolutionary conscience and the socialist concept of law shall be the judge's guide." (Criminal Code of the USSR, Section 45).

According to these principles, the Party and administrative authorities exercise a sharp supervision of jurisdiction. Thus, in Soviet Estonia a copy of every verdict has to be sent to the Court Commissariat (now Ministry of Justice). In the so-called "operative meetings" held regularly in the Court Commissariat, criticism concerned not only individual verdicts but also the judges who were often sharply reprimanded because of their verdicts being "politically immature".

The Court Commissariat frequently send circulars to the individual courts, circulars which must be obeyed regardless of whether or not they are in accordance with the laws. One of those circulars simply prohibited the People's Courts to hear cases of third persons requesting the return of confiscated properties if such properties, by mistake, were confiscated together with the properties of an arrested person.

The constitution of the USSR and its member states rules that every defendant be granted the right of defense. In the so-called counter-revolutionary cases, however, which even in peace-time are tried before a war tribunal, no defense whatsoever is granted. Information on the verdict may reach the relatives of the convicted person only by accident. Such court sessions are completely secret. In such sessions thousands of Estonians were sentenced to forced labor terms ranging from five to 20 years, or even to death.

In so-called terror, state enemy, and diversionist cases indictments will be revealed to the defendants not earlier than 24 hours before the court session, thus making the collection of counter-evidence impossible. Moreover, such cases will obligatorily be tried in absentia of the persons concerned. Furthermore, no annulment may be requested in such cases whereby, the Soviet Procedure Code not knowing any appeal, no new trial is ever possible. And finally, death sentences are executed immediately after the verdict has been pronounced.

Considering that the court has to base the nature of punishment on its "socialist concept of law", and that this knowledge does not depend on the judges

but on the party, one can easily gain an idea of the form and methods of Soviet jurisdiction.

Since in the Soviet Penal Code so-called counter-revolutionary crimes are almost exclusively punished by death, uncounted human lives are helplessly surrendered to this method of justice. Thus, thousands of men whose only guilt was that they were good and faithful patriots who had served the Estonian State honorably have lost their lives since the time of the occupation of Estonia by the Soviets in 1940/41.

According to Section 58 of the Soviet Penal Code, "every active fight against the working class and the revolutionary movement during the civil war in the Czarist period will be punished by shooting." The Soviet masters declared the Estonian War of Freedom in 1918/1919 to be a civil war, and the Estonian Free State, which they themselves had acknowledged de jure in 1920, to be identical with the Czarist regime which to have served meant a sentence of death.

In the field of USSR penal law the same provisions are still valid and being applied that were in force in the Principles of the Penal Law of the USSR and the Soviet Republics from 1919 and 1924.

In the officially organized fight of the working class, mainly that of the Communist party against the "suppressors", the Communist party could not in the least think of realizing its old pre-revolutionary slogan of the equality of all citizens and all classes of the people. Such old principles were simply buried and the proletariat, or rather the members of the Communist Party, were given a privileged position in comparison to the other classes. It was a matter of course that the latter had no rights.

One has only to recall the events taking place in the Baltic States in the summer of 1941 when, for instance, in the night preceding June 14, 1941, some 30,000 Estonian citizens were loaded in cattle wagons to be sent to the Ural Mountains or to Siberia. This is sufficiently known throughout the civilized world since it has recurred several times after 1944.

Such a deportation was arranged in the following way: the unhappy people were shown upon their arrest an order signed by the NKVD which left them 15 to 20 minutes to pack what they most urgently needed. They were deported even without the slightest criminal charge against them. Married couples were separated and only minor-aged children were left with their mothers.

Compared to such an administrative practice the official regulations of Section 5 of the USSR Criminal Procedure Code saying that "no one shall be deprived of his or her liberty and no one shall be arrested in a manner contravening the law" sounds like malicious irony. That is why all the nice-sounding words we find in Stalin's basic law on the protection of human rights and freedoms and on the maintenance of human dignity are nothing but empty, meaningless talk.

Chairman Prof. G. BELLAVISTA asked the speaker of the sub-committee for the Drafting of the Resolution to speak. Following a discussion on several individual formulations of the draft, unanimity was reached on its final wording. Therewith the Committee finished its work.

(Text of the Resolution see Part Four "Resolutions of the Working Committees.")

Committee for Civil and Economic Law

Chairman: Prof. Dr. EKELOEF, Sweden;
Vice-Chairman: Prof. Dr. F. S. F. LIU, China;
Secretary: Dr. R. BERNDT, Berlin.

FIRST DAY

Chairman Prof. Dr. EKELOEF: The morning session of the Committee for Civil and Economic Law is opened.

The Committee will immediately proceed with the agenda and ask Prof. Dr. A. Blomeyer to speak. His address will be followed by supplementary remarks by Dr. Steinmann on the expropriations in the Soviet Zone.

The Practice of Expropriation in the Soviet Occupation Zone of Germany by Prof. Dr. A. BLOMEYER, Berlin

An international discussion of human rights and their realization in the countries of the globe can easily dwell on the human right to life, freedom or security. The solid legal concepts of all civilized states are the backing of Article 3 of the UN Charter proclaiming that "everyone has the right to life, liberty and security of person."

Let me place at the beginning of my remarks Article 17 of the famous "Déclaration des Droits de l'Homme", of August 4, 1789: "The right to property being inviolable and sacred, no one shall be deprived of it, except in cases of evident public necessity, legally ascertained, and on condition of a previous just indemnity." Really, this is the classic formulation of one of the basic human rights to property permitting confiscation in exceptional cases of a public necessity and exempting Man, through obligatory indemnity, from sacrificing his property on behalf of the community.

In contrast thereto, let me quote a sentence from the preamble to the Constitution of the French Republic, of October 1946: "All property and enterprises that now have or subsequently shall have the character of a national public service or a monopoly in fact must become the property of the community."

What a difference is betrayed by this formulation written 150 years after the former. The sentences are not contradictory, but they reflect the varying points of view on the limits of private property. This variety stems from the economic development of the world since the time of the French Revolution. We ourselves have experienced an essential part of it. The com-

munity's interest in the administration of the economic goods has intensified in the course of this development in so unprecedented a manner that nowadays the following sentence can be described as a common property: "An abundance of economic goods has acquired so much importance for the public that only administration by the State on behalf of the community can meet the public requirements."

The UN Charter of Human Rights has established the following principle in Article 17: "Everybody has the right to own property alone as well as in association with others."

Practically not much more has been left of the human right to own property than the sentence saying that nobody must be excluded from owning property as such. As for the rest, the Declaration leaves the decision on the administration of private property to the individual legislations.

So it is not surprising that also those countries fully agree with the principle of the UN Charter which have imposed the extremest restrictions on economic goods eligible to be private property, namely the Soviet Union and the areas under her control. In the Constitution of the USSR we find the following definition: "The land, its mineral wealth, water, forests, mills, factories, rail, water and air transport, banks, communications, as well as the bulk of dwelling houses in the cities and industrial localities, are state property; the collective farms own collective property." In addition it permits a minor-scale private economy of peasants and craftsmen based on their own labor and excluding the exploitation of the labor of others.

Thus arises the question of the transfer of private property to the State. I will now analyze this question in detail with the help of the Charter of Human Rights. I will omit questions of mere restrictions on, and of complete confiscation of, property, which should be well known to you from your own law. Only the cases of dubious expropriation will be dealt with.

All systems of an extensive state property have had their beginning in a system of private property. So the question is under which formal prerequisites the transfer of private into state property is admissible; already the Human Rights proclaimed in the French Revolution had demanded a precise definition of that point. Of even greater importance is the second

question whether the person concerned may claim indemnity for the expropriation of his or her property. It is by no means answered by the State's right to define goods eligible to be private property. For the expropriation of a property imposes on the concerned alone a sacrifice on behalf of the community which is contravening the principle of equal treatment of the citizens. Thus, a large number of constitutions contain provisions making expropriation dependent on previous indemnity. I may emphasize that such are also the provisions of the Basic Law of our Federal Republic (Article 14).

For a long time this principle was to be regarded as the dominating international concept of justice. However, it has been, in particular since the Soviet Revolution in 1917, confronted with another practiced principle of a thoroughly revolutionary nature. This principle justifies expropriation by maintaining that the previous private ownership of the production media was illegal because private property was an instrument for the exploitation of the workers. This formula is well known from the Marxist doctrine. It was adopted in Russia and after 1945 was enforced also in the Soviet occupation zone of Germany.

Let us cast a look at Article 17, II, of the UN Charter: "Nobody shall be arbitrarily deprived of his property." This formulation just calls for the legality of expropriation without setting forth further prerequisites. This is indeed a compromise on a minimum of legal protection.

But even this minimum can be reduced. An example therefore is the practice of expropriation in the Soviet occupation zone. Its development is comprehensible only if one is familiar with the practice of expropriation in the USSR.

One of the first decrees following the Bolshevik October Revolution in 1917 was the law of October 26 liquidating all privately-owned real estate. The nationalization of the industry took the Russian legislators three years. An ordinance issued by the Supreme Economic Council, dated November 29, 1920, converted all industrial enterprises employing more than five workers and mechanical power, as well as all enterprises employing over ten workers but no mechanical power, into state property. This was the beginning of the development of Russian state capitalism. In land law, the expropriation of the property owned by large-scale farmers was followed by the collectivization of the small-fry peasants in the way of kolkhozes. Industry and trade were controlled by the government. Where special laws were required their promulgation did not encounter any difficulties, since a free expression of the will had been rendered impossible for the Russian people.

Wherever the USSR, in the course of its development, obtained power over its neighbors, the Soviet economic system was introduced according to the same plan. In the political field, a majority in parliament was created by the compulsory merge of all socialist parties; where the majority over the other parties proved to be insufficient, recalcitrance was overcome by purges.

(Follows a brief description of the development in the individual "People's Democracies" which is detailed in other reports.)

The Soviet Military Administration in Germany (SMAD) first called into life local self-administrations to be followed by provincial and state administra-

tions. The administrative bodies of the states received legislative, judicial, and executive powers; the Soviet-controlled authorities were authorized to take decisions without interference by the parliaments. Late in 1946, the legislative power was transferred to the Landtag parliaments which constituted themselves and drafted state constitutions. The economic coordination of the states took place late in 1947 by way of the German Economic Commission, and finally the Zone was coordinated politically in the form of the so-called German Democratic Republic which gave itself a constitution on October 7, 1949.

In September, 1945, almost identical laws were issued by the administration of all states, providing for the expropriation without indemnity of all privately-owned real estate exceeding 100 hectares, that is the entire property, including buildings and inventory. That measure affected over 11,000 inhabitants in the Zone. They were deprived not only of their landed property, but in most cases also of their personal belongings. They were expelled from the area around their former property, and the real estate registers and documents concerning their property were destroyed. Any legal remedy was excluded and many a person not directly subject to the implementation of those laws but owning property located in the expropriated area was inflicted considerable damage. Mortgages expiring with the expropriation, the mortgagees were seriously affected also.

Almost simultaneously, the expropriation of economic enterprises was transformed into reality. Under the general theme of "Expropriation of the Property owned by War Criminals and Fascists" a large number of enterprises were confiscated under SMA Orders, dated October 30 and 31, 1945, because their owners had been members of the NSDAP, or had otherwise supported the party's ends. For example, all film theater owners were dispossessed on the pretext of having carried out Nazi propaganda. Thus 40 per cent of all economic enterprises of the Zone were transferred to the State; the foundation to the state-owned economy had been laid.

The expropriation procedure is typical: decision on enterprises to be dispossessed rested with the so-called "Democratic Commissions" among whose assessors the Communists always formed the majority. This majority is explained by the fact that in addition to the representatives of all democratic parties, representatives of the so-called mass organizations were eligible to vote also; the mass organizations, however, were under Communist influence.

Legal proceedings were impossible. Their lack had a fatal effect wherever the commissions had earmarked as property of the enterprise items which in reality belonged to another party. The enterpriser's debts, however, were not transcribed. In most cases the expropriated owner, deprived of all his funds, was held responsible for his former debts. Zone law later on adhered strictly to those principles.

Thus the constitution of the GDR determined and sanctioned the following situation:

"(a) The enterprises owned by war criminals and active National Socialists were expropriated (Art. 24, II);

(b) Privately owned real estate exceeding 100 hectares was divided without indemnity (Art. 24, IV);

(c) All mineral deposits, all utilizable natural forces and the mining, iron, steel and power industries destined for their utilization were transformed into "property of the people (Art. 25, I)."

In this way a situation was legalized which in its essential principles equalled that in the Soviet Union and its satellite states. It was comparatively easy, since the political development had already brought forth dominating Communist influence in parliament. First of all the Social Democratic Party of Germany and the Communist Party of Germany were fused into the Socialist Unity Party of Germany (SED); then the Social Democratic influence within the party was eliminated by purges, and the bourgeois parties were forced by a policy of intimidation to give in completely.

All that, according to the Constitution, had remained private property could now be fitted with constitutional guarantees: Article 22 "guarantees" the right to own property and the right of inheritance. Expropriations may now take place to the benefit of the community and on a legitimate basis only. Even indemnity is to be paid, unless otherwise provided by law; legal proceedings are permissible to determine the amount of indemnity, unless otherwise provided by law. And yet, Article 24, II, establishes a principle valid also in the remaining sphere of Soviet influence, namely that the misuse of property with the intent of establishing an economic ascendancy to the detriment of the public welfare results in expropriation without indemnity.

But even that did not quench the thirst for expropriation. New ways were sought and found of late in order to carry out expropriation without indemnity. On the one hand the means were of a criminal nature. According to Section I of the Economic Penal Code of 1948, all major crimes against the economic planning (the so-called "economic sabotage") may be punished by expropriation without indemnity. All economic regulations have hence been placed under the protection of that penal code. It is not difficult to assail enterprises on the pretext of such economic delicts, and the Committee will hear a number of examples of this procedure here as well as in the sessions of the penal law committee.

Further possibilities arise from the "Law for the Protection of Internal German Trade", of 1950, which also permits the confiscation of property. In addition, frequent use is made of the fiscal criminal law in order to impose huge fines and to seize the enterprise for the purpose of payment. Finally, the latest instrument is the bankruptcy proceedings very often instituted by the revenue offices. A 1951 circular ordinance issued by the Ministry of Justice directed the bankruptcy courts to instruct the trustees to the effect that they have to sell bankrupt enterprises apt to recover to the holders of the people's property.

The practice of expropriation in the Soviet orbit raises the general question whether the legality, which is a minimum demand of the UN Charter of Human Rights, is still guaranteed. I think that many of my colleagues will agree with me that the legality of the legislative acts carried out in that area is only a pseudo-legality.

The German situation is different. Here I can say under all circumstances that the major part of the Soviet Zone expropriations are lacking legality. The Potsdam Agreement seems to give the essential directives. Consideration has to be given to various points:

(1) Point 6 of the Political Principles ruled that "all members of the Nazi Party who have been more than nominal participants in its activities and all other personnel hostile to Allied purposes shall be removed from public and semi-public office, and from positions of responsibility in important private undertakings." There is no doubt that such persons were to be barred from economic management in Germany and the influence resulting from it. The Soviets regarded this provision as permission for expropriation without indemnity. This, however, would legalize only a small part of their practice of expropriation, and in fact this conception is but a pretext for expropriation going much farther. In practice those enterprises are expropriated which state capitalism deems important, regardless of whether the owners were more than just nominal party members. It is almost grotesque that this formula became the basis of expropriation of nearly one half of German enterprises in the Soviet zone of occupation. As far as the land reform was concerned, the government did not even go to so much trouble; expropriation was simply carried out according to the size of landed property.

(2) The Potsdam Agreement indubitably meant the task of the four occupying powers to be a temporary one. From the temporariness of that task in view of Germany's division into four zones emerged specific restrictions on basic changes in the German economic system. Point 14, therefore, explicitly stated that "during the period of occupation Germany shall be treated as an economic unit." To attain this goal, joint rules were planned for the production and the distribution of the products of mining and processing industries, agriculture, taxes and customs, transportation, etc. Point 15 of the Agreement included Allied control over the German economy but "only to the extent necessary" to carry out programs of disarmament, to assure the production of goods, to control German industry and research, etc.

(3) In accord with those provisions some important German central administrative departments were to be established already during that transitional period, that is, central departments for the following fields: finance, transportation, foreign trade, and industry. The departments were to operate under the supervision of the Allied Control Council, but were never created.

(4) From the provisional character of the plan pending the re-creation of German self-government, from the principle of Germany's economic unity, from the limitation of the control, and finally from the definite planning of central economic bodies it is to be taken that the sole objective of the Potsdam Agreement was to have the German economy, where it served peaceful purposes, left alive, or even supported in its uniform development by the occupying powers, in the form of a decentralized unit. The dismemberment of the uniform German economy by the introduction of Soviet-Russian state capitalism sharply contradicts the objectives of the Agreement. Otherwise — the Russians were aware of that — they would not have any reason to give expropriation, by reference to the punitive purpose, the features of legality.

The post-mortem legalization by the GDR Constitution does not require further explanation. This constitution bears the marks of a constitution of countries in which the Soviets have established their political power.

In conclusion, I would like to stress that our modern time which is almost forced by the economic development to make the protection of property rank behind the requirements of the community, and which has full understanding for socialization, is nevertheless imbued with the principle of the individual not being without defense against any encroachments on his or her property. The demand for a minimum of legality must not be abandoned, and the pseudo-legality of expropriations in totalitarian states must not, as far as we can judge from practical cases, be accepted as legality. These measures must be evaluated as what they are, as measures of injustice.

The remarks by Prof. A. Blomeyer were followed by supplementary remarks by Dr. W. STEINMANN, of the Investigating Committee of Free Jurists, on the

Practice of Expropriation in the Soviet Zone of Germany

(The complete text of his remarks in conjunction with documentary material is reprinted in the Introduction to Document 130 of the collection "Injustice as a System".)

The meeting adjourned until 2 p.m.

Chairman Prof. Dr. EKELOEF opened the afternoon session I now ask Dr. W. Steinmann to continue his report on the Practice of Expropriation in the Soviet Zone of Germany.

Dr. W. STEINMANN: I am referring to the Collection of Documents on hand containing partly original documents, partly photostatic copies. This morning I pointed to the expropriations carried out with the aid of SMA Order No. 124 which created the basis of the "People's-Owned Industry" existing in the Soviet Zone today. The wave of expropriations under SMA Order No. 124 having been stopped by SMA Order No. 64, the Soviet authorities created a pretext for the incorporation of more private enterprises in the People's-Owned Industry. This pretext was furnished by SMA Order No. 201, providing for criminal proceedings against alleged Nazi criminals as well as for the confiscation of the defendants' property.

In connection therewith I refer to the Itting case mentioned in Document 140.

Question by a DELEGATE: I would like to learn something about the fate of Dr. Schneider, the president of the Gera county court. Did he wage resistance against the Communist regime?

Dr. R. BERNDT, Investigating Committee of Free Jurists: Dr. Schneider of course could not hold his position as a judge in the Soviet Zone. He was one of the non-offenders who stayed in the Soviet Zone in 1945, but later on had to flee. He went to Western Germany as a refugee and has written down the cases concerned for the Investigating Committee of Free Jurists. He certainly is not one of those judges who in any way associated themselves with the Soviet-German system. In 1945, many still believed they would do best by adhering to the former legal system. Yet the number of those trying to continue work in accordance with the former principles of a constitutional state diminished. They laid down their experiences in writing. Much of what we can bring to your attention stems from such sources. Dr. Schneider himself is an immaculate personality.

Dr. W. STEINMANN: I think that Dr. Berndt is also in a position to report on his former activity in this field. Could Dr. Berndt, with the help of cases of which he has knowledge, make it clear to the Committee that it is not the classification and punishment of the defendants, but only the confiscation of their property that matters?

Dr. R. BERNDT: What you heard from Dr. Steinmann this morning in his general discourse and what he referred to just now, I can confirm from my personal experience. Since 1931, I had been a lawyer at Dresden. In 1939, I was entrusted with the defense of a Czechoslovakian national. The defendant's husband, also a Czechoslovakian national, was Jewish. He had fled in 1939 and sought asylum in Yugoslavia. Upon the German invasion in 1941 he was arrested and returned to his former residence. He was a wealthy man owning a fruit cannery. He and his wife were put on trial, and they both were severely punished by a Nazi special tribunal. He was confined to a penitentiary for several years, his wife received several years of imprisonment. His property and the cannery, the only one in Germany manufacturing special preserves, was expropriated. After his conviction the Jewish factory owner was taken to Auschwitz and gassed. The certificate of death was submitted to me. When I returned from the war in 1945 my office had been bombed and I had to rebuild it.

The first client to call on me was the wife of the Jewish manufacturer. In the general confusion early in 1945 she had fled to Prague and returned at about the same time as I. She tried to regain her factory, but in vain. She was told that "the factory had been expropriated and would remain state property". Although the man who had received the factory from the Nazis offered its return to promote his exoneration, the factory remained under municipal control. It is now being operated as a "People's-Owned Enterprise." The only privilege I could arrange for that woman was a minor job in her late husband's factory. I think that nothing can demonstrate better that expropriation was by no means a question of whether someone was a war criminal or supported the National Socialists.

Another case is that of a Jew who had also fled to Prague and later on claimed his factory. As it had been incorporated in the People's-Owned Industry — it was a small cigarette factory — his request was refused. It is still under the supervision of the Saxon State government. As the factory was foreign property, it was not directly turned into "People's-Owned Property", but placed under the supervision of a custodian still in charge today.

I think that these examples have proved that it does not matter who at one time was the owner, but that the enterprises concerned were needed for the expansion of state capitalism.

Chairman Prof. Dr. EKELOEF: Could Dr. Berndt tell the Committee in what way he negotiated on the factory and whether he discussed the matter with the Saxon government?

Dr. R. BERNDT: Although it is seven years ago, I can still remember those cases very well. I negotiated with a governmental counsellor of the Saxon government who a little while later committed suicide because he himself could not endure the whole situation. The negotiations were continued with the mayor of the small municipality in which the factory was

located. I would rather not mention that municipality by name because it might facilitate the drawing of conclusions and because relatives of that family are still living in the Soviet Zone.

Dr. W. STEINMANN: Time being short, I failed to mention this morning a significant law that is playing a major role in this respect. It is the Law for the Protection of Internal German Trade. This Soviet Zone law was put into force on April 22, 1950. It provides that the goods listed in a special paper be transported to and from West Berlin only with special permission of the Soviet Zone Ministry of Internal German Trade. Any violation is liable to imprisonment for not less than three years, in serious cases to confinement in a penitentiary for not less than five years. The definition of a serious case was so far left to the courts.

The situation has changed now. Appendix 1 to the 3rd Regulation for the Implementation of the Law, issued in October, 1950, lists goods and objects the unauthorized transport of which is always considered a "serious" case by definition of this law. Accordingly, a minimum of five years of penal servitude is to be imposed if, e.g. cash, securities, stamps (collector's items), objects of art, or jewellery are shipped to West Berlin without a permit. A philatelist from the Soviet-occupied zone of Germany may not, under this law, exchange stamps with his friend in West Berlin, save he is willing to risk a five-year confinement.

The "Law for the Protection of Internal German Trade" was passed by the Volkskammer pseudo-parliament as prescribed by Article 81 of the Soviet Zone Constitution. The Soviet Zone government then expanded the application of the Law in the way of an ordinance issued by the Council of Ministers. While the Law placed the unauthorized shipment of goods to or from West Berlin under penalty, the ordinance extended the validity of the "Law for the Protection of Internal German Trade" to the entire shipment of goods between the Soviet Zone and the remainder of Germany. This ordinance was meant to sanction the practice of the penal courts which had developed already prior to its promulgation. I mentioned this as a beginning and will now, with the help of a few sentences imposed, outline a few practical cases. (The speaker refers to Documents 152—155.)

Chairman Prof. Dr. EKELOEF: I deem it appropriate to mention briefly at the end of your discourse the typical cases in which sentences were imposed due to the wrong application of the Law.

Dr. W. STEINMANN: I believe to have met the Chairman's request by the cases which I have mentioned just now. I have pointed out that the cases contained in the Collection of Documents under the aforementioned numbers are associated with the "Law for the Protection of Internal German Trade" and with the Economic Penal Code. It is impossible for the private enterpriser in the Soviet Zone to have knowledge of all ordinances and decrees, so large is their number. Besides, many ordinances and regulations are no longer published at all, so that the firms have to apply ordinances and regulations of which they have not and cannot have knowledge. But even petty offenses which in a constitutional state are at best regarded as violations of order and are vindicated by minor fines have been declared to be economic crimes in order to have a pretext for the confiscation of property

and the conversion of private enterprises into "People's Property". (The speaker explains the cases mentioned in Documents 153—155.)

I think that the Chairman will not have any objections to a few individual questions put right now without entering into a general discussion. I will try to answer them in the framework of the cases of which I obtained knowledge. (No questions are put.) Then I would like to cite as an example of the many expropriations of hotels by the Soviet Zone government the claim on the hotel premises at 1 Sonneberger Strasse, Saalfeld. (The speaker details the Zapfe case, Document 160.)

(The question of expropriation by bankruptcy proceedings is illuminated by Documents 156 and 157 in the Collection of Documents.)

To a growing extent the Soviet Zone authorities are using the method of "cold expropriations" for the implementation of their expropriation program, namely whenever private enterprises are needed for the organization of the huge People's-Owned Industries (VVB), but the private enterprise cannot be seized in the way of economic penal proceedings because the owner cannot be convicted of any violations of the regulations for the operation of such enterprises, nor any such evidence can be planted.

The enterpriser will be subjugated to special proceedings for the determination of the taxes payable. One of the major media is the profit-increasing liquidation of tax-free reserves with the aim of determining tax debts and a fine at the same time. As a rule the sum will be so high that it cannot be raised by the enterprise. The revenue office in charge of the collection of tax debts and fines will then institute bankruptcy proceedings if the People's-Owned Industry is interested in the plant. The bankruptcy court will thereupon, in accordance with a circular ordinance issued by the Soviet Zone Ministry of Justice, inform the competent People's-Owned Industries of the opening of the proceedings. In this manner the People's-Owned Industry is given an opportunity to contact the trustee or even the creditors directly to negotiate on a possible purchase of the enterprise.

(The speaker again details these methods with the help of the Kast case, Document 157 in the Collection of Documents.)

The number of such cases is growing. I have already stressed that the Soviet Zone authorities are using, among other things, the policy of investments to attain their goals. I would like to ask witness Dr. Sommerland to report from his praxis.

WITNESS: Two years ago the credits so far granted to various enterprises which to date had been receiving major credits were suddenly blocked. Their production had been extensive and their products were in demand by whole-sale dealers as well as by the population. Simultaneously, there were state-operated enterprises producing the same goods, however not of the same good quality. The then Land Loan Corporation was directed by secret decree to withdraw credits from the industrial enterprises concerned. Thirty enterprises of the Brandenburg spirits industry were thus laid waste; they could not carry on since their production had been perfectly paralyzed.

A large number of enterprises owe their distressed situation to a corresponding wage policy. According to a legal regulation of September 1950, the wages in

the state-operated enterprises are higher; the other enterprises are not authorized to pay the same wages. Here is an example: a surface and underground construction firm was engaged in a major construction project near Berlin in addition to a number of People's-Owned Enterprises. The private firm paid the fixed hourly wages of 1.15 marks, the state-operated enterprise about 1.40 marks. The consequence was that the private firm lost its labor, it could not carry out the work order which subsequently was taken over by the state-operated enterprise.

All measures are planned in a manner that will affect a large number of enterprises. Thus it often happens that too low a price ceiling is set for private enterprises, while state-operated plants in the same industrial branch are permitted to charge higher prices. This situation was noticed about three months ago, for instance, in the furniture-manufacturing industries. It makes private enterprise no longer worthwhile and the owner some day will be compelled to abandon his enterprise.

Another example: the state-controlled trade organization is interested in stores. Whenever the co-op society or the trade organization needs a branch-store and the shop-owner earmarked for deprivation fails to surrender his store, he is forced in the cold way. It happened to the owner of a textile store in a county town in the Land of Brandenburg. He had refused to give up his store on behalf of the co-op society. The consequence was that the trade distribution center delivered no more goods to him for several weeks and he finally had to close down.

I think we must bear in mind during the next days that enterprises are expropriated, but the Committee must also examine what is happening in cases in which somebody still owns his enterprise formally but the possibilities of its utilization are so small that his property is no longer of practical use to him.

Another typical case is the following: it happens that enterprises are returned to their former owners. About two years ago a custodian was appointed for a saw-mill and the enterprise was returned to its owners after 15 months. At the time when the custodian was appointed the plant was in a good working condition and had a capital of 50,000 marks. When the custodian returned it, it was head over heels in debts, and the machines had been seized as a security by a third party. The owners are now responsible for the debts. So I wondered who was really responsible for them. It could be proved that the debts had been caused by the custodian's taking unauthorized measures. The state government before which I carried the case two weeks ago ruled that nothing could be done about it since a general clarification of such cases is still pending.

Here is a case which occurred near the zonal border about three weeks ago: the owner of a small enterprise resident in the Western Sectors of Berlin had been granted permission to enter the Soviet Zone to run his enterprise. Suddenly, there appeared the competent city councillor escorted by several policemen and told him: "You have no more to do out here. You are no longer allowed to enter the East Zone. We will appoint a custodian."

The same procedure is applied to premises located in the East Zone. For the past four weeks, East Zone custodians for property owned by West Berliners or

West Germans have been appointed by instigation of the German Note Issuing Bank (other authorities may be involved also). In some cases the Western house owners were allowed to name an administrator for their property. The persons named by the legitimate owners were confirmed, but it remains to be seen how long this practice will continue. For a number of years already — the first indications were noted two years ago — efforts have been made to place the real-estate owned by West Germans and West Berliners under the control of the individual municipal administrations.

Dr. W. STEINMANN: Allow me to explain two more cases which I deem essential. In the Soviet Zone trucks are very rare, and consequently are seized on any possible occasion. These seizures are bare of any legal grounds; expropriation is carried out by arbitrary confiscation.

(Dr. Steinmann cites the Riedel case, Document 168, and the case of Stoecker & Co., Documents 146—148.)

I think that the few cases which have been outlined here and are no exceptions but examples of hundreds of cases, necessarily lead to the conclusion that in the aforementioned expropriation proceedings it was not the just atonement for an offense but the expropriation of specific economic branches that was sought.

It would be illogical and bare of any reason if war criminals, active Nazis, economic criminals, tax debtors, price sinners, etc., were to be found only among the most important large and medium-sized enterprises. Yet this had to be the case since the complete nationalization of certain industrial branches was to be legalized and it was not by accident that in the other industrial branches it was just the large and medium-sized enterprises which were expropriated.

Chairman Prof. Dr. EKELOEF: Thank you, Dr. Steinmann, for explaining the various cases to the Committee.

Regarding the discussion scheduled for next week, I suggest that the Committee discuss two points; first, the legislative policy, and the possible remedies for the legislative activity and Soviet laws; and secondly, the manner in which the courts in the Soviet orbit proceed, whether they administer justice with or without a judicial basis.

A DELEGATE: According to our program, we have to discuss four points (1) private property; (2) legal protection by proper courts; (3) family law; and (4) intellectual property. — If we are to discuss legislation I wonder whether we have to follow this schedule at all. I also wonder whether we should not learn the facts about each subject first and then compare them with the Charter of Human Rights. In order not to complicate matters too much, I suggest that we follow this schedule.

Chairman Prof. Dr. EKELOEF: There are no objections. We will do our best to coordinate our schedule with the appearance of the witnesses. Regarding the facts, we should limit ourselves as much as possible, so the discussion will have a proper ending. We are dealing with the conditions under which the Germans are living and being oppressed in the Soviet Zone. So we must adhere to the German legislation and limit ourselves to its discussion.

Same DELEGATE: I am afraid I did not state it quite clearly. When I said that the opinion on, for

instance, intellectual property can be varying, I did not intend to say that we should discuss the various kinds of legislation. I meant to say that the individual interpretation of the Charter of Human Rights in our philosophy might be somewhat different. I meant to say that the corresponding article should be discussed.

Another DELEGATE: I think the Committee should concentrate on the Charter of Human Rights. Since the conceptions in the various countries are differing, the Charter is rather a common denominator, a kind

of basic law. We should regard what is laid before us in the light of these basic rights. Perhaps it would be good for the discussion to proceed subject by subject as soon as we have finished with the witnesses.

Chairman Prof. Dr EKELOEF: Thank you very much for your proposals. Dr. Steinmann feels that the witnesses we heard today can come back and attend the discussion on Monday.

The meeting adjourns.

SECOND DAY

Vice-Chairman Prof. Dr. F. S. F. Liu takes the chair by request of Chairman Prof. Dr. Ekeloef.

Chairman Prof. Dr. F. S. F. LIU: The morning session is opened. The Committee will proceed with hearing the witnesses. No names will be disclosed for security reasons. The witnesses will be called as witness number one, two, three, four etc.

The first witness practiced as a lawyer in Dresden until 1935 and afterwards lived in British exile for eight years. He returned to Germany in 1947 and became President of the Civil Chamber of a Supreme Provincial Court in the Soviet zone of occupation. Witnesses number two, three and four were lawyers in the Zone.

First WITNESS: The Chairman has already explained that until recently I was a judge in the Zone. So I am very familiar with the East German administration of justice. I have a number of typical expropriation cases to report, at the same time considering the judicial fields broached by the other speakers and outlining the particular methods employed.

First of all I will analyze Order No. 64. The Committee has already heard that in the beginning there was Order No. 124 under which the enterprises of the so-called "war criminals" were sequestered. That development was concluded by Order No. 64 decreeing the confiscation of the requisitioned property. The "property" as such was defined by special regulations. The salient feature of these regulations was that not the actual property laid down in the balance was casting but everything economically associated with the property was included as well. Thus it happened that persons who had lent their machines lost them because under the regulations of April 1948, the location of the machines was decisive. In order to play absolutely safe this order excluded any legal remedy. The power of expropriation was vested in a committee, the so-called "Committee for the Protection of People's Property". This body was the only competent instance, and the Committee will imagine that anybody depending on a decision by this commission simply could not attain justice.

Reference was made on Saturday to the shut-down of banks. Shut-downs were based on SMA Order No. 01 issued in June, 1945. It provided for the close-down of the old banks and the establishment of new ones whose duty was the revaluation of former Reichsmark accounts. This was achieved with the aid of Order No. 66, of January, 1946, authorizing the state banks and the future Note Issuing Bank to ruthlessly

confiscate all accounts that appeared in the books of the old banks after May 1945. The holders had no opportunity of transfer to other accounts they had in the same or in similar banks. In most cases they were told that the Land Loan Corporation or the German Note Issuing Bank were not the legal successors, so no settlement could take place.

During the war a private banker had drawn several large amounts from the deposits to finance illegal movements such as the so-called Goerdeler Circle. Of course he could not do so by booking those amounts out but, since he had to be careful, he functioned as the company's associate in the books of its creditors. This situation was used by the German Note Issuing Bank; after a revision which did not take place until after the monetary reform in 1948 it ruled that this claim was to be treated like ordinary debts. The result was that regardless of the fact that upon the bank's shut-down he had handed over considerable values, the banker was obligated to repay the full amount.

