

Bulletin
of the
International
Commission
of Jurists

1956-1957

**FOR THE RULE
OF LAW**

***Bulletin
of the
International
Commission
of Jurists***

*"That every State and every citizen
shall be free under the Rule of Law"*

No. 4

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March 1956

Preface

On a number of recent occasions we have expressed concern about the indifference and lack of appreciation of so many lawyers from countries of the free world for the great principles of the systems of law which form the very basis of their profession.

That balanced relation of the individual to the community, of the citizen to his government, which throughout the ages has been the basis of the development of justice into a system of equality and liberty, the system of the Rule of Law, has grown too precarious in the world of today to allow any member of the legal profession to withdraw from a continuous interest in and anxiety for this legal-philosophical, legal-sociological and legal-political problem.

It does not seem necessary to point out again that many lawyers of today lack interest in and devotion to the elementary problems of modern political and social development, in vivid contrast to the spiritual atmosphere in which the legal profession lived and acted in the century which preceded ours.

We are all the more happy, therefore, that now and then we are able to make a more joyful and optimistic tone heard.

In many countries, not only in the centres of world events but also in the farthest corners of the earth, the efforts and strivings of the International Commission of Jurists have found their echo in the formation of groups which wish to support the fight and mission of this small, bold Gideons band. More and more often the question is put to us: what does the Commission suggest in the way of concrete activity for these organisations, which, in their national surroundings, want to fight for the preservation, the restoration or the propagation of fundamental legal values?

If in the present bulletin we give world-publicity to the masterful address made by the President of the Supreme Court

of Germany, Dr. Hermann Weinkauff,¹ it is not because this address contains a detailed answer to all the questions which reach us on this subject. Political, economic, social, cultural and juridical conditions are often different in the various parts of the world. As little as there is a uniform system of government which can be applied equally to every country, as little the exact activity of each national association, which in its own country wants to propagate the essential ideas and ideals of the Commission, can be defined in a stereotyped manner. But the Commission cherishes the unshakable confidence that there exist fundamental truths and fundamental values of justice, which — however differentiated in form and gradation in the different countries — will constitute everywhere the chief content of such activity.

Dr. Weinkauff has formulated these fundamental truths clearly and succinctly. He has put them in the midst of the reality of the modern world and confronted them with this reality. He has drawn the conclusions from this confrontation with regard to the duties of every lawyer who has those fundamental legal values at heart.

It is certainly no coincidence that this penetrating formulation is made by a Justice of a high German court. Germany — it is Dr. Weinkauff himself who points this out in his address — has in the most grievous way experienced the effect and the danger of the denial of these values in its own community and experiences them still today. In a recently published, excellent book called "The Perversion of Legal Systems"² — likewise from a German pen — Prof. Fritz von Hippel has demonstrated at length the inner conformity between the totalitarian systems of national-socialism and communism and has placed them in their universal-historical connection.

¹ Delivered to an audience of some sixty of the most prominent German jurists — ministers, professors, judges and lawyers — at the occasion of the founding of the German Section of the International Commission of Jurists in April 1955 at Baden-Baden. The address is reproduced in this Bulletin.

² Fritz von Hippel, *Die Perversion von Rechtsordnungen* (Tübingen, 1955).

As Dr. Weinkauff clearly indicated, future activities of national organisations — and this applies to the Commission as well — could take at least three courses. The first relates to the defence against and denouncement of the systems of injustice which violate fundamental legal values in a continuous and state-organized way. The second pertains to the exercise of vigilance within our own states towards influences which can hollow out or undermine those values. The third, finally, — and this is perhaps the most important, positive part of our task — concerns the formulation of the fundamental legal principles for a world which technically, economically, socially and politically is undergoing one of the greatest evolutions, if not a revolution, in its history.

But all this also means it is not sufficient to formulate these principles only theoretically; they will have to be elaborated and made useful, as part of a system of government and, above all, they must become a common property, a reality, instead of remaining limited to mere high-sounding words.

The Commission envisages — as the Athens International Congress of Jurists requested it to do in one of its most important resolutions — to give in the future the greatest attention to this last point. It is the purpose of the Commission to do exactly this in coming publications, with the cooperation of personalities of international renown.

The strong moral encouragement which the Commission receives from jurists of the highest repute in many countries strengthens its confidence that the first tentative steps of the Commission were the correct ones.

The Honourable Earl Warren, Chief Justice of the United States of America, in a most important and vigorous article — “The Law and the Future”³ — looked ahead and sketched the prospects for the developing role of law in the coming 25 years, a period of world-embracing and perhaps universe-stirring, technical development, and stressed the vital need of finding, on an international plane, a common charter of fundamental rights. He stated:

³ *Fortune*, November 1955, c 1955 Time, Inc.

"The U. N. has not succeeded in writing a generally satisfactory Bill of Human Rights. This does not mean that there is no measure of international agreement on this vital subject. Last June an International Congress of Jurists, composed of lawyers, judges, and teachers from forty-nine nations, showed an astonishing unanimity in their so-called Act of Athens, defining the basic characteristics of a free system. They declared that the state is subject to the law, and owes its citizens the means to enforce their rights; that judges should uphold the rule of law in entire political independence; that lawyers of the world should insist on a fair trial for every accused; and that the rights of the individual, to be protected by the rule of law, include freedom of speech, press, worship, assembly, association, and free elections. If by 1980 this writ should run through all the nations whose lawyers helped frame it, then indeed will the great tradition of government under law be established beyond challenge in our world."

