

Cuba and the Rule of Law

INTERNATIONAL COMMISSION OF JURISTS
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CONTENTS

INTRODUCTION by the Secretary-General of the International Commission of Jurists	VII
NOTE ON SOURCES	XIII

Part One

GENERAL SURVEY

I. Chronology of the Most Important Events in the History of Cuba	1
II. The Land	
A. Geography	9
B. Characteristics of the Land	10
C. Adjacent Islands.	10
III. The Economy	
A. Agriculture	11
B. Mineral Resources	17
C. Industry	17
D. Transport	19
E. Communications	20
F. Foreign Trade.	20
G. Finance	21
IV. The People	
A. General Features	22
B. Institutions	26
1. Political Parties	26
(a) Parties under the democratic régime	27
(b) Political life under Batista	36
2. Trade Unions	43
3. The Army	47
4. The Catholic Church	49
5. Economic groups and business interests	51
6. University graduates, professional workers and intellectual groups.	52
7. Foreign business firms	53

V. The History of the Cuban Revolution Between Two Speeches	
A. "History Will Absolve Me"	55
B. Stages of the Cuban Revolution	60
C. The Judiciary and the Bar Under the Castro Regime	63
D. Castro's Speech of December 1, 1961	69
E. Conclusions	72
Appendices	73

Part Two

THE CONSTITUTIONAL LEGISLATION OF CUBA

I. Introduction	78
II. The 1940 Constitution	78
A. Dogmatic Part of the Constitution	79
B. Organic Part of the Constitution	81
III. Changes in the Constitutional Order	82
A. The Constitutional Act of 1952	83
B. The Short-Lived Restoration of the 1940 Constitution	84
IV. Constitutional Variations Under the Castro Regime	
A. Amendments to the 1940 Constitution	85
B. The Fundamental Law of the Republic of Cuba of February 7, 1959	91
V. Amendments to the Fundamental Law	98
VI. Conclusions	112

Part Three

THE CRIMINAL LEGISLATION OF CUBA

I. Substantive Criminal Legislation	114
A. Regulation No. 1 and Act No. 33	116
B. Criminal Law of 1896	117
C. Act No. 425	119

D. Act No. 664	123
E. Act No. 719	125
F. Act No. 732	126
G. Act No. 858	127
H. Act No. 923	127
I. Act No. 988	128
J. Act No. 1018	130
Conclusions	130
II. Legislation on Criminal Procedure	131
A. Regulation No. 1 and Act No. 33	131
B. Criminal Procedure Act of 1882 and Procedural Law of 1896	133
C. Act No. 425	136
D. Act No. 634	139
E. Act No. 925	141
Conclusions	141

Part Four

STATEMENTS BY WITNESSES

I. Introduction	142
II. The Position of the Judiciary	142
III. The Revolutionary Courts in Action	152
IV. The Case of the Airmen.	181
V. Violations of Personal Freedom	191
A. Mass Arrests	191
B. Individual Arrests	195
VI. Conditions in Cuban Prisons	204
VII. Cruel, Inhuman and Degrading Treatment	219
VIII. Religious Persecution	225
IX. Infringements of Labour Rights	230
X. Offences against Property	241

XI. Infringements of the Freedom of the Press.	245
XII. Violations of the Freedom of Education.	248
XIII. The Right of Asylum in Cuba	252
XIV. On Leaving Cuba	256
XV. Conclusions	259
CONCLUSION	264

INTRODUCTION

The International Commission of Jurists submits in the present Report the results of its inquiry into the situation of the Rule of Law in Cuba under the revolutionary régime of Dr. Fidel Castro. Dr. Castro and his adherents themselves so describe his rule as revolutionary. The Commission's enquiry has extended over a period of years and has involved not only the examination of official and unofficial documents, but as well the interviewing and careful examination of scores of witnesses to events in Cuba before and after the overthrow of the Batista dictatorship.

The Cuban revolution offers for the consideration of international legal opinion an object lesson of cogent interest. The revolution was born under the sign of freedom and democracy and apparently inspired by the highest principles of constitutional government. Its main objective was to overthrow the cruel and oppressive dictatorship of Fulgencio Batista and to restore the Constitution of 1940. Few revolutionary movements have been welcomed with more satisfaction and have engendered more hopes than that of Fidel Castro. The International Commission of Jurists expressed the prevalent feelings of the participants at the International Congress of Jurists in New Delhi when it addressed in January 1959 a telegram of congratulations and best wishes to the first revolutionary government appointed by Fidel Castro and headed by the distinguished jurist, Dr. José Miró Cardona. There can be no doubt that the Batista régime—cruel, autocratic and corrupt as it undoubtedly was—fell amid universal condemnation.

The Commission's opposition to the Batista régime is well-known. The efforts in 1956 and 1957 to establish an effective national section to fight the injustices in Cuba met with failure due to new and stringent laws which forbade the formation of groups and associations. The Commission nevertheless maintained close relations with lawyers and jurists in Cuba whose support of the Rule of Law was unques-

tioned and who opposed as vigorously as possible the injustices of the Batista régime.