An interesting case is the liquidation of the coal syndicates based on Order No. 154. The liquidation took place in 1946 but during the transitional period a custodian had had to administer the properties. The custodian wished to resume coal mining and, therefore, asked coal dealers for advance investments. When the syndicates were transformed into so-called coal boards the coal dealers lost their advances. Here, too, it was tried to justify expropriation by maintaining that the liquidation of the syndicates as such had been decreed, so there was no possibility of indemnification.

I would like to touch upon another typical case linked with the monetary reform. The monetary reform was carried through by SMA Order No. 111, of June 22, 1948. This order directed all creditors to accept payment in the old currency if paid or offered by June 23. However, at the same time the SMA issued secret instructions to the banks, savings institutes and post offices to the effect that "beginning in the afternoon of June 22 no more Reichsmark amounts were to be accepted." In one case a man owing money to a bank tried to repay it on June 23. Acceptance was refused. He filed suit and the supreme provincial court judged that the bank would have been obliged to accept payment because it is inadmissible that secret ordinances are issued in contravention to SMA Order No. 111 — an act violating general law. The verdict was annulled by the court of cassation.

One thing becomes evident from the individual cases. It is tried by all means to enforce the alleged "law",

the ruling group's coercive law. They either — this is the best way similar to the practice of the Hitler regime — employ the so-called principle of legality of the application of law, or, if this is not possible, they ruthlessly choose the way of cassation; the sentences are quashed with the argument that for fiscal reasons, like under Hitler, right is what serves the people.

Question by a DELEGATE: I am afraid that not all of the delegates are familiar with the practice of cassation in the Soviet Zone. Could the witness tell the Committee in which cases cassation is possible?

First WITNESS: The interesting point of the cassation procedure is that not each party wishing to lodge a remonstrance can use the way of cassation. The only possible way leads via Attorney General Melsheimer. He alone is authorized to decide whether or not a sentence is to be quashed.

In connection therewith I would like to refer to two points which I studied during my practice. The huge People's Owned Enterprises are trying already in the stage of proper proceedings to seek contact with Melsheimer in the way of obtaining from him assurance that, in case decision is reached to the detriment of the People's-Owned Enterprise or the bank, he will request cassation. The second interesting point of the system of cassation is that in no case a corresponding request of the Attorney General has ever been disapproved.

Chairman Prof. Dr. F. S. F. LIU: Has the witness further statements to make? Do the delegates wish to put more questions? Then I would like the second witness to step up.

Second WITNESS: I was a lawyer in the Zone from 1912—1950 until I was informed in writing that I was no longer bearable to the GDR.

First of all, a case pertaining to economic law. The owner of a factory in my home town using zinc and lead for manufacturing was jailed in 1946 although he had been no Nazi, nor could be classified as a war criminal and profiteer. He was detained for three months. After his release the government advised him to leave his factory to the state. The factory's value was estimated at two million Reichsmarks, but he was not offered more than 20,000. The owner declined. It was tried to make him accept by further detention and by refusing his counsel permission to see him in prison.

This case demonstrates the Soviet Zone practise. Order No. 124 could not be applied, nor could Order No. 64. When the offer was turned down economic penal proceedings were instituted, the man was sentenced to confinement in a penitentiary for four years and a half, his enterprise was confiscated. As expropriation could not be bolstered up by law, it was carried out in a round-about way via the Economic Penal Code.

Chairman Prof. Dr. F. S. F. LIU: The next witness, please.

Third WITNESS: My name is Dr. Hennemann, lawyer from Stuttgart, formerly in Halle-on-the-Saale.

I had not originally intended to speak to you but I was so incited by the documents in the collection issued by the Federal Ministry that the happenings of five years ago rose again before my eyes.

In 1946, I was a member of the sequestration commission in Saxony-Anhalt, that is, as a delegate of the Christian-Democratic Union (CDU). When the se-

questration project came up on which Order No. 124 was established — the dispossession of active Nazis and war criminals — I told my party and the FDP that it is impossible to find a basis for the sequestration without legal regulations, regulations for their implementation, ordinances issued by the state governments and administrations. The term "war criminal" must be properly defined. I was told to follow suit and prevent the worst. If the Christian-Democratic Union did not participate things would become worse.

I asked for permission to speak before this Committee so it would get an idea of how the expropriation procedure developed. The procedure was secret, excluding the public. I am speaking of Saxony-Anhalt, but the situation in the other areas was similar.

In 1946, the commission's chairman felt that we had worked so smoothly during the previous period, that we were taking only unanimous decisions, so why should we not also take decision on the sequestrations.

The following day lists of firms eligible for sequestration were received from the mayors and other provincial officials. In one enterprise workers had been maltreated, the owner of another had been a Nazi, etc. We determined that in all those cases none of the persons concerned was granted a proper hearing, as we say in German. They were not aware of the charges the Communists and later on the SED party had proffered against them. In most cases they continued to run their enterprise without knowing what was in the making. If they were able to disprove the accusations, the Communists said: "Well, we'll find something else"; this at least was the tenor. It was simply asserted that the firm had produced war materials or the like but no proper hearing took place in any case.

Another typical case is that of the Naether Children's Furniture Factory at Zeitz. The proprietors were never members of the Nazi Party; they even had been confined to concentration and forced labor camps during the Nazi era. The firm was expropriated because due to the war-time timber shortage it had to make ammunition boxes instead of furniture. The Pfahl Piano Factory at Zeitz had been interdicted the making of pianos and had to manufacture cases for small-gun shells. The reason of the expropriation: the owners were "war criminals".

Until Germany's surrender, I was the manager of the huge Freiberg Brewery at Halle. It was one of the few German enterprises that were not contaminated with Nazism; neither the owners nor the directors had been members of the Nazi Party or one of its sub-organizations. The reason of the expropriation: Mr. Freiberg, the owner, is a reactionary. Basis: Order No. 124 on the "expropriation of the property owned by active Nazis and war criminals".

The commissions were working. Both the CDU and the FDP party refused their signatures because of obvious injustice but the expropriation was notwithstanding recommended by the SED party.

Owners whose enterprises were on the sequestration lists but were not expropriated received a document on the return of their property expressing the hope that "they would continue participating in reconstruction in a democratic spirit". The documents were handed over in "festive ceremonies" sponsored by the SED Party. Nevertheless it happened that enterprises were expropriated a few days later.

Here is an example. The Weise & Monski Pump Factory of Halle. The owners had not been Nazis, nor war criminals, and therefore were not deprived of their property immediately. Half a year after the firm's return the owners were no longer allowed to enter its premises.

In my capacity as a member and deputy president of the Landtag parliament of Saxony-Anhalt I urged the creation of a parliamentary sequestration committee, but it was in vain. Owing to my personal friendship with former SPD parliamentarians in the SED Party I finally succeeded in establishing in the Council of Elders a committee for the mitigation of hardships to take action in particularly harsh cases. Its major assignment was the re-examination of the 1,500 illegal expropriations which had taken place in Saxony-Anhalt. By September 1947 it had studied 400 out of the 1,500 remonstrations. Three hundred were determined as cases of definite injustice. When about 25 per cent of the cases had been treated — 75 per cent of which had been revealed as illegal — Colonel Radionov of the Soviet Military Administration at Halle called on the presidium of the Landtag parliament and declared: "Committee no good. Must not work any longer." So the committee had to cease functioning and I had to leave the Zone on March 9, 1948.

Chairman Prof. Dr. F. S. F. LIU: Thank you very much. Does any of the delegates wish to put another question to the witness? As there are no questions, the Committee will hear the next witness. Dr. Samson, please.

Dr. SAMSON: I will make a brief attempt to outline a system with the aid of the cases the Committee has just heard. I am referring primarily to the Collection of Documents which reveals the legal basis.

A difference must be made between cases resulting from violations of the law and cases that were treated on a legal, formal level. Cases of direct Soviet and East German "Government" and court interference with the law are relatively rare. The Russians and, following their example, the Soviet Zone administration, government and courts are trying to take action within a legal, formal limit. The appearance of legality must always be maintained. It is difficult and dangerous to institute action against those seemingly legal and formal regulations, laws, and verdicts. Among the legal-formal bases five categories are noted.

(1) Orders issued by the Soviet occupying power on which expropriations were based in the beginning. I am referring to the Collection of Documents in which you will find Orders No. 124 and 64 which were quoted very frequently, Order No. 247 on the expropriation of insurance institutes, and finally Allied Control Council Directive No. 38. These orders which are no longer being applied formed the basis of the large-scale land reform and the so-called "industrial reform", i. e. the expropriation of the huge industrial and commercial enterprises.

(2) Laws and directives issued by the five state governments which partly represented the further implementation of Russian orders or were an independent legal basis. The five state governments have been sided since 1949 by the government of the so-called German Democratic Republic. In the Collection of Documents the delegates will find the laws on the expropriation of agricultural enterprises, industries, and mines. Towards the end the delegates will see single laws on the expropriation of film theaters, phar-

macies, and of the so-called "miscellaneous property", that is, private property.

(3) Sentences imposed by the courts. A difference is made between such expropriations as were pronounced by authority of the law, and such as were carried out in sequence of court proceedings concluding with a proper sentence. The sentences are based primarily on penal regulations such as the "Law for the Protection of Peace", of December 15, 1950 (Collection of Documents, Document 15). They are also propped on the Economic Penal Code (Collection of Documents, Document 141), Sections 1 and 16 of which provide for the confiscation of the total or part-property, as well as on the "Law for the Protection of Internal German Trade" (Collection of Documents, Document 150), providing for the expropriation of goods seized for formal reasons, and on the "Law on Crimes of Speculation", etc.

All these laws directed against so-called economic sabotage provide for the confiscation of property and enterprises, including items being part of the enterprise's equipment but belonging to persons not associated with the enterprise itself.

(4) Expropriations not based on laws, orders, or sentences, but on administrative directives (Collection of Documents, Documents 155—163). They are "cold expropriations" by means of bankruptcy or requisitioning. In addition, I refer to the Request Law affording the opportunity to request objects and even complete enterprises (e. g. hotels) for public use. From the legal point of view this is also an expropriation since the owner loses his right to run his enterprise.

(5) In the literature and in the administration of justice of nearly all countries expropriation is regarded not only as the deprivation of an object, but also as the restriction of the owner's rights in a manner not leaving very much of his right to own property. Property restrictions have been playing the greatest role during the last two years. The occupying power and the government — obviously for political reasons — refrain from total expropriation. The appointment of a custodian suffices to achieve what otherwise would be accomplished only in the way of expropriation.

The appointment of a custodian means that the owner loses his right to administer his property. Gains from the enterprise will be deposited in blocked accounts not accessible to the owner. That practice is applied to enterprises and estates whose owners live in, or have moved to, the Western Zones. Those are cases in which the grounds of legality have been abandoned; those are "cold expropriations" since the appointment of a custodian would have been possible only under a law which was never promulgated. Decisions reached by municipal councils will suffice. I myself have two houses in Dresden being administered by a custodian who so far has not given me account of the stand of affairs. The appointment of a custodian consequently serves as a substitute for regular expropriation.

Since January, 1952, other cases have been added in which the appointment of a custodian took place in accordance with the "Law for the Protection of Foreign Property". The administration of foreign property thus has been transferred from the SMA to the German government. The Law says that each estate, in particular each enterprise, in which foreigners are holding a share, will be sequestered. In conse-

quence the German owner also has to give way to a custodian and cannot administer his property any longer. This system of custodians is directed less against foreigners than against Germans.

It was my desire to facilitate the forthcoming discussion by an outline of this system.

Chairman Prof. Dr. F. S. F. LIU: Are there any more questions?

A MEMBER OF THE COMMITTEE: What is the situation of property owned by companies and bodies corporate? Are such organizations still in possession of their property or were they robbed also?

Dr. SAMSON: The expropriation of property owned by companies was the first measure to be carried out according to Order No. 124 and the subsequent Order No. 126. First of all the large stock corporations were expropriated whereby the share-holders lost their shares. The same goes for the limited and all other types of companies which we have in German law, that means, also for the so-called companies with unlimited liability ("Personalgesellschaften") and the trading companies with general partnerships ("Offene Handelsgesellschaften") in which at least two businessmen associate for doing business in their own name and responsibility.

Chairman Prof. Dr. F. S. F. LIU: My question pertains to the five methods of expropriation which Dr. Samson has mentioned. He said that, for instance, the rents from his house in Dresden are paid into a blocked account. Who is in charge of that money, the government or the custodian?

Dr. SAMSON: The custodian. In case an estate is placed under trusteeship in Saxony, not only a single custodian but the whole municipal administration will take over.

The estate is administered by the municipality headed by a mayor and the rents flow into a municipal account, that is, a blocked account registered under one name but controlled by the city.

Vice-Chairman Prof. Dr. EKELOEF: So the money is blocked. Is it not used?

Dr. SAMSON: It is still there and is used for the maintenance of the houses. I have learned by chance that one of my houses received a new roof. Repairs are carried out if necessary. Where possible, bombed houses are restored; but the owner has no permission to touch his money. The next step probably will be the complete expropriation.

Chairman Prof. Dr. F. S. F. LIU: Are there any more questions?

A MEMBER OF THE COMMITTEE: I have a question to put to Dr. Hennemann. Our colleague from Halle has mentioned several cases including that of the Halle factory which was solemnly returned to its owner who six months later was informed that he was no longer permitted to enter the premises. The way I understood it, the first proceedings before the sequestration committee still observed a certain formality. They looked like legal proceedings. But what was the procedure six months later? How was that decision reached?

Dr. HENNEMANN: The final decision was announced by a brief document issued by the state government. Yet after the owner had been ousted from his property and a custodian had been appointed, this document had only a declaratory value and was not

defeasible. The Zone still does not have administrative courts. No suit could be filed in this case. The expropriation had been carried out de facto by the appointment of a custodian. About half a year later written notice of the factory's expropriation was received. On this occasion I recall another case of foreign property mentioned by Dr. Samson. There is the huge cloth factory of Paasche at Burg near Magdeburg. This factory belongs to a limited company, if I am not mistaken by 95 per cent to a French enterprise at Colmar, Alsace. This French enterprise in turn is owned by a British industrial group. Nevertheless this factory was expropriated as property of active Nazis and war criminals. Why? Because in war-time this factory had to produce cloth which was later on used for the uniforms of the Wehrmacht.

Vice-Chairman Prof. Dr. EKELOEF: Who does the witness think is the instigator of all these decisions?

Dr. HENNEMANN: The Communist Party, that means, representatives of the Communist Party, the Communist Works Councils, the Communist FDGB. I am sorry to say that the SPD representatives in those committees at one time failed to realize that they were to be made instruments of the Communists, just as the representatives of the Christian Democratic Union and the Liberal Democratic Party did not recognize what the game was. After the foundation of the SED on May 1 it was impossible to combat such decisions because only Communists were delegated into the commissions.

Chairman Prof. Dr. F. S. F. LIU: Dr. Samson has given us a good and clear summary showing that these cases can be classified in five groups. We received additional information from the other German colleagues. I am afraid we do not have much time and, therefore, have to enter into the discussion on the first category, i. e. the confiscation and seizure of property.

S. PRAMOJ, Thailand: The first point that has aroused some doubt is the following. I am a practicing jurist. Something I would not like is to have my case treated by the wrong court. So I am asking you, Mr. Chairman, who are we and what are we doing here at all? Are we in the right place and are we entitled to judge on all those cases? I feel that we have assembled here as jurists. But we are only a private investigating committee and not a public court, that means, we are supporting Dr. Friedenau and his colleagues. This is all we can do. But we cannot sit in court. So I suggest, Mr. Chairman, that this point be made clear.

I suggest that we do not analyze all these cases for judgment. Such cases belong before the United Nations Organization. I would like you to mention that in your report and to emphasize that we are not forming a court which has jurisdiction.

The second point about which I have doubt is the following: I have been sitting here and hearing many cases for two days. The question is: "What is our guiding principle?" We are speaking of expropriated factories, machines, industries, film theaters, shops and all sorts of other cases. Reference is made to nationalization. I am coming from a Capitalist Country in which all expropriations must have a public, legal basis. Full indemnity must be granted. I have never heard that machines were nationalized. So I wonder whether such cases could not be transformed into a few guiding principles.

I wonder whether there is not a legal and juristic pretext for all those expropriations. We must determine that a law is not a law unless it is based on juristic principles. So we have to find out the State's principles governing the seizures or the expropriations. Otherwise we will never arrive at legality. It almost looks as though those people had a right to confiscate property. I deem it our primary task to define the items eligible for confiscation.

The second principle is pertaining to the question which arose when mention was made of the stamp collector who went to the Western Sectors to exchange stamps and whose collection was confiscated afterwards. I do not really know the situation in this country, but in our state there are antiques such as statues, objects of art, etc. not admitted for export. I do not know the situation in the Soviet Zone but it seems that they went too far.

I cannot say very much about it because I do not know the reasons inducing the people on the other side of the Iron Curtain to confiscate such property. This is very important and I suggest, Mr. Chairman, that when dealing with the expropriations you adhere to the law by virtue of which we have to treat those matters, namely to the Declaration of Human Rights.

The most important words in Article 17 of the Charter of Human Rights are "arbitrarily confiscated." "Arbitrary" is the basic word from which everything derives and which is playing the most important role in the Declaration. We must of course consider that the United Nations recognize martial law under which an occupying power can seize weapons and ammunition. This international principle is applied everywhere. But the law itself fails to mention dubious cases. If confiscations and expropriations take place in times of war they are justified by themselves. It is an international principle valid only during war.

We are now returning to the word "arbitrary." I have mentioned that I am coming from a Capitalist Country. I think that a new idea of social justice has developed and that each country may sovereignly introduce nationalization. These principles are contained in the constitution and the constitution has to be applied accordingly. All we can do is establish for nationalizations, expropriations, and sequestrations the principle that in such cases the law must be founded on democratic principles and that laws must not serve as pretexts.

Now, the only principle we can apply is the principle of majority. If expropriations take place under the pretext of laws, it has to be determined whether these laws were put into force by a democratic body. If this is not so, we must examine whether the laws are based on the will of the people.

I would like you, Mr. Chairman, to lay this down in our report for the plenary meeting. We have to establish the principle that each law issued by a minority is not to be recognized. We must be guided by the principle that people are governed with their consent, that means, they participate in the government. This again means that only such laws are to be recognized as are passed by a democratic body. If the expropriation laws are dictated by a minority, contrary to the will of the majority, they are illegal. This was the second point I wanted to lay before you.

Now I am coming to point number three. Does the majority have an absolute right to impose its will on

the minority? This is the last point we have to investigate. In fact Democracy recognizes the right of the minority. The majority in a country is not allowed to pass laws in a manner that will do harm to the minority. Certain rights of the minority have to be acknowledged everywhere. For this reason I find that persons whose property was expropriated should be given indemnity like in England where nationalization was introduced by law. The principle is that where people are deprived of something they must be given something in return.

I am now turning to the somewhat dubious procedure in the Soviet Zone. Sometimes committees will convene and take decisions behind closed doors. This, of course, is not legal, for there is a principle in this world saying that a trial not held in public is not a good trial. I suggest that this point also be included in the final report for the plenary meeting and that it be considered a legal principle that each agency in which a certain authority is vested take its decisions in public.

If such agencies are right, the people will be witnesses; if they are wrong the interested party still has the right to apply to a superior court to make sure that the law was applied correctly.

I would like to conclude by saying that an animal is born naked and remains naked until it dies. Man is born naked but learns how to dress and improve his mode of living. It is my opinion that it must be our guiding principle that everybody who has toiled to accomplish and acquire something must be enabled to enjoy it. (Loud applause.)

Chairman Prof. Dr. F. S. F. LIU: Thank you, Mr. Pramoj, for your very valuable contribution to our discussion. Allow me to make a few remarks also.

First, you wondered who we really are. The way I understand it, we have been invited by the Investigating Committee of Free Jurists and are not the representatives of a specific government or country. Whatever opinion we may express at this Congress or in this Committee will be personal opinion. We greatly appreciate the legal principles which you have set forth and which will help us to measure the law that is to be applied and the law that is being applied in the Soviet Zone.

We now proceed with the next subject, that is, the legal protection before the proper courts.

Vice-Chairman Prof. Dr. EKELOEF: I suggest that the question of legal protection be discussed in the afternoon. However, I would like to put a question which perhaps can be answered by Dr. Samson. We have heard much about the expropriation of industries and other enterprises, but very little about the expropriation of agricultural property. Could you tell the Committee what methods are employed in the expropriation of agricultural property?

Dr. SAMSON: Agricultural property was expropriated as early as 1945 by force of the state laws. Farms were not expropriated individually, but each farm of more than 100 hectares was automatically turned into people's property. Special land reform commissions examined the size of the individual farms and decided that a property of over 100 hectares was to be expropriated. The land reform commissions also made serious errors and expropriated a number of farms of less than 100 hectares. Certain legal remedies

were offered in the form of remonstrations effecting a re-examination. As far as I know remonstrations were successful in only a few cases. In most cases the expropriation was finalized even though the farms obviously were not eligible for expropriation.

Vice-Chairman Prof. Dr. EKELOEF: Did the owners receive indemnity?

Dr. SAMSON: No.

Dr. W. STEINMANN: I think that the applause has proved how much we appreciated the remarks made by the delegate from Thailand. In general, we have arrived at complete agreement. Still, I would like to add a few words. I think I understood you correctly when you asked whether this assembly is competent for the questions under discussion, whether it represents a tribunal authorized to pass judgment on the legal situation in the Soviet Zone. You answered your question in the negative and did not concede that right to the assembly. I share your opinion. We are not a tribunal, nor are we passing judgment on the GDR Government which has issued the laws and ordinances whose legal basis we are partly denying.

You continued, Dr. Pramoj, by asking to which tasks this Congress has been assigned. Referring to the remarks made on the first day, I would like to emphasize in a few sentences that the Investigating Committee of Free Jurists has invited you to make you familiar with the legal situation in the Soviet Zone. It wishes to inform you on the legal development after 1945 and show you how the entire legal system of the Soviet Zone has adapted itself to that of the USSR, and how much it has removed from that of the Western World.

I would also like to touch upon a set of questions which you have mentioned, namely the democratic conditions.

Allow me to add to my discourse of yesterday that it is not by accident that Communism is playing a paramount role in the political and economic life of the Soviet Zone in the form of the Socialist Unity Party which is the guiding factor in the entire structure of the state.

I deem it very important to point to the following: the word "Democracy" has another meaning in the Soviet Zone than in the free Western World. It is called "Realistic Democracy" and economic equality is the primary factor. One might say like Kroemer that it is a democracy brought in line with socialism, a democracy whose economic and political aim is already set and not yet to be sought and found by a balance of power.

I may repeat that we are not sitting in court but we would like you all not only to accept our knowledge but to convince yourself by means of first-hand testimony. I think that the witnesses' testimony which you heard today has demonstrated very clearly to what extent the recognized legal principles have been abandoned.

It would be appreciated if the Committee for Civil and Economic Law would find a certain common denominator, if it would bring the facts that are being recorded to the attention of the United Nations Organization and submit to it recommendations and concrete material; for, it has been proved that the expropriation procedures and methods — apart from a few minor exceptions — were not exclusively aimed

at punishing the accused, but that a large-scale expropriation campaign was unleashed and carried out and that the tax and price procedures were expropriations as well. Even if only a few cases could be related to this Committee, they are not exceptions but only examples of thousands.

I think that once we have come to the end of this Congress you will agree that the administrative authorities in the Soviet Zone fail to base their decisions on the property standards of civil law, and that the judges are directed to deviate from those principles in cases involving the so-called bearers of people's property.

Vice-Chairman Prof. Dr. EKELOEF: I think the Committee can now adjourn until this afternoon.

Chairman Prof. Dr. F. S. F. LIU: The Committee for Civil and Economic Law now opens its afternoon session and proceeds with the second topic, the legal protection before the courts. I asked some of my German colleagues about the importance of this subject and gained the impression that it actually concerns the refusal of legal protection before the proper courts. The Committee will, therefore, enter into a discussion.

I would like to announce that the Committee will drop the discussion of the subjects "Family Law" and "Intellectual Property" because time will be too short and because it is presumed that most of the delegates are not so much interested in family law and the right to intellectual property as in the legal protection before the proper courts.

The afternoon session will be brief because the Committee has to elect a sub-committee for the drafting of the final resolution. This sub-committee will meet subsequently.

The Committee will now hear Dr. Berndt, of the Investigating Committee of Free Jurists.

The Deterioration of legal Protection in the Soviet Occupation Zone

by Dr. R. BERNDT, Berlin

Civil Law in the Soviet Zone is not exposed to continual infractions like Penal Law. Nevertheless it would be wrong to presume that the Bolshevization of Civil Law has made less progress than that of Penal Law. In Civil Law whole categories of cases have been removed from the judge's competency, any legal procedure being excluded. Thus injustice begins far from the chair of the judge. The dying of the private economy, the lack of any sound credit, and the conviction that it is useless to call on a court if it is impossible to force the other party to comply with existent contracts have resulted in a far-reaching limitation of Civil Law. Basic decisions prevent the daily injustice from being brought to the attention of the court because the applicants feel that no justice will be obtained in similar cases anyhow.

In all civilized countries the scope of Civil Law is the largest in the entire administration of justice. In a normal state, penal jurisdiction has little to do and needs only a few judges.

In Saxony, the hugest state in the Soviet Zone which was aggrandized after the surrender in 1945 by the annexation of a few Prussian districts and whose

populace grew by the influx of refugees, there were in former normal times, that is before 1933, a Supreme Provincial Court at Dresden with 14 Civil and 2 Penal Senates, the Dresden County Court with 18 Civil Chambers, 3 Chambers for Commercial Matters and 5 Penal Chambers. These Chambers were staffed with three skilled judges and very often with a reserve judge. Nowadays the Dresden Supreme Court comprises only four Civil Senates. The number of the Penal Senates has remained the same but due to the doubling of their staffs is equivalent to four Penal Senates. The number of the Penal Chambers has also been increased considerably. However, there are but five Civil Chambers manned with only one judge. There is no better proof of the lack of legal protection than the withering of Civil Law, its progressing death, and its absence from the people's minds.

By authority of the law the State evades any examination of its measures and refuses the citizens the right to have their objections heard. In this way civil jurisdiction has been restricted to a considerable extent, especially since the State's grip has expanded to a growing number of fields. All civil cases directly or indirectly originating from the measures taken by the public authorities and being directed against the State, its functionaries or beneficiaries are removed from the competency of proper jurisdiction.

The limitation of proper jurisdiction commenced simultaneously with the post-war reconstruction of the administration of justice. As the first state of the Soviet Zone, Saxony promulgated on March 14, 1946, an ordinance excluding legal remedy for the return of items or for indemnification for measures taken by authorities or municipalities in the exercise of public functions.

The ordinance became an example. The other states soon followed with analogous laws. A secret decree provided that even criminal offenses committed by government functionaries were to be considered measures executed by the public authority if they served the objectives of the State instead of personal enrichment. This is definite proof that most cases were of a criminal nature; otherwise the legislator need not have removed criminal cases from the competency of the proper courts. These laws ban all suits for the return of property or for indemnification for damage inflicted by the State. Such measures taken by the State include the minor expropriations in the way of confiscating people's household utensils, horses, motor vehicles and similar items. All those laws explicitly state: "No legal remedy admitted". They were supplemented by a vast number of secret circular ordinances which the Investigating Committee is holding at the delegates' disposal.

Since the day of issuance of those laws, lawsuits with a political trend or lawsuits against the State or other public enterprises were seldom carried before the courts. Jurisdiction in that field is dead. In the event that such cases were brought before a court, the judge could not but brief the litigants to the effect that he was unable to help them and that the suit would have to be rejected unless revoked or the litigants wished to use the abortive administrative channels. Any arbitrary action, any breach of law committed by a village mayor or a district councillor will be treated exclusively by the ministerial "committees" for the examination of claims. These committees will judge from purely political viewpoints.

While complaints are still formally possible in case of claims resulting from general actions by the State, such legal remedy has been abolished with regard to expropriations and other actions taken under Order No. 64 in conjunction with SMA Order 124 of which the Committee heard already on Saturday. The authorities have been forbidden to consider such remedy at all, even to reject it; the citizen simply will receive no answer.

In the remaining fields of civil jurisdiction the State's interests have overweight. The public prosecutor is authorized to intervene in any civil lawsuit, to join one of the litigating parties by virtue of his authority, and thus to exert a pressure on the court. Ample use is made of this law. Such misuse of official power was originally based on the divers secret decrees. The authorization to misuse official power was finally laid down in the "Law on the GDR Prosecutor", of March 15, 1952 (Document 182), permitting the public prosecutor intervention in any proceedings verbally or in writing.

Another considerable restriction on proper jurisdiction and protection from arbitrary action is the current limitation of the lawyers' practices. A large number of lawyers in the Zone had to discontinue practicing and flee. From Dr. Friedenau's introductory remarks we learned that about 900 lawyers' offices are empty. A comparison with the period before 1945, or even before the war, reveals that the number of lawyers has diminished even more. Only one eighth to one sixth of the lawyers practicing before the war can continue functioning in the Zone today. In the large towns, in which formerly some 300 to 400 lawyers had offices, there are only 50 to 60 at the present time. Many of them are aged and hardly in a position to properly carry out their profession.

Another restriction on legal protection is the lawyers' subjugation to arbitrary action by the SSD. This is carrying a depressing feeling of unsafety among the justice-seeking population. A lawyer failing to evade becoming an informer will be at the mercy of the SSD; nothing will save him from his next client being an SSD agent.

The individual's legal protection against State action has been reduced to complete insignificance. People's-Owned Enterprises — expropriated undertakings now in the hands of the State — and Soviet joint-stock companies are taking part in the general jurisdiction, their suitors, however, will be withdrawn from the competent judge and will be subject to special jurisdiction. Litigation in which representatives of People's Property are involved will be heard only by special senates and chambers composed of partisan judges. All cases will be referred to those senates and chambers regardless of whether the People's-Owned Enterprise is the plaintiff or the defendant.

A special jurisdiction or a special competency for accused People's-Owned Enterprises might be excused by the "Law on the Constitutions of the Courts". If, however, the People's-Owned Enterprise has a special judge with whom it so to speak has intimate relations and can carry all its cases before this judge and his chamber, it is bound to win its case. The judges are under special supervision. Even SED judges are not trusted since it is feared that in individual cases they might help the other party to obtain justice. For this reason the judges have to turn in current reports on how the interests of People's Property are protected best (See Documents 183, 184, 185).

Since late last year the verdicts have been subject to immediate study by the Party. It is the same system which the Nazis introduced in war-time for cases subject to the so-called "pre- and review". Before the trial the judges had to discuss the verdict with the prosecutor and before its announcement again had to come in for the prosecutor's approval. This unheard-of principle was adopted by civil jurisdiction. We have on hand the working schedule of a Supreme Provincial Court providing for the formation of a special commission for the examination, at regular intervals, of the "politico-social contents" of the verdicts. This commission is not composed of professional judges but of People's Judges and legal probationers with SED Party affiliations.

As for the rest, the prosecutor's right to cassation will see to it that any inconvenient sentence is wiped out. The Soviet Zone Supreme Court before which requests for cassation — also in civil litigation — have to be laid has not yet disapproved any prosecutor's request.

It is the usage of the People's-Owned Enterprises to ascertain the prosecutor's coming request for cassation in all dubious cases. The most oratory objections, the best appeals will be useless; the court will not give in. Even if the court decides otherwise, the People's-Owned Enterprise will know that it will be privileged by the Supreme Court. This does not even give the courts a chance to decide, or to induce one of the litigants to compromise, on the principle of equity.

Another security for People's Property has been inserted in the executive instance. In case a private person should, contrary to expectations, win his case versus a People's-Owned Enterprise or a Soviet joint-stock company, the court will not be allowed to issue an executory copy of the verdict. "In view of the immunity of the socialist property any distraint of the property of these enterprises is inadmissible". Verdicts against the State, People's-Owned Enterprises, or other public undertakings are without any value. The winning party depends on the People's-Owned Enterprise's good will to comply with the verdict (See Documents 186 and 187). In mortgage cases concerning estates in the possession of People's-Owned Industries only a declaratory application can be filed and only a declaratory verdict can be passed.

In contrast thereto, compulsory executions regarding Religious Communities and Churches are unlimited. The former restrictive regulations providing for a settlement between the State's Supervisory Authority and the Church, prior to compulsory execution, have been abolished. Churches may now be subjected to compulsory auction and the bailiff may seize the money collected by the Church (See Document 188).

The legal protection of the individual — I am thus coming to speak of substantive law — is also restricted by the rights and duties no longer being proclaimed in the form of laws and proper ordinances, but by secret legal regulations being issued to the courts. On November 22, 1951, legal principles for the treatment of family litigation were issued and have to be regarded as valid law. Nevertheless, verdicts are not allowed to cite those principles which in fact have abolished the Family Law established after a two thousand-year development, nor are those principles allowed to be published. Excerpts from the principles are contained in the Collection of Documents.

It is also important that an amendment to Section 1666 of the Civil Code permits the withdrawal of children from their parents if deemed necessary for the "child's well-being", — the "child's well-being" meaning the "well-being of Communism". It is no longer the neglect of parental duties or the jeopardy of a child difficult to rear but the interests of the State that matter.

The Chairman has suggested to drop the substantive law for lack of time. Nevertheless I would like to indicate briefly that the Divorce Law has also developed in a Communist sense. We have on hand three typical verdicts in matrimonial cases, showing that marriages may be and are divorced for political reasons. The verdicts have been reprinted in the Collection of Documents. Copies of the verdicts can be studied here. They concern the cases of Jahnke vs. Jahnke, Jaehnichen vs. Jaehnichen, and Gruhn vs. Gruhn (See Documents 189, 190, 191).

The restriction of legal protection of trade and intellectual property will be broached only briefly. I am recalling that only recently the so-called Aufbau Publishing Company in East Berlin released a "pirate" edition of the works of Hermann Hesse and Thomas Mann without authorization by the authors and the S. Fischer Publishing Company in Frankfurt-on-Main. The works were printed without royalties being received by the authors. The royalties are deposited in a blocked account in the Soviet Zone which the holders cannot use unless they go into the Soviet Zone.

Chairman Prof. Dr. F. S. F. LIU: There are several witnesses which the Committee is going to hear now.

WITNESS: Until a year ago I was lawyer in the Soviet Zone and wherever possible practiced in accordance with the recognized international legal principles. For this very reason several proceedings were instituted against me which I could circumvent more or less successfully. I am going to relate to the Committee only the latest events which forced me to leave the Zone. They add to the revelations on lawyers being forced to violate international principles of law.