There is a remarkable similarity in the above with the statement of Dr. Weinkauff: "The lawyers have to unite themselves about ultimate, universally-valid principles of law, unconditionally binding every government."

* * *

The Commission is aware that the task which it has undertaken, that is, to have the writ of the Act of Athens run through all the nations, to unite the lawyers of the world on the ultimate and binding principles of law, will meet with and be crossed by political passions: thirst for power, greed for gain and mere hate.

But the Commission is confident that its positive activity, as inspired by the spirit of the noble words of Dr. Weinkauff and Chief Justice Warren, will prevail in the ultimate victory of justice.

A. J. M. van Dal

Address by

DR. HERMANN WEINKAUFF

President, Federal Supreme Court of Germany

Delivered at the Founding of the
German Section of the
INTERNATIONAL COMMISSION OF JURISTS
on April 29, 1955, at Baden-Baden

Ladies and Gentlemen,

The members of the German Section of the International Commission of Jurists, which was founded yesterday, asked me to make some introductory remarks this morning at this larger assembly on the reasons for the foundation of this Section, its aims, and its mode of operation. I am pleased to comply with this request because I have the feeling that this is not one of those numerous foundations which, though useful, could be dispensed with. Here we have an earnest effort to stand up against a present dangerous and serious threat to law, and to win for this purpose all lawyers and jurists, not only in Germany but everywhere where the law as a bulwark of freedom is taken seriously.

What is the point at issue? In the course of the twentieth century so-called totalitarian movements arose, some of which are still struggling for political power, which, however, they obtained for a part — and that in large parts of the world — or had once obtained. These movements are the cause of a peculiar, strangely analogous disorder which was hitherto unknown as such, even a disorganization of law. While retaining the superficial forms of law they hollow out its inner substance. By means of innumerable legal provisions they cause a more or less far-reaching, at times an almost absolute, lawlessness. The point is now to recognize this danger, to make it clear first to the jurists and then to the peoples, when possible to obviate it where it has already become reality, and to prevent it where it is only threatening to become reality. We are concerned, therefore, with a struggle for law, or to be more precise, the defence of law, and not with a political fight. This struggle must be decided in the field of law and by lawful means, objectively, without indulging in claptrap, but

with that restrained inner passion which this purpose requires. Nobody, above all no jurist, should exclude himself from this task, be it only by indifference or by a cautious stepping aside.

We Germans, the German people as well as the German jurists, twice received terrible object-lessons in these matters which we should not forget: once, under National Socialism and then again is that unhappy part of our country which still to-day, or once again, is governed by a totalitarian regime. This fact obliges us in a special way to be quick of hearing and watchful in defence of the law and to reflect intensively once more on our relation to law and to form it anew. In this respect German jurists can never take their responsibility seriously enough. But, on the other hand, these bitter experiences enable us, perhaps to a higher degree than our Western friends who were spared these experiences, to realize how far the totalitarian threat to law goes, how difficult and almost impossible it is to evade it or to resist it once it has become a reality, and how much one should guard against giving unproved general opinions on the unworthiness of persons who are involved in such a system.

It cannot be my task now to illustrate in detail, on the basis of a model, so to speak, how the totalitarian system takes effect on the law. It is rather the main task of this newly founded Section to discover this in an objective way, to clarify the methods and the results of legislation and — what is far more important — to clarify the application of law in the totalitarian sphere, to realize how an interdependent system of legal and illegal means finally leads to the deprivation of the rights of the citizen in every essential respect and transforms him into a mere object of the state and of the relatively small group which governs society. A subsequent task is to compare this perverted law with real law, to discover the dangerous points which threaten law with decadence and from which no legal order is positively secured, and to stimulate the formation of an intellectual and ethical movement for the restoration of real law.

Now, how is the relationship between power and law worked out in a totalitarian system — shown in a rough schem-

atic outline? A minority group, kept together by a fanatical political credo and by brutal leaders who above all are intent on power, who lack any ethical and legal inhibitions and who are basically nihilistic, has gained power in the state, be it by direct force or by pressure similar to a coup d'état, or as a result of occupation by foreign military forces; the object of the group then is to transform the whole people into a uniform, unified instrument of its regime, with no political will of its own but which is technically efficient, and to gain more and more power with the help of this instrument. For since the undertaking is in reality a nihilistic one, there always remains as the last target — beyond all the prominent political and economic ones — only the never-ceasing, vain increasing of power as such. *The means employed for gaining and maintaining power are: propaganda, which is designed to arouse fanaticism and hatred — fanaticism for the regime and hatred for its alleged enemies, no matter whether they are depicted as racial or class enemies; indirect, and, in most cases, direct terror, which is to create among the masses the feeling of a continuous threat, helplessness, fear and mistrust of everybody; granting of political and economic benefits to the bearers of the organization of the regime and, if feasible within the scope of the preponderate purposes, also economic elevation of those classes on which the regime intends to rely chiefly.* It is clear that such a system no longer has any place for actual law. It is only tolerated there where it cannot be dispensed with, in order to ensure the outward functioning of economic and social life. Where it could become a danger to the actual political system of the government, it either disappears or is transformed into a terroristic instrument for the protection of the system.