But as early as August 1959 the Commission voiced its concern and issued a warning respecting the precarious situation of the Rule of Law in Cuba at that time [see *Bulletin of the International Commission of Jurists*, No. 9 (August 1959), pp. 36-39].

In June 1960 the Commission sent to Cuba a distinguished Professor of Law at the University of Caracas, Dr. Antonio Moles Caubet, to express the Commission's concern over alleged violations of human rights by the new Castro government. Dr. Moles met with officials as well as with a large number of lawyers and submitted a report to the Commission. As a result of his visit, the Commission sent a questionnaire on December 1, 1960, to the Minister of Justice of Cuba inquiring about points of concern to the Commission. No reply was received. A cable was also sent at the same time to Dr. Fidel Castro regarding the trial of the distinguished lawyer Dr. Umberto Sori Marín who was a Minister in Dr. Castro's government and had served from the earliest days in Sierra Maestra as the legal adviser to the revolutionary army in the fight against Batista. The Commission requested information on the charges against Dr. Sori and expressed concern about the nature of his trial. No reply was received. Dr. Sori was executed in April 1961.

On September 22, 1961, I sent a cable to the Minister of Justice asking that the Commission be permitted to send an observer to the trial of seventy persons accused of security offences. The trial had become an object of world-wide concern. The Commission's request was not granted.

In March 1962 the Commission asked the Cuban Government to permit Lic. Ricardo Franco Guzmán, Professor of Penal Law at the University of Mexico, to attend the trial of persons arrested in connection with the unsuccessful invasion of Cuba. Lic. Guzmán sent a cable to Dr. Raul Roa, Minister of External Affairs of Cuba. In reply Dr. Roa stated that "it was decided to send this message to the President of the Court because it is a matter of his absolute competence". The trial was completed at the time the answer was received.

It was apparent that a widening gap had appeared between the avowed aims and the recorded practices of the leaders of the revolutionary government. Less than two years later, that is in 1961, the

establishment of a totalitarian régime had been completed and Fidel Castro proclaimed—retrospectively, as it were—the marxist-leninist character of the Cuban revolution. In fact his respect for the Rule of Law revealed itself on the same level as that achieved by Batista.

Thus, the ominous circle from oppression to freedom and back to oppression appears once again to have been closed. Whatever the future development of the Cuban revolution may bring, a flagrant betrayal of its proclaimed objectives is clear on the evidence adduced in the Report. It is no longer necessary to search for definitions of the type of régime now prevailing in Cuba. It has been publicly identified by the leader of the Cuban people himself as being nourished from sources alien to Cuban traditions and hostile to the freedom of the individual.

The International Commission of Jurists has studied with growing concern the various stages of this development and its underlying reasons. The history of the Cuban revolutionary legislation, which had at the beginning raised so many long-suppressed hopes of the Cuban people, emerges from such study as a process of systematic concentration of power having for its ultimate objective the setting up of a centralized dictatorship.

In its *Declaration of Delhi* of January 1959, the International Commission of Jurists adopted the proposition that “the Rule of Law is a dynamic concept for the expansion and fulfilment of which jurists are primarily responsible and which should be employed not only to safeguard and advance the civil and political rights of the individual in a free society, but also to establish social, economic, educational and cultural conditions under which his legitimate aspirations and dignity may be realized.” This modern elaboration of the content of the Rule of Law, confirmed and further developed at the African Conference on the Rule of Law held in Lagos in January 1961, presupposes acceptance of progressive social and economic change. Of course, the Commission has never compromised on its basic postulate that such a development must be pursued and achieved through and not above the Rule of Law. Social and economic reforms devoid of deep respect for the Rule of Law or, indeed, breeding new illegality, are bound to provoke added suffering and end in ultimate failure. The first unchecked erosion of the cornerstone of freedom leads sooner or later to the collapse of the entire structure

of the Rule of Law. Cuba has once again demonstrated the fatality of such a course.

During the less than four years of its existence, the government of Fidel Castro moved from a moderate climate of democratic reform into the violent atmosphere of an extremist authoritarian régime. "Freedom with bread and without terror" was the slogan of the first days. "Terror without freedom and with insufficient bread" is the solution arrived at today. Perhaps it is not the theory and technique of, in many respects, a unique revolution by which its achievement will be judged in history, but rather by the ways in which it has affected the lives of the people.

The Castro régime has had and continues to have a dominating and compulsive impact on all aspects of the life of the Cuban population. The régime permeates both the public and the private sphere of human endeavour and subjects all to strict control. A flood of Acts, by-laws, administrative decrees and police orders has swept away all safeguards of individual freedom. The false image of the country's social and economic backwardness, created and spread by the Castro régime, has served to justify the gradual establishment of a totalitarian system and to legitimize the corollary violations of the Rule of Law. Consequently, it would be futile to analyse in the present Report only the Cuban revolutionary legislation and to ignore the history, the social and economic features and the main political events influencing and often determining the course of the recent revolutionary process.

The following scheme has therefore been adopted in the preparation of this Report.