About a year ago criminal police officers appeared in my office one morning claiming they knew that a man wanted by the police had called on me. That man had actually been in to see me. The officers wanted to know where the man was. I told them that firstly, I did not know where he was, which was true, and secondly, that if I knew I would not tell them and that being criminal police officers, they ought to know that lawyers, clergymen, and physicians are obliged to secrecy and liable to punishment if their professional secrecy is violated. I regretted that I could not help them and assured that naturally I would have omitted assisting a wanted criminal had I known that he was one. I stressed that I could not furnish any other information unless I wanted to violate the legal principles still valid in the Soviet Zone. When they left I had the impression that they were somewhat dissatisfied.

When I came home in the evening, there were again several criminal police officers, among them some whom I had seen already in the morning. They asked me to follow them and to repeat my statement to their superior. Another officer joined them during this negotiation, so in other words it was an arrest.

I was put into a car and driven to the prison instead of the police station. There, the interrogation was repeated in the presence of the alleged superior. They had chosen a setup which was bound to exert psycho-

logical pressure on me and which I regarded as an attempt at intimidation. I simply repeated what I had said in the morning and thereupon was told that all that sounded very nice and might be acceptable to the criminal police, however, they underscored, I had no longer to do with the Police but with the State Security Service to which there were no legal barriers. That meant I had to violate the secrecy of my profession whenever demanded by the SSD.

I said again that I really did not know where the man was. On seeing that they did not get any farther they confined me to a cell. Later on I learned that the wanted man had been detected and arrested the following morning. Notwithstanding I was kept in prison and made believe that the man had not yet been apprehended. During the following interrogations I realized that the man had been found, and I wondered what those people wanted after all.

I saw that the interrogators were not so keen on that particular case, but that they questioned me on various points (relations with the West, etc.). After several days I was called in the middle of the night and was told the following: "Well, we are convinced that nothing can be proved in this case, but your general attitude betrays that you are not on the grounds of reality and that you are liable to punishment according to the general principles. As the State Security Service has full authority, we can exempt you from punishment provided you are ready to prove that you are standing on the grounds of reality and henceforth will act in accordance with our principles. We are going to release you now. If you agree, you will come back in a week to work for us. You will bring a list of your friends, acquaintances, and relatives. In other words, you will work for the SSD in the future. And don't forget there is no such thing as 'secrecy of the profession' to us."

As quickly as I had come in I found myself out in the street with the secret order and with the warning that "if I did not work for them I would be back in prison". Apart from the danger to my personal freedom, I was convinced that from now on I would not be able to practice in accordance with the recognized legal principles. I was obligated to break my professional secrecy by order of the SSD and to furnish information on everything I would learn in the framework of my profession. For this reason I made up my mind to flee to West Berlin where I am practicing today.

Chairman Prof. Dr. F. S. F. LIU: Are there any questions?

MEMBER OF COMMITTEE: Is there a common Lawyers' Association in Berlin or was it divided?

WITNESS: I am now a judge in West Berlin. I know there is a Lawyers' Association in West Berlin, but there is none in East Berlin. The city-wide Lawyers' Association was destroyed just as the unity of Berlin.

MEMBER OF COMMITTEE: Does the system of free selection of lawyers still exist in the Soviet Zone?

WITNESS: Yes, it does, but the lawyers have to practice under special conditions.

Their practicing is exposed to a continuous influence, beginning with supervision, activities on behalf of certain organizations, circular directives concerning their practice, non-compliance with these orders being considered proof of the lawyer's unreliability. Practicing

also requires a license. The Ministry holds the view that a resistant lawyer is unreliable and must be revoked his license. In case a lawyer became more inconvenient heavier guns were used and evidence for legal proceedings was planted. There is a wide variety.

MEMBER OF COMMITTEE: In Rumania, the campaign against the advocates began with brutal measures. In 1947 and 1948 the advocates were compelled to appear before a commission of Communist advocates established on top of the court system. About 90 per cent of the advocates were barred from the courts, so that finally only the Communist ones were left. The advocates thus have become instruments in the hands of the Communists. Did such a general purge take place in East Germany also?

WITNESS: The purge started as early as 1945 and gathered momentum in the course of years. In the beginning the principles were lenient but became stricter in the following years. The development is similar to that in other fields. The new system was not brutally introduced right away. Considering repercussions abroad, old legal principles were adopted, but in the way of administrative measures were turned into the contrary and rendered ineffective. We are still in the middle of a progressing purge. The Ministries are going to tighten the screw slowly but steadily, thus forcing many to abandon their profession and flee. In this way the profession is cleansing itself of undesirable elements. What is left are only a few who are 100 per cent in line with the Communist ideology.

Dr. R. BERNDT: There are some more witnesses to confirm what I said by their personal experience. Yet all these points have been laid down in writing. So I would like to ask the Committee whether a study of the documents will do and whether it will enter into a discussion now. I think the Committee wishes to enter into a discussion based on what the Committee heard from the witnesses.

Chairman Prof. Dr. F. S. F. LIU: There are no objections. The discussion on the legal protection before the proper courts is opened.

S. PRAMOJ: Mr. Chairman, I am not claiming a monopoly in the discussion, but since so far nobody has risen to speak I would like to make a few remarks. I am afraid I have not quite understood the previous discourse on the Soviet Zone jurisdiction. Yet after all that I have heard the situation seems to be that the courts will employ certain persons who were not trained along juristic principles. It is true that they attended a law school, but they received a training in the application of the Soviet principles rather than of the universal principles of law.

It is important to know how such a tribunal is composed. It should be determined whether people ignorant of the genuine legal principles are employed.

Now a remark on this morning's subject, the "public trial". In order that proper justice be practiced in a trial it is significant for people to be allowed to attend the proceedings. Only then a person can say that this or that trial was unjust, that a measure was right or wrong. I deem this very important. Now I have heard that it is not possible in the Soviet Zone and in the Soviet Sector where a special invitation, a "Spectator's Ticket", is required. I would not call that a public hearing. It seems to be a special interpretation of justice in contravention of the principle laid down in Ar-

Article 10 of the Charter of Human Rights. This is no "public trial", for "public" means that not only a few or many, but all people may attend.

Dr. M. BUTARIU: There seem to be certain reflections that do not help the approach to this subject. On the contrary, they are misty and will confuse the situation which is not very clear anyhow. People's Courts are mentioned and it is said that they are formed of judges without a proper juristic training, with only a political one. Despite their inadequate training those "judges" still seem to be regarded as judges, their "courts" as courts, their "judgment" as genuine judgment. Since an audience is still admitted to the sessions, jurisdiction is still considered to be almost normal.

There seems to be a slight confusion regarding the definition of juristic terms. The Constitutional State is normally based on the tripartite division of powers. The three powers establish an equilibrium and prevent arbitrariness. This is the theory we owe to Montesquieu and which in a more or less satisfactory manner has been transformed into reality by all constitutions ever since. We have lived along this principle for the past two centuries.

The Communists do not know this division of powers limiting and controlling each other. There is only one power, that is the Communist Party. Unless a person understands that in a Communist country the State is the instrument of the Party, that the Law is the instrument of a Party, and that the Police are also one of its instruments, the person cannot know that in Communist thinking the individual is ranking last. The Law is made by the State and since the State is an instrument of the Party, the Law is created by the Party for its ends. Only thus can the jurisdiction in a Communist country be understood.

People are speaking of judges who underwent only a political training. What does that mean? I will explain it to you. It is a system of power intending to bring all officials in line. At one time there were officials, including upright judges, not obeying a certain Party but exclusively applying just Laws. Such officials were to be abolished. They were not fit to serve the terrorism, the arbitrariness, and the pressure exerted by a Party. For the sake of the Party such judges are dismissed and replaced by judges without any juristic training.

I presume that the People's Judges in Germany can at least read and write, but those behind the Iron Curtain to a large extent are still illiterates. How can such illiterates apply the law? The explanation is that they do not apply it at all. They use the orders issued by the Party which placed them in their posts.

In order to be genuine, jurisdiction must be carried out by honest, independent judges who are not subject to political orders, who have not attended political training courses, but can apply to the best of their knowledge a law that was not created by a single man or a party.

Chairman Prof. Dr. F. S. F. LIU: The speaker has just underlined that basically law must be founded on the tripartite division of powers but that there is only one party and thus only one power in the Soviet Zone.

Frau Dr. LUEDERS, Berlin: The remarks we have just heard are day after day confirmed by the trials taking place in the Soviet Zone. The first speaker in the discussion suggested that the Collection of Docu-

ments be consulted as to whether it contains something expressing very clearly that Law is being infringed in the Soviet Zone. It is violated daily by not complying with the basic principle of the civilized world which reads: "Nobody shall be withdrawn from his competent judge."

The first speaker was of the opinion that jurisdiction and judgment are carried out in accord with laws that have been put into force. Well, my dear colleague, what kind of law is it on which jurisdiction and judgment are based? They are not laws which you might presume were issued on a democratic basis, but they simply were decreed. They are orders for the procedure of the trial and judgment. Yet what kind of judgment is it? No sentence is drawn up in accordance with the respective regulations of the court's constitution, etc. but in most cases the sentence is ready before the defendant himself has had a chance to speak or something has been investigated.

The entire basis of jurisdiction and judgment is absolutely undemocratic, and so is jurisdiction itself. Two languages are spoken over there and here. They speak our language, believing that that which is a matter of course to them is a matter of course to us as well. No, nearly each word has a different meaning.

This is what makes it so hard for people not living here to understand what is going on on the other side. The previous speaker has characterized it very well and has made similar remarks on another occasion yesterday. It will be very difficult for foreigners to understand that our approach is based on different definitions and that those who are supposed to find and practice justice on the Eastern side of the fence are not allowed to apply our definitions.

The few examples of Family Law and the other examples named in the Collection of Documents prove that there is no proper jurisdiction, for instance, in divorce cases and family litigation, but that judgment on a divorce case depends on judgment of the political attitude of the partners in marriage. If a partner in marriage does not display the attitude prescribed by the Party there is sufficient reason for a divorce. This, of course, would never be possible in your countries, nor is it in our area. There, objective facts are required rather than a simple political credo adopted by more or less intense political indoctrination (Applause).

Dr. R. BERNDT: Concerning question number one on whether the political views are influencing divorces it has to be emphasized that the political attitude and views of a spouse can have considerable influence on the court. (The speaker refers to Documents 189 and 191). There is no doubt that a party member always has a better chance with the People's Judges than other persons.

Persons not given a hearing by the proper courts have no opportunity to apply to administrative courts. There are no such courts in the entire Soviet Zone. The state constitutions mention administrative courts, two states actually established such courts but they never went into operation. They exist only theoretically and do not even have judges.

The new tax laws of 1950 provided for the creation of fiscal courts, another species of administrative courts which were never established. Thus over 200,000 appeals concerning fiscal matters have accumulated that cannot and will not ever be decided because of the

absence of administrative courts. The taxes were collected in the meantime so that those cases were settled by themselves.

I am coming back to the question put by the delegate of Thailand, namely to what extent Soviet Zone jurisdiction can still be regarded as proper jurisdiction. There is only a very small number of judges of the old school in insignificant positions. The majority of the People's Judges are shoemakers, craftsmen, saddlers, former stenotypists who underwent mere People's Judge training including primarily lectures on social politics, political science, Marxism and Leninism. Justice as defined by the gentleman from Thailand does not exist in Soviet Zone jurisdiction.

Chairman Prof. Dr. F. S. F. LIU: The Committee will now proceed with the last item of its agenda, the

appointment of a sub-committee for the drafting of the final resolution. (The Chairman read a list of members of the Committee). I would like the Committee to approve the composition of that sub-committee.

S. PRAMOJ: I suggest that you, Mr. Chairman, be appointed secretary of the sub-committee. Besides I object to being called doctor. I am not.

Chairman Prof. Dr. F. S. F. LIU: Are there any other candidates? The following have been nominated subject to the Committee's approval: S. PRAMOJ, Thailand; Prof. Dr. A. TRIMAKAS, Lithuania; Prof. Dr. E. J. COHN, Great Britain; S. DAEHLI, Norway; Prof. L. J. CONSTANTINESCO, Rumania.

Prof. Dr. Ekeloef and I will be in it anyhow. There are no objections. The session is closed.

THIRD DAY

The Chairman made a few routine announcements, then asked Prof. Dr. A. Trimakas to take the floor.

The Disregard of Human Rights in economic Legislation in Soviet-occupied Lithuania by Prof. Dr. A. TRIMAKAS, Lithuania

In Lithuania freedom had created the prior conditions for the nation's economic development in the private as well as in the public sphere. Being suited best to meet the requirements of the population, the private factor was the primary element in the country's economy. In agriculture as well as in trade, banking, and industry the private initiative was extremely successful. The secondary element was the co-operative societies combining the savings of the low-paid categories, mostly peasants, to help them attain prosperity, in particular during the pre-World War II era.

The land reform carried through in 1922 changed the former system of rural administration and satisfied a large number of small-fry land owners. This change resulted in a considerable increase of the crops from 1.2 million tons in 1913 to 2.5 million tons in 1939, as well as in a corresponding growth of cattle-breeding and food-processing industries.

The outstanding economic development resulting from the system of free enterprise was effectively supported by the free Lithuanian workers. The workers had their organizations and the necessary legal protection of their rights. Minimum wages were created by modern labor legislation also providing for better working conditions, the eight-hour day, health insurance, and compensation in case of accidents.

Unfortunately, this progress was interrupted by the Soviet occupation of Lithuania first in 1940 and again in 1944 towards the end of World War II. The Soviets occupied the country in violation of all international conventions and bilateral agreements concluded with Lithuania. The invasion was an international crime and, against its will, incorporated this innocent country in the Soviet Union. This illegal act did not vest in the USSR any authority in accordance with the Hague Convention of 1907.

No sooner had the Red Army occupied Lithuania on June 15, 1940, than the Soviets ordered the introduction of the Communist system. On August 10, 1940, the Soviet-appointed "Commissars" took over all commercial enterprises. On September 27, a decree on the confiscation of private enterprise was issued. All private firms whose annual turnover exceeded 150,000 Lit. were expropriated. Not only their assets and liabilities and their landed property but also the property of their owners or their families as well as their bank accounts were dispossessed. The decree was arbitrarily interpreted by the authorities. As a rule the Communist Party's desire for the nationalization of an enterprise would suffice. In consequence, all private enterprises — there were 1,595 — had been expropriated without indemnity after two months.

The administrative boards of the employees' associations were conquered by Communists and their functions were coordinated with the prevailing system of government. They were turned into instruments of the Communist Party and the State.

The Decree of 1941 issued by the People's Commissariat for Commercial Affairs defined Communist nationalization as the expropriation of any property. In this way former owners of property became actual proletarians, and enterprises, which had been liquidated and had collapsed completely, were plunged into chaos.

Foreign trade was just as "lucky". By way of ordinances issued by the Ministry of Finance in 1940 and 1945 the entire foreign trade was placed under the control of representatives of the USSR Ministry of Foreign Trade. All archives and properties as well as customs offices and agencies were absorbed by the Central Customs Office in Moscow. This procedure was carried out by way of a simple police proclamation of the new regime, without special legislation or a legal basis for that kind of expropriation being needed.

The nationalization of industry was enforced in the same manner regardless of personal rights. The Nationalization Law having been adopted, the government and the Communist Party formed a special committee for the election of new administrators of the nationalized enterprises.

The respective law was put into force on July 26, 1940, and its application harshened after World War II.

All craftsmen had to join the government-controlled organizations which represented a kind of collective production corporation. To these organizations they had to transcribe their entire property. Transcription was ordered by a simple administrative directive. The administrative procedure was the same as in the nationalization of other properties.

The nationalization of the banks and capitals followed the same line. According to a decree issued by the Minister of Finance on July 26, 1940, "all banks, private safes, insurance companies, and mutual savings banks are nationalized".

Their managerial boards were replaced by a commissariat appointed by the government in conjunction with the Communist Party. All securities in the possession of private persons were lost. At first their owners were forced to deposit the papers with the government's Central Bank, and following the nationalization of all private bodies corporate they lost their value. No private ownership of foreign capital was allowed.

In the Soviet Union, landed property is regarded as the primary source of prosperity. On July 22, 1940, the People's Parliament passed a Law on the Nationalization of Landed Property for Soviet-occupied Lithuania. The land became property of the State. The Lithuanian land owners were deprived of their property to the benefit of the occupying power, that is, the Soviet Land Pool.

The landed property which remained in the hands of the farmers was allocated to them for temporary cultivation but not as property to which only the State was entitled. In a word, there is no legitimate landowner beside the State which will use the land the way it deems appropriate. Such intervention by the Soviet State in agriculture frustrated any stimulus to cultivating the land and producing the quantity of food needed for feeding the population. The peasants refused to take over the soil that had been left to them for cultivation. The nationalization was, therefore, followed by another law which forced the peasants to till their fields. This law was put into force on October 17, 1940.

The pressure was so immense that the number of kolkhoz farms grew from 20 in 1948 to 600 in 1949. By the end of the latter 926 kolkhoz farms were determined. Thus, 98 per cent of all farms were converted into collective farms. There is hardly any difference between these two types of farms. Both are owned and administered by the State. The administrators of the government-operated farms are formally appointed by the State, while the administrators of the kolkhoz farms are formally elected by the farm workers. In reality, however, both are appointed by the same government agencies and the Communist Party.

From the legal point of view the land remains property of the State. It is cultivated by the peasants, but the products are at the State's disposal. Even Stalin's Constitution, which turns the land over to the kolkhoz farms, transfers it only for cultivation, that means that, as confirmed by G. A. Aksenench on pages 200 to 364 of his treatise on "The State's Right to own Landed Property in the USSR" (Moscow 1950), "the kolkhoz farms have land for cultivation but not as property".

The Soviet laws in the USSR as well as in Soviet-occupied Lithuania impose restrictions on the free

choice of employment outside of the kolkhoz farm. In order to obtain a permit for residence at a specific place a peasant needs approval by the administration of the collective farm. Any contract for employment outside of the farm can be concluded only in advance through special government agencies and it will be registered by the collective farm administration for a period specified by the latter.

The recruitment of employees from the ranks of the collective farm workers can be undertaken directly by economic agencies in accordance with special agreements concluded with the collective farm administration.

The Decree of March 17, 1933, also put into force in occupied Lithuania, forbids members of the collective farm to leave the farm except under contract concluded with a registration agency accredited with the farm concerned. Workers not complying with this principle will be evicted. Registration with the farm is not a mere formality, for approval by the farm administration can be refused for any reason.

Although the peasants were forced to join the collective farms, their admission was based on the principle of social inequality. Peasants formerly owning more than two hectares were barred from the collective farms as well as those who prior to joining the collective farms had destroyed their tools, or disposed of their horses or personal property. The situation of such farmers was terrible because they would not find any place to work and live in.

The situation of the industrial workers is not any better. The basic right of the working people is their right to free choice of employment and place of work. Soviet legislation in Lithuania does not concede to the people any such freedom. Even the freedom of movement is unknown. Anybody wishing to travel from one place to another needs a special permit whose issuance depends exclusively on the administration. Compulsory labor is regulated by law and the unjustified abandonment of employment is branded as an act punishable by imprisonment.

The right to strike has been abolished in Soviet-occupied Lithuania, and it is mentioned neither in the Constitution nor in law. All media and agencies through which the workers in the Free World can pursue their aims are, under the Soviet regime, agencies of the chief employer, that is, the State. The Soviet Union and the countries occupied by it do not know any kind of free workers' organizations. In contrast to the Declaration of Human Rights, the Soviet-sponsored trade unions are operating under the control of the Communist Party. In consequence, the Soviet trade unions established in Lithuania are official agencies of the State. The workers do not have the right to form independent trade unions.

By Decree of October 19, 1940, the directors of the government departments were authorized to order the transfer of specific categories of technical personnel and skilled workers from one enterprise to another, regardless of the persons' wishes. Non-compliance with that order was considered unauthorized abandonment of employment and was punished accordingly. The decree is still in force, proving that the workers behind the Iron Curtain are not free to choose their employment.

The Decree of October 2, 1940, which came into effect in Lithuania after World War II, empowers the Council of Ministers to designate youths between 14 and 17 years of age for training at trade and railway schools. The same regulation has been ap-

plicable to girls between 15 and 16 years of age since 1947. After a four-year training they will receive assignments from the Ministry of Labor.

Assignments are made by the State. Workers as well as administrators are liable to severe civil and penal punishment in case of disobedience. Millions of future Soviet citizens, at present not older than 14 to 17 years, underwent forcible training for vocations selected for them by the State regardless of the personal wishes of the trainees, of their parents, or of their guardians.

Stalin's Sovietization campaign in Lithuania has destroyed the lives of hundreds of thousands of people. Their discontent and resistance are stifled by brutal violence. Whole villages were burned to cinders and their inhabitants were deported. Nobody knows how many of them have perished. At any rate it is a fact that the liquidation of private property in Lithuania brought to bear misery, lawlessness, unsafety, and slavery which not even the smartest and most heinous Soviet propaganda can deny.

Chairman Prof. Dr. F. S. F. LIU thanked the speaker and opened the discussion.

MEMBER OF COMMITTEE: What are the practical economic consequences of this kind of agricultural policy?

Prof. Dr. A. TRIMAKAS: The practical results of collectivization are disastrous. The peasants had to give up their property and join state-operated farms. They lost any kind of privacy and as employees of a state-operated enterprise are hardly in a position to produce a minimum of foodstuffs.

Under the Soviet regime the country has reached hardly 50 per cent of its former production. As the agrarian situation is deteriorating, the Soviets are trying to create industrial enterprises outside of the state-operated farms. Industrial production can of course be increased, while agricultural production is declining.

Chairman Prof. Dr. F. S. F. LIU: In China, agricultural enterprises have not yet been nationalized but requisitioned. The land, however, is distributed among landless peasants. Will, in the case of Lithuania, the Soviet Union also distribute the nationalized land among the landless peasants?

Prof. Dr. A. TRIMAKAS: To break the strong resistance in the occupied country, it is tried to concentrate people in camps. In reality, there are no more private farms like in the Soviet Union. When the Communists say that the land in China will be distributed to the peasants, this is a lie. In China, too, huge state-operated farms will be formed.

Chairman Prof. Dr. F. S. F. LIU: Allow me a remark on the "lie." At the moment land is actually being distributed to the landless Chinese farmers. I would not know what will happen in the future, but I think that the "lie" is a "lie yet to come".

Prof. Dr. A. TRIMAKAS: In Lithuania, the transfer of land to the so-called "landless peasants" in 1940 was the first step towards Bolshevization. Since the individual small farms yielded inadequate crops, kolkhozes and sovkhoses were formed. The development in China will be similar.

Chairman Prof. Dr. F. S. F. LIU: At the moment the Chinese still believe in the Soviet slogans, but their illusions will fade very shortly.

The legal situation of Bulgaria will now be described by Mr. Slavov.

Communist Legislation in Bulgaria

by A. SLAVOV, Bulgaria

There is no justice, nor human freedom, nor private property, nor freedom to form associations in present-day Bulgaria. The country abounds with concentration camps to which some 500,000 Bulgarian citizens have been confined. The prisons are overcrowded. The Communist State is trying hard to force the new Soviet policy on the country. There is no more Bulgarian Sovereignty; there is only a Red Symbol. Bulgarian traditions were destroyed completely. Social principles have no more value. Where it contradicts the Soviet doctrine, the teaching of truthful science has been barred from the universities. No religious education, no allegiance to the Church is allowed. The Communists are controlling the Ministry of Education and Schools. Substantive law has been changed completely. Laws and special laws were created with the direct aim of enforcing the dictatorship of the Communist minority by all means.

The first law to be created was the "Law for the Defense of the People's Power", forbidding any criticism, any reflection, propaganda, domestic or foreign political trend not in accord with the intentions of the Soviet government. There followed the "Agricultural Market Law" prohibiting the sale of agricultural products on the free markets; the "Law on Economic Sabotage" supporting the Communist regime and providing for severest punishment of peasants failing to surrender, or still owning land, and of those letting machines or agricultural products rot. In addition were created laws on the establishment of kolkhozes and sovkhoses, on the Communist cooperatives to be joined by all peasants, and on the state secrets, the latter providing for capital punishment only.

There is the "Law on the Abolition of Political Parties" not allowing the formation of new non-Communist parties; the "Law for the Defense of Peace" making it impossible for people to publicly discuss war and armament, unless they want to risk severe punishment; the "Law on Commitments and Contracts" permitting the conclusion of contracts exclusively from the angle of the Soviet social order.

The new Criminal Code and the new Civil Code, both issued in 1952, filled the last gaps in a system depriving Bulgaria of all its rights. They were the climax of unlawful Soviet action. The new Criminal and Civil Codes provide for the current attendance of all legal proceedings by the public prosecutors; the abolition of common evidence; the simplification of court procedures; joint enquiries by the prosecutor and the judge; and the abolition of the witness' oath. Investigations are made, evidence is produced, and the verdict is reached already in the preparatory meeting; only then the trial will follow. The Communists can pass judgment the way it serves their interests best.

The pre-arranged Communist nationalization of factories and the monetary reform were used to deprive people of their last belongings. Government loans are obligatory for all citizens who have to raise the funds needed by the State. Families are being spied on. The Central Committee is questioning thousands of people according to systems mocking human dignity.

In 1947, Bulgaria had 6,000 lawyers to seven million inhabitants. The lawyers exercised their functions in harmony with the social and cultural life of the nation. The beginning of the Communist reign was accompanied by disorder and chaos. A special law robbed 4,500 lawyers of their right to freely exercise their profession on the pretext that "they supported the imperialist trends of the enemies of the people," i. e. because they operated against the Soviet regime. The lawyers thus deprived of their rights were sentenced to hard labor, they were interned and confined to concentration camps. Only 600 lawyers were left in Sofia.

The advocates having been purged in this manner, the remainder of the lawyers were rounded up in so-called "advocates' collectives" each headed by a Communist. The fees were no longer collected by the individual advocates but by the collective organization's secretary. The lawyer is not allowed to speak in trials, nor may he produce evidence for the defense of his client because he is compelled to recognize the methods of Communist inquisition. The cases in which the Communist courts provide the lawyer are the worst, since the lawyer does not have the slightest intention to make the court consider mitigating circumstances.

There are no independent judges in Bulgaria. The judicial power is vested in the State and shared by the Central Committee of the Communist Party. The judges are deprived of their immunity. No competition is allowed in the selection of judges. The appellate court has been abolished. The judges are members of the Communist Party and carry out its orders. People participating in juristic discussions have to determine in advance which standpoint they will express in accord with the Communist Party's policy. In Communist countries the judges are made simple administrative officials exercising the governmental functions against innocent citizens. The courts are buttresses of Communist tyranny oppressing the people. The slightest deviation by a lawyer or judge from the directives of the Communist Party are liable to severest disciplinary punishment.

The Bulgarian people are battling Communist oppression. In order to weaken the opposition, economic measures were instituted. This practice began when Dimitroff was Secretary General. During that period judicial extortion commenced. I am recalling the pain of Petkoff whose execution took place on September 23, 1947.

On June 4, 1951, the Communist tribunal sentenced 12 members of the agrarian organizations. Hamev and Hanov were sentenced to death, the others to 20 years of confinement. Their only crime had been the attempt to revive agriculture on a national basis. In February, 1952, the Sofia Court in camera tried three former Ministers who had been members of the agrarian organization. The consequences of such extortion and arbitrary action were horrible for the victims. Some of them were sentenced to death.

Many such breaches of Law the Communist system may have committed in order to let Stalin's barbarism and the Kremlin's international conspiracy have its way. However, it is not so strong that it can stifle the sense of justice in men, and in particular in jurists. It is our sacred duty to fight for the restoration of freedom and human rights.

Chairman Prof. Dr. F. S. F. LIU: Thank you, Mr. Slavov. I would like to make now a brief remark on the situation in China. After the conquest of Shanghai by

the Reds, Communist judges were appointed. The jurists believed they could act in accordance with the law. Yet, if a lawyer wished to plead before a court he was told by the judge that the case was very simple, that the judges knew how to apply the law, and that it was not necessary for the lawyer to make an address. The advocate was not allowed to make any statement.

The next report will be given by Mr. Breikss.

The legal Development in Latvia since 1940

by J. BREIKSS, Latvia

Until November 26, 1940, Latvia had a modern Civil Code, Civil and Criminal Procedure Codes and its Criminal Code issued in 1933.

Soon after Latvia's occupation, the Presidium of the Supreme Soviet issued a decree repealing all laws of independent Latvia effective November 26, 1940. These laws were substituted by Soviet laws, i. e. by the Soviet Criminal Code, Criminal Procedure Code, Civil Code, the Civil Procedure Code, as well as Labor, Marriage, and Family Laws. Those were followed by the Supreme Soviet's Decree of November 27, 1940, transforming the Latvian District Courts into People's Courts after the Soviet pattern.

Even the judges were replaced. To that date it had been the Latvian judges' guiding principle to remain unbiased and uninfluenced by the interests of any class. According to the Soviet Court Constitution, the judge has to educate all citizens in the spirit of "true" Communism, that means, Stalinism.

By Decree of December 24, 1940, a man by the name of Fritz Dombrovskis was appointed Vice-President of the Superior Court, regardless of his Russian nationality. He had undergone intense Communist training in the Soviet Union and had all the experiences required for his assignment.

As all judges' positions became vacancies and no Soviet-trained judges were available in Latvia, special judges' training courses in line with the Soviet law on the court constitutions were arranged in Riga in the fall of 1940, and politically immaculate persons were trained to become judges within a few months. No higher-level education or judicial practice were required because under Soviet Law anybody eligible to vote may at any time become a judge. This is the reason why mainly Communist Party functionaries were delegated to the courses, although in many cases they could not even read and write properly.

The judges thus prepared in three-month courses began functioning early in 1941 and took over the former District Courts. The People's Judges' practicing was an inexhaustible source of merry and sad tales in Latvia.

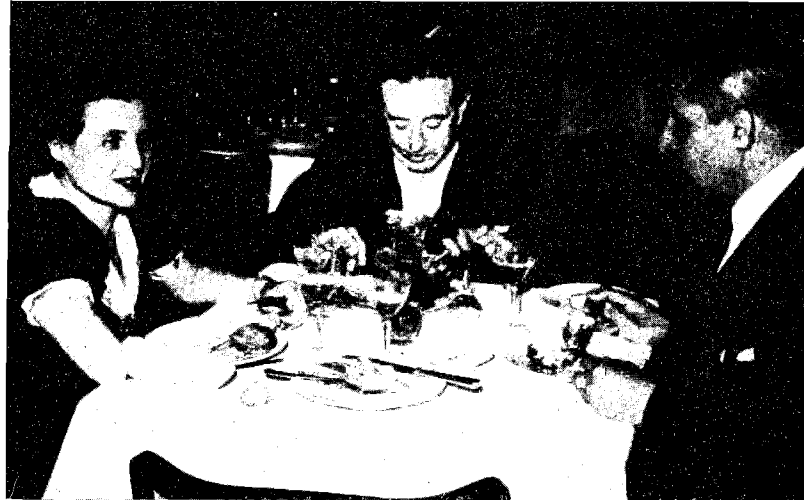
I am recalling a dramatic scene under People's Judge Murnieks' direction. About 10 witnesses were heard by him, but afterwards he declared that their testimony could not be believed because they were bourgeois people. The only witness he deemed acceptable was a Communist proletarian. Although he had been previously convicted and sentenced to imprisonment for larceny, Murnieks believed him and sentenced the accused to a five-year term of confinement. The result was the delinquent's deportation and disappearance from Latvia once and for all.

RECEPTIONS

At the various receptions held by the Federal Government and the Berlin Senate the delegates came to know each other. Many a friendship was concluded



Maj. Gen. L. Mathewson, U. S. Commandant of Berlin with G. Morris, U. S. A., and Prof. F. S. F. Liu, China (f. l. t. r.)



Right side, down:

Dr. and Mrs. A. Quintano-Ripolléz with Persian delegate Dr. P. Kazemi

The French delegates D. Boisdon (left) and Dr. Kréher (right) with Prof. Dr. S. Osusky, Czechoslovakia

The Portuguese delegates Prof. L. P. Coelho and Dr. M. Fernandes with Prof. F. della Rocca, Italy (f. l. t. r.)

President Hon. J. T. Thorson with Mr. and Mrs. J. Nabuco

The Japanese delegation and Dr. T. Friedenau



Prof. L. de Luca, Italy, in conversation with Prof. L. J. Constantinesco, Roumania (during reception held by Free University of Berlin)



SIGHT-SEEING TOUR

During a sight-seeing trip through the city and a subsequent boat ride the delegates saw Berlin and its nice environments

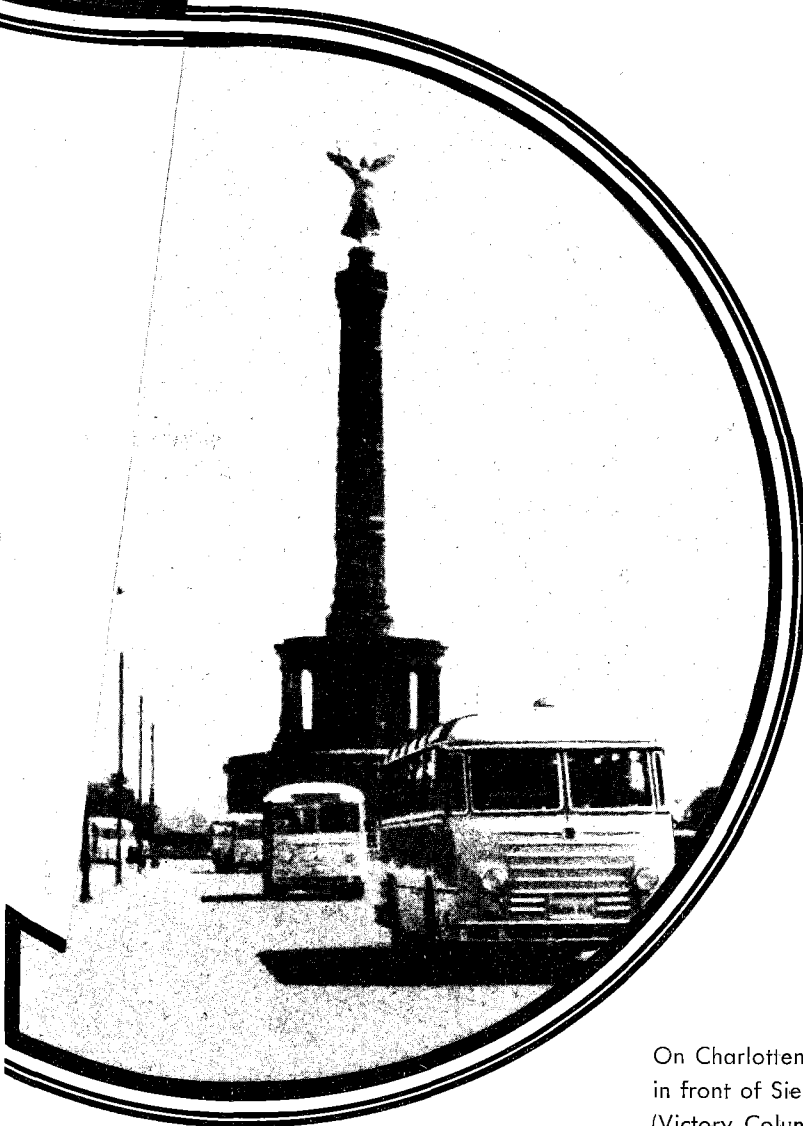


On Taentzien Boulevard.
In the background the ruin of
Kaiser Wilhelm Memorial Church



Incomprehensible for many delegates:
The Soviet Memorial in West Berlin

In bright sunshine on the Havel river



On Charlottenburger Chaussee
in front of Siegessäule
(Victory Column)

Another notorious judge trained in Riga was People's Judge Freimanis of the Riga 4th Judicial District. His spelling was incorrect, even in Latvian. As the sentence had to be written in the judge's own hand he could not accept assistance by the secretaries. Though being serious documents deciding the fate of human beings, his sentences thus became a collection of gross mistakes in spelling. Freimanis was a strange man.