State power no longer proceeds from the people. The citizen loses the rights to political association. They have become the monopoly of the so-called state party, or, more precisely, a monopoly of its supreme leadership, whether its form is monocratic or oligarchic, and whether only the so-called state-bearing party is permitted or other parties are also hypocritically admitted in the beginning, which parties, however, are politically undermined and the leadership coordinated.

Elections are nothing but a humiliating farce, since votes can only be cast in the manner dictated from above and nobody dares to vote as he pleases. The separation of powers disappears; all power is rather concentrated in the leading authorities. Fundamental rights no longer exist, even though they may be loudly proclaimed on paper in constitutional documents. The rights of personal freedom and self-determination are denied on principle; the citizen is, strictly speaking, no longer anything but the object of state power; a man ceases to be a person; thereby, however, the innermost core of human existence is outrageously attacked, even abolished.

At any time an anonymous, terrible power, the secret state police or whatever it may be called, may snatch out of the dark for the life, the freedom, the property, the honour and the family of the individual and wipe them out. In this connection a fine intelligence net, a really all-embracing system of informers, is spread over the country and its people. The state power may at any time, directly or indirectly, take away your property without compensation and force you to perform any work. In all spheres of life and culture you are allowed to think and speak only in the way prescribed by the prevailing doctrine. It is precisely this inner uniformity which the regime tries to exact by all means. When churches cannot be destroyed immediately, they are limited to the narrowest scope of religious worship and their field of activity is diminished to an ever-increasing degree. Science and art are coordinated. Social groups which are legally organized, especially trade-unions, are deprived of their rights. Children are to a great extent withdrawn from their parents' influence and are given a one-sided political education even at a young age.

Even marriage loses its true nature and takes on a one-sided political character. Civil law is gradually crumbling away, since legal relations between equal legal entities disappear more and more. Penal law adopts increasingly terroristic forms, above all by draconic threats of punishment and by extremely vague determination of criminal offences in the fields of political and economic penal law. Planned economy and taxation laws become means of expropriation. Labour

law leads to state slavery. The free Bar is forced to fade away. The procuracy rules over the court. The independence of judges disappears; judges become dependent political functionaries who pronounce judgments according to the orders of the regime, partly from fanaticism and partly from fear.

When asking the question how such a decadence of law could come about, one asks at the same time why the jurists did not or could not oppose such a development more effectively. But then the following question also arises, which I consider to be mainly for the work of the International Commission of Jurists and to which I want to devote a few remarks, namely this: whether our inherited concept of law was faulty from the very beginning and needs to be corrected, i.e., corrected in a way which would enable us to recognise in time the totalitarian decadence of law and to oppose it effectively by legal means in the beginning of its development — the only period in which it can be fought off at all.

It can certainly be said that in the beginning the development of lawlessness in our country progressed only slowly and step by step; that at first the aim of this procedure was not immediately clear to everybody, and that after a certain point any counter-action was practically impossible, except at the price of open resistance which, however, was as a rule useless and ended in the dark without effect, at the risk of one's life, therefore, which in general only few persons, only the best ones, are able to do. But to-day we know how the totalitarian decadence of law generally tends to start, to proceed and to end, and we can and must impress this on the minds of those who do not know it any more or do not yet know it.

One could also ask: "Of what use is a counter-action of jurists if it does not find a vast echo in the people, if justice does not enjoy any more the unconditional and self-evident esteem which once made the old Greek philosopher say that the people have to fight for their *nomos*, for their legal order as for the walls of their native town." This is a profound and serious question. The least we should have learnt from the past is this: if a people no longer has any direct contact with

its legal system it must continuously be told, especially already at school, what its law is and what meaning it has for the security and freedom of the people.

But is this not in contradiction to the so-called scientific methods, to the technical perfecting of law in which field we German jurists especially believe we have made great progress and of which we sometimes tend to be proud in a rather naive way. Yes and no. Law requires science, but it is more than science alone. As a scientist one can adopt a two-fold attitude towards law: firstly, by elaborating a given system of legal rules dogmatically, that is abstractly-logically, thus making it fit for application, and secondly, by investigating and showing the historical development of law. Both are scientific ways, scientific, it is true, without furnishing proofs as scholars of mathematics and physical sciences do. Thus, however, one has completely failed to grasp the essence of law, that which forms the basis of its intrinsic binding force and of its effective power over the hearts of the people. The irrational essence of law evades a purely scientific approach, and it is a disastrous error to believe and to teach in a sort of spiritual arrogance that law is only that which can be deduced in a strictly scientific way. The judge constantly feels this when practically applying law — he is then practising art and not science — and if he feels differently, he is not a good judge. With some exaggeration one could venture this paradox: the more law is technically perfected and the more one relies only on this perfectionation, without the irrational basic values of the law being emotionally embedded in the people, the less important the law's intrinsic power of conviction becomes and the sooner it will be prone to totalitarian decadence.