The Report is divided into four parts. The first comprises in five chapters a survey of the relevant political, sociological and economic features of Cuba and deals in particular with various aspects of the country's geography, economy, ethnology and history. Special attention is given to the most important institutions, groups and enterprises, the interaction of which affected the pattern of Cuba's society before the Castro revolution. The last chapter of this first part records the various stages of the development of the ideology of the new régime and of its implementation as seen through two crucial speeches made by Fidel Castro in 1953 and 1961 respectively. The position of the Judiciary and of the Bar has been analysed here

in the context of major institutional changes brought about by the revolution.

Part Two of the Report deals with constitutional legislation in Cuba. A chronological approach has been adopted and the Constitution of 1940 used as the basis for comparison with later enactments. It will be noted that while a return to that instrument has been one of the revolution's declared aims, a new Fundamental Law of Cuba has subsequently been promulgated and then again radically altered by sixteen major amendments. A study of the substantive and procedural provisions of the new Cuban penal legislation makes up Part Three of the Report. The ever-expanding scope of acts punishable under revolutionary legislation, the ominous vagueness of the concept of counter-revolutionary crimes and the broad jurisdiction of the revolutionary tribunals with their extreme and brutally sudden penalties are the salient features of recent developments in this field.

While Parts Two and Three contain the constitutional and legislative framework of the present Cuban revolutionary régime, Part Four brings out the practical consequences through reports and testimonies of victims and witnesses from all walks of Cuban life. These reports and testimonies speak only too well for themselves. The tragic implication of these statements is that the government of Fidel Castro, apart from violating the Rule of Law, has been equally contemptuous of its own revolutionary legislation.

Although this Report is designed to be as comprehensive as possible, it does not aspire to be an all-inclusive survey of the present Cuban situation. A further study devoted to other important aspects of the problem may later appear desirable. It is hoped, however, that this Report adequately illustrates the effect of the studied distortions, abuses and, so constantly and blatantly, the complete and brutal disregard of the processes of criminal procedures followed by a civilized Jurisprudence.

After the fall of the Batista dictatorship, the International Commission of Jurists had hoped for an opportunity to make a positive contribution to the revival of the Rule of Law in Cuba. That opportunity has been denied the Commission. The evidence cited in the following Report makes melancholy reading. But those innocents who have died, or who are still in gaol will not have undergone their ordeals in vain. Freedom may be submerged: it is never lost. As I have said elsewhere before, "the Commission, through all those in

so many countries who support it, must be fearless and unceasingly vigilant to resist the totalitarian and aggressive trends and developments which menace the structure and traditions of the Law, be it national or international. ”

November 1962

LESLIE MUNRO
Secretary-General

Note on sources

The following list of official documents, books, journals and other materials used in the preparation of this Report is not exhaustive. The references cited here are intended only as an indication of the broad research conducted in connection with the study. A large number of newspaper articles and editorial comment as well as other secondary materials were consulted but are not listed in full in this note on sources.

Apart from the *Gaceta Oficial de la República de Cuba*, edited in Havana, use was made of official laws, decrees, administrative regulations and court judgments published in Cuba. Wherever possible, official English translations were utilized; these were issued either by the Government of Cuba, or the Secretariat of the Organization of American States in Washington, D.C. The text of the Constitution of 1940 used is the English translation in Amos J. Peaslee, *Constitutions of Nations* (The Hague: Martinus Nijhoff, Second Edition, 1956). The laws appearing in *Folletos de Divulgación Legislativa*, which consists of over twenty volumes published by Editorial Lex, La Habana, were also used as a semi-official reference.

The following publications, among others, were consulted in connection with the study of the social and economic situation in Cuba: *Boletín Económico para América Latina*, and its statistical supplements as well as the English edition of the *Boletín; Annuaire Statistique* 1961 (New York: United Nations) and the excellent *Report on Cuba*, which was published in 1951 (The Johns Hopkins Press) and contained in over one thousand pages the findings and recommendations of an economic and technical mission organized by the International Bank for Reconstruction and Development in collaboration with the Government of Cuba. With reference to the latter work the seventeen-person mission was headed by Francis Adams Truslow and performed its work during the régime of President Carlos Prío Socarrás who was overthrown by the coup d'état of Batista in March 1952. It is one of the best and most authoritative sources on the situation in Cuba at that time. The geographical aspects of Cuba and their relationship to social and economic problems are discussed on the basis of the standard work by Antonio Núñez Jiménez, *Geografía de Cuba* (La Habana, 1954). Professor Núñez Jiménez is one of the closest and most loyal collaborators of Dr. Fidel Castro. Also used in this connection was the book by Preston E. James, *Latin America* (3rd ed.; New York: The Odyssey Press, 1959). Of value was the monthly

magazine, *Hispanic American Report*, published by the Institute of Hispanic American and Luso-Brazilian Studies at Stanford University, California, which has been highly critical of United States policies in Latin America. Also used were the following magazines: *Combate* (San José, Costa Rica: Instituto Internacional de Estudios Políticos y Sociales de San José); *Cuadernos* (Paris: Congreso por la Libertad de la Cultura); *Revista Internacional* (Prague: Publicación Teórica e Informativa de los Partidos Comunistas y Obreros); *International Affairs* (Moscow: Soviet Society for the Popularisation of Political and Scientific Knowledge).