According to Section 3 of the Soviet Law on the Constitution of the Courts, "the court has to educate people to become loyal citizens of the Soviet state". Likewise, the court is supposed to teach the people that they have to treat Socialist State Property with care and that they have to respect the socialist mode of living. The Soviet People's Courts in Latvia were rather drastic in performing this task.

If, for instance, a worker took a small item of State Property, the minimum punishment would be one year of imprisonment.

This, however, was linked with deportation to the remotest areas of Russia. I myself witnessed the sentencing of a slaughter-house worker who had taken a kilo of minor-quality meat, and of another one who had taken home two pints of gasoline because he could not get any soap to wash his hands. The punishment was one year in prison plus the obligatory consequences. If the same offense was committed in a privately-owned enterprise the same defendant was acquitted since the liquidation of private property was not considered a punishable act. If a bourgeois, in a state of intoxication, made noise or otherwise became a public nuisance, the punishment was one to five years imprisonment, so the people would learn how to respect the socialist mode of life. However, if the ruffian was a member of the working class, he would be acquitted in most cases. Article 99 of the Constitution says that "all citizens of the Soviet Union shall be guaranteed the inviolability of the home and the privacy of correspondence." The actual practice is revealed by the documentary lists of deportees held in slave camps, as well as by the ban on correspondence with persons living outside of the territory behind the Iron Curtain.

Chairman Prof. Dr. F. S. F. LIU: Prof. Dr. Trimakas would like to call the Committee's attention to his concluding remarks on mass extermination. Under breach of the Universal Declaration of Human Rights and the United Nations Charter, the Soviet Union is contemplating a monstrous plan for the extermination of the nations.

I would like to submit to the Committee the draft of a resolution prepared by its honorable colleague, Prof. Dr. A. Trimakas. The text reads as follows:

"Whereas the Soviet Union, in violation of the Universal Declaration of Human Rights and of the United Nations Charter, undertakes to carry out a monstrous policy of extermination of the nations, keeps Eastern Europe and Eastern Germany occupied, attempts to replace the concept of a nation by the concept of the "Soviet Man," deprives the people of their source of existence by abolishing the right to own property;

whereas the Soviet Union is continuing its policy of extermination by the liquidation of state leaders and by the extermination of families;

whereas, if successful, the Soviet plan would mean the extermination of more than ten nations which paid significant contributions to the civilization of Western Europe and Christianity;

whereas the activity of the Soviet Union is tangent to the scope of the Genocide Convention which is binding law; and

whereas the further ratification of the Convention would strengthen humanitarian unity and form a broad basis for its application against the perpetrators of such an outrageous crime,

it shall be determined to invite the non-signatory nations to ratify the Genocide Convention as soon as possible, and to mind that the Genocide Convention is used by the United Nations Organization to protect nations and denominations menaced by Soviet extermination."

If the Committee approves this wording, I suggest that the sub-committee submit this resolution to the plenary meeting. (Approval).

FOURTH DAY

Vice-Chairman Prof. Dr. EKELOEF opened the meeting and read the draft resolution prepared by the sub-committee. The reading was followed by a lengthy discussion on minor formulations of the resolution. The discussion concerned primarily terms like "illegal"

expropriations and expropriations "without indemnity". A final wording having been formulated and adopted by all members of the Committee, the work of the Committee was concluded. (Text of the Resolution see Part Four "Resolutions of the Working Committees".)

Committee for Labor Law

Chairman: Prof. P. R. HAYS, U.S.A.;

Vice-Chairman: Dr. J. KREHER, France;

Secretary: A. LEUTWEIN, Berlin.

FIRST DAY

Chairman Prof. P. R. HAYS: The morning session and the work of the Committee for Labor Law is opened. Dr. Kreher and I thank the Committee for the honor of being allowed to preside over its sessions.

According to the agenda, the Committee will first hear a discourse by Prof. F. Schmidt, Stockholm, on the general principles of labor law. His remarks will be followed by Berlin Prof. Dr. Heinitz' discourse on West German Labor Legislation.

General humanitarian Principles of Labor Law

by Prof. F. SCHMIDT, Sweden

After a few introductory remarks on the historical development of the workers' requirements, and in particular on Marx and Engels, Prof. F. Schmidt first went into the right to free choice of employment. In the beginning the leaders of a state considered it their task to incorporate manpower in the production process on the principle that everybody shall perform that kind of work which corresponds to his or her qualification. The original system in Sweden and in other Norse countries was the compulsion to work. The employee was not free to choose his employment.

Agriculture was the most important sphere. As it was short of cheap labor, workers were recruited under compulsion. Persons owning no property or being unable to prove their association with a specific trade or profession were compelled to work as farmhands.

There was almost no freedom to conclude labor contracts. The gradual abolition of compulsory labor in Sweden coincided with the structural changes in other countries. In Sweden, the safeguarding of labor relations became the primary principle of the governmental labor exchanges. The labor exchanges were directed to balance the shortage of labor at one locality with the surplus of labor at another.

Other countries went even farther. Thus, it is the major principle of the British labor exchanges to channel manpower to such industries as are short of labor. There were exceptions during the war. At that time certain controls became necessary, but it remained the guiding principle to assign workers under compulsion only in cases of emergency.

Referring to the right to coalition, Prof. F. Schmidt continued by explaining that the modern trade union movement is based on the idea that the employees are forming a class in opposition to the employers. Only joint action will give the employees the opportunity to safeguard their economic interests. A state of benevolent neutrality has resulted in the fact that present-day labor law necessitates collective cooperation in the Free World. Prof. F. Schmidt emphasized the nature of protective labor legislation in modern America. President Roosevelt's Social Program regarded a strong trade union movement as the prerequisite to the peace of labor and held the opinion that, same as in the European democracies, wages must be fixed by collective bargaining between the employers and employees.

It is worth mentioning that in Sweden the desire for legal protection of the right to form associations and to conduct negotiations was not expressed by the employees until the time about 1930. The real workers' organizations had attained recognition as the representatives of the workers in an open struggle which had lasted for decades. When the respective legislation of 1936 generally conceded to the employees' organizations the legal status of a contractual partner, this was of less importance to the workers than to labor with employee status.

The employee's rights also include the right to payment. The system of payment in kind gave way to the principles of cash payment a long time ago. The safeguarding of the claim to payment, that means, to adequate and satisfactory payment, is the most important task of collective bargaining.

The wage rate is the core of the labor contract and in most cases will assume the form of minimum wages for certain species of work. The workers' wages are determined in accordance with the time of work (hourly wages), while the employee's salary as a rule will be fixed on a monthly or annual basis.

Sweden knows piece-wages in many fields. In such a case the employer can fix the wages either in accordance with the production units to be completed, or another quantity produced, during the space of time between two pay days. In other countries the basis is a normal day shift.

Only in very rare exceptions will the employer use his right to dismissal. It is the consensus that the wage level must not be lowered during the period of employ-

ment. It is explicitly prescribed by the so-called "Workshop Agreement" valid for the entire machine-tool industry. In that connection Prof. F. Schmidt mentioned that, according to the Swedish collective labor contracts, the individual piece-worker may at any time claim the ordinary hourly wages as a minimum.

Yet this system can be misused. So it is of importance that the piece-work contracts will actually have the character of free agreements and that the payment or quantity of production are not unilaterally arranged by the employer or a state authority. Protection against any excessive development of this system is afforded by the workers' solidarity determining the duration of working hours to a certain extent.

The claim to adequate payment includes the demand for minimum payment also for such employees as are not members of vocational organizations or whose organizations did not succeed in reaching agreement with the employer.

A general law on minimum wages was created in the United States in 1938. This law is of importance mainly in those fields in which the trade unions have so far failed to enforce their demands. In the United Kingdom, organizations have been created in which both the employees and the employers are represented. The system of minimum wages is applied in the United Kingdom only where collective bargaining in the way of free agreement is impossible.

Prof. F. Schmidt then went into the idea of labor protection, mentioning that this idea gained ground in Britain 50 years later than in other countries. The "Swedish Labor Protection Law" of 1950 is meeting wide requirements. In addition to special provisions for the protection of juvenile workers, it contains detailed regulations regarding the measures to be taken by the employer for the protection of his staff against accidents and exposed health. Compliance with the law is supervised by the government.

Labor protection is holding a central position in ILO activities, and protective regulations that have been in effect since 1919 are largely due to its efforts. The ILO 1951 annual report revealed that labor and health protection directives are being drafted and henceforth will serve the individual governments as a guide to drawing up protective regulations of their own.

The right to social security in employment requires the creation of special regulations governing the dismissal of employees and workers. In Germany this was accomplished in the way of legislation. A significant step forward was the "Works Council Law" of 1920 which, under certain circumstances, entitled the employee to remonstrance against dismissal. Further progress in that field of legislation was made in the Federal Republic. It is still an open question to what extent notice of dismissal given for political reasons is to be considered immoral. In a much-debated decision taken in 1951 the Labor Court forced a government-operated factory to re-employ a Communist who was in a position to insist that the employer, i.e. the government, was bound by collective contract.

Thus, the collective labor contract is playing an important role with regard to dismissals. The Swedish Employers' Association has instructed its members to conclude only such collective contracts as will contain the right to free dismissal. Through the Main Agreement concluded by the top organizations on the labor

market in 1938 the employers committed themselves to consult the trade unions prior to any dismissal.

The 1946 "Agreement on the Formation of Works Committees", concluded by the same organizations, extended the contractual restrictions on dismissals. For the past 20 years contracts have been adopting the well-known U. S. usage that, in the event of cuts in the number of personnel, those will be dismissed first who were hired last.

In this way our system, too, affords far-reaching protection of the right to social security in employment. The protection of the employees' rights is a politico-social task of first importance. That this aim is desired at all is a criterium of our democratic way of thinking.

Realization of the Social Basic Rights in Western Germany

by Prof. Dr. E. HEINITZ, Berlin

To understand the present status of labor law in Germany it is necessary to cast a look back on the general line of its development. In the middle of the 19th century, the individual German states set out to create a labor protection law. Prof. Schmidt mentioned already the 1839 "Prussian Law on the Protection of Youths and the Prohibition of Night Work." Corresponding directives were issued in 1869 by way of the "Industrial Code of the North German Union" and, later on by the German Reich. In the last third of the century, the labor protection legislation was further improved. Mainly by the initiative of Chancellor Bismarck. The Emperor's Message of November 17, 1881, on the introduction of the workers' insurance as well as the Ordinances of February 4, 1890, were milestones of this development. The fusion of the social insurance systems, laid down in the "Reich Insurance Code" of 1911, concluded this period.

The right to a labor contract was regulated in part by the German Civil Code, in part by the Industrial Code, the Commercial Code, and other laws. The right to collective labor could develop only after the 1918 Revolution. In spite of some difficulties, workers' unions had been organized which since the end of the 19th century have been struggling for the conclusion of labor contracts, but legislation of that time was no guarantee for the genuine implementation of such contracts. Only the labor contract regulations of 1918 made the contracts obligatory for the members of the signatory organizations. The acceptance of the labor contracts was inalienable. Thanks to jurisdiction, their implementation was safeguarded. Labor contracts spread all over the country during the era of the Weimar Republic.

The Reich Labor Minister, by a general declaration on its validity, could extend the scope of the labor contract also to outsiders if the contract was of paramount importance. Trade unions and employers' associations, as bearers of the labor contract law, were established by free agreement. The freedom of coalition was safeguarded within certain limits by the Weimar Constitution. Walkouts and lockouts were limited means of the workers' struggle. They were not allowed to violate moral standards, nor were they allowed to inflict more damage on the opponent than was justified by reasonable economic objectives. The for-

mation of groups opposed to the wage rates, or other illegal measures, resulted in the obligatory payment of indemnification by the responsible workers' organization.

Labor contracts were principally concluded in free agreement. Arbitration boards assisted, and arbitral decisions were put into force only if both partners agreed. As an exception, the arbiters could declare their decision to be binding if its execution seemed to be necessary for economic or social reasons.

The "Works Council Law" of February, 1920, included roots of an industrial constitution. The attempt to introduce the Soviet System in Germany failed mainly due to resistance on the part of the German workers. But the idea of a workers' representation in the plants was already deeply rooted in the workers' hearts. By implementing Article 165 of the Weimar Constitution, the "Works Council Law", though not realizing the right to co-determination, attained for the workers participation in social and personnel affairs.

The social insurance system overcame the serious consequences of war and revolution. Unemployment insurance is particularly remarkable. In the field of labor protection, the regulation fixing working hours to eight per day was of special importance. A law issued in 1926 improved the legal status of the older employees. Generally, the German Labor Law had quite a standard until 1933. No intelligent person will blame it for its failure to stop the growth of unemployment to a total of six millions in consequence of the international economic crises of that time.

Nazi domination started with the destruction of the unions. Thereby all the principles of collective labor law that had developed since 1918 collapsed. In the plants the "Fuehrer" (leader) principle had to prevail. The freely adopted labor contracts were replaced by wage regulations issued by government officials or trustees of labor. Under the dead surface of that authoritarian regulation the fresh forces which had created the pre-1933 Labor Law were still alive.

The new law on dismissals provides that any dismissal, if it is to be put into legal force, has to be just from the social point of view. The worker has to prove that his dismissal is not justified, while the employer has to prove that it is. According to our social and ethic views, the employer is not entitled to deprive the worker of his basis of existence unless he has good reasons to do so. In spite of the short period the law has been in force, one may say that it is a milestone in the development of labor law. The practice proves that the Labor Courts are able to tackle the extraordinary difficult task to which they were assigned.

German legislation has been active also in the field of labor protection. I can mention the "Law for the Protection of Working Mothers", of January 24, 1952, and the "Home Work Law" of March, 1951. Numerous Federal State Laws protect the working youths. A "Law on Minimum Wages" was issued for those workers who are not protected by labor contracts. Our Labor Court Legislation is also being revived to give workers quick, unexpensive, and understanding legal assistance.

Serious controversies were caused by the Factory Law (industrial constitution) which — it has not yet been put into force — does not meet all the demands of the unions. Nevertheless, it is not the jurist's task to take a stand on this feud already today.

There is a difference between social hardships and economic necessities. If employer and works' council cannot reach agreement, an arbitration board consisting of an equal number of representatives of both parties under an impartial chairman will decide the case. The works' council furthermore has a vote in personnel matters, i. e. employment, reorganization, transfer from one assignment to another, notice, and dismissal. Though the union-inspired regulation that employment, dismissal, etc., become subject to approval by the works' council has not attained the power of law, the works' council nevertheless is to be informed on any such measures and is entitled to a final appeal. In certain cases the works' council also has the right to apply to the Labor Court which will decide whether or not the measure taken by the employer may become effective.

The most difficult of all problems is the extent of the works' council's right to co-determination in economic affairs, namely in fundamental, structural changes which might bring forth disadvantages for the workers in bulk. If no agreement can be reached, it is possible to apply to an impartial arbitration board which, however, does not have the right to reach a binding decision, though it is to be hoped that then an agreement will be reached. Finally, the supervisory board of a stock holders' company or a share company en commandite has to consist by one third of workers' representatives. Even more extensive rights are reserved by the Constitution concerning the influence of workers in supervisory and executive boards of mining, iron and steel industries.

Chairman Prof. P. R. Hays thanked both speakers for their reports and announced that the session would be continued in the afternoon.

Chairman Prof. P. R. HAYS: I open the afternoon session in which we will deal with Labor Law and its application in the Soviet Zone of Germany. I ask Mr. Leutwein to speak on this topic. (The report given by Mr. A. Leutwein, Investigating Committee of Free Jurists, is analogous to the Introduction to Documents 89 ff. of the Collection of Documents "Injustice as a System").

Chairman Prof. P. R. Hays asked Prof. Dr. H. K. Nipperdey, of Cologne, to speak.

Structure and Operation of Labor Law in the Soviet Zone of Germany

by Prof. Dr. H. K. NIPPERDEY, Cologne

In the Soviet Zone almost twice as many labor laws and directives are being issued as in the Federal Republic within the same space of time. According to its importance and its dignity, this Congress will impartially investigate, with the help of documentary material, to what extent the Soviet Zone Labor Law bears the character of exploitation, thus contradicting the generally accepted principles of justice.

You know that for a long time numerous important international organizations, including the International Labor Organisation in Geneva, the United Nations, and the European Council, have concerned themselves with the problem of social security in labor life.

To begin with, I point to the "Philadelphia Declaration" of the spring of 1944 in which the principles of the International Labor Organization were laid down.

It accentuates the right of Man to strive for "material well-being and mental development in freedom and dignity, in economic security and under equally favorable conditions".

Secondly, there is the "Universal Declaration of Human Rights" whose Articles 22 through 26 contain, as a program at least for the time being, the rights to social security, work, free choice of employment, adequate payment, membership in trade unions, rest and leisure, social services, and education.

The third great agreement is the "European Convention for the Protection of Human Rights and Basic Freedoms". This Convention, concluded in 1950 in Rome, Italy, in the meantime has been ratified by a number of European nations. The German Federal Republic adopted this Convention also. Though it does not contain so extensive regulations on social rights and freedoms as the Declaration of Human Rights of the United Nations, it establishes the two most important social basic freedoms violated most frequently by totalitarian states. I refer to forced or compulsory labor prohibited by Article 4. The other basic right, also laid down in the chapter on universal human rights in the European Convention, is the prohibition of a varying application of those rights on the grounds of different sex, race, color, language, religion, political or other views, and national or social backgrounds.

When examining these international agreements with regard to whether or not they include the Labor Law of the Soviet Zone of Germany and of the Soviet Union, three points can be noted:

(1) The social rights laid down in the above-mentioned conventions are based on the principles of natural rights and justice accepted by all civilized nations.

Only totalitarian dictatorships will ignore these basic principles and make them appear questionable, or at least uncertain, in form so that, in the face of their violation by dictatorial states, their codification in international agreements appeared necessary to the nations of the Free World.

(2) The principles of the "International Labor Organization" and the "United Nations Declaration of Human Rights" were signed by the overwhelming majority of nations. The principles of ILO were adopted unanimously by its 46 member states, including some of today's East Bloc countries, and the "Convention of the European Council" explicitly refers to the United Nations Declaration, while presenting itself in its preamble as some kind of a regulation for the implementation of the United Nations Declaration.

(3) That is why one can say that, due to the amount of natural rights included in the declarations and conventions, due to their adoption by the overwhelming majority of nations, and due to their legal extension to all nations, these rights and freedoms may be considered general international law binding also for those states which have not explicitly accepted the declarations and conventions, nor are members of those organizations.

So there is no doubt that they are valid also in the Soviet Zone and, it may be added, they were laid down in its Constitution. In particular, Articles 15 and 18 say that "the individual's capacity for work is protected by the State. Working conditions must be such as to safeguard the health, cultural requirements, and

family life of the workers. Payment for work must correspond to performance and must provide a worthwhile existence to the worker and those dependents entitled to this support. Juvenile workers shall be protected against exploitation and from falling into moral, physical or mental neglect. Child labor is prohibited".

All violations of these human rights in the Soviet Zone are being justified by a certain pretext, that of economic necessity and fulfillment of certain politico-economic plans. This economic necessity is nothing but an extreme exaggeration of the State's plan theory serving the transition to a pure-brand Communist economic system where it has not yet been realized in the Soviet Zone.

With respect to the basic right of free choice of employment it may be stated first that it is not possible to use the legal directives of the occupying powers as an excuse for the forced labor system. The steering of labor became a necessity immediately after Germany's complete collapse.

In the Federal Republic such conscription for labor was discontinued more than three years ago. It is now explicitly prohibited by the Constitution. But in the Soviet Zone, labor conscription for the fulfillment of production programs in "vital industries" is still legal, without any clear definition of what a "vital industry" is meant to be. The solution to this question is deliberately left to the labor exchanges which, as a matter of course, receive their instructions from their superior government agencies. Such labor conscription for "vital industries" concerns primarily the compulsory labor in the Uranium Mines in the Saxon Erzgebirge Mountains and in Thuringia, and may also affect women.

Each labor exchange has to register that part of the population which is fit to, but allegedly does not, work and is directed to conscript a certain number of such persons for certain jobs. The adequate provision of labor for the Uranium Mines is controlled by current reports and is guaranteed by threat of severe punishment. For employers and factory directors such punishment may run up to 10,000 Mark fines and imprisonment of up to one year.

According to a Soviet Zone report, in January and February, 1951, alone a total of 5,809 male workers were sent to the Uranium Mines by means of conscription and pressure. This is documentary proof that there is compulsion to perform a certain work which is contrary to the right to free choice of employment.

There is also the right to adequate payment which in all civilized countries of the Free World is being implemented by freely bargained labor contracts. In the Soviet Zone, the free labor contracts have been replaced by so-called "Factory Collective Contracts" which are anything but free agreements; they are state-dictated contracts whose contents cannot be changed by either of the partners. The Soviet Zone Ministry of Labor is preparing a "Model Collective Contract" that will be binding for all "Factory Collective Contracts".

The same goes for the "Collective Contracts" concluded with whole industries. Strict control by the so-called "Free German Trade Union" (FDGB) and by the labor administration will see to it that no changes are made. These contracts mean an essential deterioration of payment and classification of workers and employees. In various large plants,

such as Zeiss in Jena, the Maximilian Foundry at Unterwellenborn, and the Eastern Foundries, the Soviet Zone wage policy met with open resistance.

To prevent such incidents in the future, the government itself has lately issued special ordinances on a number of points concerning payment hitherto decided by the contracting parties. This ordinance includes, beside the "Model Collective Contract", a number of noteworthy details which no longer safeguard the right to adequate, just, and equal payment. No minimum wages are guaranteed by law or wage rates. For wasted labor the maximum payment will be 90 percent of the hourly or piece-rate wages. It is exclusively up to the employer to decide whether or not the blame is to be thrown on the worker. Not the slightest attempt was made to insert provisions for an impartial examination by a judicial or arbitral body.

The provisions of this ordinance and of the so-called "Collective Contracts" have resulted in wages no longer corresponding to the "better-pay-for-better-work" principle. For the completion of work orders on schedule as well as for the fulfillment of the production norm by a labor "brigade" only the so-called "brigadier" will receive, according to Article 20 of the "Model Collective Contract", a bonus amounting to 10 to 25 per cent of his basic wages, although the work was performed by the so-called "brigade", that is, by the workers.

With this incentive the Soviet administration has created a system of exploitation. If a worker, by making suggestions for the improvement of the production process or by making an invention, changes the process of production, the norm, the so called "Soll", for the other workers will be immediately increased, while the worker who made the suggestions will continue for the next four weeks to receive, in addition to other bonuses, payment on the basis of the original "Soll", thus being granted an undue privilege. Extra pay for night work was reduced from 15 to 10 per cent.

Some statistical remarks reveal that the Soviet Zone economy is being revised at the expense of the workers and that a systematic rearmament will be carried out. The 1952 "People's Economic Plan" provides for an 11.3 per cent increase in output of the People's-Owned Industry, as compared to the previous year, while the increase of wages will not amount to more than 4.6 percent. This disparity will be even more striking at the end of the Five-Year Plan, when the output is to be raised by 60, but wages only by 20 per cent.

Naturally, the economy of the free nations also knows norms by which piece-rate wages are measured and fixed. The Soviet Zone work norms, however, are not fixed on the basis of averages, as is the use in the Free World, but on the basis of maximum performances. The directives for the elaboration of Technical Work Norms explicitly forbid the application of the principle of averages and prescribe norms set up in accordance with the work performed by "activists." Thus, the rare maximum performances are made the average for all workers — a slave-driving system under which the worker is forced to adjust his output to that of the few activists, unless he wants to lose a considerable part of his wages.

Chairman Prof. P. R. Hays thanked the speaker and asked Mr. A. Leutwein, Investigating Committee of Free Jurists, to make his report.

A. LEUTWEIN introduced to the Committee the witness Haeussler who reported on his personal impressions and experiences while conscripted for labor in the Soviet Zone. (The statements the witness made before the Committee are identical with Documents 99, 100, 101, and 102 of the Collection of Documents "Injustice as a System".) Chairman Prof. P. R. Hays announced that the session would be continued on Monday.

SECOND DAY

Chairman Prof. P. R. HAYS opened the morning session which began with the election of the Resolution Committee consisting of: Chairman Prof. P. R. HAYS, USA.; Vice-Chairman Dr. J. KREHER, France; Prof. F. SCHMIDT, Sweden; and Hon. L. W. BROCKINGTON, Canada.

At first, Mr. A. LEUTWEIN made some additional remarks on the report given by Prof. Dr. Nipperdey. He referred in particular to the exploitation of labor by the TAN (Technical Work Norms) system, to the hourly wages and the grading of payment.

P. BARTON, Czechoslovakia: How and when were the labor exchanges created? Were these institutions built up only after the war? To whom are they subordinated? Which Ministry is their superior, and to what Nazi institution do they correspond? Is there any such thing as the fulfillment of quotas in the Soviet Zone, and how is it being handled? In what cases will individual norms be changed? How old are the graduates of schools, and is there any examination? Are there any such things as wage funds as in the Soviet Union, and how are they being handled?

Is there a uniform wage rate, or has each industrial branch a different one? How many grades are listed and how great are the differences between the grades? Can you give me any information on intra-plant disciplinary punishment? Are there any particular regulations differentiating the training of apprentices from that in other countries?

A. LEUTWEIN: Labor exchanges existed already before 1933. During the war, in particular, their task was the steering of labor. They were special government agencies, i. e. they were not subordinated to the local or regional authorities. A similar institution is just in the making in the Federal Republic. In the Soviet Zone, the labor offices continued working after 1945 in the same way as before. Their supreme authority was the German Administration of Labor and Social Affairs which was established by the Soviet Military Administration. The labor exchanges were completely reorganized last year, i. e. they lost their character of independent authorities.

On the state level, they were subordinated to the individual Ministries of Economics and Labor. At pre-

sent, a reorganization of the whole administration is under way which will result in the virtual dissolution of the state administrations. The five states were replaced by 14 districts.

The question regarding the fulfillment of quotas must be definitely answered in the affirmative. I am ready to show you my labor card. Regarding the establishment of the work norms, I can say that there are different categories. One category is: A worker, or a whole brigade, having reached for some time a certain norm above the average, this norm is being fixed as the new one. In that case, special bonuses will be paid.

Regarding the question of work norms, you will be given information by Mr. Haas who at one time was Labor Protection Secretary of the Free German Trade Union (FDGB) in the Zone.

WITNESS HAAS: The "Technical" Work Norms are in no way based on any technical considerations. There are two ways of increasing them: a political and an economic one. The political increase of norms will be proclaimed by the SED on certain holidays. The economic method means that the workers are given the opportunity to over-fulfil their quotas without being entitled to any additional payment. This kind of norm increase automatically makes the new norm binding — and normal. I finally point to the administrative increase of norms by the competent Ministries which are entitled to draw up norm lists all by themselves. Such Ministries are those representing the employer, i. e., the Ministry of Heavy Machinery, etc. The employer alone, i. e. the State, has the right to decide whether or not a norm is reasonable.

A. LEUTWEIN: As to Mr. Barton's other questions, I would like to say that in Germany the compulsory school system is valid for all youngsters up to 14 or 15 years of age. In the Soviet Zone, only the children of workers and farmers are allowed to study at academies and universities. Principally excluded from such studies are all children of parents having had a university education. I am referring to Part 4 of the Collection of Documents. (See Documents 243 ff. of the collection "Injustice as a System".)

The wage fund exists also in the Soviet Zone, namely for each individual enterprise. Increases of work output will not affect the wage fund so that the payment of higher wages for over-fulfillment virtually means lower wages for those fulfilling the normal quotas.

WITNESS HAAS: The problem of wage grading is: "Which worker with what vocational qualifications will receive what wage?" The wage grades were fixed by government directive prescribing that, e. g. the worker with top qualifications in the chemical industry will get 79 pfennigs per hour. In the Federal Republic and in other democratic countries the wage grades are being fixed by collective bargaining, i. e. they are agreed upon. The GDR government, however, as well as the individual Minister is entitled to make up a norm list for his industrial branch so that, beside the question of wage grades, the problem of a specific pay to a specific worker is also decided by the employer.

The dominating principle of such lists is to admit as few workers as possible to the higher grades and to leave as many workers as possible in the lower ones. Should a plant director by himself classify workers in higher pay grades which are not "justified" he is liable to severe punishment.

Already in the Nazi period, the REFA System was a medium to find out how the largest possible number

of workers could reach the greatest possible output under the most favorable conditions. The REFA System as such is neutral in both political as well as economic respects. The TAN System of the Soviet Zone, on the other hand, has absolutely nothing to do with technique.

The REFA System, in comparison to the TAN System, is in the same position as the streetcar operator in comparison to the tank driver who, on account of his vehicle's superiority in power and weight, is of course superior to the streetcar operator.

Disciplinary punishment in the Soviet Zone has not yet reached the standard of the Soviet Union and of the People's Democracies. It was planned to introduce in the plants a disciplinary code alongside with the "Ordinance on the Protection of the Rights of the Workers."

The workers' resistance, however, resulted in the decisive sections of that ordinance being left out. Therefore we do not yet have a special disciplinary jurisdiction in the individual plants. That does not mean that the normal courts could not take action in case of resistance against work orders. In the Soviet Union, the plant director is entitled to reduce wages of late-comers. Such a disciplinary code is not yet known in the Soviet Zone of Germany, but its introduction is to be expected in the course of progressing Sovietization.

The training of apprentices is also handled according to plan. There is guidance of education and training of juvenile workers which, in particular during the current year, is divided into several distinct phases. To begin with, in April and May the heavy industries are allotted active propaganda groups to persuade the young people to work in mining, heavy, and rawmaterial industries of strategic importance. Then the rest of the People's-Owned Industries are considered, with the private industries and craftsmen ranking last. It is known, e. g. that the vocational category of precision-mechanics has been closed already for male graduates; it will be open to girls only.

This training plan is an administrative directive. Juvenile workers' training is governed by administrative directives which actually have legal power in the Soviet Zone.

Vice-Chairman Dr. J. KREHER: What was the character of the plant in which the witness was working?

WITNESS HAEUSSLER: The People's-Owned Plastics Works at Taubenheim. I was the technical director. It was not a private but a state-operated enterprise.

Vice-Chairman Dr. J. KREHER: I would like to know the consequences of a dismissal. Can the person concerned remonstrate against his dismissal? I would also like to know whether labor organizations or boards will intervene only if the workers are unemployed, or also while they still hold jobs?

A. LEUTWEIN: As to the rights of the labor exchanges, I would like to point to Section 6 of the "Directive on the Tasks of the Labor Administration and on the Steering of Manpower" of July 12, 1951 (See Document 89). It rules that workers can be transferred from one plant to another.

Vice-Chairman Dr. J. KREHER: What was the development after the witness was dismissed?

WITNESS HAEUSSLER: Following the legal regulations, I went to the local labor exchange. Once I

was there, the head of the exchange tried to persuade me to a "voluntary" assignment in the Aue Uranium Mines. When I pointed to the fact that I was working in my mother's enterprise, he answered that the People's-Owned Industry was more important than a Private Enterprise, and that, being a skilled worker, I would have to work where I was needed, according to the regulations.

Vice-Chairman Dr. J. KREHER: What kind of work was the witness ordered to do?

WITNESS HAEUSSLER: I was expected to work in the Siemens-Schuckert plant which had just been nationalized. I refused by saying that I was not interested in working for a State-Owned Plant, nor in doing work that did not correspond to my knowledge and qualifications.

Vice-Chairman Dr. J. KREHER: What happened when the witness refused?

WITNESS HAEUSSLER: I was ordered to report to the labor exchange where I had a long talk with its director who tried, by pressure and threats, to persuade me to accept a "voluntary" assignment. The labor exchanges had been ordered to send a monthly quota of persons to Aue. Only very few dared refuse such conscription. I did not even shrink from taking the case to court. After my refusal the public prosecutor at Bautzen was entrusted with the case and I received an order inflicting a fine of 50 Marks, or ten days confinement. Again I filed a protest.

Vice-Chairman Dr. J. KREHER: Then the witness was sentenced, as I was informed on Saturday, to imprisonment. Is that right?

WITNESS HAEUSSLER: It is. Following my protest, a court trial was held before the Court of Aldermen at Eberbach on January 23, 1951, when a sentence of four weeks imprisonment, though on probation and on labor parole, was imposed.

Vice-Chairman Dr. J. KREHER: Did the witness appear in person before that court and was he allowed to make a statement for his defense?

WITNESS HAEUSSLER: I did, and was allowed to make my statement. I did not want a defense-counsel. Though I was not treated badly, I felt clearly that the court was dependent on the State Planning Commission. The minutes presented to this Congress are clear proof.

Vice-Chairman Dr. J. KREHER: Did the witness serve his term? Was he in prison?

WITNESS HAEUSSLER: I was not. As I told the Committee, the four-week term was suspended on probation and labor parole. I did not serve my term because I went to West Berlin at that time.

Vice-Chairman Dr. J. KREHER: I would like to put a question regarding the collective contracts. Such a contract, as a matter of course, must be concluded by two partners conducting prior negotiations. I understood that, as far as salaries and wages are concerned, such a contract is no genuine agreement, but a state regulation of wages. How, then, were the collective factory contracts handled? What about the consideration of the interests of the wage recipient in those negotiations? Are trade union functionaries admitted, and by whom are they elected? What working conditions are prescribed?

A. LEUTWEIN: This question leads the Committee to point 3 of today's discussion, i.e. the problem of the workers' representation which is inextricable con-

nected with the contractual establishment of working conditions. One can only speak of a contract if two independent partners reach an agreement. The statements of the witness which I do not want to anticipate will reveal that there is no such thing as an agreement between two partners in those collective factory contracts. There, the governmental power alone will decide the amount and kind of wages, as well as the other conditions of work. Since this problem is closely related to the issue of the status of the trade unions in the Soviet Zone, I think Mr. Haas, who is a trade unionist, will be the right man to comment on it.

Vice-Chairman Dr. J. KREHER: We should not anticipate anything, but the second question deals with the right to adequate payment and working conditions, our topic being that of collective factory contracts. That is why I would very much appreciate to learn what wage problems are being regulated by those contracts. Or else, is there only a governmental regulation?