But the decisive point has not yet been mentioned. The decisive weakness of jurists in the struggle against the totalitarian decadence of law was their inveterate concept: "Law is created only by state legislation; law is only that which is established by the rulers and everything they declare to be law is law." On the grounds of this legal philosophy, one was indeed completely powerless in the face of the legislative

authorities in a totalitarian state; then nothing remained but to obey in silence — albeit under qualms of conscience — or to steer a middle course in individual cases, or to resign from one's office. This starting-point is wrong, however. There is a quintessence of law, a final legal order, which is valid by itself and which cannot be broken by any ruler of a state. It is essential to realize this fact and to develop it in detail, if one intends to really master the totalitarian decadence of law. It seems to me that the tasks of the International Commission of Jurists lie here in the first place. It is erroneous to think, however, that this knowledge is already common property. On the contrary. Those who were lucky enough to escape a totalitarian dictatorship and to live again in a constitutional state often tend to sing the old, easy song again: "Law is only what the state lays down as such". Many jurists become nervous again if they just hear of natural law, or they console themselves with the knowledge that fortunately all such differences are not important any more in a constitutional state. In this way, however, no justice is done to the deep seriousness of the questioning; in this way, one abandons the victims of a totalitarian regime as far as legal assistance is concerned; and one's own constitutional state will not exist so very long and will not be too secure, if one is not able to defend oneself also against the totalitarian threat by means of law and legal philosophy.

The jurists should agree on legal principles which are unconditionally binding for the rulers of a state. In this connection it is not even so critical for the practical result whether these principles are justified strictly in terms of natural law, or whether they are only regarded as the expression of basic legal concepts which have become historical, but which rule the Christian-Occidental sphere of civilization and which break contradictory law.

Strictly speaking, the following elements seem to be decisive: the principle of equality, the basic rights, the right of resistance and certain basic and allegedly prescribed principles of order for the order of the family, the people, the state, the churches and the peoples. I cannot go into

details here; this will be one of our future tasks. Let me only mention the following: every totalitarian regime legally subsists in first place on the violation of the principle of equality; it is precisely one of its characteristics that it constantly treats what is equal by law in an unequal manner. For this reason it is necessary to take the principle of equality as the formal basic law of every legal order seriously, to recognize that it is — though only in its utmost limits and notwithstanding its formal character — an instrument for realizing material justice and that it breaks contradictory law. It is not very encouraging when nowadays jurisdiction for a part again renders the principle of equality so relative that it becomes practically inapplicable. On the other hand, the totalitarian regime legally subsists on the denial of the fundamental rights. If it would have regard for basic rights it would annihilate itself. In the face of the worldwide totalitarian threat to law the fundamental rights are indeed of vital importance. It seems to me, however, that one should heed two things: in the first place, it has become a fatal custom to speak in a hollow and pretentious manner of the freedom and dignity of man without drawing any legal conclusions from this. The matter is too serious to be treated in such a way. Everything that violates the genuine fundamental rights is void of any legal sense, be it what it may be. Then, I believe one should resist the tendency to formulate in detail innumerable fundamental rights in national legislation and in international agreements. This may result all too easily in a positivistic weakening of the few elementary fundamental rights which really matter. I consider it more important and of more practical consequence to remember the profound essential basis from which the fundamental rights originate, and which rank over all other rights. Fundamental rights are nothing but the legal expression of the fact that man is a person, i.e., that he alone of all creatures is destined to make a free and self-responsible decision between good and bad, or, to put it more profoundly, that he is made in God's image. Of course, this is not recognized by the totalitarian decadence of law; but here its mortal essence

is apparent. Because of his quality as a person an unassailable sphere of law and freedom is spread around every individual; for that reason, his free decision in conformity with his conscience must not be infringed; for that reason, he possesses the right to political association; for that reason he enjoys protection of property. — Finally, the right to resistance. This question does not arise or hardly arises in a protected constitutional state; it does arise, however, indeed with piercing sharpness, in a totalitarian state of injustice. I therefore consider it not the smallest task of the International Commission of Jurists to work out a doctrine of the right to resistance, which will be able to substantiate this right and to define its limits.

Let me conclude at this point. I believe we all have the feeling that the task which the International Commission of Jurists and their national groups have set themselves is as broad as it is difficult. It seems to me that its most pleasant side is the fact that it will be the mutual work of all the nations for which the rights constitute the basis of human freedom. We hope that in this joint work they will get to know each other better and to appreciate each other. This seems to me a comforting hope in this time of need.

Newsletter

FRANCE

The French Section of the International Commission of Jurists — “Commission d'Etudes Juridiques pour La Défense des Libertés Fondamentales” — was created on March 1, 1955.¹

The initiative for forming an organization in France which would undertake the propagation of the aims of the International Commission of Jurists was taken by two French participants in the Berlin Congress in 1952: Mr. Daniel Boisdon, former President and Counsellor of the Assemblée de l'Union Française, and Mr. Jean Kréher, lawyer at the Court of Paris. Mr. Jean-Louis Aujol, lawyer at the Court of Paris, joined their effort in the beginning of 1955. This small nucleus of enthusiastic persons, with the earnest desire to create a French organization to work within the framework of the International Commission of Jurists, formed the origin of the French Section.