The publications of Oficina Internacional de Investigaciones Sociales de FERES (Friburg, Switzerland, and Bogotá, Colombia) and El Centro de Investigaciones Socio-Religiosas (Brussels, Belgium) were also consulted in connection with questions dealing with population, urbanization, social classes, political institutions, and rural problems. Among the works consulted were:

La Población en América Latina, by Federico Debuyst (1961);

La Urbanización en América Latina (Vols. I, II, III), by Jaime Dorselaer y Alfonso Gregory;

La Familia en América Latina, by Berta Corredor (1962);

Las Clases Sociales en América Latina, by Federico Debuyst (1962);

Transformación en el Mundo Rural Latinoamericano, Núm. 2, by Berta Corredor y Sergio Torres (1961);

Las Instituciones Políticas en América Latina, by Raul Cereceda (1961).

A large number of secondary sources were also referred to, chief among which were: *Cuba: a Brief Political and Economic Table* (London: Oxford University Press, 1958); Jules Dubois, *Fidel Castro: Rebel, Liberator or Dictator* (Indianapolis: Bobbs-Merrill, 1959); Fernando Benítez, *La Batalla de Cuba* (México: Ediciones Era, 1960); *Una Nueva Diplomacia* (La Habana: Ministerio de Relaciones Exteriores de Cuba, 1959); Leo Huberman and Paul M. Sweezy, *Cuba: Anatomy of a Revolution*, (New York: Monthly Review Press, Special Issue, July-August 1960); C. Wright Mills, *Listen, Yankee* (New York: Ballantine Books, 1960); Stefan Baciu, *Cortina de ferro sobre Cuba* (Río de Janeiro, 1961); Antonio F. Silió, *Aspectos de la Revolución Cubana y un Mensaje*, (1961); José Luis Massó, *Qué Pasa en Cuba*, (1961); Karl E. Meyer and Tad Szulc, *The Cuban Invasion* (New York: Frederick A. Praeger, 1962); Daniel James, *Cuba: the First Soviet Satellite in the Americas* (New York: Avon Books, 1961); Nathaniel Weyl, *Red Star Over Cuba* (New York Hillman Books, 1961); Theodore Draper, *Castro's Revolution: Myths and Realities* (New York:

Frederick Praeger Inc., 1962); *Sartre on Cuba* (New York: Ballantine Books, 1960); Rafael Otero Echeverría, *Reportaje a una Revolución* (Santiago de Chile: Editorial del Pacífico, 1959).

Finally, research was conducted in Cuba itself on various occasions since the advent to power of Dr. Fidel Castro. In addition, over one hundred witnesses were interviewed by the Commission's legal staff and certified depositions obtained. The names of these witnesses, whose testimony and evidence will be found in Part IV of this Report, have been withheld because of the fear of reprisals. The names and depositions, in full stenographic reports, are on file in the offices of the Comission in Geneva. All facts and data supplied by the witnesses have been verified and checked against other information.

GENERAL SURVEY

I. CHRONOLOGY OF THE MOST IMPORTANT EVENTS IN THE HISTORY OF CUBA

- 1492 October 28: Christopher Columbus lands on the north coast of Cuba and establishes Spanish rule.
- 1762 August 14: British occupation of Havana. End of British occupation of Havana on July 6, 1763.
- 1809-1825 Wars against the Spanish Crown for the independence of Spanish America. Cuba remains loyal to Spain.
- 1823 December 2: The President of the United States, James Monroe, sends a message to Congress in which he lays down the famous doctrine which bears his name. The Monroe Doctrine declared that the United States would consider any attempt by European powers to extend their "system" to the Western Hemisphere as dangerous to peace and to the security of the United States.
- 1853 Birth in Havana of José Martí, Cuban national hero.
- 1868 The "grito de Yara" (cry of Yara) marks the beginning of the ten-year war between Spain and Cuba.
- 1878 End of the ten-year war with Spain, with a peace treaty and promises by Spain to pay attention to popular claims.
- 1895 Beginning of the War of Independence. Death of José Martí.
- 1898 February 15: The United States battleship Maine, anchored in Havana harbour, blows up. In April, the United States declares war on Spain. Occupation of Cuba. Beginning of United States military government in Cuba. Signature of Treaty of Paris on December 10. The United States undertakes not to exercise any sovereignty, jurisdiction or control over Cuba, except insofar as is necessary to secure complete pacification. It also undertakes to leave the government and control of the island in Cuban hands.