A. LEUTWEIN: The first thing to be concluded between the industrial trade union and the state administration is the model collective contract which appeared in the Government Law Bulletin last year. Shaped after this model, the collective contracts will be concluded between the individual plant managing board and the plant trade union board which, according to the Labor Law, is to protect the interests of the workers. There is virtually no possibility to change the model contract concluded between the government administration and the industrial trade union so that the contents of the collective factory contracts is identical unto the last detail with the model contract prescribed by the Law Bulletin.

In addition, this year many regulations were issued in advance by a government directive of May 20, 1952. This included the problem of bonuses for Sunday and holiday work, of payment for overtime and for night work, during sickness, in case of work accidents, of rest and leisure, of a worker's engagement in political activities and many other issues which are no longer objects of free agreement, but are regulated by government directive. The collective, autonomous Labor Law thus has been abolished in all such respects.

Prof. F. SCHMIDT, Sweden: I would like to ask whether the statisticians do have documentary material on the number of forced laborers?

A. LEUTWEIN: In view of the secret methods used by all Soviet Zone authorities it is difficult to make exact statements. In the Collection of Documents you will find a record on the small district of the Gotha labor exchange which also contains names. (See Document 89). This allows certain conclusions as to the number of conscriptions at a certain date and a certain place in Thuringia.

Prof. F. SCHMIDT: Before we proceed to the next point of discussion, it might be of importance to investigate thoroughly which of those measures violate our moral standards.

Chairman Prof. P. R. HAYS: May I suggest to resume this problem - which is connected with the possibility of representation - at a later time? (Approval).

Let us discuss the third question. Since our witness, Mr. Haas, can only attend our session this morning, we should listen to him right now.

WITNESS HAAS: In order to determine the existence or non-existence of the right to join labor organizations in the Soviet Zone, we have to investigate whether

unions of workmen are possible at all, and in particular to find out whether workers may form new unions besides those existing. We have further to determine whether existing unions are genuine associations in the sense of labor law, i. e. associations protecting the interests of the workers.

As a matter of fact there is such a labor union, the FDGB. To better fulfil its tasks, this union was made up as a real trade union. Membership is not a de jure, but for many workers a de facto constraint. The managements use coercive measures to make the workers join the FDGB, either by giving notice to, or by not employing, nonorganized workers.

In certain branches of trade and industry some workers, by resolute resistance, up to now succeeded in not joining the FDGB, but there is no possibility whatever to form free unions outside the FDGB. Such unions are dissolved by the State whenever workers try to form them. The monopoly of the FDGB is guaranteed by the Labor Law.

After 1945, "works councils" safeguarded the interests of the workers in the Soviet zone of occupation. For some time, these councils had rather comprehensive judicial and other rights, because the occupying power, the government, and the SED considered them strong weapons in the class struggle against private enterprises. The importance of those works councils diminished, however, with more and more enterprises being nationalized.

In 1946 and 1947, the Soviet occupying power demanded that the FDGB board dissolve the works councils which were to be replaced by the "plant union boards". In some large enterprises both institutions co-existed for quite a time. In 1948, the FDGB Executive Committee decided at Bitterfeld ("Bitterfeld Resolutions") to replace the works councils by FDGB representations in those enterprises only in which 80 per cent of the workers were FDGB members. Within the next four or five months, all works councils in the Soviet Zone were dissolved.

The primary reason for the abolition of the works councils was, at the time of the Bitterfeld Resolutions, the Communist fear of the election returns. The SED was afraid that the population might make the elections of works councils a political demonstration against the SED.

Now we have to examine whether the FDGB is a true trade union. It is not, it is a government authority serving the technical and psychological inducement of workers to work more and harder; it is an auxiliary party to the SED. Section 4 of the Labor Law says: "In our new democratic order with the key industries belonging to the whole nation the codetermination right of workers and employees will be realized by the democratic state organs as the decisive force in state and economy." So the FDGB cannot even represent the worker's interests from the judicial point of view.

In fact, the FDGB does not represent, but opposes the interests of its members. The trade union paper "Tribune" wrote on September 15, 1950: "The functionaries of the FDGB in charge of wage and tariff policy in the various branches of industry were too much interested in the highest possible wages for the workers. They had not yet comprehended the meaning of wages in People's-Owned Industries." Thus we may conclude that, due to its organization and its various

branches, the FDGB lacks any possibility to function as a true trade union and thus to further the interests of its members.

In December 1950, the SED wanted to finally discontinue the payment of Christmas bonuses to workers and employees in the People's-Owned Enterprises, but failed to do so because a tremendous wave of protests swept through the enterprises. Another setback was recorded in the following year when quite a number of religious and official holidays accumulated in May. Again the trade unionists who favored unpaid holidays had to retreat.

The session was continued in the afternoon.

Vice-Chairman Dr. J. KREHER: I herewith open the afternoon session. The Committee will now discuss Section 23, par. 1, of the Charter.

A. LEUTWEIN: We will deal with the protection of labor. In my introductory remarks I stated already that the protection of labor must be guaranteed under all possible conditions. I also said that in the Soviet Zone this idea is subordinated to the increase of industrial production.

In 1951, a new Ordinance for the Protection of Labor was issued which made it clear that the government in fact has little interest in a genuine protection of workers. I will prove that by means of the text of the Labor Protection Regulations. In that connection, I may refer to Document 114 of our Collection. The management alone has to decide when the female workers' health is endangered.

Now I will make the Committee familiar with statistics revealing the results of the increased employment of women in violation of the Labor Protection Regulations. I refer to Document 115.

This protocol which was recorded at a meeting of the social insurance companies in Saxony clearly discloses what the protection of labor, in particular of females, is like in the Soviet Zone.

With respect to the youth, there is no difference. Again I refer to the legal regulations, i. e. to Sections 24 and 25 of the "Ordinance for the Protection of Labor." Section 24 says that child labor is prohibited, while it is allowed in Section 25.

I am in a position to produce to the Committee a number of documents. I refer to a report on an Accident Prevention Conference of the Ernst Thaelmann Plants in Magdeburg, Central Germany, which reveals that not even the most primitive protective measures are observed. People complained that no protective goggles are available, while demands are brought forth for shoe leather, another pair of shoes (for each worker) and caps.

I further quote the East Zone periodical "Labor and Social Care" (Arbeit und Sozialfürsorge) as saying on page 185 of its issue No. 8/1952: "Plant inspections frequently revealed that neither the plant union boards nor the management know our progressive laws. In 1951 already, it was forgotten in the VEB plans, i. e. the plans of People's-Owned Enterprises, to include investment funds for labor protection. In some enterprises where they had been included in the plans they were deleted later. That shows that the ministries concerned have not yet recognized the importance of labor protection to the necessary extent. Otherwise it would hardly be possible for social institutions to be

inadequately planned in the establishment of production centers."

This self-accusation of a Soviet-German paper clearly disclosed what lower quarters really think of the implementation of labor protection measures. During the last six months, the number of accidents in Soviet Zone plants has extraordinarily increased. There was a large number of mine accidents which were not caused by force majeure. The number of accidents went further up until the Supreme Control Commission of the Soviet Zone, which has to control all economic developments, felt it had to intervene.

Following are the statements of a witness who knows exact details on the conditions in the Martin-Hoop Mine.

WITNESS WIESSMEIER: I was employed as a jurist with the hard coal administration in Zwickau from September 1, 1945 until ten days ago. I had talked about the main reasons of the mine catastrophe and had made a general report on the situation and the political conditions in the Soviet Zone. This report was turned in to the SED so that I had to flee within a few hours.

Being a jurist, I regularly participated in the meetings of the managing board. Since 1947, the technical directors of the various mines had time and again opposed the inadequate labor protection. During the last year a number of fatal accidents happened for which some technical directors were held responsible. Yet they had often pointed to the fact that the working conditions in the hard-coal mines of Zwickau-Oelsnitz were dangerous. Fresh-air supply was the worst bottleneck because of the lack of pipes. Oxide gases could not escape so there always was the danger of explosions. Another obstacle was the inadequate isolation of cables against explosive gases. There is no possibility in the Zone at present to produce such cables as are prescribed by the mine police regulations.

Until July 15, four more fatal accidents occurred after the prior disastrous event.

The reason was that the management wanted to "ride on one horse only", i. e. on the horse called "production". After the catastrophe my fellow-engineers drew the consequences and turned, unilaterally, to the horse called "security". That move resulted during the last months in an essential decrease of output in the hard-coal mines, whereupon the Party issued intra-plant directives saying that it was inevitable to ride on both horses, i. e. "production" and "security".

According to the regulations, the working time was eight hours per day, but activists as well as brigadiers

used to make one or two hours in addition to get higher output percentages. These were published as though they had been reached in normal work days.

Chairman Prof. P. R. HAYS: Were any responsible persons in the People's-Owned Industries ever prosecuted for violating the regulations?

A. LEUTWEIN: In case — which would be mere theory — a mine is still in private hands, it may be assumed that the responsible persons would be prosecuted upon the very first violation of such labor protection regulations. But in People's-Owned Enterprises that would only happen if those in power should deem it necessary, for political reasons, to show the workers that they are interested in their security. Thus, in the case of the Martin-Hoop Mine catastrophe the medium-ranked employees were given severe penal terms.

Vice-Chairman Dr. J. KREHER: What role are the labor courts playing? Is it possible to bring arbitrary acts committed by the State before an independent court?

A. LEUTWEIN: Theoretically, the labor courts in the Soviet zone of occupation are in charge of all controversies in labor relations. In fact, however, they are no independent courts, because all labor judges are SED members. Theoretically, you may file a charge against a People's-Owned Enterprise, but the FDGB will refuse any representation in such a case. Generally, the plaintiff will be influenced to drop his case. In the rare cases when a worker wins a suit versus a People's-Owned Enterprise, the decision cannot be executed, because this would not be in line with regulations.

Vice-Chairman Dr. J. KREHER: Are there places in the Soviet Zone where workers are being treated like prisoners, i. e. where they are forbidden to leave certain areas?

A. LEUTWEIN: Voluntary workers in the uranium mines, as well as those conscripted for such labor will be taken away their identification papers so that they are actually bound to that place. Although the Aue sites are no closed camps, and the workers may take a walk after working hours, they must stay at this very place and need a special leave permit for a visit to their family. There is, at any rate, a restriction of free movement.

(The following statements correspond to Introduction and Documents 121 ff.)

At 6 p. m. hours the Vice-Chairman adjourned the session till Tuesday.

THIRD DAY

Labor Law in Soviet-occupied Estonia

by J. KLESMENT, Estonia:

Since Labor Law throughout the Soviet Union is uniform, it is applied by the organs of the Communist Party in Estonia after the same pattern. A functionary attempting to partly change, or completely ignore, the regulations coming from his superiors, in order to adjust them to a particular trait of one territory or

to the mentality of the population of a particular area, will not only lose his post, but also runs the risk of being charged with "dangerous deviations from the party line," or, to put it more exactly, with displaying "bourgeois nationalism." The results of such charges are only too well-known.

No functionary holding a leading position in 1940, or even in 1944, when the second Soviet occupation started, is in office today.

When the Soviets, with the force of their arms, had occupied the Baltic States they immediately set out to abolish the Civil Rights, including Labor Law, valid in those countries.

The freely elected trade unions were dissolved and replaced by trade union functionaries nominated by the Communist Party whose task it was to call for socialist overtime work, to fight for the increase of output of the state-owned industries, and to protect at any rate the interests of the State rather than those of the workers. The Estonians' right to go on strike was abolished. Also dissolved was the Labor Chamber based on Estonian Public Law.

The workers' right of free choice of their place of work, guaranteed by the Estonian Constitution, was abolished immediately. A system was created to chain the worker to his job. Also abolished were all Estonian laws on social insurance the administration of which, in most cases, had been elected by the workers.

Collective contracts, modeled after Estonian Public Law, were drastically changed so as to protect the interests of the state-owned industries rather than those of the workers; the right of assembly as well as all other rights of the workers were annulled.

Prior to the Soviet occupation, some two thirds of the Estonian working population were economically independent. The last third consisted of wage earners and employees. With the Soviet occupation the whole people was degraded to hired labor.

Accordingly, the present society is divided into two categories: members of the Communist Party and non-Party members. May I mention that the number of Communists in Estonia is as small as 22,000, including the Russian military personnel and the Russian Communists living in Estonia.

Highest payment is given to those sent from the USSR to Estonia. Party membership enables them to simultaneously hold several high-paid positions, e. g. in the Party, the Government, as delegates of the Supreme Soviet, etc. That is why their income will be several times higher than that of a common worker. The chairman of the Academy of Science, e. g. draws 20,000 Rubles, while a common worker or employee will earn 500 Rubles per month, and the average income of a kolkhoz worker is even lower.

The average employee or worker who wants to buy various goods will have to work 41 minutes for two pounds of rye bread; one hour and 30 minutes for two pounds of wheat bread; five hours and 17 minutes for two pounds of sugar; five hours and 49 minutes for two pounds of salt herrings; seven hours for two pounds of meat; eleven days for one pair of shoes; and 17 days, six hours and 12 minutes for one yard of woollen cloth.

A common kolkhoz worker will have to toil even longer. To earn the above-mentioned wage, the Estonian worker will have to work not only eight hours per day, but will also have to enter into "socialist competition" which means an additional heavy burden. He will have to perform unpaid overtime work to "fulfil" and "overfulfil" the plans.

At the end of his working day and also on Sunday, after endless political meetings and training courses, he has to perform various unpaid "voluntary" tasks, such a cleaning rubble, constructing roads, repairing schools and other public buildings. He even has to pay

for the repairs of his own apartment which belongs to the State, but for which he has to pay rents.

A worker or a kolkhoz worker who fails to fulfil the plan, or who is politically "inactive," runs the risk of being branded as a saboteur or "enemy of the people." On such a charge he will be given severe punishment, including forced labor or deportation, without trial.

During the first Soviet occupation from 1940 to 1941 more than 60,000 people were deported to the Soviet Union; the number of deportees during the second occupation is the same or possibly even greater.

Of the former 1,200,000 Estonians only 800,000 are still living in Estonia. One third of the present population consists of Russian forces and police, government officials and functionaries of the Communist Party.

The social order and the laws of the Soviet Union which were also extended to Estonia are ideal prerequisites for the creation of a system of forced labor:

(a) on the basis of the Law of July 1934, it is possible to confine people considered dangerous to society to forced labor camps for up to five years, i. e. without any verdict by any court, solely on the grounds of a decree issued by the Special Council of the Ministry of the Interior;

(b) on the basis of Chapter 33 of the Soviet Penal Code anti-revolutionary cases will be tried before special courts where there is no defense, nor possibility to appeal to a higher court. These cases will be examined in absence of the defendant; the court sessions are never held in public, not even on the day of the return of the verdicts (Art. 468);

(c) the Penal Labor Code existing since 1933 is composed of 147 Articles dividing forced labor into the following categories: (1) forced labor without imprisonment (Art. 8); (2) imprisonment which in turn is subdivided in the following categories: (a) one-man cells for people on remand; (b) deportation camps; (c) collective labor colonies; (d) colonies for sick people; (e) institutions for youths between 15 and 18 years of age (Articles 28 to 40); (3) exile plus forced labor (Art. 100) generally including the families of the deported persons;

(d) on the basis of the Law of June 26, 1940, all workers and civil servants are forbidden to leave their jobs or to change them without explicit permission by the administration. On the basis of the Law of December 20, 1938, all workers must be in possession of a so-called Labor Registration Card wherein all violations of working discipline and all penalties will be noted. These cards contain the cases and reasons of dismissals of the respective worker. No one will be employed unless he produces his Labor Registration Card;

(e) the fulfillment of the state production plan will be carried through on the basis of the Law of June 8, 1946, the use of which has developed into a system of forced labor with the commitment to perform overtime work;

(f) Article 7 of the Stalin Kolkhoz Statute rules that persons "who have been deported on account of actions against the Soviet system and the kolkhozes" are given the chance to join kolkhozes if and when "they have shown for three years an improvement of morale at their new residence."

In conclusion, I would like to express the hope that this Committee will draw up a resolution condemning the Soviet Regime's neglect of Human Rights, including

Labor Law. May this resolution give hope and encouragement to those fighting for Human Rights, and may it give strength to my people, in their serious distress, to withstand the terror exerted by the interventionists, and to maintain their faith that the hour of liberation is not too far away.

Structure of Labor Law in Czechoslovakia

by P. BARTON, Czechoslovakia

Czech labor legislation is generally divided into three parts: (1) directives to destroy the means to defend and protect labor and to turn them into means of oppression; (2) directives to legalize all elements of labor relations as well as all employment and working conditions; (3) directives to create particularly underprivileged workers' categories, including the forced laborers, in order to exert an additional pressure on the common worker.

The common specific trait of all those categories is that their regulations are safeguarded by threatening the workers with serious punishment, including not only fines but also prison terms. On July 12, 1950, when both the Criminal Code and the Administrative Penal Code were put into force, all penal regulations contained in the individual directives expired, the Penal Code's guarantee of the existing labor directives now being based on those two fundamentals of people's democratic Penal Law which also deal with punishable actions in the field of Labor Law. Thus, Penal Law has become an important factor of labor legislation.

Permit me to examine the first of the three parts of labor legislation, i. e. the official interpretation of defense media of the wage recipients which was put down in the Administrative Penal Code of July 12, 1950: "The people's democratic state, whose leading force is the working class, is the realization of all interests and the satisfaction of all needs of the workers." We are now interested in the conclusion to be drawn from this interpretation: namely that the institutions formerly thought to safeguard the interests of the workers are now superfluous. Nevertheless, those institutions will continue to exist. Is there any other conclusion than the one that those institutions will have to fulfil other functions from now on?

The most important means of the workers to defend their interests is, of course, the trade unions. Today, their role and their tasks are fixed by various regulations of which the following are of first importance: the Law of May 16, 1945, on the uniform trade union organization; Section 25 of the Constitution of May 9, 1948; the Law of July 12, 1951, on voluntary organizations and meetings; and the Penal Code of July 12, 1950.

All those laws include, first of all, certain regulations to create a monopoly of the right of association the implementation of which is conferred upon an officially acknowledged organization, the "Revolutionary Trade Union Movement". Section 80 of the Penal Code punishes any participation in an oppositional organization with prison terms ranging from one to five years and, in particularly serious cases, even from five to ten years.

This unique position of the "Revolutionary Trade Union Movement" reveals that it is anything but a real trade union. For, the wage recipients' right to create organizations according to their own will is one of the

elements of the right of association. Where this right is abolished, the trade union does not belong to the worker, but the worker belongs to the trade union.

The Law on Voluntary Organizations and Meetings also rules in its Section 4 that the State has to see to it that the internal operation of each of the acknowledged organizations (the number of which has been limited to eight, by the way) "shall develop in harmony with the Constitution and with the principles of the people's democratic policy." Various regulations assign to the official trade union organization various tasks most of which have absolutely nothing to do with, or are even contrary to, the aims of a true trade union.

Things are in no way better with respect to the collective contracts. At first they were abolished. Later, however, their renewal was ordered by Section 7 of the Government Ordinance of April 3, 1951. With the exception of the "social, health and cultural care in the enterprises" all clauses of these "collective contracts," including those which are named as duties of the management as well as those named as duties of the workers, belong exclusively to the normal duties which the director of an enterprise usually has to fulfil towards its owner. The real commitments an enterprise normally has to fulfil on its workers, in particular the payment problem, have been excluded by law from those "collective contracts."

If we accept the social insurance system, codified by the Law of April 15, 1948, and a number of additional directives (apart from its principal conditions laid down in the collective contracts) as a humanitarian institution, and if we thus restrict our interest to its scope and the number of insurance-holders, we come to the completely wrong conclusion that the establishment of the people's democratic regime in Czechoslovakia has brought about an important progress as far as the social insurance is concerned. But if we look at the norms with respect to their function in the labor contract, we find that even the extension of social insurance, its scope, and its services have actually developed into a disadvantage for the workers.

This is no paradox, since social insurance has become a means to chain the workers to the employers and make them increase their output. According to the Law of December 19, 1951, the administration of health insurance was formally conferred upon the trade unions, actually however upon the managing directors. Thereby the former "plant insurances" have been renewed whose devastating effects on the freedom of movement are known all too well. This renewed plant insurance system, patterned after the Soviet model, adds new evils to the old ones, because it is supplemented by plant dispensaries making also the doctors dependent on the management.

Let us turn to the second part of this legislation, i. e. the directives directly determining the elements of wage conditions. First, mention must be made of the institutions responsible for the supervision and steering of employment which presently are the labor departments, successors to the former so-called Labor Protection Offices. They include all agencies of public administration, i. e. the so-called municipal, district and regional national committees. As can be read in the Government Ordinance of February 15, 1949, those departments are, e. g. "to guarantee all people the right of work, as well as the development and use of their knowledge for the needs of the uniform economic plan, the adequate payment for work performed, the right of recreation, and the right of labor protection."

Those departments shall also, as was put down, "steer the planned distribution of manpower and the kind of labor to be performed by the workers and the youths; take care of vocational training, work output and proper utilization;" they "shall participate in the implementation of state wage policy" and "super-vise the security of the working population."

The most important instruments in the hands of the departments of labor are the Labor Registration Cards and the registers made up of these cards.

The fact that the worker remains in possession of this card (he is compelled to carry it with him all the time) makes it easy, on the other hand, for the police to discover "idlers" and "lazy people", to use the official terms.

The basic task of the Departments of Labor and Social Affairs is, as a matter of course, the steering of labor by (a) the restriction of free choice of employment; (b) the steering of movement of labor; (c) the use of labor according to plan; and (d) planned conscription.

The restrictions on free choice of employment are mainly based on the President of the Republic's Decree of October 1, 1945, on the introduction of universal conscription for labor. On the basis of this Decree, employment or vocational training contracts can only be concluded or canceled subject to administrative approval.

So, this Decree enables the administration to tie the worker to a certain employment for any given time, even for life.

Since the spring of 1951, this indirect steering has been supplemented by a direct steering method mainly based on the April 23, 1951, Ordinance of the Ministry of Labor and Social Affairs and on the Government Ordinance of December 27, 1951. At present, labor is being recruited according to a plan, i. e. for the most important industries directly by the Ministry of Labor, while the less important industries have to draw the labor they need by themselves in numbers laid down in a plan and in fields particularly opened to them for that purpose. Such fields are not only territories, but also age groups, health categories, and the like.

The same steering method is being used for the double purpose of preparing either plans for the distribution of labor, or plans for labor exchange. Just as the minor-important industries are prescribed the maximum of workers they may recruit, they are also prescribed the minimum figure of workers they have to release to other industries.

The authoritarian regulation of wages goes even farther. The Government Ordinance also prescribes the implementation of the State's wage policy "in the framework of wage funds." The government decision of April 3, 1951, introduced those wage funds from January 1, 1952 on. These funds comprise in advance fixed amounts to be spent on wages in a certain plant, an industrial branch, the whole industry and, finally, the whole economy in the course of one year, i. e. according to the extent the plan is being fulfilled, non-fulfilled, or over-fulfilled. The decisive trait of these wage funds is that they are computed not on the basis of the value of labor and quality of the output needed for the fulfillment of the plan quota, but on the basis of the consumer's goods and their prices available to the wage receivers.

How can the officially fixed wages be brought in line with the wage funds which, regardless of the value of labor, have been prepared exclusively on the basis of

available consumers' goods and their prices? The answer is: "By an increase of work norms". The corresponding directives are the economic plans which explicitly prescribe the increase of output within a given period.

The fulfillment of the economic plan, including the increase of norms prescribed to the individual worker, is enforced, as is well known, by penal laws.

Since 1950, an annual general revision and decrease of piece-rate wages has become the custom to increase the performance and adjust the wage grades to the wage funds.

In connection with the directives forcibly fixing the wages we have to mention finally those directives which guarantee the working discipline.

There is primarily the Law of May 9, 1947, concerning several measures for the implementation of the national mobilization of labor, Section 35 of which rules that "the employers and the workers have the duty to use all their strength and capabilities to achieve the best performances possible in the plants, and to orderly fulfil all resulting commitments, in particular the maintenance of working discipline. They shall see to it that no one will disturb the correct operation of the working process, and that no one will be absent from work unless he has good reason to do so." If it is necessary for the fulfillment of the Two-Year Plan, everyone has to do overtime work, as far as the valid regulations prescribe this, and even has to work by night if required.

These regulations complete the legal regimentation of the wage relations as such. The situation of economic pressure in which the wage worker finds himself as a contractual partner at any rate is fixed by law and will be carried through by force. Thus, wage labor has become forced labor.

But this is not yet all of the people's democratic labor legislation. There is still its third part, the norms (creating particularly underprivileged categories of workers) whose application is exerting an additional economic pressure on the whole of the working class. The aforementioned categories are numerous and highly differentiated, ranging from the so-called voluntary labor brigades to the inmates of the concentration camps.

First, there are the so-called "voluntary" labor brigades which hardly differ from the conscriptions whose statutes were laid down in the decree issued by the President of the Republic on October 1, 1945. Conscription may be applied with certain exceptions to every man between 16 and 55 years of age, and to every woman between 18 and 45 years of age, for all those kinds of work "the immediate performance of which is of important public interest."

The next category is composed of the so-called state labor reserves created on the basis of the Law of December 19, 1951, Section No. 110. This category comprises apprentices and young workers who, after their apprenticeship, are labor at the disposition of the Ministry of Labor which may use them for work in enterprises for a period of three to five years. Thus, the young worker has not even the smallest chance, open to the wage worker to some extent, to freely choose or to change his employment.

The sum of the years of apprenticeship plus three to five years of state labor reserve plus another two years of military service reveals that, prior to his 21st year, often his 24th to 25th year, no one will be able

to enjoy the privilege of becoming a normal wage worker, not to forget all the chains such a wage worker has to carry after all.

By the way, during his military service term the young worker has to perform a kind of forced labor that is even more strictly organized than that in the state labor reserves, since part of the military service (at least eight months) consists of the membership in so-called military brigades which are working in various enterprises, preferably in coal mines, and whose working discipline or working morale are controlled by military courts.

The next category is that of punitive labor which is sub-divided in three, (1) punitive labor without internment, (2) forced labor camps, and (3) punitive camps.

Punitive labor without internment is called a corrective measure; it will be imposed according to Section 37 of the Penal Code of July 12, 1950, for offenses punishable with not more than three months imprisonment; in such cases punitive labor will extend over a period double that of the applicable prison term. A particular trait of this penalty is that part of the wages for this work will be confiscated.

The second kind of punitive labor is done in camps officially called forced labor camps where there are two categories of prisoners, depending on whether they were sentenced on the basis of the Administrative Penal Code or on the basis of the Criminal Code. In the first case the main punishment is confinement in the camps, while in the latter case the internment in the camp is an additional penalty after the convict has served his term.

In both cases confinement in the camp may range from three months to two years. It is quite obvious that the nebulosity of such regulations leaves an unlimited field to any interpretation and administrative arbitrariness.

The effort to remain as flexible as possible is anything but incidental. Beside the fact that the intensity of the implementation of those regulations must be adjusted at any time to the situation, the rhythm of confinements in forced labor camps has to be brought into particular harmony with the present situation of the labor exchanges. This principle was most clearly expressed by the "Ordinance of the Council of the Slovakian Commissars" of June 14, 1946. According to this ordinance, all municipal and district administrations have to currently register all so-called anti-social people, and have to report the numbers of those persons to the Commissariat of the Interior by late in March every year.

Regarding the third step of punitive labor, i. e. the labor performed by the inmates of punitive camps,

there are hardly any official documents available. Yet it is obvious that conditions are much harder than in the forced labor camps; that the inmates, contrary to the inmates of the forced labor camps, do not even draw any formal payment for the work they perform; and that internment will last much longer.

In order to judge to what extent the camp inmates are exploited a wide-spread error must be corrected, i. e. their identification as slaves. The slave is a merchandise that must be bought by the prospective user. That fact, in a way, limits his exploitation. If a slave-holder wears out the strength of his slave he has to buy a new one.

Such limits do not exist for the exploitation of a forced laborer. The enterprise which uses him does not have to buy him, it hires him as it would hire a wage worker. In case it puts on him too heavy burdens so that his strength is worn out in a short time, he, the forced laborer, has to pay for it, while the enterprise will hire another forced laborer. And the State which offers the laborer to the enterprise does not have to buy him either. It arrests and uses him until his strength is exhausted; then he will be replaced by others who are recruited in the same manner.

This review of modern Czech labor legislation cannot be concluded without pointing to one more fact. More than once we stated that institutions have been reconstructed which had been outmoded for quite a time. Such a return to obsolete methods is, in fact, one of the most characteristic, though mostly ignored, traits of people's democratic legislation in general and of the people's democratic Labor Law in particular.

Thus, Section 85 of the Penal Code of July 12, 1950, rules that "a sentence of five to ten years imprisonment will be imposed against anyone who does not fulfil, or acts contrary to, a duty of his profession, his employment, or his office; who evades the fulfillment of such a duty, or who commits any other action in order to (a) disturb or hinder the fulfillment of any point of the Five-Year Plan; or (b) effect any serious disturbance of the operation of any authority, any public agency, or any enterprise."

Par. 2 of the same Section adds that imprisonment of 10 to 25 years will be imposed if the delinquent "committed the deed described in par. 1 as the member of a coalition". Noticing such a regulation, one can but think of the various penal regulations against strikes and against coalitions that were put down in all penal codes of the times of early Capitalism up to the 19th century.

Hitler's labor legislation of the time of occupation has been maintained almost completely by the people's democratic regime.

FOURTH DAY

The Committee dealt with the resolution on the results of the Committee sessions which had been prepared by a sub-committee the day before. Pointing to a number of suggestions, the Chairman asked the Committee members to make additional suggestions for eventual changes or its final completion. The Chairman himself took part in the discussion in his capacity as a member of the sub-committee and, therefore, turned the chair over to Prof. F. Schmidt. The draft resolution,

consisting of a preamble and five paragraphs, was read by Prof. F. Schmidt who had it put down at first in English, then translated into German. Discussion pertained only to correct juridical formulation of the text of the resolution. (Text of the Resolution see Part Four "Resolutions of the Working Committees".)

With the conclusion of this discussion the work of the Committee for Labor Law was completed.

PART THREE

Plenary Meetings of the Congress

Communist Disturbances

Final Ceremony of the Congress

Third Plenary Meeting

Development of Law in the USSR

by Prof. G. GUINS, Russia

When talking about Law one is bound to think of the excellent remarks Prof. Darmstaedter made during this Congress. He stated that Law is the paramount achievement of social progress; that Law is the institution to defend the rights of the individual against the power of the state, to bring them into harmony with the interests of the State, or to balance them with those of other individuals. Other scientists have the same thoughts about Law. But when applying the concept of natural rights one has to begin with the inalienable rights due to everybody.

What is the attitude of Soviet Law Theory towards the individual rights of Man? I should like to quote two scientists who have won extraordinary merits in the Soviet Union. They said: "Capitalist legislation is based on the abstract concept of natural rights of the individual. It puts Man in the center of life and the world; it glorifies him. It thereby sets limits to the State. In the proletarian state, however, the State imposes limitations not to itself, but to its citizens." This is the one point, but what is the other?

We all accept the existence of a close relation between Law and Morality. What is the moral notion in the USSR? Lenin once said: "Moral is all that is useful for the destruction of the capitalist world of exploitation and serves the union of all workmen of the proletariat." Hatred against all enemies of the regime — that is the second item by which the concept of the USSR distinguishes itself essentially from that of the rest of the world.

When talking about Law we have the notion of Justice. But in the Soviet Union Law is an exclusive instrument of politics. Vishinsky once coined the sentence: "Law is an instrument of politics. Politicians have to obey the Law, and the Law must be subordinated to party politics."

Some phrases of bourgeois legislation are still contained in certain articles of Soviet Law which, however, is characterized on the whole by the socialist contents of the individual laws. In the "Civil Code", e. g. there are many articles that have not been annulled, but which are not being used at all. In this Code there are articles on joint-stock companies, though it is well known that no such companies are left in the Soviet Union, so that all the regulations which are put down in those articles are virtually invalid. This Code also contains a chapter on contracts, though there are no contracts in the USSR because everything is nationalized. All such articles can only fool the reader, since this is a code of the Soviet Union containing regulations which are nothing but printed paper. The only Law which is in full force is the Penal Code.

This Law, being the instrument of Soviet policy which has often changed its course during the 35 years of the

state's existence, has been changed just as often in the various periods of legislation. Once again I want to give you a very brief description of those three periods. In the beginning, as everybody knows, in the early stage of the Soviet Union, there was the Communist era, as prophesied by Dostojevsky in his famous novel "The Possessed," the era of destruction of the Family, destruction of the Church, and destruction of the State. At that time, Law was the instrument for destruction and at the same time, as Lenin put it, a medium of propaganda.

The second period was the era of the new economy when, according to Soviet thinking, it was necessary to protect the rights of the individual, when the farmers were allowed again to create properties of their own. During that era some jurists in the Soviet Union again tended to hope that Law might be restored. Some others who had been educated in Marxism believed that after the Socialization of the country such laws would be revoked, since no class system was imaginable to exist in a socialist state. But from 1928/1929 on, law was re-established together with the Five-Year Plan which was introduced at that time.

That was the early phase of the Stalinist era which I should like to call the period of stabilization. Public and private circles were merged and, in connection with the liquidation of private economy, private law lost all of its importance and meaning. That was the time when Public Law was given first priority. What, then, was the consequence of this predominance of Public Law? Every individual living in the sphere of Private-Economic Law is personally interested in his very own work. He would suffer if his energy were not strong enough, or if he were lazy. It was unnecessary to punish him for such an attitude because he himself had to bear the loss. But if someone is working for the State, if his laziness affects the interests of the State, then he is violating Public Law. Then, as seen from the viewpoint of the Soviet Union, he must be punished for neglecting his work.

I will give you a few examples. Is it a crime if the administrator of an apartment house does not collect the rents from some of the tenants who are in an impecunious situation? In the Soviet Union such an omission is a crime. The administrator will be prosecuted for neglecting the interests of the State, for considering the interests of some individuals instead. A worker who is twenty minutes late for his shift will violate the interests of the State insofar as he will work less that day. So, every action may be interpreted and punished as a violation of the interests of the State, i. e. of Public Law.

That is the tendency of the Soviet State which will employ its power against anyone who is weak and whom the State can bring under its control. True, Stalin has restored Law in the country, but Law in his very own interpretation which means Law as an instru-

ment of power. Stalin also restored the "moral" of the country, but "moral" and "ethics" also in his very own interpretation.

We know that children have to report on their parents, and that in the Soviet Union there is a memorial in honor of a certain Pavlik Mamsov who informed the authorities that his father, who was a kulak, had not delivered the grain he had harvested, but had used it for himself. He is not the only hero of that type. Such is the moral in the Soviet Union.

Following those general remarks on the principles of law philosophy and moral in the Soviet Union we may turn to the Soviet State as such. Stalin, who always opposed federalism, once said that national particularism cannot be tolerated in the program of social democracy.

There is some kind of a contradiction between this theory and the Soviet Law as we know it. In the Constitution we read of the existence of the Soviets in the individual Republics, of independent Ministers, etc. Yet all these institutions are, so to speak, nothing but pieces of furniture in an apartment; they have no rights whatsoever, nor are they independent in any respect.