The Constituent Assembly of the French Section, which took the name “Commission d'Etudes Juridiques pour la Défense des Libertés Fondamentales” in order to make clear its basic principles, was held on March 1, 1955, in the Musée Guimet in Paris in the presence of a large number of representatives of all the juridical professions. During the course of the meeting Mr. A. J. M. van Dal, Secretary-General of the Commission, held a speech in which he emphasized the importance the French Section could assume within the International Commission of Jurists. Mr. James L. McDonnell, member of the London Bar, Professor Henrik Munktel, University of Upsala (Sweden), Dr. Theo Friedenau, Chairman of the Investigating Committee of Free Jurists in West-Berlin, and Dr. Edouard Zellweger, lawyer at the Bar of Zürich and former Swiss Minister to Yugoslavia, extended greetings from the English, Swedish, German, and Swiss jurists.

¹) The following report is based on information submitted by the French Section.

After the adoption of the statute of the new association, a provisional Board was elected. It was completed by a General Assembly of May 26, 1955, which was held in the Civil Chamber of the Court of Cassation in Paris. At this occasion the French members were able to meet Messrs. James Grafton Rogers, former Assistant Secretary of State of the United States, Ernest Angell, Chairman of the American Civil Liberties Union, and Professor R. Maurach, of the University of Munich. Mr. Jean Kréher gave an address in which he defined the broad lines of activity of the French Section: to oppose everywhere injustice which threatens to become systematic; to undertake juridical studies illustrating the meaning of liberty as applied to judicial institutions; to put into practice, by the development of international contacts, international solidarity in the sphere of the defence of fundamental freedoms.

On May 27, 1955, the members of the Executive Committee of the French Section were received by the Minister of Justice, H. E. Robert Schumann, who showed a lively interest in the activity of the International Commission of Jurists and its French Section.

After the General Assembly of May 26, 1955, the French Section was organized as follows:

GENERAL PRESIDENT OF THE FRENCH SECTION:

Daniel Boisdon

PRESIDENT OF THE EXECUTIVE COMMITTEE:

Jean Kréher

VICE-PRESIDENTS: Robert Lecourt, former Minister of Justice, parliamentary representative of Paris;

André Blondel, Professor at the Law Faculty of Dijon;

Paul Janvier, Counsellor at the Court of Appeal;

Jean-Jacques Marzorati, Lawyer at the Bar of Le Mans;

Louis Rousseau, Lawyer at the Council of State and at the Court of Appeal.

SECRETARY-GENERAL: Jean-Louis Aujol, Lawyer at the Court of Paris.

ASSISTANT SECRETARY-GENERAL: Mrs. Jacqueline Bromberger, Lawyer at the Court of Paris.

TREASURER: Louis Pettiti, Lawyer at the Court of Paris.

ASSISTANT TREASURER: Mrs. Suzanne Merle, Lawyer at the Court of Paris.

MEMBERS OF THE EXECUTIVE COMMITTEE:

Messrs. Emmanuel Blanc, Lawyer at the Court of Paris.
René Dupuy, Lawyer at the Court of Paris. Gouvernel,
Lawyer at the Court of Paris. Rochette, Lawyer at the
Court of Paris.

The following regional delegates were designated for the present: for Dijon — Professor Blondel; for Nice — Mr. Pecout; for Le Mans — Mr. Marzorati; for Bordeaux — Mr. Sire.

It has become apparent to the French Section that in order to defend the juridical principles, as defined in the Universal Declaration of Human Rights of the United Nations, it is necessary to ascertain by means of studies on comparative law the concrete juridical rules which are most favourable for the freedom and liberty of the individual and which form the guarantees of a juridical democratic regime. To undertake the problem of fundamental human rights from this point of view would make clear all the violations of liberty taking place in our time in various States, beginning with the study of their legislation. In this spirit the French Section is undertaking at present the organization of a large-scale inquiry into the "Juridical Position of the Politically Accused and the Politically Condemned". The results of this inquiry will permit the jurists to propose to their national legislators the adoption of a real Code for the politically accused and the politically condemned. Such an inquiry will certainly not fail to arouse interest on an international plane. The French Section already

has initiated plans to hold discussions on this theme throughout Europe.

A meeting of delegates from the French and German Sections took place on October 24, 1955, in Strasburg. Present from the French Section were Messrs. Aujol and Kréher; from the German Section, Messrs. Wilhelm Martens, President of the German section and former President of the Court of Appeal in Karlsruhe, and Max Silberstein, member of Presidium of the German Section and present President of the Court of Appeal in Karlsruhe. This meeting was to form the basis of future collaboration between the two sections. The delegates were of the opinion that such a system of regular and close contacts should be extended to include all the national sections of the Commission in existence in Europe. They expressed the hope that it will be possible to hold an informative conference of the European Sections during the course of the year 1956 which would serve to systematize the collaboration between them, with a view to the defence of the principles which form the link between the jurists under the aegis of the International Commission of Jurists.