- 1900 The Cuban Constituent Assembly holds its first sessions.
- 1901 March 2: The President of the United States signs the Law of Amendment to the Army Appropriations Bill proposed by Senator Orville H. Platt. By this measure, known as the "Platt Amendment", the conditions were laid down under which the Cuban people would be allowed to govern the island. The United States retained the right to intervene in Cuban internal affairs in order to preserve Cuban independence and to maintain adequate government for the protection of life, property and individual freedom.
- June 12: The Cuban Constituent Assembly approves the Platt Amendment as an appendix to the Cuban Constitution.
- December 31: The first presidential elections are held and Tomas Estrada Palma is elected.
- 1902 May 20: Authority is transferred from the United States military government to the President-Elect, Tomas Estrada Palma. End of United States military government in Cuba.
- 1903 February 16: The President of Cuba signs in Havana a convention with the United States leasing to the latter, for such time as may be necessary and for the purpose of establishing naval bunkering stations, stretches of land and water at Guantanamo and Bahia Honda.
- May 22: A permanent treaty is signed between Cuba and the United States incorporating the Platt Amendment as an additional safeguard.
- 1906 Estrada Palma re-elected for a further period of four years. In August, an armed uprising occurs against the Government whereupon Estrada Palma calls upon the United States to exercise its right of intervention under the Platt Amendment. Charles Magoon, a Nebraska lawyer, is appointed governor of the island and administers it from September 29, 1906, to January 28, 1909.
- 1909 José Manuel Gomez is elected President of Cuba.
- 1912 An insurrection among the Negro population of Cuba causes serious disorder, especially in the eastern part of the country. U. S. forces threaten to intervene, but energetic action by President José Manuel Gomez is notified in time to the President of the United States, William Taft, and intervention by U. S. troops is avoided.
- 1913 Beginning of the government of Mario Garcia Menocal.

- 1917 Re-election of Garcia Menocal, charges of rigged elections, uprising by the army. These disturbances cause the United States Minister to Cuba to issue a statement that no government resulting from a revolution will be recognized. The presence of United States troops helps to put an end to the uprising.
- The United States declares war on Germany. Cuba follows suit.
- 1921 Election of Alfredo Zayas as President of Cuba. Washington sends special envoy, General Enoch Crowder, as adviser to the President of Cuba.
- 1924 Formation of the Cuban National Workers' Confederation under the leadership of anarchist-syndicalist groups.
- 1925 Election of Gerardo Machado as President of Cuba, marking the beginning of the dictatorship known as the "machadato".
- 1928 Re-election of Gerardo Machado, acute economic and political crisis, active resistance by student bodies (the ABC) and workers.
- 1933 Franklin D. Roosevelt, newly elected President of the United States, launches the "good neighbour" policy with the objective of improving relations with Latin American Republics. Sumner Welles sent to Cuba as Ambassador in May.
- In August, opposition groups call a general strike. The army demands a change of government. On August 12 Machado flees by air to the Bahamas, thus ending the "machadato".
- August 12: The provisional government of Carlos Manuel de Céspedes is installed.
- September 4: The "Sergeants' Revolution" takes place. Sergeant Fulgencio Batista enters the scene, promotes himself to Colonel and seizes control of the army. A provisional collective government (the Pentarchy) takes over.
- November 4: The Pentarchy comes to an end and Ramon Grau San Martin becomes provisional President. The United States does not recognize this government.
- 1934 In January, a new provisional President, Carlos Mendieta, takes office and is recognized by the United States Government. On May 29 Cuba and the United States sign a treaty repealing the Platt Amendment. Cuba obtains complete political independence. The United States retains the naval base at Guantanamo.

- 1935 Miguel Mariano Gomez is elected President of Cuba. Fulgencio Batista remains at the head of the army.
- 1936 Miguel Mariano Gomez takes office as President of Cuba. In December, following a constitutional conflict, Congress removes President Gomez from office. He is succeeded by the Vice-President, Federico Laredo Bru.
- 1939 Outbreak of the Second World War. Presidential elections held in November and Fulgencio Batista is elected President.
- 1940 A new Constitution for the Republic is promulgated on July 5, drafted with the assistance of almost all sections of political life.
- 1941 In December, Cuba declares war on Germany, Japan and Italy.
- 1942 Cuba, following the policy of the United States, establishes diplomatic relations with Russia.
- 1944 Ramon Grau San Martin is elected President of Cuba.
- 1948 Carlos Prio Socarras is elected President of Cuba.
- 1952 March 10: A military coup d'état ushers in the dictatorship of Fulgencio Batista.
- 1953 July 26: Fidel Castro leads the attack on the Moncada Barracks at Santiago de Cuba. Castro is arrested, tried and sentenced to prison. His defence plea to the court is published under the title *History Will Absolve Me*.
- 1954 November 1: General Fulgencio Batista is elected President without opposition. Fidel Castro is released from prison under a general amnesty.
- 1956 December 2: Fidel Castro lands in Cuba from Mexico with 82 followers and establishes himself in the Sierra Maestra.
- 1959 January 1: President Batista resigns and flees by plane to the Dominican Republic.
 January 2: Fidel Castro proclaims Manuel Urrutia Leo provisional President of the Republic of Cuba.
 January 3: President Urrutia is sworn in at Santiago de Cuba, the provisional capital of the revolutionary government. He then appoints Fidel Castro as Commander-in-Chief of the armed forces.
 January 5: José Miro Cardona is appointed Prime Minister.
 February 16: Fidel Castro takes over the post of Prime Minister, replacing Miro Cardona.

1959

April 15: Fidel Castro arrives in the United States on an unofficial visit.

April 17: Speaking before the American Society of Newspaper Editors in Washington, Castro declares that he is not a communist, that Cuba has no intention of ending its treaty with the United States regarding the Guantanamo naval base and that Cuba will not confiscate property belonging to foreign-owned private firms.