The Soviet state is Unitary State. It exists because it is built up on a One-Party System. In this state the judges of even the highest courts are Communists.

Now, let us cast a look on social life in the Soviet Union with its various kinds of social institutions which in fact are only government agencies. The trade unions, e. g. do not have to protect the interests of the workers, but have to spur them towards the fulfillment of the Five-Year Plan. Then, there are the kolkhozes which are no co-operative communities, but agencies established to deliver food. There further are the organizations of writers, various unions of artists, etc., which were created by the State in order to control the activities of these people.

Those who do not want to be subordinated to the State cannot exist at all in the Soviet Union, because private life is unknown there.

What, then, is the actual importance of the investigation of Soviet Law? It has great importance and high value because we know now what experiences the countries have made which were forced under Soviet dominance. All that which exists in other countries and depends on the Russian State is based upon Soviet jurisdiction.

Development of Law in Czechoslovakia with special Reference to the Individual Rights of Man

by Dr. J. MIKUS, Czechoslovakia

(Dr. J. Mikus began with a summary of Czech history, in particular of foreign politics, since 1918. He then turned to the Communist predominance in the 1945 government of the "National Front".)

At the same time when the Communists consolidated their own position they set out, in accord with the socialist parties and tolerated by the centrist parties, to destroy or at least to weaken the position of their opponents. We will see how they achieved this aim. To begin with, the 1945 regime suspended the validity of all laws. Thus, nobody knew any longer what legal principles were applicable to his home, his employment,

his food, and what rights he had reserved. In the political field the Communist tactics, tested all the world over, consisted also in Czechoslovakia in the attack on the still existing parties. The first institutions to be abolished were not the guilty persons, but the governments of the Protectorate of Bohemia-Moravia and of the Slovakian Republic, as well as the officials of the supreme administration. Then, those political parties had to be dissolved which had supported those governments during the war.

A good recipe to achieve this aim was found in the concept of collective guilt which is an excellent means of political jurisdiction. Thereby, many leading personalities and several political parties were excluded from public life.

The special courts had to convict a vast number of anti-Communist resistance fighters as well as some persons who were found to have collaborated with Hitler.

No remonstrations were permitted against such charges. Only such lawyers were to be entrusted with defense before the People's Courts as were registered in a special list prepared by the Prague Ministry of Justice and the Bratislava Commissariat of Justice.

According to Article 6 of Implementation Regulation No. 55/1945 of the Council of Commissars of Bratislava, every citizen was entitled to bring an alleged political criminal to court by a simple report. The extraordinary character of such jurisdiction was underlined by Article 42 of the Regulation which ruled that the members of the People's Courts were to be elected on the basis of parity from the ranks of the political parties. In practice, this basis was currently corrected to the benefit of the Communists so that the Bratislava National Court was composed of five Communists and two Democrats. There was no possibility of appeal against the decisions made by those courts.

One of the consequences of the principle of collective guilt was the expropriation and expulsion of the Sudeten Germans and Hungarians. These measures were carried through without considering Human Rights.

The Sovietization of administration was another characteristic trait of Czech Public Law at the time prior to the Constitution. Local self-administration as well as mayors and prefects were abolished as "bourgeois" institutions. All those reforms were exactly defined in Section 12 of the Kosice Government Program published on April 5, 1945. According to this Program, the currency and banking systems, the key industries, the insurance companies, the natural and power resources were placed under exclusive control by the State.

In the various industries those enterprises which employed less than a certain number of workers were not nationalized immediately. The nationalized part of the industries amounted to 100 per cent of mining; 100 per cent of iron industry; 80 per cent of sugar industry; 73 per cent of power plants; 72 per cent of chemical industry; 53.5 per cent of leather industry; 68.5 per cent of foundries; 65 per cent of glass-works; 47 per cent of ceramic plants; 45.5 per cent of paper-mills; 31.5 per cent of breweries; 25 per cent of clothing industry; 14 per cent of flour mills; 9 per cent of food-processing industry; and 8 per cent of wood-processing industry. The number of labor employed with nationalized industries amounted to 570,000 workers throughout the Republic, while 430,000 workers were employed with non-nationalized enterprises.

Slovakia was, from the very beginning, leading in resistance against the regime of the Communist-dominated National Front. Re-incorporated into the Czechoslovakian Republic without a plebiscite, the country strove for the maintenance of several rights it had won, i. e. an autonomous parliament and an autonomous government. The country, therefore, insisted on a federal Constitution with one government in Prague and one government in Bratislava, as well as a central government for common affairs, such as foreign politics, armed defense, and finance. This conception was defended with all the more strength since the country had scored an overwhelming victory over the Communists in the 1946 elections, when the Slovakian Democratic Party alone won 63 per cent of all votes, while the Communist Party in Slovakia had but 30 per cent.

Slovakia embitteredly defended personal freedom, mainly in the fields of religion, justice, and private property. It displayed opposition in particular to the implementation of nationalization orders. When the negotiations between Prague and Bratislava lasted too long in their view, the Communists planned, in the summer of 1947, to dissolve the Democratic Party on the pretext of a conspiracy. This plan was carried through in January 1948. Later the same procedure was repeated in Prague. In February, the Communists who were supported by the Social Democrats could defeat the other parties without firing a single shot, and could establish themselves as the only government.

It took the Communists not more than three months to work out the details of the Basic Law. On May 9, 1948, the Constitution was unanimously adopted by the 246 representatives attending that parliamentary session; the rest of 54 were either imprisoned or had fled. In a ceremonial meeting of the National Assembly, Gottwald declared that without the help of the Soviet Union it would have been impossible to put the Constitution into force.

In the first Chapter of that Constitution all the traditional freedoms of the citizen are enumerated, including equality before the law; freedom of the person; freedom of living; secrecy of the mail; freedom of movement; hereditary right; protection of family and youth; right of information; freedom of religion and conscience; freedom of expression; protection of cultural goods; right of petitioning; right of association and assembly; social rights. All these freedoms and rights can be limited or suppressed only by force of a law, but certain moderate restrictions are anticipated by the Constitution anyway.

All civil freedoms, however, become illusory by the use of Article 38 which rules: "Law shall decide the limitations of rights and freedoms of the citizens in case of war or of occurrences which, at a serious degree, might threaten the independence, integrity and unity of the State under its Republican form, or the Constitution and the people's democratic government system, or peace and public order." Since any people's democracy will always feel threatened by something, personal liberties and rights can be lifted at any time.

The 4th Czechoslovakian Republic introduced a one-chamber parliamentary system. Contrary to the old Constitution which included the collective responsibility of the whole government, the new Constitution replaced this concept by individual responsibility. A vote of "no confidence" against any Minister who is no longer persona grata thus will not result in the resignation of

the whole cabinet — i. e. a purge is possible without a cabinet crisis.

To get an idea of the dependence of the "national Slovakian organs" on Prague it will do to read Article 117 which says: "The Council of the Commissars, as well as its members, are expected to pay attention to the directives issued by the government. Also, every Commissar has to obey the directives issued by his Minister in charge."

That makes it clear that the national Slovakian organs depend, in all of their activities, on the good will of the central government. In fact, all vital problems of Slovakia are being decided in Prague.

The Constitution acknowledges three forms of property and enterprise, i. e. the state, the co-op, and the private properties. Private property is limited to industrial enterprises employing not more than 50 workers, and to privately owned farms of less than 125 acres.

Private property of the citizen is declared inviolable, but private organizations striving for profit or a monopoly (cartels, trusts, syndicates) are prohibited. Finally, the Constitution sanctions and perpetuates national-economic planning and socialist management.

The "Law for the Protection of the Czechoslovakian People's Democratic Republic" of October 6, 1948, serves the aim of protecting the security of the state, the defense potential of the population, the currency, and public security and order. The Law's characteristic traits are draconic penalties, an extraordinarily wide range of the judges' freedom of decision, and complete integration of regime and state. A remarkable novelty in the juristic respect was introduced by Article 32 on the spreading of news that might endanger public order. This Article does not only refer to the spreading of false news but also to that of correct news which might turn out to be an offense or a violation of law.

The Law of October 25, 1948, legalized the system of forced labor which had been practiced by the administrative authorities since 1945. It empowers these authorities to shorten or prolong, by intra-authority measure, the terms of confinement in a labor camp.

The freedoms of independent professions are oppressed. Lawyers and physicians are nothing but state functionaries.

With regard to the freedom of religion, it is the general tendency of the regime to establish in the country a Red Cesarship and to cut off all relations between the Churches in Czechoslovakia and in foreign countries. The Catholic Church in particular is being fought in its capacity of a universal community. The government's conception is to create a "National Catholic Church" (contradictio in terminis!) to better dominate its hierarchy and members. That is why the government, by using renegade priests, created on June 10, 1949, a "Catholic Action" obeying the orders of the government and opposing Rome.

The government is determined to take over the intellectual leadership over the Church. Under various pretexts it threw bishops into prison, often on account of alleged incapability to fill their posts, and replaced them by vicars dependent on the good will of the government. Thus, all dioceses are being led by "Vicars of the Government" who were excommunicated by the Vatican. In other fields of its activities, too, the Church has had to suffer, including education by the nation-

lization of free schools; in the field of publications by confiscation of printing-shops, oppression of publications of a religious character; persecution of Catholics who are faithful to Rome, prohibition of pilgrimages, and transfer of priests' seminars to the "National Catholic Church."

Since 1948, private property has been exposed to the arbitrariness of the State, contrary to constitutional guarantees. There is actually no legal range of, nor any legal means to protect private property.

After the Gottwald government had destroyed all political forces of Slovakia, it virtually also liquidated the idea of the Czechoslovakian state. In spite of its constitutional appearance, Czechoslovakia today is the model of a completely centralized state, as e. g. the USSR. From a "national" state the country has changed into a socialist state.

After four years of experiences with the 1948 Constitution it can be said that this Constitution is outmoded already by the events and recent legislation.

The Communist Regime is, according to its very nature, a regime of arbitrariness. Law is being pushed aside more and more by arbitrary decisions.

Development of Law in Rumania

by Prof. L. J. CONSTANTINESCO, Rumania

You heard two excellent speeches in the plenary meeting today and also, in the morning, some more reports on the conditions behind the Iron Curtain. Now that I am going to report to you on Rumania and, thus, to confirm what was said about a legislation which is the same everywhere behind the Iron Curtain, you will understand that I ask myself whether it is of any use to describe another case of the same kind; whether it is of any use to add something to what you know already; whether it would not be better to go back to the source, and to seek the causes of such phenomena. I nevertheless believe that it is the first and foremost duty of our Free World to gather all available information concerning the Soviet Regime. Particularly in the field of jurisdiction, the Soviets have committed what might be called the meanest of treacheries. As long as the Free World believes that the concepts of "Law" and "Right" are the same in both halves of the world, that also the principles of legislation are the same, it will not see the abyss it is facing.

In my opinion, misunderstandings have lasted long enough so that we should introduce new definitions, that we should re-edit even the simplest words in our dictionary. As long as we do not set out to explain the complete changes in the terminology of jurisdiction and legislation we cannot understand anything of what Communism is offering us. This, unfortunately, has been the case with many a Rumanian jurist. We had a very hard time understanding what happened during the first period of Communist government.

Communist domination will always work in two phases, the first of which is the slow infiltration. In this phase people will still ask themselves how it is possible that unjust verdicts are pronounced, and why no one protests against them. I can only state that this question is to be answered by the fact that Soviet forces are stationed in the country concerned. There is not a single country in Europe where Communism won power by legal means, which it placed under its control legally

and with the approval of the population. This fact should never be forgotten by those who, partly in good faith, are speaking of the "legality" of the Soviets.

When power has been taken over in a country, when the day comes that the judges are nothing more than Party members, when the press belongs to one Party, when all political opponents have been expelled by the new power, when the parliament is being occupied only by members of one Party, then the second phase has begun already. I have the impression that East Germany is just leaving the first, and entering the second phase. In this phase, the regime has the power and is in a position to rule everything. It can promulgate laws that are "legal", but solely serve the legitimization of their misuse by the system. In this phase, power is being dressed up in the form of legality and justice. Yet this is nothing but a mystification and a deception. Law has lost its contents and its meaning. This is a fact many people can understand only very slowly. Then the State is nothing but an instrument of power in the hands of the ruling class.

We may say that in our regime Law represents the will of society. The purpose of Law, as we understand it, is the adjustment of the various relations among the people. Law and jurisdiction of the Soviet Regime, however, represent nothing but the ideology of the Party. Law, in this case, is based exclusively on military power. It is the aim of Law under the Soviet Regime to safeguard what is called a People's Democracy. This is a terminology based on lies, since it has nothing to do with either the people or democracy. It is a name to cover tyranny with a mask.

In Rumania, the Criminal Code, e. g. is based on the Western principles of Criminal Law. Two minor changes were added which were mentioned already this morning, i. e. the concept of crime by analogy and the concept of social protective measures. What do these amendments mean? De facto they mean that people can be arrested for crimes they never committed if only there was the theoretical possibility to commit them. Thus, people can be sentenced for crimes that were never carried out.

Unless a State wants to be a mere State of prisoners, it must be based on the freedom of the people. Law under the Soviet Regime is principally misused by the Party. The position of the judges under the Soviet Regime is that of Party officials who have to obey Party orders. A Soviet judge once said that the idea of the impartiality of judges belongs to bourgeois mythology.

The main difference between the two regimes shows itself in the different position of the individual towards Law. For us, the individual is the center of juridical thinking. I believe that the best invention of our Western civilization is not the Machine, but the Human Being's Legal Position without which no State life could exist. Democracy has not been invented for the benefit of political parties, but has been created for the better defense of the freedom of Man. No democracy can exist under a regime where Man is destroyed, raped, tyrannized, where he is but a play-ball in the hands of power, subjected to exploitation. In the People's Democracy, Man is an instrument in the hands of Law, Law an instrument in the hands of Oligarchy. When analyzing the methods of such a regime, which is necessary to do, one comes to the conclusion that it is a system wherein the Law of Injustice has become the general rule. Though cases of injustice will also occur in our world, I should like to state that such cases are

exceptions, and that we know ways and means to eliminate such injustice. Those rare cases must never be compared to a system that is actually based on injustice.

I do not believe in the possibility of concluding a gentlemen's agreement between two regimes of so different a nature. The Free World must recognize at long last what is at stake. It must recognize that the Iron Curtain separates not only two geographic parts of Germany, but two worlds. Two days ago, we

saw with our own eyes the difference between East and West, we felt that difference and were overpowered by fear. We did not feel at ease again until we sat down in our buses and knew that we had no longer to fear any danger. What we are to do, and what position we are to take, depends on the question to what World we belong. We are facing a heavy responsibility which we cannot escape. We must realize that our freedom will last only so long as we preserve the firm will to defend that freedom.

Special Meeting of Congress

International Jurists talked to former Inmates of Soviet Concentration Camps

The delegates to the International Congress of Jurists were given the opportunity to meet more than 160 political prisoners and relatives of such prisoners from the Soviet Zone in the Ratskeller Restaurant of the Schöneberg City Hall, West Berlin. Following Dr. T. Friedenau's address, the delegates could convince themselves by personal conversations of the truth of all those Soviet Zone acts of injustice and arbitrariness which had

been proved in the last days. The 160 persons attending the meeting represented more than 26,000 political prisoners and many more thousands of persons still waiting in custody to be put to trial.

The delegates were strongly interested in the personal experiences of the individual victims. There were heart-rending scenes when they talked to men who during their detention had suffered inhuman treatment and to women who up to that day did not know why their husbands have been held for years in Soviet concentration camps and are still kept there.

Communist Disturbances

On July 30, the Communist attempts to disturb the Congress entered into a new phase. At the moment it seems impossible to determine whether the abduction of Dr. Walter Linse had any direct relation to the Congress. It is a fact, however, that the spectacular trials of members of the Investigating Committee of Free Jurists were propagandistic attempts at disturbing the Congress. On July 25 and 26, a huge spectacular trial of seven members of the Investigating Committee of Free Jurists was staged in an East Berlin electric bulb factory. Two defendants were sentenced to life terms of penal servitude, the rest to a total of 59 years of penal servitude. It was attempted in this trial to prove that the Investigating Committee of Free Jurists is an American espionage center in order to give the participants in the Congress the idea that they are being misused for a bad purpose. The first press attack was started on July 25, by a "Tägliche Rundschau" article headlined "Jurists as Gangsters." It was followed by reports on the trial and the full text of the indictment by Ernst Melsheimer, Attorney General of the Soviet Zone.

This indictment was so full of obvious untruths, of political threats, of propaganda and unobjectiveness, that such a document of Soviet Zone judicial practices could not be withheld from the delegates. The indictment carried by "Tägliche Rundschau" was translated into English and French and cut on stencils. It was not necessary to have it mimeographed, however, since a number of delegates reported that in their hotels they had received a letter with a nicely printed copy of the indictment in English and French, as well as a printed leaflet entitled "Information on the Character of the Investigating Committee of Free Jurists and its Chairman Dr. Erdmann-Friedenau," published by the International Association of Democratic Jurists — German Section — signed Hilde Neumann.

Prof. Dr. F. Darmstaedter, one of the main speakers at the Congress was approached even more individually. A huge bunch of yellow roses plus a letter addressed to Prof. Dr. F. Darmstaedter was sent to the bureau of the Congress in West Berlin's College of Political Science. Since the professor was out and the roses could not remain without water for a long time, a helper, a girlstudent, drove to the Park Hotel, although without finding Prof. Dr. F. Darmstaedter at home. It was not until that night that Prof. Dr. F. Darmstaedter had a chance to read the letter. It was signed by Prof. Dr. Neye, Dean of the Law School of the Humboldt University in East Berlin and President of the German Section of the International Association of Democratic Jurists. Addressed to the "Most honorable colleague," the letter abounded with the well-known slanderous insinuations against the Investigating Committee and by a protest against the Congress. Here some excerpts:

"I found your name on the list of participants in the so-called International Congress of Jurists at present held in West Berlin.

I was not invited to participate in that Congress. It is held among a selected group of participants.

But instead I had the opportunity, while the Congress was in session, to familiarize myself with the material of a trial before the Supreme Court of the German Democratic Republic involving the 'Investigating Committee of Free Jurists.'

The facts of that trial are simple. The seven citizens of the German Democratic Republic were induced, by the agitation of the 'Investigating Committee of Free Jurists', to accept unselfish aid, whereupon they received from those agents orders to carry out espionage with the aim of harming the economy of the German Democratic Republic.

The almost unbelievable fact remains that in West Berlin jurists assemble for a meeting which was called by an organization whose task it is to organize espionage and to instigate crimes.

Jurisprudence was lowered by this Congress to serve as a camouflage for criminal activities.

The organization which summoned this Congress, outlined its working program, and decisively influenced all of its decisions, has nothing to do with the Law or with Jurisprudence. It is only a U.S.-paid espionage organization. Under the pretext of granting 'legal aid' it attracted citizens of the German Democratic Republic, gave them orders to carry out espionage, incited them to harm our economic reconstruction for which millions of our citizens work with all that is in them, and brought them onto the road of crime through extortionate methods.

The program of the Congress announces the appearance of representatives from 43 countries. In reality, a great number of them are 'exiled jurists.' These people who have an inimical attitude towards, and lack of understanding for, the great decision of their people to embark onto the road of Socialism, are they entitled to speak in the name of their peoples? The collaborator of General Vlassov, who betrayed his people and his fatherland in its most fateful hour and joined Hitler, what has he to do with the development of Law among the peoples of Russia? The representative of Chiang Kai Shek, who was driven out of China and has to be protected from his own people by U.S. armored vessels, what has he to do with the development of Law in China? These 'exiled jurists' who once fled from Lithuania, Estonia, Rumania, Poland, Albania, etc., did not come from their own countries — about whose development of Law they could have told the jurists many interesting things — but from London and Washington. What have they to do with the development of Law in their countries? They cannot report on the new justice created by those people en route to Socialism. They speak in the name of their U.S. and British exile-masters who wish to wipe out the movement of the people towards Democracy and Socialism and who prepare another war.

As the Dean of the Law School of the University of Berlin I wish to tell the international public that I vigorously protest the misuse of our science, on German soil, by an organization which pretends to uphold the interests of German Law and of German Science. This Congress is but a large-scale deceptive maneuver and a desecration of our science which cannot be tolerated. Just as Hitler in his mania of mass destruction misused the medical science for the liquidation of human lives, this Congress misuses the Law, which should serve the furthering and the development of mankind, for the preparation of mass destruction and another war.

It seems to be advisable to let these words sound loudly through the halls of your Congress.

Most respectfully yours,

(sgd) Prof. Dr. Neye

Dean of Law School
Humboldt University of Berlin"

The result of that letter was that Prof. Dr. F. Darmstaedter gave the first radio interview of his life the very next morning. He said he enjoyed the bunch of roses and the fashionable lady who brought it. If discussions with the East could only be conducted in a similarly polite way all the time! He added:

"Unfortunately, the contents of the letter did not correspond to the polite manner in which it was handed to me. It contains the grossest accusations of the Investigating Committee of Free Jurists and of the Congress of Jurists convoked by that Committee.

It is superfluous to go into the details of the letter since they have been repeated ever so often. But the substance requires a flat rejection. The accusation that

the Investigating Committee of Free Jurists commits espionage falls back on the Eastern authorities, because the things the West has to find out in a complicated way are nothing but the Public Administration of Law, one of the most fundamental principle of civilized life. And the Congress of Jurists has done nothing during this past week but discuss these fundamental principles of Law whose recognition is the right of every human being. It is not the fault of the West that these principles have to be upheld by way of defending them against infractions. It is solely due to the violations of Law which are increasing in the East."

Prof. Dr. F. Darmstaedter concluded his radio interview by saying:

"The words of the Dean of the Law School of Humboldt University have not caused the slightest doubt within me as to the work of the International Congress of Jurists. On the contrary, they affirmed my conviction that the job done here was a most valuable service to Justice which is, regardless of any political boundaries, a holy precept of mankind."

The other participants in the Congress reacted likewise. Speaking on the letters, President Hon. J. T. Thorson said from the rostrum: "I am of the opinion that we should simply laugh at these accusations."

Dr. J. Kréher, who had to fly back in the afternoon of July 31 already, issued a public statement expressing his solidarity with the Congress and his disdain for such letters. He said he had to fly back in order not to miss a hearing which had been set since the beginning of July.

Convictions to penal servitude were thus followed by yellow roses and letters.

But the recipients would not have been jurists, men well versed in public life, had they not recognized both the politeness and the threat as variations of the same propaganda tune.

Fourth Plenary Meeting

President Hon. J. T. THORSON: Before opening the discussion on "The Right of Resistance", I would like to ask Dr. T. Friedenau, Chairman of the Investigating Committee of Free Jurists, to give us his opinion.

The Right of Resistance

by Dr. T. FRIEDENAU

Mr. President, ladies and gentlemen,

The Leipzig county court recently tried a junior barrister who was charged with incitement to boycott agitation and subversive activities because, as it was put, he had given reports to West Berlin on the latest unity-list election in the Soviet Zone. So far, the trial was not particularly remarkable. Compared to the usual ones, the sentence was relatively mild: four years confinement in a penitentiary and expropriation of his property were considered sufficient expiation. The remarkable thing about this trial was, however, that the court during the proceedings became convinced that the defendant's statements on falsifications of election returns had been true. The judge admitted that the election results actually had been falsified by order of the Soviet Zone government, and that the defendant had no lied a single word. I will read to you an excerpt from the verdict which goes as follows:

"The argument of the defendant that he had reported facts, not rumors, is of no avail. All those facts become one-sided rumors at the very moment when the enemies of our democratic order come to know them, those enemies who will evaluate such rumors for their propaganda" — this means, e. g. for our Congress — "and such one-sided falsification for their criminal aims."

Using this example as an introduction to the discussion of the topic "The Right of Resistance", I would like to ask first: Is it illegal to turn against injustice; is everything legal that is ordered by a government? Has a citizen, in particular a government employee, the right to try to prevent unjust actions by all means? This idea is a real problem especially for all those who have not yet lost the feeling of right and wrong, who nevertheless have learned, on the grounds of their education and family tradition, to obey orders given by the State.

As you know, such conceptions are particularly widespread in Germany. In the times of the Third Reich, the Nazi Regime, there was many an official who, against his own conscience, against his feeling of justice, became an executive agent of ordered injustice. But the pressure of conscience has constantly increased since the collapse of the Reich. What were these people to do? Some of them think it might be a solution to separate their vocational activities from their political tasks. Orders given by the Party, i. e. the Communist Party, mostly bear the stamp of untruth and injustice so obviously that almost every Soviet Zone inhabitant at

least tries so evade them without feeling bad about it. To make up for this, some administrative officials put all their energy in the fulfillment of their vocational duties.

They are not to blame so long as the fulfillment of such vocational duties serves the well-being of the population. A craftsman, a plumber, will do his work exactly in the same manner as in the time of the Weimar Republic or during the Nazi Era; the farmer will try to grow the best possible crops; the worker will do his job well. But must a judge become guilty of violation of justice because the Socialist Unity Party or the Ministry of Justice demand him to do so? Please, permit me to give you my point of view.

Different as the opinions may be on how to resist an order to do Injustice, the fact remains that Injustice is Injustice even if ordered by a ministry. This, I think, is an internationally valid principle of Law, the defenders of which also included the Soviet Union at the time of the Nuremberg trials. Acting under orders of a superior will no longer be an excuse. This goes not only for National-Socialist injustice, for National-Socialist brutalities, but also for Communist arbitrary action.

I believe that all people who, out of inward conviction, resist unjust actions (first of all I mean violations of the laws and the Constitution of their very own country) are not only no criminal offenders, but deserve the respect and the appreciation of the whole world, regardless of whether such resistance is displayed in the Soviet occupation zone of Germany, in the Soviet Union itself, in the Satellite States, or in any other country where Injustice is ruling as a System.

The President opened the discussion.

P. TRIKAMDAS, India: No government has the right to discriminate against any citizen on account of his race, sex, or nationality. I am glad that such an article was included in my country's constitution which was put into force two years ago. Anyone who feels discriminated may go to court to reach a decision. I know, however, that behind the Iron Curtain there is no more freedom even though it is guaranteed by a Constitution which in fact contains only the 1936 Stalin Constitution. Such a Constitution is but a scrap of paper.

Yet there is a country not located behind the Iron Curtain, it is South Africa. In this country, whose government is dominated by a minority of Europeans ruling a majority of Africans, neither my fellow-countrymen nor the citizens of Pakistan are allowed to do business. They are completely segregated as far as economics are concerned, just as the Jews under the Nazi government.

In my opinion, the Congress of Free Jurists should state that we are against racial discrimination as exercised in South Africa. I would like to say that the citizen has to fight a law that violates his freedom. Also in my country such interpretations of Law exist, in particular of Administrative Law. Though we have

executive authorities concerning themselves with such problems, the superior courts treat them only formally. That is the kind of jurisdiction the citizen should be entitled to resist, though he will have to bear the consequences of such resistance.

The question now arises how such resistance might be exercised. Everyone has the right of rebellion, either with or without arms.

One must not simply give in by surrendering or suffering Injustice. I therefore suggest that the methods of resistance be examined. I see the delegates shaking their heads because they think such things are impossible, but suffering is also impossible. We Indians do no longer want to suffer, either. We have to stress that if anyone is deprived of his liberty, we too might be deprived of our liberty at any time. Since the world cannot be half enslaved and half free, the International Conscience must wake up.

E. GUEGUETCHKORI, Georgia, USSR: Nowhere in the whole world people have understood yet to answer the question of what Bolshevism actually is. May I point to the fact that Georgia, i. e. the inhabitants of Georgia, were the fiercest fighters for democratic freedom. Many thousands sacrificed their lives in this fight. Whoever knows the Russian history will have to admit that Georgia played a paramount part in the fight for freedom. Every kind of resistance in Soviet Russia is a crime for which the resistance fighter will have to pay with his head. For a long time, I was desperate about the Free World because I believed to have lost it. In 1945 and 1949, the gloomy idea occurred to me that the Free World should perish unless it would be willing to defend itself. But when I saw the resistance and the awakening, as it has been expressed mainly by the Free German Jurists, I realized that it was a clever appeal to all anti-Bolshevist fighters to demand that they co-operate. Yet such initiative must be broadened, resistance must be organized.

This Congress should realize that only an organized resistance can be of use. I am not for war, I sincerely wish to spend the last days of my life in peace. I do not want to see my freedom saved by another war. But mankind must be free, and the Asiatic countries must drop the idea that the Western powers want to inflict on them as much harm as possible. I am no moralist, I am the son of an oppressed country, and as such I can state that one cannot compare the Western countries to the totalitarian Soviet State. You in the West still have the right and the opportunity to resist somewhere, but in Moscow there is no such opportunity, because there is no Law in the Moscow-dominated countries. It is not hatred that makes me tell you this. In my age one does not hate any more. But I want to state that, should India fall one day into the hands of the Soviet power, it will never be free again.

My conclusion: if you want to be and remain free you must realize that the peril, great and heavy as it is, can only be fought by organized resistance. This Congress must be crowned by a permanent organization to steer propaganda. I already told you that there is no hope for any efficient resistance so long as the Western World and the Asiatic States uphold their present line, i. e. to go onward without mutual understanding. In that case, I tell you, they will perish.

Prof. Dr. J. ANDENAES, Norway: on drawing a clear line between justice and moral, we will see that the problem of the right of resistance has both a juridical as well as an even more important moral aspect.

When considering the problem at first from the juridical aspect, we will see that it might happen that the executive power of the state authorities does not contradict the constitution. We were given examples, however, when the Soviet Zone government or authorities doubtlessly forced laws upon the constitution of the so-called German Democratic Republic. Such cases mean, according to the rules of the present judicial system, a violation of Law by the State. The next, purely juridical, question is whether the system grants the individual the legal right of resistance, or whether the individual first has to give in to Injustice. Let us further pursue this idea, let us assume that the exercise of power appears to be completely legal — there might, for instance, be a law which I consider unjust — so the question is whether I have the right to resist that law.

It is quite obvious that this is no longer a question of jurisdiction, but one that lies in a different field. According to the rules of the present judicial system, the official Law is valid so that my resistance as such is illegal. The only question to remain is this: do I have the moral right of resistance? Since moral and political values are at stake, there is not one final standard, but the individuals will judge the problem differently, according to their different moral and political principles. From the democratic point of view it will be of high importance whether the problem comes up in a democratic or a non-democratic state.

Democracy accepts the will of the majority as the basic principle. It is possible to fight a law or to strive for its cancellation. But so long as it exists the citizen has the duty to obey even though he might regard it as unfair and unjust. Loyalty towards both the will of the majority and the legislative is the basis of Democracy. Where the citizen fails to display loyalty, Democracy will become anarchy.

Yet, in the democratic state loyalty toward the State also has its limitations. Our Danish colleague cited the example that a parliament might pass in a formally correct manner a law providing for the complete annihilation of the Jews or any other minority, and it might be imaginable that the people, too, by a great majority approve of such a measure — in a case like that, our Danish colleague said (and I am of the same opinion) loyalty towards the will of the majority will end. It might be not only a moral right, but a moral duty to defy an inhuman law.

Under quiet and normal conditions such conflicts will not arise in a Democracy, but at times of political and national excitement they are imaginable. In a non-democratic state where the system in power cannot claim to be supported by the majority, conditions are completely different — still seen from the democratic viewpoint. Take the examples of the Eastern territories, or of my country, Norway, under the Quisling Regime during the war: in such cases people are no longer compelled to loyalty towards the State; they have the right to resist.

It will be difficult to decide how far and with what means the fight may be carried. Circumstances can be such as to make certain forms of that fight, which promise success, result in much misery for Man. We will have to leave it to conscience and political insight to decide what kind of action might be right.

Sir G. R. VICK, Great Britain: I should like to make a general remark on the topic of resistance. Fighting evil (we have been told since the first years of our lives, and have sucked with our mothers'

milk the lesson that we must do no evil) I think is less a question of Law, but of Reason, whether or not we should resist. Now that India enjoys self-administration and self-government, I hope our friend who gave us his opinion will not forget that the Indian civil resistance was directed against a nation which has a particular strong love of freedom; the attempt to resist the Soviets is a completely different affair. I hope you all will realize your serious responsibility and I also hope that Pakistan and other countries will realize this responsibility.

Prof. L. J. CONSTANTINESCO, Rumania: With deep interest I heard what the Indian delegate said, and my remarks are mainly addressed to him. I thank the Indian delegate that he brought up some points which are designed to clarify our debate somehow. Permit me nevertheless to draw his attention to certain points he may have interpreted in a wrong manner. I am fully aware of the fact that we may use different languages in spite of the same words and principles. That is why I attempted two days ago in a speech I delivered in this same hall to point to the difference between the two Systems, and to show that incomparable things cannot be compared. I believe that two Systems cannot be compared by simply using the same words and sentences. I do not believe this could be done by a comparison of articles of laws. The methods, the media, the principles of the Systems must be compared.

How can you hold a System based on Injustice against a System based on Justice, where Injustice is a rare incident? Generally, I agree to what the delegate of India said and I am also convinced that cases of Injustice occur with us, also in France and in Great Britain. I fully admit that things like that might happen; I do not like to venture on politics. But it appears to me that certain followers of the Islam complain about our Western system. As a matter of course, they must live in freedom to do so. I therefore ask you again: is it possible to compare cases of Injustice in our System to those in a System where Justice does not exist at all? Where all measures serve Injustice?

I now return to the problem already mentioned here, i. e. that of the method of resistance without force for which Mahatma Gandhi gave a wonderful example. I do not believe that this method might be used always and everywhere. Let me state that India doubtlessly owes its freedom to the outstanding qualities of its leaders. But you may believe me that the country also owes a great many things to the United Kingdom; I already underlined that your presence at this Congress may be viewed more or less as a congratulation extended to the British System. I now ask you, my friend, whether you really believe that the people from behind the Iron Courtain, some of whom we have seen here, may ever hope to see again their next-to-kin who presently are confined in the prisons? I do not believe that.

The method of civil resistance may be used in our latitudes, perhaps also in Africa, but never in a world where Injustice is a System. In conclusion I should like to answer the question brought up by Dr. Friedenau. The fight we are observing is a fight between positive right on the one hand and inhumanity, arbitrariness, and violence on the other. Are we to leave those people in the prisons, or shall we try to overcome violence in order to save them? In my opinion, the latter must be tried, and I believe you will recall that Sophokles once said that people should resist Injustice.

It is new to us that suddenly there is a System footing on Injustice. I think you should realize that clearly. We are all engaged in a fight of our whole civilization against those who set out to systematically destroy this civilization.

C. VAN RIJ, Netherlands: We have been invited to come here for a particular purpose, that is why I should recommend to restrict our discussion to the given topic. My sympathy was especially aroused by the remarks made by the delegate of Georgia, Russia, and also by what the Rumanian delegate Mr. Constantinesco said. I suggest to plant in our resolutions a small grain of humanity to make it clear that we all felt sympathy with what was said here.