GERMANY

The founding meeting of the German Section of the International Commission of Jurists took place on April 28 and 29, 1955, at Baden-Baden. ²

Among the sixty prominent German jurists participating in this constituent meeting were presidents of the highest German courts, prominent professors, politicians of the main German parties, lawyers, ministers, members of the German Parliament and high administrative officials. The presence of so many important personalities and leading governmental figures was further evidence that the aims of the International Commission of Jurists were endorsed and that the Commission is actively supported in its fight for the preservation and

² The following report is based on information submitted by the German Section.

extension of those basic legal principles which are the common good of all states governed and guided by the principles of the Rule of Law.

The meeting was opened with an address by Professor Dr. Eberhard Schmidt, Heidelberg, whose report was followed by a paper read by Prime Minister of Baden-Württemberg Dr. Gebhard Müller, Stuttgart, and speeches by representatives of other Sections of the International Commission of Jurists, *inter alia*, by Dr. Jean-Louis Aujol (France), Dr. A. J. M. van Dal (The Hague), Professor Henrik Munktel (Sweden), and Dr. Edouard Zellweger (Switzerland). A major address delivered by the President of the German Federal Supreme Court, Dr. Hermann Weinkauff, reproduced below, constituted the central point in the second session of the constituent meeting. Following Dr. Weinkauff's address, papers were read by Dr. Edouard Zellweger (Switzerland), and Dr. Theo Friedenau. The text of the opening declaration and excerpts from the main reports are reproduced below.

* * *

From the Declaration:

I.

"According to the experiences of unjust practices in totalitarian states and in respect to the possible after-effects of totalitarian legal philosophy also on the Free World, it is necessary to place a precise construction on those basic rights and freedoms established in the United Nations Universal Declaration of Human Rights and to make them live in our legal consciousness.

"Especially, it must be made impossible for the holders of public power to assume an appearance of being the guardians of real justice, in spite of the fact that basic rights are disregarded. The German Section of the International Commission of Jurists has set for itself the task of establishing those minimum guarantees which a state has to grant to its citizens in order to be regarded as a state governed by the principles of the Rule of Law.

II.

"By exchanging views and information with the other Sections of the International Commission of Jurists, the German Section will make efforts to cooperate in the enlightenment of the Free World about legal developments in those states which are ruled by a system of injustice. This is done to enable the formation of a uniform defensive front of Law and to warn in this way of abuse of the Law."

From the address by Professor Dr. Eberhard Schmidt, Heidelberg:

"The task of the International Commission of Jurists and its various national sections evolved from the threat to the world by the system of injustice prospering under the protection of Bolshevism. I believe, however, that it would mean a narrowing of our field of vision if we directed our scientific efforts and turned our minds only and exclusively to the facts occurring behind the Iron Curtain, in the countries of those peoples which are enslaved by Bolshevism. Certainly those facts are a splendidly terrible and permanent example of what may result from the triumph of power over Law and from the unrestrained rule of a cold, teleological thinking, which may influence the fate of those individuals who are defenceless at the mercy of such a rule. But the danger that threatens the idea of justice, the danger that law might really collapse and that, therefore, it would be of no value for human beings to live on earth, comes not only from the Bolshevik sphere of influence. It is a general symptom of our time that such a law-destroying system, as is the Bolshevik system, could become a reality. The dangers to justice originate in our time, they are a symptom of our century . . . The constitutional state, the state which guarantees the human rights in its Constitution and proceeds from them in determining the state order, is not secured at all at the present time. It becomes a living reality only then, when the struggle for a constitutional state never ceases in the daily work of vigilant jurists and, above all, in the life of a really independent judiciary.

"It seems of great importance to me that the national sections of the International Commission of Jurists everywhere join that fight for a constitutional state and that they also become critical guardians, deriving their impulse from a scientific mind and from the ethos of justice, who are willing to counter the dangerous symptoms which have arisen from the spiritual situation of our time and which threaten the idea of justice everywhere. For this purpose, a mutual exchange of experiences can be of great importance.

"For the performance of work which is worthy of regard and notice, it is an absolute precondition that the work of the various sections and of the whole Commission be based on the most orderly scientific methods and on an incorruptive scientific spirit. This applies to the collection of material and documentation, as far as they prove really illegal actions; this applies also to the juridical evaluation of such acts and to exposition at congresses directed to the world at large. The more scrupulous the care exercised, the more conspicuous will be the fact that it is our responsibility to the highest value of human existence, to justice, which urges us to make our declarations . . .

". . . It should be our goal that the International Commission of Jurists, the aims of which we will promote, in virtue of its cooperation with its national sections, of its permanent exchange of experiences with them and of its scrupulously exacting study of facts, will become a kind of public conscience every time its members appear at congresses, i.e., before the world at large, a conscience to whose voice 'he rulers will listen, the blame of which they will have to fear, whose vigilance will support and strengthen all those who have to fight for justice on the firing-line . . . The meeting of jurists from all parts of the world, who are filled with the same anxiety, who feel the same responsibility, who want to serve unpretentiously the same cause, is a result which can be realized by this new international organization. By serving our cause in this way, a spiritual power will be created which will help mankind to overcome the dangers with which this terrible century threatens human culture and even human existence."