April 22: Castro states in New York to a group of United Nations correspondents that the holding of free elections in Cuba might mean the return of "oligarchy and tyranny". He promises that elections will be held within four years.

May 11: Castro promises the early winding up of the revolutionary courts and the restoration of *habeas corpus*.

May 17: The Land Reform Act is passed. Establishment of the National Land Reform Institute (INRA).

July 17: Fidel Castro announces his resignation as Prime Minister owing to differences of opinion with President Manuel Urrutia, whom he accuses, however, of behaviour bordering on treason. Resignation of President Urrutia. Appointment of Osvaldo Dorticos Torrado as new President.

July 18: Osvaldo Dorticos is sworn in and announces that the Cabinet has rejected Fidel Castro's resignation.

July 26: Fidel Castro resumes his post as Prime Minister.

1960

February 4-13: Visit to Cuba by the Soviet Deputy Prime Minister, Anastas Mikoyan.

June 28: Fidel Castro announces the confiscation of all property belonging to United States citizens if the United States cuts the sugar import quota.

June 29: The Cuban Government confiscates United States and British-owned oil refineries.

July 6: President Eisenhower suspends the Cuban sugar import quota. The same day the Cuban Government orders the expropriation of all U.S.-owned property in Cuba.

July 9: The Soviet Prime Minister, Nikita Khrushchev, threatens to give Cuba military protection if the United States intervenes in the island's internal affairs.

October 14: Nationalization of banks and trading companies.

December 21: A purge of the judiciary. Seventeen Supreme Court judges dismissed.

January 3: The United States breaks off diplomatic and consular relations with Cuba.

February 3: The Cuban Government orders the dismissal of 120 judges.

March 22: The Revolutionary Council, under the leadership of José Miro Cardona, is formed in exile.

April 17: Unsuccessful invasion of Cuba by forces opposed to Castro.

May 1: Castro declares in a speech that Cuba is a socialist state and that there will be no elections because his Government is based on the direct support of the people.

May 17: Fidel Castro offers to exchange the 1,200 prisoners taken during the invasion of April 17 for 500 heavy tractors and bulldozers estimated to cost about U.S. \$20 million.

June 2: The "Tractors for Freedom" Committee, set up by private citizens in the United States, informs Fidel Castro that it is prepared to send the 500 tractors in exchange for 1,214 prisoners.

June 6: Fidel Castro proposes exchanging his prisoners for alleged political prisoners in United States, Puerto Rican, Guatemalan, Nicaraguan and Spanish prisons.

June 7: The Cuban Government decrees the nationalization of education.

June 14: Six experts of the "Tractors for Freedom" Committee interview Fidel Castro, who raises his demand to thousand tractors for agriculture or 500 of a special, heavier type. He also declares that the exchange would involve only 1,167 prisoners instead of the 1,214 he had originally promised.

June 23: The Committee is dissolved on the ground that Fidel Castro has not accepted its offer.

July 26: Fidel Castro announces in a speech celebrating the establishment of his July 26 Movement that all political parties in Cuba must be integrated into the United Socialist Revolutionary Party (PURS).

August 2: The Government announces the reorganization of the Confederation of Cuban Workers under direct government control.

August 4: The Government announces that 500,000 persons belong to district, factory and farm vigilance committees.

September 17: 136 Catholic priests are deported by the Cuban Government.

1962

December 1: Fidel Castro, in a televised speech lasting five hours, proclaims himself to be a Marxist-Leninist.

January 2: Fidel Castro repeats his previous statement.

January 22: Conference of Foreign Ministers of the 21 American Republics meets in Punta del Este, Uruguay, to consider collective action against Cuba.

January 31: The Conference of Foreign Ministers votes by 14 to 1 (Cuba) and 6 abstentions (Argentina, Bolivia, Brazil, Chile, Ecuador and Mexico) to exclude Cuba from participation in the Inter-American system.

February 3: President Kennedy proclaims an embargo on almost all U. S. trade with Cuba with the exception of certain foods and medicines.

February 8: Argentina severs diplomatic relations with Cuba. This is the 14th American state which has severed diplomatic relations with Cuba. The others are: Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Haiti, Honduras, Nicaragua, Panama, Paraguay, Peru, United States, and Venezuela.

March 10: Constitution of a 25-men directorate of the Integrated Revolutionary Organization as an expression of the "collective leadership".

March 12: Fidel Castro announces nation-wide food and soap rationing to become effective on March 19. The rationing affects all staple goods and most household commodities; each person is allowed up to $\frac{3}{4}$ of a pound of meat, up to $1\frac{1}{2}$ pounds of beans per week, up to 6 pounds of rice and 1 cake of soap per month.

March 23: The United Nations Security Council rejects by a vote of 7 to 2 a Cuban charge that the Organization of American States (O.A.S.) violated the UN Charter in barring Cuba from the Inter-American system. The Security Council also rejected by a vote of 7 to 4 a Cuban request that the question of the legality of the O.A.S. action be submitted to the International Court of Justice. On the same day, Fidel Castro takes the post of First Secretary of the Integrated Revolutionary Organizations. His brother Raul is named Second Secretary.