I believe that there are certain fields in human life, e. g. in science, family, and personal matters, that may be called independent fields of personality. If anyone invades this autonomous field, the moment will come when every man and every woman must clearly say "No", when they must rise to defend their independence. That is what we did when the German occupiers refused to acknowledge the legal authority of our Queen.

I very much appreciated the invitation by the Investigating Committee. Here in Berlin we have met people with civil courage, people who bravely say "No" to the oppressors. They stand by their opinion; that is why we should highly esteem and honor the people of Berlin.

P. BARTON, Czechoslovakia: I share your opinion that it is impossible to compare the conditions of life of those people who resist the Stalin Constitution to those of other people who have to oppose a Colonial System.

The main idea of this Congress is its solidarity with those suffering under a Totalitarian and those suffering under a Colonial System. Only if we demonstrate this solidarity may we declare ourselves united with those people.

President Hon. J. T. THORSON: During the last days we have done much work in the various Committees and, perhaps, have surpassed our competence, but I hope you will agree with what we have put down. The suggestion had been made that two or three members of each Working Committee assist in the preparation of the draft communiques on the work of these Committees. The members and the Chairmen of the Working Committees have met frequently for useful and interesting discussions. The jurists of the Free World have proved how they work, that they are not stubbornly clinging to a single point. In the course of our discussions many differences in opinion have come up, but never any on major issues. As far as important problems were concerned we have always reached agreement.

I now ask the Chairmen of the individual Working Committees to submit their reports. To begin with, I ask Prof. Hays, U.S.A., to give us the report of the Working Committee for Labor Law.

Prof. P. R. HAYS, Chairman of the Working Committee for Labor Law: The members of the Committee made many changes and corrections in the original draft. Allow me to state that we heard interesting information on the living conditions in the countries behind the Iron Curtain. We learned quite a number of facts, and the really informative remarks rendered us a valuable service.

(He read the report of the Working Committee. See Part Four "Resolutions of the Working Committees.")

President Hon. J. T. THORSON: I thank Prof. Hays and now ask Prof. Dr. Liu, Chairman of the Committee for Civil and Economic Law, to give his report.

Prof. Dr. F. S. F. LIU, Chairman of the Working Committee for Civil and Economic Law: Being rather small, the Working Committee for Civil and Economic Law was in the enjoyable position to ask for the opinions of all members of the Committee. (The report was read in German. See Part Four "Resolutions of the Working Committees.")

President Hon. J. T. THORSON: I also thank Prof. Dr. Liu for his report. The text is here in German and will soon be made available by the translators also in French and English. I now ask Prof. Dr. Carabajal Victoria, of Uruguay, to read the report prepared by the Committee for Public Law.

Prof. Dr. J. CARABAJAL VICTORIA, Chairman of the Working Committee for Public Law: I first owe this assembly a short statement. I had decided to submit my ideas and concepts of the right of resistance against oppression in a special report. I am not going to give you the whole contents of that report, but I would like to express one conclusion. I believe this topic, though being of a merely political nature, is nevertheless connected with jurisdiction. So, I should like to state that all countries by resisting tyranny display an attitude of indubitable legality. The state organizations and international public opinion have the duty to declare their solidarity with all nations rising against tyranny. (Applause)

Now speaking in my capacity as Chairman of the Working Committee, I want to express my heartfelt gratitude to my working group, in particular to Mr. Boisdon who worked hard on the report, who also corrected the French translation, and made many suggestions. I also want to thank all those who made suggestions for corrections and additions, mainly Prof. Rommen who defined the limitations of state authority by the Human Rights. (The report was read. See Part Four "Resolutions of the Working Committees.")

President Hon. J. T. THORSON: Now I want to make up for something I have overlooked so far. Dr. Kreher asked for permission to make a statement, since he has to leave us by noon.

Dr. J. KREHER, France: I did not intend to speak on the topic of discussion, and I would not have done so unless a personal problem had been brought up which I think should be clarified to avoid any misunderstandings. Twice I received a document, once by a messenger who brought it to my hotel and for the second time by mail, a document containing a French-language circular signed by Hilde Neumann on behalf of the International Association of Democratic Jurists. I was advised to leave this Congress; the letter reflected Mr. Melsheimer's (Attorney-General of the GDR) views on the "agents of the U.S. espionage organization", i. e. the Investigating Committee of Free Jurists. Ranking first among the leading persons of this "espionage organization" is, of course, Dr. Friedenau. I want to stress my feeling of solidarity with this Congress, and want to emphasize that I will board the Paris-bound plane in two hours because I had set this date since the beginning of July. I thoroughly ignore such documents as I have just mentioned. (Loud applause).

President Hon. J. T. THORSON: As it is rather late now we will hear the fourth report, i. e. the one by

the Committee for Penal Law, in the afternoon. So, let us interrupt the meeting which will be continued at 2.30 p.m.

The meeting was continued in the afternoon.

President Hon. J. T. THORSON, before entering into the agenda, expressed condolences to the President of the German Federal Republic on the death of his wife, Mrs. Elly Heuss.

Prof. G. BELLAVISTA, Chairman of the Working Committee for Penal Law, read the resolution taken by the Penal Law Committee. (See Part Four "Resolutions of the Working Committees").

President Hon. J. T. THORSON: Before proceeding to the next point of our agenda I want to make the following statement: I was informed by one of the delegates that behind the Iron Curtain statements concerning our Congress have been made to the effect that the members of this Congress are not free, and that the members of the Investigating Committee are "spies". I hold the opinion that we should simply laugh off such accusations. We know, and all the rest of the world also knows, that we belong to the Free World, and that we have assembled here as freedom-loving jurists of the Free World; that the members of the Investigating Committee call themselves "Free Jurists" and that they are really free. (Applause).

The President then expressed the opinion that Part IV of the resolution of the Penal Law Committee might be deleted. He continued:

We hold the view that we should not leave Berlin before having established an organization. On behalf of the Resolution Committee I therefore suggest that we organize a Standing Committee of this Congress. (Applause). In connection with the recommendations made in Part IV of the Resolution of the Committee for Penal Law, this Congress might discuss the question whether these recommendations should be referred to the new Standing Committee for further investigation. I leave it to the Congress to decide whether it will accept this suggestion. (Applause).

I was particularly impressed during this Congress by the general determination to concentrate as much as possible on our primary task, i. e. in view of the enemy (who is only one mile away) to stand together and unite as members of this Congress. (Applause).

The President suggested that the Congress accept the report of the Working Committee for Public Law, Part I and Part II, Sections 1, 2, and 3, and that it leave out for the moment the final section on the establishment of an International Court. The President demanded to do the utmost to avoid differences of opinion and appealed to all delegates to respect each other's views, as had been the case in the course of the Congress. The Congress applauded the President who then continued:

Now we come to the decisive part of our work. The statements laid down in the reports of the Working Committees will horrify the whole Free World, and I hope that we will be able to give the victims of Injustice in the Soviet Zone the conviction that the day will come when Justice will dominate again, and when Freedom and Law will be restored. (The President began reading the Final Resolution. See Part Four "Final Resolution of the Congress").

"The Working Committees of the Congress, having considered the material and evidence presented to them

and having heard witnesses, have reported to the Congress as follows —" here we suggest to include in this Resolution the reports of the four Working Committees.

Thus our first resolution is to ask the Congress to adopt the Resolutions of its Committees. We thank the Committees and approve of their work. We further believe that their work is important. We state that the Congress as a whole was impressed by the authentic material gathered by the Investigating Committee of Free Jurists and by the weight of the evidence and is of the opinion that universally accepted legal principles have been violated by the Administration of the Soviet Zone.

Thirdly, the Congress believes that the basic violations referred to in these reports are a matter of grave concern not only for all jurists but for all peoples.

Finally, I have to announce a change to be made in Section 9 of the report of the Committee for Public Law. The last line of this Section speaks of "more than 20,000 protests". The word "protests" should be replaced by "appeals".

When I made my statement in the beginning, Prof. Dr. Carabajal Victoria, Chairman of the Committee for Public Law, was not present. Now he wants to make a statement.

Prof. Dr. J. CARABAJAL VICTORIA: The organizers of this assembly convoked an international Congress to deal with the systematic violation of Human Rights. This does not only refer to intranational law, but it is a problem reaching beyond national boundaries. (Applause). Unless this Congress works out a clear conception, it will counter-act its own objective which is the recognition of the fact that the violation of Human Rights is an international problem. Should we not express in our resolution the fact that the overwhelming majority stated that those accusations were based on nothing but the truth? We have been talking about the tyranny forced by Russia upon its satellites. We have seen and heard impressive evidence. It would be good to use these facts to justify our presence and our actions at this Congress. We have come here from lawful states because our concern was that of International Law. (New applause).

The second point is this: we plan to establish an international organization because we want to see respected the International Law reaching beyond national boundaries. This Law defends, on an international scale, the freedom of all people in all countries. Now that the United Nations have issued a Declaration of Human Rights, our Congress, too, attempts to return to those century-old principles of Human Rights. It would be a shame if we could and would do nothing to end Soviet Tyranny. The Soviet Union fights all institutions serving the defense of Human Rights. I would feel very sorry to see the Soviet Union find certain allies in this very Congress.

In 1947, the United Nations released their Declaration of Human Rights based on the unrestricted principle of non-intervention. But the sovereignty of the Soviet Vassal States is but a status of complete dependence. There is no sovereignty at all within the Soviet bloc. All tyrants are usurpers of sovereignty.

Well, if we are asked what reforms we suggest — if we then have nothing but these resolutions without displaying the courage to fight the tragedy of tyranny, I believe that the many victims of that tyranny have

died in vain. We must think of those people who died, those people who have suffered. They should inspire the speakers of this Congress.

The State is but a weapon, a means to protect human dignity. The legitimation of this Congress is this: we all have to stand for the idea that the violation of Human Rights is a concern of international public order. (Strong applause).

President Hon. J. T. THORSON: The Congress has not the slightest intention to prevent anyone from speaking on the topic of discussion. The delegate of India wants to make some suggestions regarding Part I of the Resolution.

P. TRIKAMDAS: I do not want to elaborate on details, but as far as the preamble is concerned, we should express again that we have assembled here to discuss the violation of Human Rights. As was said already by Prof. Dr. Carabajal Victoria, a violation of Human Rights is not the matter of a single country, but a cause concerning all nations of the world. Unless we express this idea clearly in the preamble, the resolutions are insufficient in their present form. Then it would not have been necessary to convoke an International Congress of Jurists from 43 different countries.

In the resolution of the Committee for Public Law we have quoted one article after the other of the Communist Constitution of East Germany. This will only cause confusion insofar as we have assembled to state that this Constitution is only a scrap of paper. Yet, beside the statements made by the witnesses, we all know the picture which so to speak is international since it is the same throughout the Communist countries.

In fact, it lies in the very nature of the Soviet power that within its social order nothing is limited by legal regulations, but everything is based on coercion. That is why we should state that the Soviet Constitution makes this System a System of Injustice, though the Constitution contains certain guarantees of basic Human Rights. Under this aspect we have dealt with the facts which have led us to the conclusion that this Constitution is only a facade. I suggest that such a statement be inserted in our Resolution rather than extensive quotations from the Soviet Constitution, and that a report be prepared which, in my view, will be very impressive.

President Hon. J. T. THORSON: This has been an example of the differences of opinion we faced during this Congress.

I would like to suggest that we accept Part I of the Resolution although some members of the Congress would like to have it drawn up differently. The Presidents are of the opinion that the draft resolution represents the opinion of the majority. Is that so? (Applause). In that case I suggest to proceed to Part II of the Resolution.

(The President read Part II).

Do the delegates agree? (Applause).

I assume that the delegates agree to Part II of the Resolution. But Prof. Dr. S. Osusky wishes to add something.

Prof. Dr. S. OSUSKY, Czechoslovakia: I had the opportunity the day before yesterday to point out that it would be regrettable for the exiled jurists to leave Berlin without having established an organization similar to this Standing Investigating Committee. It was suggested and unanimously agreed by the exiled jurists that we should set up a Council. Since Dr. Friedenau

is most experienced in this field it was proposed that Dr. Friedenau and I should streamline the cooperation between the exiled jurists.

It is intended to prepare the statutes of a Council to be submitted to the Standing Committee. Thus, the same shall be done for the Satellite Countries what the Investigating Committee of Free Jurists under Dr. Friedenau is doing for East Germany. (Strong applause). In connection with Part IIc of the Resolution I wish to point out that in cooperation with the Standing Committee we shall create an International Investigating Committee directed against Injustice committed behind the Iron Curtain.

President Hon. J. T. THORSON: I am sure we are all grateful to the speaker. A great service will be done to the cause of Justice.

I believe that Part II of the Resolution has been adopted.

We proceed to Part III. — I assume it has been adopted.

We proceed to Part IV of the Final Resolution. (The President read Part IV.) Do the delegates agree? (Applause.)

We proceed to Part V. Do all the delegates agree? (Applause.)

We proceed to the more or less formal parts of the Resolution. (The President read Part VI.) Do all the delegates agree?

We proceed to Part VII. (The President read Part VII.) Do all the delegates agree? (Applause.)

Then we proceed to Part VIII. (The President read Part VIII.) Do all the delegates agree? (Applause.)

Now we proceed to the next part of the Resolution. We are of the opinion that we must not leave Berlin without, in a special resolution, approving the work of the Free Jurists and to thank them for the work they have done and presented to the Congress. We should express the hope that this brave and able group of men will continue their work. We should realize what it means to the people on the other side of the Iron Curtain to know that they can come to Berlin where they will find a courageous group of men who know of their sufferings, and that they may tell these men, without revealing their names, what is going on in the East Zone in order that they may obtain advice.

We also thought of something else which we consider very important, namely that this Investigating Committee shall continue its outstanding work, thus fostering the belief of the people behind the Iron Curtain that great endeavors are being made to finally let Law and Order prevail in order that Freedom and Justice, which are lacking in their country at the moment, will be restored. For this reason we have drafted the Resolution in this form and have put it at the end. (Strong applause.)

Another resolution has been submitted which we were unable to complete in the Resolutions Committee. But I believe all of you will agree to it. I ask Mr. van Dal, to read it.

A. J. M. VAN DAL, Netherlands: I believe that it will be unnecessary to argue about the draft resolution once I have read it to you. (Read the Resolution on the Abduction of Dr. Linse, see Part Four.) (Strong applause.)

President Hon. J. T. THORSON: Having heard the strong applause after what Mr. van Dal had to say, I assume that the delegates fully agree to this Resolution. (Applause.) The Resolution is adopted.

Now we will hear Mr. Raeburn.

W. RAEBURN, Great Britain: I should like to suggest a resolution pertaining to a matter of great importance which will be handled later by the Standing Committee. It concerns the way in which Allied Control Council Directives are being applied in East Germany. Control Council Directive No. 38 reads: "The Arrest and Punishment of War Criminals, Nazis and Militarists and the Internment, Control and Surveillance of Potentially Dangerous Germans". Part I begins as follows: "The object of this paper is to establish a common policy for Germany." Section C, which I wish to point out to you, deals with "the internment of Germans who though not guilty of specific crimes are considered to be dangerous." It is not until Article 3 that we find, under headline "Offenders", item A) "Activists", a definition of who is considered an activist. Then follows Section III which I ask you to read very carefully: "An Activist shall also be anyone who after May 8, 1945, has endangered or is likely to endanger the peace of the German People or of the world through advocating National Socialism or Militarism or inventing or disseminating malicious rumors."

The Communist authorities in East German, including the East Sector of Berlin, who claim to act in accordance with these directives, have deprived about ten thousand people of their freedom on the basis of a special interpretation of this directive: those who only wish to change the System ruling beyond the border which is so close to us here are also considered to be Militarists. The result of conviction under the Allied Control Council Directive is that the person concerned receives a remark in his court records, also in West Germany, to the effect that he has once been sentenced to confinement, although for a "crime" only known in the Communist orbit. But it is handled like a criminal offense throughout Germany because it is an offense against a Control Council Directive. In this connection, three questions have to be decided:

1) Does the Directive have the meaning accorded to it by the Communist authorities? This is a question of legal interpretation.

2) If the Directive has this meaning, can we do anything to amend it in order to give it its original meaning, namely to serve for the sentencing of Nazis and Militarists?

3) Should the persons arbitrarily convicted continue to be considered persons previously punished when coming to West Germany?

These are decisive questions we are unable to decide here. They are a matter for the Standing Committee.

I suggest that this matter be referred to the Standing Committee which will have to decide whether the Directive contains provisions which, by their meaning and context, might bolster up such sentences. If such provisions can be interpreted like that, measures have to be taken to rescind this Directive; it will have to be recommended to the West German authorities to ignore sentences pronounced in East Germany on the basis of Directive 38 which would cause a person's criminal record in the court register. (Strong applause.)

President Hon. J. T. THORSON: You have heard the Resolution. Do the delegates agree? (Applause.) The matter will be referred to the Standing Committee.

P. TRIKAMDAS read the text of the Resolution on the Work of the Investigating Committee of Free Jurists (See Part Four).

President Hon. J. T. THORSON: The delegates have heard the Resolution. Do the delegates agree? (Strong applause.) I shall forward the Resolution to the appropriate authorities.

At the beginning of this week Mr. Trimakas gave me the draft of his Anti-Genocide Resolution. I would suggest that it be forwarded to the Standing Committee as well.

Prof. Dr. A. TRIMAKAS, Lithuania: I come from the United States of America, but here I represent Lithuania. As you know, the Soviets have been deporting hundreds of thousands, yes, millions of people from their homeland. The destruction and liquidation of peoples is the subject of my draft Resolution. (Prof. Dr. Trimakas read the draft Resolution on the Genocide Convention, see page 81.)

President Hon. J. T. THORSON: We have all heard this "Resolution on the Genocide Convention". It will be forwarded to the Standing Committee. Do the delegates agree? They do. Mr. Nabuco would like to add something.

J. NABUCO, Brazil: Concerning the Resolution of the Committee for Civil and Economic Law: we have heard of the so-called "cold expropriations." In other countries, the practices of the Soviet Zone authorities

would be regarded as unfair competition and misuse of a monopoly. I move that a passage be added to the draft resolution to the effect that we condemn these practices which violate the universally accepted principles of Justice. (In reply to the remark of a delegate:) Yes, I would agree to the version that "the principles are disregarded."

President Hon. J. T. THORSON: Do the delegates agree to the adoption of this motion and the forwarding of the amendment to the Standing Committee? Yes, good.

Mr. Trikamdas has proposed a resolution which has been referred to several times by the Congress. The resolution, which had been brought before the First Plenary Meeting of this Congress already, reads as follows:

"The Congress recommends to the Standing Committee that the cases of discrimination of citizens on account of differences of race, color, or religion, and especially the racial laws in South Africa, be investigated."

Do the delegates agree that this resolution be referred to the Standing Committee? There seem to be many opinions to the contrary — because it does not fit into the context of the work of this Congress and of the Working Committees, I believe. I assume that the Congress as a whole favors the forwarding of this resolution to the Standing Committee.

A delegate moved that the session be ended. Strong applause when he thanked the President in the name of the delegates to the Congress.

The meeting was ended.

Final Ceremony

of the International Congress of Jurists in Berlin's Schiller-Theater

President Hon. J. T. THORSON opened the ceremony in Berlin's Schiller-Theater: I greet all those present, and in the name of all jurists here assembled wish to thank Dr. O. Suhr, the President of the Berlin House of Representatives, for the hospitality extended to all foreign delegates by the College of Political Science. I also wish to thank Berlin's Governing Mayor, Prof. Dr. E. Reuter, for his consideration towards this Congress and for his participation in this final ceremony. All of us feel very honored by Prof. Dr. Reuter's presence tonight. — I beg Sir Vick to be the first speaker.

Sir G. R. VICK, Great Britain: Mr. Mayor, ladies and gentlemen! Actually, I should say fellow-gangsters and fellow-spies, but I prefer to address you otherwise. It is my task and a special honor to be the first speaker tonight. This is due to the fact that I am an Englishman. You will probably realize in the course of the evening, that only Englishmen are able to speak to the subject within a given period of time.

It has been a great pleasure to have come to Berlin to meet colleagues of our profession from other countries. Personally, I have to add that I was very glad not to have brought my wife. She did not know how many beautiful girls one runs across in Berlin, otherwise she might have wished to come over, too.

It was very interesting for us lawyers to meet again many friends from other continents, especially from the American continent. Of course, we lawyers speak different languages, but it is obvious that the purpose of our sojourn here was the same. We lawyers consider Truth and Justice to be more important in the world than anything else, even more important than Patriotism for one's own country. Of course, we met with some difficulties in this Congress; but we have difficulties in the courts of our own countries, too. Nevertheless, we were aware, throughout the meetings of this Congress, of fulfilling a purpose, namely to show to the world where Truth and Justice stand and how anxious we are about what is happening here. If we tell the world exactly what is going on here and if we draw the consequences, I believe that we have nothing to fear as long as we know that Truth and Justice will finally triumph and as long as we fulfill our duty towards Mankind. I wish to God that he give me serenity to enable me to bear with patience what I cannot change, and that he give me courage to change what I can change, and that he give me wisdom to distinguish between the two. We lawyers really do not have any other purpose in life than serving Truth and Justice in the world in order to achieve for both of these ideas a better place in the life of Mankind.

Dr. E. ZELLWEGER, Switzerland: The participants in this International Congress of Jurists in Berlin have enjoyed their stay in Berlin and the generous hospitality extended by the city, just as the previous

speaker said. In spite of that, a shadow fell over these days, due to the insolent abduction of a member of the Investigating Committee of Free Jurists, Dr. Walter Linse. This crime has roused the indignation of the Free World as well as of the jurists who assembled here shortly after its perpetration.

I consider it important that the work of the Investigating Committee of Free Jurists be known all over the world. Through its extremely valuable work the Investigating Committee of Free Jurists has laid before the International Congress of Jurists very impressive evidence which is collected in a book entitled "Injustice as a System." I think I am not exaggerating when I state that thus the Investigating Committee has presented to the world a most impressive document. As far as I know, the tactics of Bolshevist assumption and fostering of power have never before been outlined with such precision and in such details. The endeavor to camouflage with a veil of legality the brutal stripping of the majority of people of all their rights has never before been quite as clearly shown. This camouflaging proves strangely enough that even the SED and the Occupying Power protecting this Party feel compelled to mind certain rights which are the universal property of Mankind, thus acknowledging the fact that there exist judicial values applicable to all Mankind.

The democratic-liberal and legal varnish, called the "Constitution of the GDR", which is used to cover the new legal and social order under construction in the Soviet Zone of Germany, and the group of power-hungry people aiming at a Europe-wide dictatorship, do not let themselves be hindered by the legality which they pretend exists. Therefore, this group commits those infractions of Law which the civilized world unanimously considers as such. Ancient Rome, the mother of Law, recognized that kind of infractions of Law and created a special act to fend them off, the *Actum Julianum*.

The experiences we have had here show that Freedom is a matter of Justice, but even more a matter of Courage. The Investigating Committee of Free Jurists follows this historical principle in a most exemplary manner. The Free World is grateful for that. It is the same kind of fortitude and courage shown by the people of Berlin. These characteristics are trumps in the struggle for the maintenance of Peace and Freedom.

Prof. L. J. CONSTANTINESCO, Rumania: Mr. President, ladies and gentlemen!

Speaking at the end of the Congress, I wish to thank those who have helped, through their quiet work and their total devotion to their task, to make this Congress a success. My thanks, therefore, to the hidden staff of students, young men and women, secretaries and translators, journalists and interpreters who, through their diligent work, have enabled us to comply

with our task so much more easily. I thank you all and still have a feeling of uneasiness for handling such a great obligation so lightly.

Ladies and gentlemen, by extending my thanks to the Government in Bonn, to the City of Berlin, and especially to the Investigating Committee of Free Jurists in Berlin, which has taken the initiative for this Congress and enabled it to work because of its meticulous preparatory work, I do more than simply fulfill a commandment of gratitude. I also wish to extend my congratulations on your great success. I have participated in many congresses and diplomatic conferences, where garrulous diplomacy spoke in the name of mute peoples. But here for the first time did I gain the impression that the core of the problem was tackled.

Up to now, the Free World seems to have preferred to consider the struggle of the people in enslaved Europe to be nothing but a struggle between the reactionary and the progressive forces, or between State-Socialism and out-moded Liberalism. But the Congress has unmistakably proved, through the material and evidence presented to us, that in reality something quite different is at stake: namely the struggle between Justice and its misuse, between genuine and hypocritical legality. It is the struggle of Man and his basic freedoms against their systematic negation. That is what this Congress has been able to make clear. That is the reason why not single persons nor single peoples alone have taken up the fight, but all of our culture and with it all of free mankind — to which all of you belong as well.

In this struggle between the powers of light and the powers of darkness (which have built up a whole system of their own) Man is at stake, and with him his honor and his freedom — the best achievements of Europe. And our culture, Europe, and the Free World will live or die with Man. This is the true meaning of the problem put before the conscience of the world, of which the conscience of every one of you is a part, and which the Free World must begin to understand.

The peoples and the individuals of the Free World will have to learn to understand that the world is one unity — in which they may die alone but live only in unison. Leaving one's neighbor in slavery does not mean that one's own freedom is safeguarded; it is the beginning of one's decline. In order to live one should begin to have a strong and sturdy will.

When, over 50 years ago, one single man — Dreyfuss — fell victim to methodical and deliberate Injustice, all of France was roused. Free World, listen for just a moment and hear the feeble sighs of suffering mankind, and realize that you have lost your sense of Justice and of your own freedom if you remain indifferent in the face of destiny of millions suffering like Dreyfuss!

Mrs. S. AGAOGLU, Turkey: Let me tell you, at first, that I am only here by mistake because the invitation was addressed to Mr. Agaoglu. But I wish such errors would happen more often because I cannot but wish that more lady-jurists had been present at this Congress. I for my part was very interested in coming to know all these problems in Berlin and the Western World which should be studied by all jurists. I know that Berlin, where all of these problems have been discussed before, is a very adequate meeting place for the jurists from all parts of the world. Here, everything can be judged best and I wish to say that I leave this Congress with great hopes and confidence. Since it is always said

of women that they talk too much, I wish to end my speech now and thus prove the opposite.

Prof. Dr. F. S. F. LIU, China: Let me tell you at first that I studied in Berlin 27 years ago. When I returned to the city now I was very sad because I believed that the Berlin I had known had disappeared completely. But I wish to say that now, at the end of the Congress, after having made numerous contacts with Germans, this sadness is gone. I will remember this Congress with gladness because I have seen that the German people are determined to resist the threat from the East and not to relent.

China is a country famous for its traditions and its philosophers. Just think of the family-pride which should make China immune against Marxism. But, nevertheless, my country fell victim to Soviet Communism within two short years. That was possible only because Communism is a slow poison that can be found everywhere, a poison that has even infected great writers and thinkers behind the Iron Curtain. We should never forget that this is true not only with regard to intellectuals, but also to the youth. I would like this to be taken as a warning to all those who are still free that one cannot be careful enough about this poison.

Finally, however, I wish to express my admiration for the great amount of civil courage and fortitude shown here. It is well known that these characteristics are very much admired in China. I believe that the morale of the Investigating Committee will be an example for all people living in exile, and that all people pursuing an objective of a similar kind should do it in the same way as the Investigating Committee of Free Jurists.

G. MORRIS, U.S.A.: Mister President! Herr Buergermeister! Herren, Frauen, Fraeuleins! Mesdames, Messieurs et Mademoiselles! Signoras! Signores! Signoritas! Ladies and Gentlemen; Youth and Beauty, Jurists, and — I guess I should also say — Ordinary Lawyers! But there are so few of them among this audience that it is hardly worth while addressing one of our kind.

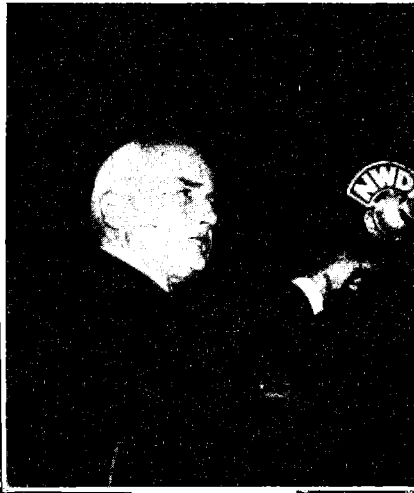
All day today we have worked under a President who possesses the most remarkable parliamentary technique so far displayed in Western Europe. We have passed several resolutions wherein something of what everybody wanted was expressed, something of what everybody wanted was left out, and finally something of what nobody wanted was expressed, too. Now this proportion is an ideal in every group of lawyers. Wherever all lawyers are of the same opinion, honest people should be on their guard.

And now a word of praise for this our President. He had the most remarkable ability to give everyone in the hall the feeling that he has always been of the same opinion with every one of us — until it dawned on us that in reality we had submitted to the opinion of the President.

We have been here in the service of our Goddess. There she is, clearly depicted, she who does not distinguish between man and woman, color, party, religion, or race — the Goddess of Justice. She listens to every one who has a case, files a complaint, or makes a statement. There she stands with the balanced scale of Justice which is the basis of all social relations throughout the world. We serve her, and as long as people serve her, human society will be successful.

FINAL CEREMONY IN SCHILLER-THEATER

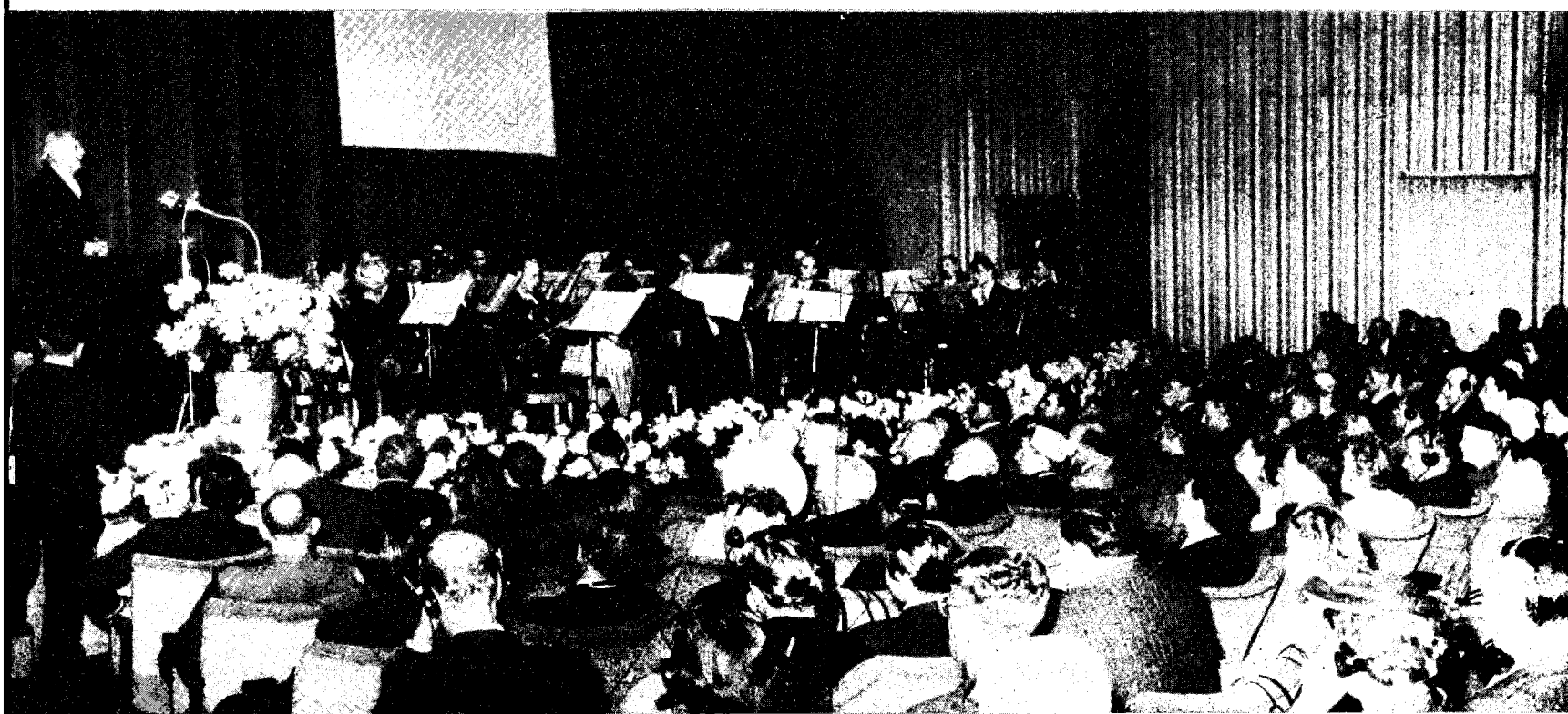
The Congress was concluded with a festive ceremony in Schiller-Theater in Berlin-Charlottenburg



Swiss delegate Dr. E. Zellweger (left);
G. Morris, U. S. A. (center); Persian
delegate Dr. P. Kazemi (right)



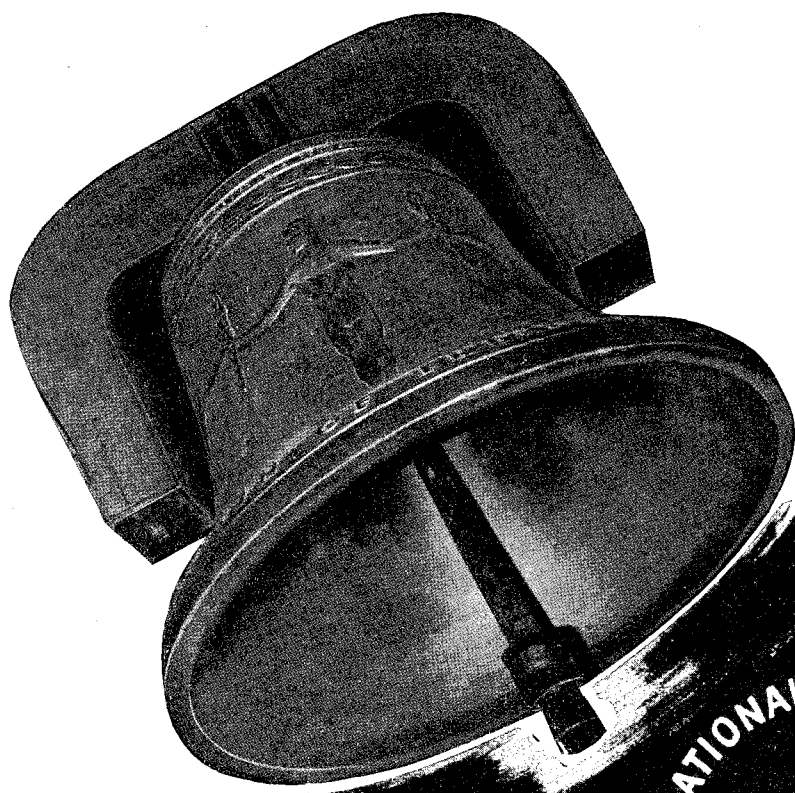
Eleven delegates in their final remarks expressed their understanding and solidarity with the grim fate of Berlin and the Central German people's struggle against systematic injustice



View of Schiller-Theater during final ceremony. On the rostrum, B. W. Stomps, Netherlands, during his final remarks. On the right the Berlin Orchestra of Physicians and Jurists underlining the festive character of the ceremony by their performance of Mozart's Magic Flute and Ludwig van Beethoven's Leonore Overture

The World Freedom Bell is hanging
in the tower of Schoeneberg Town Hall

I believe in the sacredness and
dignity of the individual. I believe
that all men derive the right to
freedom equally from God. I
pledge to resist aggression and
tyranny wherever they appear on
earth



The free people of the world are
united by the recognition of the
rule of justice. The realization of
their common goal will not only
halt the expansion of systematic
injustice, but eliminate injustice
as a power of the state. Justice
must become a power

The above Declaration of Freedom was
signed by more than 16 million people

We have also been convinced here of how much a people can achieve by courage, fortitude, wisdom, and ability.