From the address by the Prime Minister of Baden-Württemberg, Dr. Gebhard Müller:

"Scientific research is not confined to the limits of nations. It is international in its essence. It comprehends — or tries to comprehend — everything that happens within the domain of human activity and life and even that what happens outside of this domain; it tries to clarify, to direct and to shape. This applies also to the domain of Law.

". . . If I understood properly the aims of the International Commission of Jurists, the research of this association, which works on an international basis, will penetrate all those genuine questions of Law and humanity. It is the task of the national sections to stand up for the maintenance and the strengthening of basic rights and freedoms, which have been developed in the civilized countries, and to promote the exchange of experiences and international relations of lawyers and jurists. Connected with this task is the study of legal conditions in the world according to objective, scientific standards, and the enlightenment of the free peoples on all cases of a severe, systematic injustice . . .

"Such work, which embraces not only research but also evaluation, can only be done from a position which — beyond the differences of the Law practised in the various countries — is based on a higher, general legal conviction claiming totality".

From the address by Dr. A. J. M. van Dal:

"If one wants to talk about the cooperation of jurists for defending the Law, one should first realize what Law actually means and what has to be defended as such.

". . . Law is a precondition of freedom in society. Freedom, as is stated in an excellent little study published in Britain entitled *Rule of Law*, is the totality of the rights which the Law grants to the citizen. Within this circle marked off by Law, the individual person can make the decisions which determine his life and the totality of which form his independence. The demarcation line of this circle can be drawn

widely or narrowly. If there is little space left to the individual person, if most of the decisions he should make are made by others, he may have more security but he will enjoy less freedom. But if the rules determining the limits within which the individual person may decide on his personal life are uncertain as such, and even arbitrary, then he has no free status but is enslaved.

“ . . . The International Commission of Jurists mobilizes and unites the jurists of the world especially to counter the threat of enslavement; the foundation of national associations of jurists, which recognize and support the aims of the International Commission of Jurists, constitutes one of the most effective means of that mobilization.”

From the address of Professor Henrik Munktel:

“ . . . Three tasks ensue, *inter alia*, for the international cooperation of jurists in order to defend the Law. First of all, we have to convey really objective and scientific information on the actual conditions in the totalitarian states. Secondly, we must — if I am allowed to use this expression — stir the legal conscience of our colleagues throughout all the other countries. Thirdly, we must appeal to them to join us in our practical work, in the ‘fight for justice’.

“ . . . I believe that such an organization (The International Commission of Jurists) which in a completely non-political way spreads over national borders — may become a most important factor in this defence of Law. We have set ourselves a great task — to unite the jurists of the western world in the fight for those legal principles which make life worth living. An organization like ours is not capable of living if its members do not play their full part. But I am convinced that if we are only able to stir the legal conscience of our colleagues in all the countries of the world — as I mentioned already — then they too will become efficient in their work.”

From the address by Dr. Edouard Zellweger:

“ . . . However peoples, parliaments and governments may

shape the legal order of their state community, however the equation between state authority and the freedom of the individual will be constituted, however the demarcation line between the rights of the individual person and the claims of the community may be drawn: if the principles of a constitutional state are disregarded, justice will necessarily change into injustice.

"A clear definition, a binding determination of the essence of the basic rights can only be obtained by comparing and clarifying our concepts, that is, only through international cooperation . . .

"Also among the jurists of the free world there must be some who apprehend the necessity and are willing to vivify with activity their belief in the constitutional state. The negation of the constitutional state, injustice as a system, affects us also because it has direct effects on inter-governmental relations. There exists an intrinsic connection between the respect of the human personality and the respect of an international legal order. The greatest threat to International Law as an order of peace emanates from those states which ignore the value of the human personality within their sphere of influence. Our appeal to the jurists of the countries throughout the Free World for international cooperation finds its cogent reason in that perspective."

Among other reports, Dr. Edouard Zellweger (Switzerland) delivered a short lecture on "Yugoslavia Between Totalitarianism and Constitutionalism", based in great part on his intimate knowledge of conditions in Yugoslavia.

Dr. Theo Friedenau, Chairman of the Investigating Committee of Free Jurists (West Berlin), described, on the basis of extensive evidence, the effects of the so-called change of course in the Soviet Union on the Soviet Zone of Germany. The 'New Course', he stated, seemingly introduced in 1953 an approach towards a constitutional state order but the abandoning of this policy led back to a reintroduction of the system of injustice and control by a small group of rulers with the aid of terror and police state methods.