March 25: Fidel Castro creates the office of Vice-Premier. Raul Castro is appointed to the post.

March 26: Fidel Castro, in a radio-television broadcast, denounces Anibal Escalante, an old-time Communist Party member, for having brought chaos to all the country and having tried to create an apparatus to pursue personal ends.

March 29: The Castro régime begins a trial of 1,182 prisoners captured after the unsuccessful invasion of April 17, 1961. A five-man military court tries the case.

April 3: Trial of prisoners ends. Ecuador severs diplomatic relations with Cuba.

April 8: Military courts sentence each of the prisoners to loss of citizenship and payment of damages ranging from US \$25,000 to US \$500,000. Those who cannot pay the penalty shall serve jail sentences ranging to a maximum of 30 years.

June 16: Government parades tanks, troops and artillery through the streets of Cardenas, a port 90 miles east of Havana, in response to popular demonstrations over food scarcities.

August 20: Press reports state that between July 27 and July 31, twenty Soviet ships arrived at 4 ports in Cuba with 3,000 to 5,000 technicians from the Communist bloc, and large quantities of goods and weapons.

September 2: Soviet-Cuban joint communiqué on Soviet military and technical aid to Cuba.

September 12: The Soviet Union warns the United States that an attack on Cuba or on Soviet ships bound for Cuba would mean war.

September 26: The United States Congress authorizes the President to use force if necessary to oppose Communist aggression or subversion from Cuban bases.

September 26: Cuba and the USSR announce plans for building a fishing port in Cuba in the framework of Soviet economic and technical aid.

October 22: President Kennedy reveals the construction of missile launching pads and the presence of offensive rockets in Cuba. The United States imposes a partial blockade (variously called peaceful blockade or quarantine) to stop deliveries of such weapons by the Soviet Union and calls for an emergency session of the Security Council.

October 28: Premier Khrushchev agrees to dismantle Soviet bases and to ship offensive weapons back to the USSR.

October 30-31: Acting Secretary General of the United Nations, U Thant, visits Cuba to discuss the procedure of dismantling the Soviet missile bases in Cuba under United Nations control.

II. THE LAND

A. Geography

Cuba is the largest island in the Caribbean Sea. It is situated between North and South America, is very close to the Tropic of Cancer and lies in the earth's torrid zone.

In relation to neighbouring countries, Cuba is located 111 miles from Key West at the tip of the Florida Peninsula in the USA; 125 miles from the Yucatan Peninsula in Mexico; 87 miles from the island of Jamaica and 49 miles from Haiti. Cuba has an area of 44,218 square miles: it is about 785 miles long from east to west and varies from 25 to 120 miles (at its eastern end) in width from north to south. Compared with the other islands of the Caribbean, Cuba is by far the largest. It is only one fifth the size of France but it is larger in area than Holland, Belgium, Switzerland, Austria, Hungary or Denmark. It is also larger than such other Latin-American countries as the Dominican Republic, El Salvador, Guatemala, Haiti, Honduras and Panama.

From the geo-political standpoint Cuba lies in what has been called "the American Mediterranean". Viewed from this approach the Caribbean Sea has never been considered as a factor of division between the islands of the Caribbean and the North American mainland.

Occupied by Columbus in 1492, Cuba was regarded by Spain as the "key to the New World". It was the operational base used by Spanish military power for the conquests of the Peninsula of Florida and the Aztec Empire, and Havana was an obvious port of call for all the Spanish fleets loaded with precious metals from America or with goods from Spain.

Owing to Cuba's strategic value a number of powers have tried to conquer and occupy it. For example, English forces seized Cuba on August 14, 1762, and stayed for almost a year. Its strategic importance was further enhanced by the construction of the Panama Canal, which was opened in 1914 and the maintenance by the United States of a naval base at Guantanamo.

These geographical factors have led to a profound cleavage of opinion among the Cubans themselves. Some have felt that by the nature of the country's geography, union with the United States was inevitable. Some, on the other hand, have taken an uncompromising stand for full independence. The experiment of Fidel Castro's government constitutes so far the most determined effort to break up the community of political, economic and cultural interests which has been fostered by Cuba's physical proximity to the United States.

B. Characteristics of the Land

About a quarter of Cuba's total area is mountainous. West from Guantanamo Bay and north from the port of Santiago de Cuba stretches the Sierra Maestra which, in places, reaches a height of 8,000 feet. The Sierra Maestra is about 157 miles long and up to 18 miles wide. It consists of a number of parallel ranges, the biggest of which is nearest the coast. The highest mountain is the Turquino. In addition to the Sierra Maestra there are two other mountainous areas of lesser importance. In the centre of the island there are the Trinidad mountains which reach a maximum height of 3,700 feet; to the west of Havana is the Sierra de los Organos with a maximum height of 2,500 feet.

Apart from these mountain ranges the remainder of the island consists of rolling countryside. Over half the area of Cuba is suited to mechanized farming. The moderate tropical climate, combined with adequate and well-distributed rainfall, makes it possible to grow a variety of crops. Some sections of the coastline are marshy but by and large the whole island is well drained. The coastline contains a number of natural harbours, the largest of which are Havana, Santiago and Guantanamo.