In her name I beg the God of every one of you to bless this man and his colleagues, to guide them and lead them to victory and triumph which we know they will achieve in the end.

Prof. Dr. S. OSUSKY, Czechoslovakia: I would have regretted it all my life had I not attended this Congress in Berlin. For me, a Slovak, it afforded a unique opportunity to continue, in West Berlin, my fight against Injustice, together with the citizens of Berlin who are fighting for their rights. Through the division into East and West Berlin such an unnatural situation was created that it has to attract the attention of the whole world. Due to this, the prerequisites for Germany's liberation and reunification are much better than they would have been without this division. I think that Mephisto's words in Goethe's "Faust" are valid for Stalin as well: "I am a part of the Power that wishes to do Wrong but always achieves the Good."

The people of Berlin do not have to put their ears to the ground to hear the steps of the bringer of Injustice and Mischief. We have witnessed during our stay in Berlin the increasing number of refugees seeking asylum in the Western World. These refugees are the personification of the World's Conscience, the mutiny of the World's Brains against the evil from which the people behind the Iron Curtain are suffering. For the past 35 years the Communists under Stalin have been waging a war against this conscience because they know that the "new Man" cannot develop until that conscience is dead.

Communist theory and practice aim at destroying human freedom by destroying Man's thoughts and feelings, which the Communists wish to govern.

I hope that all peoples behind the Iron Curtain know and believe that their present political status will not remain. I also believe that the peoples behind the Iron Curtain are aware of the fact that a new order is dawning in Europe which will not only help us solve our problems but will automatically do away with numerous other problems. With confidence I look forward to the day when the German people, as well as the Czechs and the Slovaks, will be free.

Dr. P. KAZEMI, Iran: It is a great pleasure and honor to speak before such a distinguished assembly of free jurists from many different countries. It was a special pleasure to come to Berlin, where I studied before the war, in order to speak once again to this diligent and resolute people. Unfortunately we saw the ruins of once-beautiful Berlin, but we also had a chance to realize how German jurists are active for the defense of Human Rights. We, the jurists, have chosen as our vocation the defense of Law and the maintenance of Justice and we may be proud of being able to work for this noble aim every day. But the German jurists of Berlin have an additional task, namely the defense of the rights of their fellow-citizens who do not have the opportunity to defend themselves and to uphold their rights. We have seen their endeavors in this direction and we have admired how well they proved the old saying that Germans are good organizers.

Your conference has been so carefully planned and carried through that not a single question remained open; every one of them found a correct answer. We have heard very interesting reports and discussions and

have studied remarkable documents. We have also seen your fight for the liberation of your fellow-citizens and the maintenance of Justice. I am convinced that you will reach your goal, because it is right.

S. PRAMOJ, Thailand: We are confronted with the danger that our civilization will turn from an intellectual to a completely mechanized civilization. It is imaginable, therefore, that Democracy will be replaced by a Technocracy and then develop into a mechanized democracy. If we do not realize this danger, we will one day destroy ourselves. Things lose their original value through the mechanized way of thinking. But we should remember that Freedom and the Dignity of Man still are the highest goods. This freedom we have to watch at the moment. If we lose this attitude, Man will turn into a slave. Therefore I believe that it is one of the foremost tasks of mankind to watch over this freedom.

I should like to express my thanks to the Investigating Committee and to the City of Berlin. I think we could not have found a better place to visualize the actual infraction of Human Rights. I thank you for all you have done to make our stay as pleasant as it has been.

B. W. STOMPS, Netherlands: I should like to stress one particular impression out of the host of impressions the Dutch delegation will take back home. When, in 1940, the German Wehrmacht suddenly invaded our country we had to realize, nevertheless, that everything proceeded correctly as long as the military administration of the German Army ruled in Holland. But when the Austrian traitor and his gang came to Holland, a tyranny started that was unbearable for our free people in a Free World.

At that time a resistance movement started in Holland. It made a great impression on us when at that time a German soldier was sentenced by a German court-martial and executed for robbing and murdering a Dutch couple. We considered this to be an example of the fact that genuine judges were left among the Germans. You will understand how I felt a few days ago when, as a member of the Committee for Penal Law, I heard a witness who reported that this very same judge, who had filled us with confidence, was arrested in the East Zone and put to death for sentencing a German soldier.

We know that the struggle against Inhumanity and Injustice is difficult. We, the old resistance fighters, know no hatred, only pity. At that time I learned that one must not lose courage in the fight for Freedom. But we, the foreigners, should help in more ways than with mere words. Deeds are demanded from us now. Up to now it may have been a matter of German home politics to fight the system of terror, oppression, and coercion in the East Zone. But I believe I may say that from today it no longer is a matter of German home politics, but a matter concerning all of Europe. The colleague asking the Almighty for his blessing on the work of the Investigating Committee of Free Jurists and of this Congress has spoken from our hearts.

Hon. L. W. BROCKINGTON, Canada: Being the last foreign speaker, I have been very interested in hearing the speeches of all of these gentlemen. And I wonder what might be left to say, unless I wish to apply the Soviet tactics of claiming that everything is my own invention. Let me state, however, that Dr. Friedenau's and his colleagues' achievements in this Congress are an example for us.

It is much more difficult to draw limits where moral rather than geographical values are concerned. But here in Berlin I have become aware of the fact that sometimes such a clear limit does exist. Standing on Potsdamer Platz it becomes quite clear that there are two separate worlds: one treads on its sacred principles, while in the other one hopes begin to blossom again. On one side, the road leads from Potsdamer Platz to the dark valley of slavery, on the other side to the high peaks of freedom.

In 1945, when I first saw Berlin, I felt commiseration over what human foolishness had done to the city. I believe that the Berlin of 1945 looked like East Berlin looks today. But I have noted with satisfaction that a semi-miracle has happened: from what was practically a tyranny, freedom evolved at least in one half of Berlin.

Therefore I am glad that the jurists, whose duty it is to safeguard Justice, have assembled here. I should like to mention that Abraham Lincoln and Mahatma Gandhi were lawyers, too. Like them we should now refrain from using big words for Justice and Law but rather make sure that no one, whoever it may be, be deprived of Justice.

Dr. T. FRIEDENAU, Chairman of the Investigating Committee of Free Jurists, concluded the International Congress of Jurists with the following remarks:

Mr. Mayor, Mr. President, ladies and gentlemen!

I do not intend to deliver a speech. I only want to thank you. I wish to tell you that I feel somewhat ashamed of all the cordial words dedicated to the work of the Investigating Committee and to myself. I wish to emphasize that I think my personal work has been somewhat over-estimated here. It is not me who should accept all the words of gratitude spoken here — this gratitude should be addressed to all those men, women, and youths, to those millions in the Soviet Zone who have done this work and of whom I try

to be a representative, at least with regard to the fight against Injustice.

I wish to thank you from the bottom of my heart for all that has been said here. I believe that it is necessary to tell you that all of us, Berliners as well as inhabitants of the Soviet Zone, owe our thanks to the delegates of the International Congress of Jurists. We do not believe at all that it has been a matter of course for such eminent personalities, jurists, politicians, and statesmen from 43 countries of the world to come here to study and work on the subject of this Congress.

We think that all of us, the people of Berlin, the people of the Soviet Zone, as well as the people of the countries behind the Iron Curtain, owe our thanks to these eminent personalities for having come to study our problems.

I can assure you that these foreign jurists have really worked until late at night. They drafted each sentence very carefully. The Resolutions which will be presented to you tomorrow have not been made out of some odd feeling; they are the result of exact examinations, of careful work. We had no vacations here, nothing but real work. Thus we were in line with the spirit of Berlin, of hardworking Berlin. I am glad the work did not discourage you and that you have felt at home in our city.

Let me point out at the conclusion of this ceremony and of the Congress that perhaps a new era is dawning now: the era when the nations fortunate enough to be free will give up their passive, neutral attitude and will start an offensive of Justice.

My dear friends, delegates, Berliners! Let me assure you that I have really been touched to have had this opportunity to cooperate with these distinguished men, and that it has been an honor for me. In the name of my colleagues and in my own name I wish to emphasize that we shall continue our work in the service of Justice, for a life in a state based on Law, and for a life in Freedom!
(Applause.)

PART FOUR

List of the Delegates

Final Resolution of the Congress

Resolutions

of the four Working Committees

Delegates to the International Congress of Jurists

The following personalities were delegates to the International Congress of Jurists:

Albania

S. DAMANI, Leading Albanian Jurist living in exile;
H. DOSTI, former President of Court of Appeal;
N. KOTTA, former President of "Relief and Assistance Committee".

Austria

Prof. Dr. Dr. h. c. G. J. EBERS, University of Innsbruck;
Prof. Dr. E. SACHERS, University of Innsbruck.

Belgium

A. BRAUN, Lawyer at Court of Appeal.

Brazil

Prof. CESARINO jr., University of Sao Paolo;
J. NABUCO, President of Brazilian-American Institute.

Bulgaria

Prof. Dr. N. DOLAPCHIEV, formerly University of Sofia;
V. PASCALEFF, former Diplomat;
A. SLAVOV, Member of the National Committee.

Canada

Hon. L. W. BROCKINGTON, Dean of Queen's University, Former Deputy Prime Minister;
J. ESTEY, Judge at Supreme Court;
Hon. R. L. KELLOCK, Q. C., LL. D. h. c., Judge at Supreme Court;
Hon. J. T. THORSON, Q. C., LL. D. h. c., President of the Exchequer Court.

China

Prof. Dr. F. S. F. LIU, Yale University, former Presiding Judge at Supreme Court of Shanghai.

Czechoslovakia

Dr. J. MIKUS, former Envoy of Slovakia in Madrid;
Prof. Dr. S. OSUSKY, President of Central Committee for a Free Czechoslovakia;
Prof. Dr. J. STRANSKY, former Professor for Penal Law and Minister.

Denmark

J. BUHL, Lawyer;
P. FEDERSPIEL, Vice President of the U. N. Legal Committee, former Minister;
O. RASMUSSEN, Lawyer at Supreme Court.

Egypt

Prof. Dr. M. ABOU AFIA, Cairo University.

Estonia

J. KLESMENT, former Minister of Justice;
H. MARK, Secretary General of National Council;
P. POOM, former Judge at Supreme Court.

France

D. BOISDON, former Chairman, at present Member of Council of the French Union;
Dr. J. KREHER, Lawyer, Legal Adviser at Ministry of Labor.

Georgia

Dr. G. AWALIANI, Ukrainian Free University at Munich;
E. GUEGUETCHKORI, former President of Transcaucasian Government.

Germany

Prof. Dr. A. BLOMEYER, Free University, Berlin;
Prof. Dr. F. DARMSTAEDTER, Cambridge and Heidelberg Universities;
Dr. T. FRIEDENAU, Chairman of the Investigating Committee of Free Jurists;
Prof. Dr. E. HEINITZ, Free University, Berlin;
Dr. V. KIELINGER, Senator for Justice, Berlin;
Dr. H. KÜHNEMANN, President of Senate, Berlin;
Prof. Dr. R. MAURACH, Munich University;
Dr. R. NEUMANN, President of Penal Senate of the Supreme Federal Court;
Prof. Dr. H. K. NIPPERDEY, Cologne University;
Dr. A. SKOTT, President of Supreme Court of Berlin.

Great Britain

Sir A. BROWN, LL. D., Lawyer;
Prof. Dr. E. J. COHN, Ph. D., Lawyer;
W. RAEBURN, Esq., Q. C., Recorder;
Sir G. R. VICK, Q. C., Chairman of the General Council of the Bar of England and Wales.

Greece

Prof. GAZIS, University of Athens.

Iceland

T. O. THORARENSEN, Deputy of Jurists' Association.

India

P. TRIKAMDAS, LL. B., Senior Attorney at Supreme Court of Bombay, formerly Secretary to Mahatma Gandhi.

Iran

Dr. P. KAZEMI, President of Criminal Court at Teheran.

Iraq

Prof. Dr. S. BISSISSO, LL. E., Dr. jur. Legal Board, Baghdad, former Chairman of Juvenile Court in Palestine.

Ireland

G. DUFFY, M. A., Lawyer, Librarian.

Italy

Prof. G. BELLAVISTA, Messina University;
Prof. O. G. BETTIOL, Chairman of Legislative Committee of Chamber of Deputies;
Dr. V. ISOTTA, Lawyer;
Prof. L. DE LUCA, Lawyer at Rota Romana;
Prof. F. DELLA ROCCA, Rome University.

Japan

S. KOBAYASHI, Judge at Supreme Court;
T. MATSUMOTO, Public Prosecutor of Japanese Government;
M. MIYAKE, Chief of Main Department and Information Office of Supreme Court;
Prof. Dr. K. MORI, Chuo University.

Korea

KYU HONG CHYUN, Minister to France;
LEE BOM HO,
PAK HYUN KAK,
RHEE HAK CHUN, all of them Deputies of Korean Bar Association.

Latvia

J. BREIKSS, Lawyer;
M. CAKSTE, former Judge at Supreme Court;
A. GRANTSKALNS, former Judge at Riga District Court.

Lebanon

P. BOULOS, Vice President of Chamber of Deputies and Minister for Public Affairs;
A. NACCACHE, former President of Lebanon.

Lithuania

J. SAKALAIUSKAS, former Diplomat;
Prof. Dr. A. TRIMAKAS, former Director of the Chancellery of Executive Council.

Netherlands

A. J. M. VAN DAL, Lawyer at High Council;
C. VAN RIJ, Lawyer;
B. W. STOMPS, Lawyer.

Norway

S. ARNTZEN, Lawyer at the Supreme Court;
Prof. Dr. J. ANDENAES, Oslo University;
S. DAEHLI, Judge at Supreme Court;
A. FRIELE, Lawyer at Supreme Court;
C. L. JENSEN, Lawyer at Supreme Court;
J. RAEDER, Judge at Supreme Court;
I. SCHEFLO, Storthing Secretary of the Labor Party Fraction.

Pakistan

TYABJI, President of Supreme Court.

Poland

Dr. T. KOMARNICKI, former Head of the Delegation to the League of Nations.

Portugal

Prof. L. PINTO COELHO, Lisbon University;
Dr. M. FERNANDES, former General Manager of Ministry of Justice.

Rumania

Dr. M. BUTARIU, Lawyer;
Prof. L. J. CONSTANTINESCO, Cambridge University.

Russia

Prof. G. GUINS, formerly at the Charbin and Manchurian Institutes;
Prof. Dr. N. MYSCHEKOFF, Georgetown University, Washington;
N. SEMENOFF, former Prosecutor and Judge.

Spain

Dr. DON A. QUINTANO-RIPOLLEZ, Chief Public Prosecutor, Judge at International Courts.

Sweden

Prof. Dr. EKELOEF, University of Upsala;
Prof. H. MUNKTELL, University of Upsala;
Prof. F. SCHMIDT, Stockholm University.

Switzerland

Prof. J. GRAVEN, Vice-President of World Union of International Jurists' Associations;
Dr. E. ZELLWEGGER, Zurich University, former Minister.

Thailand

S. PRAMOJ, former Prime Minister.

Turkey

Mrs. S. AGAOGLU, Lawyer, President of International Organization of Lady Jurists;
Prof. Dr. H. BELBEZ, Ankara University;
Prof. Dr. R. DICLELI, former Minister for Transport and Trade.

United States of America

D. B. BONSALE, American Bar Association;
Prof. P. R. HAYS, Columbia University;
W. H. HOYT, Lawyer;
Prof. Dr. H. ROMMEN, St. Paul University, Minnesota;
G. MORRIS, Chairman of Executive Committee of Inter-American Bar Association;
R. STOREY, President of the American Bar Association.

Uruguay

Prof. Dr. J. CARABAJAL VICTORIA, former Minister of the Interior.

Final Resolution

of the International Congress of Jurists in West Berlin 1952

The following Final Resolution was unanimously adopted by the 106 delegates to the Congress:

I. Whereas Jurists from 43 countries in the world have met in their individual capacities in this Congress in West-Berlin on the invitation of the Investigating Committee of Free Jurists of the Soviet Zone of Germany operating in West-Berlin to consider the material and evidence presented by them relating to the administration of justice in the Soviet Zone of Germany,

and whereas the Congress has appointed Working Committees of its members to study the administration of Labor Law, Civil and Economic Law, Public Law and Penal Law in the Soviet Zone of Germany,

and whereas the Working Committees of the Congress having considered the material and evidence presented to them, and having heard witnesses, have reported to the Congress as follows:

- a) The Committee for Public Law (See p. 124)
- b) The Committee for Penal Law (See p. 125)
- c) The Committee for Civil and Economic Law (See p. 126)
- d) The Committee for Labor Law (See p. 126)

Resolved:

- 1. That the Congress adopts the reports of its Working Committees.
- 2. That the Congress is impressed by the authentic nature of the material gathered by the Investigating Committee of Free Jurists and the weight of the evidence and is of the opinion that generally accepted principles of law have been violated by the administration of the Soviet Zone as set forth in the reports of the Working Committees.
- 3. That the Congress believes that violations of principle of the kind referred to in these reports is a matter of grave concern not only to Jurists but to all people throughout the world.

II. Resolved: That the Congress considers that its work should be continued and to that end a Standing Committee of the Congress should be appointed with the following powers:

- a) To maintain contact between the Investigating Committee of Free Jurists and the members of the Congress.

- b) To receive such answers and other communications as may result from the action taken by Congress.

- c) To take such further action as the Standing Committee may deem desirable to implement the objectives of the Congress.

III. Resolved: That the Congress elects the following as members of the Standing Committee: Hon. J. T. THORSON, Ottawa, Canada; Mr. P. T. FEDERSPIEL, Copenhagen, Denmark; Sr. J. NABUCO, Rio de Janeiro, Brazil; Hon. H. B. TYABJI, Karachi, Pakistan; Dr. E. ZELLWEGER, Zurich, Switzerland; and Mr. A. J. M. VAN DAL, The Hague, Netherlands, with power to replace and co-opt; and that Hon. J. T. Thorson be Chairman and Mr. A. J. M. van Dal Secretary of such Standing Committee.

IV. Resolved: That the Secretariat of the Standing Committee of the Congress be established at The Hague under the direction of its Secretary, Mr. A. J. M. van Dal, 75, Noordeinde, The Hague, Netherlands.

V. Resolved: That with a view to assisting the Standing Committee in its work, Dr. T. FRIEDENAU be requested to keep the Standing Committee currently informed about the conditions behind the Iron Curtain.

VI. Resolved: That a statement of the resolutions adopted by the Congress be sent to the Government of the Federal Republic of Germany.

VII. Resolved: That a statement of the resolutions adopted by the Congress together with copy of the publication "Injustice as a System" be sent to the Government of the German Democratic Republic and to the Occupation Authorities of the Soviet Zone of Germany.

VIII. Resolved: That a statement of the resolutions adopted by the Congress together with a copy of the publication "Injustice as a System" be sent to the Secretary General of the United Nations for his information and such action as may be appropriate.

IX. Resolved: That the Congress approves the work of the Investigating Committee of Free Jurists in gathering the material presented to the Congress and hopes that this courageous and able group will continue its work in rendering aid to the victims of Injustice in the Soviet Zone and stimulating faith that the rule of Law will ultimately prevail and that Freedom and Justice will be restored.

Resolution of the Committee for Public Law

The delegates of the Committee for Public Law concluded their work with the following Resolution:

On October 7, 1949, a document entitled "Constitution of the German Democratic Republic" was published in the Soviet Zone of Germany. This Constitution appears to be imbued with the most liberal principles. Many of its provisions are a transcription in German of the "Universal Declaration of Human Rights" drawn up by the United Nations in 1948.

On the basis of material gathered during the past three years, the Committee has considered whether the "Constitution of the German Democratic Republic" has been applied in the spirit and in the letter, or whether it has served as a mere pretext for the arbitrary exercise of power.

Having examined a great deal of documentary evidence and having heard several witnesses, the Committee is of the opinion that

I

- (1) by the terms of the Constitution of the Soviet Zone of Germany, dated October 7, 1949, the citizens are guaranteed freedom of association and of election, as well as proportional representation. All these promises, however, are belied by the elections for the Assembly of the German Democratic Republic of May 15 and 16, 1949, and by the elections of October 15, 1950. (The parties were compelled to establish a single list merging them all into a so-called "Democratic Block", the vote was not taken by secret ballot and the election results were falsified.)
- (2) The individual freedom that is essential for the exercise of political rights (freedom of opinion, of coalition and of association and freedom of the press) have been frequently violated sometimes on the strength of Article 6 of the Soviet-Zonal Constitution allegedly providing a legal basis for arbitrary restrictions of the fundamental rights. (Judgments against Hans Klette, chartered accountant, of February 23, 1951 — Doc. 10 —, judgment against electrician Kurt Pfefferle of December 15, 1950, — Doc. 12 —, judgment against Fredi Zeitlow of May 7, 1951 — Doc. 13 —, statement Ploegert and others — Doc. 231 and following —, service regulations of the Leipzig General Post Office Administration — Doc. 234 and following.)
- (3) The right of education according to one's abilities, especially at secondary schools, academies and universities in the Soviet Zone of Germany is granted only to those classes of the population which accept the ruling system without reservation. (Orders concerning the admission of pupils to secondary schools and schools with ten forms, December 22, 1951 — Doc. 242 —, regulation No. 17 for Academies and Universities of the Secretariat for Academies — Doc. 245 i. a.)
- (4) Freedom of movement in the Soviet Zone of Germany has been restricted for political reasons.

(Service regulation No. P.M. 7/51 of the Chief Administration of the German People's Police of June 2, 1951, Doc. 254 and following.)

- (5) Inviolability of domicile and postal secrecy as recognized by the Constitution are notoriously disregarded. (Regulations of the Dresden General Post Office Administration of September 9, 1950 — Doc. 275 and following.)
- (6) The administration of the Soviet Zone of Germany is dominated by the Socialist Unity Party (SED), which was created under pressure of the Soviet Occupation Power against the will of the great majority of the social democrat members and must not be confounded with the German Social Democratic Party. The members of the SED in public service have also in their official activities to follow the orders of the Party. (Decision of the Socialist Unity Party of Germany — Landesleitung Mecklenburg, of February 3, 1952 — Doc. 281.) The activity of the State serves the realization of the aims of the Socialist Unity Party of Germany, which consist in the establishment of a Bolshevik order of State and society according to the Soviet Union pattern, without taking into consideration the vital needs of the population.
- (7) In order to achieve this aim, illegal measures are taken in numerous cases. In addition to the usual administrative authorities and the State Security Service, special offices with far-reaching powers, especially Control Committees and Boards for the Protection of the People's Property, have been established. (Order concerning the tasks of the Central Control Committee etc. of September 1, 1948, and the regulations of its implementation — Doc. 287 and following.)
- (8) Heavy taxation is imposed arbitrarily and illegally, in accordance with government needs as established by the Socialist Unity Party of Germany.
- (9) Very little legal redress of any kind is open to the population. Complaints to higher authorities have been unsuccessful in the majority of cases. In fact, the constitutionally guaranteed administrative jurisdiction is in reality insignificant or non-existent (Saxen/Anhalt, Saxony). Tax tribunals as announced by the Law on Taxation of December 2, 1950, have not yet been established although more than 20 000 appeals are awaiting judgment.

II

- (1) For the achievement of the aims of the Socialist Unity Party of Germany the administrative authorities violate the existing laws of the Soviet Zone of Germany, the laws of humanity and the general legal principles of a civilized world as laid down in Articles 8, 12, 13, 17, 19, 20, 21, 26, and 27 of the "Universal Declaration of Human Rights" of December 10, 1948, although these legal principles have also been guaranteed in the Constitution of the Soviet Zone of Germany of October 7, 1949.

- (2) From the reports made by the citizens of different Satellite States and countries occupied by the USSR (Albania, Georgia, Rumania, Czechoslovakia and the Baltic States Estonia, Latvia and Lithuania) it may be concluded that the conditions prevailing in these countries correspond with those prevailing today in the German Democratic Republic, and with the same flagrant violation of Human Rights. In the Baltic States even mass deportations of innocent human beings have repeatedly taken place.

- (3) The Committee considers that constant review of the development of legislation and its application behind the Iron Curtain is an urgent necessity, together with careful investigation of the systematic violation of Justice, wide publication of reliable information and active support in the fight against the suppression of Law perpetrated against the population behind the Iron Curtain.

The Committee is bound to support the struggle of the nations behind the Iron Curtain for the maintenance of liberty.

Resolution of the Committee for Penal Law

The Committee for Penal Law passed the following resolution:

I

The Committee for Penal Law of the International Congress of Jurists, after due examination of the material presented, and having heard and questioned witnesses concerning the legal situation and the administration of the Law of the Soviet-Occupied Zone of Germany, is of the opinion that

- (1) In the Soviet-Occupied Zone of Germany persons are arbitrarily arrested and detained.
- (2) In the prisons of the State Security Service (SSD) prisoners are tortured and subjected to other forms of inhumane treatment.
- (3) The tribunals of the Soviet-Occupied Zone of Germany are neither independent nor impartial. The principle of public trial is frequently disregarded.
- (4) The verdicts of these tribunals are often inhumane and cruel, especially in political and economic trials.
- (5) No consideration is given to the fact that in many cases the accused are young persons.
- (6) The State Prosecutors and the Judges in the Soviet Zone of Germany frequently take advantage of political or economic charges to return verdicts involving arbitrary and illegal confiscation or expropriation.
- (7) In political or economic trials the accused is not always entitled to defend himself and cannot choose his counsel freely; nor is he, generally, permitted to consult his legal representative otherwise than in the presence of prison officials. He has only limited access to his dossier.
- (8) The administrative authorities of the Soviet Zone of Germany may impose such fines and enforce such economic measures as are likely to deprive the accused of his livelihood. No appeal or redress of any sort is possible.

- (9) The prosecution of members of certain religious sects shows that the principle of freedom of conscience is disregarded.

- (10) In addition, numerous trials and verdicts prove that the principle of freedom of opinion and speech is likewise subject to constant violation.

II

The Committee therefore concludes:

- (1) That these violations of the basic principles of Law and Justice constitute an offence to the conscience of Mankind;
- (2) That they are contrary to Articles 3, 5, 9, 10, 11, 18, and 19 of the "Universal Declaration of Human Rights" of December 10, 1948;
- (3) That they affect the very basis of the Constitution of the German Democratic Republic;
- (4) That the existing legislation is not applied and that the administration of Penal Law in the Soviet Zone of Germany deliberately fails to conform to the principles of the Rule of Law.

III

The Committee on Penal Law takes note of the reports concerning the development and application of Law and Justice in Czechoslovakia, Bulgaria, Rumania, Latvia, and Estonia, although it has not extended its investigations to those countries.

The Committee considers that a further examination of the development and application of Law and Justice in the Soviet sphere of influence is necessary, and that world public opinion should be informed of the results of such an examination.

Resolution of the Committee for Civil and Economic Law

The Committee for Civil and Economic Law concluded its work with the following resolution:

After examination of the material presented and having heard and questioned witnesses, the Committee believes

- (1) that the orders issued by the Soviet Military Administration for Germany (SMAD) and the acts of expropriation without compensation based upon such orders, which aim at introducing State Capitalism in the Soviet Zone of Occupation of Germany, for agriculture (e. g. landownership over 100 hectares) as well as for the majority of industrial concerns of economic importance, are contrary to the principles of Law, when such orders and acts have exceeded the provisions governing the expropriation of war criminals and active members of the Nazi Party and recognized war reparations. Such acts of expropriation are arbitrary by the terms of art. 17, § 2 of the "Universal Declaration of Human Rights" of the United Nations;
- (2) that the laws and decrees issued by administrations or parliaments in the Soviet Zone of Germany, providing a basis for expropriation without compensation for the purpose of socialization, are invalid and hence arbitrary under art. 17, § 2 of the "Uni-

versal Declaration of Human Rights", because those institutions have not been set up in a democratic manner, but by intimidation used in the interests of the Communist Party.

- (3) Documents have been submitted to the Committee showing the procedure for expropriation adopted in the Soviet Zone of Occupation for the purpose of socialization. They indicate that expropriation without compensation has been carried out by legal verdict or administrative act, although there was no evidence for the alleged facts (e. g. in criminal prosecutions for alleged fascist activities, for economic offenses, for tax-evasion and for infringement on price ceiling regulations). The Committee believes that such an abuse of statutory provisions is tantamount to arbitrary expropriation under art. 17, § 2 of the U.N. Declaration of Human Rights.
- (4) Finally the Committee believes that the denial of legal redress in cases of expropriation without compensation and other cases of claims arising out of measures taken by the public authorities, is contrary to articles 8 and 10 of the U.N. Declaration of Human Rights (e. g. in cases of seizure, forfeiture, requisitions, sequestration of lodgings).

Resolution of the Committee for Labor Law

The delegates of the Committee for Labor Law passed the following resolution:

The Labor Law Committee has considered the material presented to it by the Investigating Committee of Free Jurists as to conditions in the Soviet Zone of Germany and has heard a number of witnesses. The Committee is of the opinion that the following facts have been established:

- (1) The workers do not have the right freely to choose their occupation and, even when they are employed in jobs which they prefer to keep, are frequently ordered, under threat of punishment, to take jobs in mines or other industries, where it has been determined that their employment would further the interests of the regime.
- (2) The workers are not free to organize trade unions of their own. Their sole choice is the "Freier Deutscher Gewerkschaftsbund" (FDGB, Free German Trade Union Federation) which is an instrument of the State, and which is not in fact a genuine trade union but represents the interests of the State, the actual owner of the means of production, and fre-

quently acts contrary to the interests of its members. Collective bargaining no longer exists. Wages and working conditions are fixed by governmental decree.

- (3) A wage system has been introduced which is based upon production norms fixed arbitrarily by government order and without relation either to accepted standards of wage determination or to the principle of providing an adequate minimum wage. The workers are denied any voice in the fixing of these norms and have no protection against repeated increases in work requirements which impose heavier and heavier burdens upon them and endanger their health and welfare.
- (4) In nationalized enterprises, which include all basic industry, legislation for the protection of workers is frequently disregarded to the detriment of the workers' health and security.
- (5) Workers are frequently discharged for political reasons, and, under express statutory language, may be summarily discharged, without the right to appeal, by order of governmental committees of inquiry or other control authorities.

Resolution on the Abduction of Dr. Walter Linse

The Plenary Assembly of the International Congress of Jurists moreover passed the following resolution on the "Linse case":

The International Congress of Jurists has learned with deep emotion about the kidnapping from West-Berlin of the member of the Investigating Committee of Free Jurists, lawyer Dr. Walter Linse, on July 8, 1952. Such an offence against personal liberty violates the laws of all nations of the world. A human being should only be deprived of his freedom according to the Law.

The Congress has learned that authorities of the Soviet Zone appear to have done nothing in order to

examine the abduction of Dr. Linse and to call to account the responsible persons.

The jurists from 43 countries present in this Congress agree that by their inactivity the authorities in the Soviet Zone, and especially the General Prosecutor of the German Democratic Republic, are suspect as accomplices in the crime committed against Dr. Walter Linse.

Therefore the Congress intensively stresses the opinion that it expects from the competent authorities in the Soviet Zone the immediate release of the kidnapped jurist and that they will take all measures to clarify this flagrant violation of Law.

Resolution on the Work of the Investigating Committee of Free Jurists

The Indian delegate, Mr. P. TRIKAMDAS, Chairman of the Socialist Party of India and former Secretary to Mahatma Ghandi, brought in the following resolution which was unanimously adopted by the Congress:

This Congress of International Jurists conveys its appreciation and sympathy to those members of the Investigating Committee of Free Jurists who are work-

ing at grave personal risks to themselves in East Germany in helping the citizens of that region in their attempts to obtain Justice. The Congress condemns the trials and convictions of some of these brave men and women and the savage sentences enforced on them for being members or helpers of the Investigating Committee of Free Jurists.

Resolution on the Constitution of a Standing Council of Exiled Jurists

The following resolution was passed by the exiled jurists participating in the International Congress of Jurists.

The exiled jurists who are taking part in the International Congress of Jurists, have decided on the constitution of a "Standing Council of Exiled Jurists from Countries behind the Iron Curtain", which Council will be composed by leading jurists and politicians from Russia, Rumania, Bulgaria, Lithuania, Latvia, Estonia, Poland, Albania, Czechoslovakia and Korea. It will be the task of the Council to take measures for a joint fight against the Systematic Injustice behind the Iron Curtain and in doing so to make use of the experiences of the Investigating Committee of Free Jurists.

The President of the National Council of Czechoslovakia, former Ambassador Prof. Dr. S. OSUSKY, and Dr. T. FRIEDENAU, Chairman of the Investigating Committee of Free Jurists, have been charged with the preparations for the constitution of an International Investigating Committee to be developed from this Council of Exiled Jurists.

In close collaboration with the Standing Committee of the International Congress of Jurists at The Hague, which was also constituted, the Council has the duty to inform the whole world about the acts of Injustice committed by the Soviets. By keeping in touch constantly, the leading jurists in exile from the Satellite

Countries will exchange their experiences, with a view to forming a common Front of Law against Systematic Injustice and by their influence mitigating the consequences of such Injustice, thus becoming a practical aid for the population of the Soviet-dominated territories.

During the last Plenary Meeting of the International Congress of Jurists the delegates Recorder W. RAE-BURN, Esq., Q. C., Great Britain; Prof. Dr. A. TRI-MAKAS, Lithuania; and P. TRIKAMDAS, India, brought in several motions.

Further motions were made by Prof. Dr. J. CARA-BAJAL VICTORIA, Uruguay, Chairman of the Committee for Public Law, and by Prof. G. BELLA-VISTA, Italy, Chairman of the Committee for Penal Law. Due to lack of time these motions could not be voted upon in the Plenary Meeting. They were, therefore, forwarded to the Standing Committee of the International Congress of Jurists.

Note: As, due to the different systems of the administration of justice that exist in the Soviet Zone of Germany and in the Western World, it is sometimes impossible to translate exactly certain official titles and administrative nomenclature, we apologize for eventual divergencies you may find in the translations of this report and the Collection of Documents "Injustice as a System". For the translation of the publications mentioned different interpreters have been engaged.