A Statute was proposed and accepted and provisions were made for individual contributions as well as contributions from organizations. The following officers were elected:

PRESIDIUM: President - Dr. Wilhelm Martens, Former President of the High Court of Appeal, Karlsruhe

Prof. Dr. Arwed Blomeyer, Dean of the Law Faculty, Free University of Berlin

Dr. Theo Friedenau, Chairman, Investigating Committee of Free Jurists, West Berlin

Prof. Dr. Reinhart Maurach, Professor of Penal Law, University of Munich

Dr. Wolfgang Pohle, Member, Federal Diet, and Director, Mannesmann AG, Düsseldorf

Prof. Dr. Eberhard Schmidt, Professor of Penal Law, University of Heidelberg

Dr. Max Silberstein, President of the High Court of Appeal, Karlsruhe

SECRETARY GENERAL, Dr. Walter Schmidt, lawyer, Düsseldorf

SECRETARY: Dr. Heinrich Schrader, lawyer, Bad Godesberg

CURATORIUM: President - Dr. Hermann Weinkauff, President of the Federal Supreme Court, Karlsruhe;

Members: Peter Altmeier, Prime Minister, Land Rheinland-Pfalz, Mainz; Walther Ascher, Judge, Federal Supreme Court Karlsruhe; Werner Baerns, President of the High Court of Appeal, Düsseldorf; Dr. Fritz Bauer, Chief Public Prosecutor, Braunschweig; Bruno Becher, Minister of Justice, Land Rheinland-Pfalz, Mainz; Prof. Dr. Gustav Boehmer, Professor of Civil Law, University of Freiburg; Dr. Heinrich von Brentano, Minister of Foreign Affairs, Federal Ministry, Bonn; Dr. Gerd Bucerus, Member, Federal Diet, and Editor, Bonn; Dr. Curt-Eberhard Cerutti, Federal Finance Judge at the Federal Finance Court, Munich; Dr. Thomas Dehler,

Member, Federal Diet, Former Federal Minister, Bonn; August Deynet, President of the High Court of Appeal, Koblenz; Hans Egidi, President of the Federal Administrative Court, Berlin; Kurt Eilles, Secretary of State for Bavaria, Bavarian Ministry of Justice, Munich; Wolfgang Fränkel, Federal Public Prosecutor, Federal Supreme Court; Hellmut Froböss, Former President of the High Court of Appeal, Düsseldorf; Prof. Dr. Otto Gönnenwein, Professor of History of German Law and Public Law, University of Heidelberg; Dr. Alfred Gross, Chief Justice of the Federal Supreme Court, Karlsruhe; Dr. Albrecht Haas, Secretary of State, Bavarian Government Office, Munich; Dr. Wolfgang Haussmann, Minister of Justice, Land Baden-Württemberg, Stuttgart; Prof. Dr. Ernst von Hippel, Professor of Public Law and International Law, University of Cologne; Prof. Dr. jur. Ernst E. Hirsch, Rector, Free University of Berlin; Matthias Hogen, Member, Federal Diet, and Lawyer, President of the Committee for Jurisprudence and Constitutional Law, German Federal Diet; Prof. Dr. Hans-Heinrich Jescheck, Director, Institute for Foreign and International Penal Law, University of Freiburg; Prof. Dr. Eric Kaufmann, Legal Adviser, Foreign Office, Bonn; Dr. Fritz Koch, Bavarian State Minister of Justice, Munich; Prof. Dr. Richard Lange, Professor of Penal Law, University of Cologne; Dr. Otto Lenz, Member, Federal Diet, Bonn, Former Secretary of State; Dr. Bernhard Leverenz, Minister of Justice, Land Schleswig-Holstein, Kiel; Alfred Levy, Former Chief Justice, Berlin; Dr. Gerhard Littmann, Police President, Frankfurt/Main; Dr. Marie-Elisabeth Lüders, Member, Federal Diet, President by Seniority of the German Federal Diet, Berlin; Prof. Dr. Walter Meder, Director, "Osteuropa-Institut", Free University of Berlin; Dr. Gebhard Müller, Prime Minister, Land Baden-Württemberg, Stuttgart; Dr. Udo Müller, Ministerial Chief, Federal Ministry of All-German Affairs, Bonn; Prof. Dr. Rudolf Müller-Erbach, Professor of Civil Law, Commercial-, State- and Administrative Law, University of Munich; Prof. Dr. Werner Niese, Professor of Penal Law, University of Mainz; Prof. Dr. Arthur Nikisch, Professor of Civil Law, Labour Law, Univer-

sity of Kiel; Prof. Dr. Hans Carl Nipperdey, President of the Federal Supreme Court of Labour, Kassel; August Schaefer, President of the High Court of Appeal, Bamberg; Dr. Ernst Schlapper, Mayor, Baden-Baden; Prof. Dr. Carlo Schmid, Vice-President, German Federal Diet, Bonn; Dr. Josef Schneider, President of the Federal Social Court, Kassel; Werner Titze, Chief-Editor, "Südwestfunk", Baden-Baden; Prof. Dr. Eduard Wahl, Member, Federal Diet, Professor of Civil Law and International Private Law, University of Heidelberg; Prof. Dr. Hellmuth von Weber, Professor of Penal Law, University of Bonn; Prof. Dr. Arthur Wegner, Professor of Penal Law and Procedural Law, University of Münster; Dr. Otto Weinkamm, Former Minister of Justice, Augsburg; Dr. Gerhard Westram, Federal Public Prosecutor, Federal Supreme Court, Karlsruhe; Dr. Carl Wiechmann, Supreme Public Prosecutor, Supreme Federal Court, Karlsruhe.