The temperature is fairly uniform without any marked extremes. During the summer it may rise to about 30° C. while the annual average for Cuba is around 25° C., this uniformity being due to the longitudinal shape of the island.

C. Adjacent Islands

Cuban territory consists not only of the main island, Cuba, although the latter is of course the largest part; there are also four groups of numerous islands of varying size. The first of these groups, called Santa Isabel Archipelago or Los Colorados, is situated to the north of Pinar del Rio. The second group, called Sabana-Camaguey Archipelago or the Jardines del Rey, with 400 rocky islets and small islands, lies to the north of the Provinces of Matanzas, Las Villas and Camaguey. The biggest island is Cayo Romano with almost 320 square miles. To the south of the latter province lie the islands known as the Jardines de la Reina. Finally, to the south of Matanzas, Havana and Pinar del Rio, lies the archipelago of Los Canarreos.

These four groups of islands off the coast of Cuba, inhabited by mainly fishermen, are particularly important because they abound in fish, shellfish, sponges, and other species. They are also rich in timber and contain a number of mineral deposits, while their natural beauty attracts numerous tourists.

Reference should be made to the Isla de Pinos, which also is in the Archipelago of Los Canarreos and lies to the south of Havana,

with an area of 1,120 square miles. The population of the island totals a mere 10,000 inhabitants. This island contains the biggest prison in Cuba.¹

III. THE ECONOMY

Despite the fact that Cuba is the youngest Latin American republic, a comparative analysis of the economic development of the Latin American countries shows that it has become one of the most advanced. Owing to its strategic position, its importance as a producer of sugar, and its historical background, Cuba was closely tied to the economic interests of the United States.

Two factors contributed towards the development of Cuba's natural resources. The first was the ability and remarkable drive of Cuban businessmen; the second was the realistic policy of protection followed by Cuban governments. This second factor, despite political upheavals, fostered the growth of industries such as footwear, textiles, fibres, etc. Under this protectionist policy specially low tariffs were levied on imports of machinery. This was used to equip plants to process sugar by-products such as bagasse (pressed sugar cane pulp), paper mills, steel mills, fertilizer plants, basic chemical factories, cement works, oil refineries, etc. It is a fact that in recent years, before the Castro revolution, foreign capital was being gradually but steadily replaced by Cuban capital, a development of major importance for the country's economic and social structure.

A. Agriculture

1. *General.* Cuba is predominantly an agricultural country and 51% of its surface is considered suitable for farming. For many years Cuban and foreign businessmen concentrated exclusively on growing sugar cane. This single crop system was criticized in Cuba as the cause of the island's vulnerable economic structure. Cuban businessmen and governments set about re-shaping the national economy. Missions of experts from international bodies which carried out surveys in Cuba at various times agreed that: (1) the Cuban economy, far from being on the brink of ruin, was developing rapidly; (2) the skills of Cuban businessmen and workers, backed by foreign capital investment, were gradually diversifying the economy; (3) the main obstacles to even faster economic development were administrative dishonesty and political illegality; (4) once this public immorality had been eliminated Cuba would, because of its economic potential, develop at a much faster speed.

¹ Antonio Nunez Jimenez, *Geografia de Cuba* (Havana, 1954), pp. 11-29.

The years following 1950 saw in fact the beginning of intensive cultivation of tobacco, coffee, rice, maize, potatoes, vegetables, beans, pineapples, etc.

Despite this diversification Cuba remained the world's leading sugar producer and exporter, achieving a record output in 1952 of 7,011,637 Spanish long tons. The special features of sugar growing produced specific social and economic patterns which will be discussed in more detail later. In terms of foreign trade, Cuba's competitive position in the international market was greatly enhanced by the United States policy of buying a fixed annual quota of sugar at a price higher than that in the international market.

The total area of Cuba is 28,631,000 acres, of which 79.3%, or 22,691,750 acres, formed part of estates or farms. Of this area forming parts of estates or farms, only 21.7%, or 4,916,010 acres, were in fact under cultivation in Cuba in 1945. Pasture land, whether natural or sown, accounted for 42.9% of the total area forming parts of estates or farms.

The characteristic feature of Cuban agriculture was the concentration by its farmers on a single product. This was true not only of the sugar plantations but also of the tobacco, coffee and stock-raising farms.

In 1945, 26% of the total number of farms grew sugar cane, which was the main source of agricultural income. Sugar cane represented about 56% of the total area under cultivation. The second crop in order of importance was tobacco, which was produced by 21.5% of the farms with an area equivalent to 3.4% of the total area under cultivation.

The farms engaged in growing cereals and vegetables amounted to 16.8% of the total number. Maize-growing was widespread in Cuba and most of the crop was consumed within the country.

Rice accounted for 3% of the total area under cultivation and in 1945 was grown by 18.4% of the total number of farms.

The large stock-raising farms tended to be concentrated in eastern Cuba, especially in Camaguey and in Oriente Province. Of the total number of estates and farms, 18% were engaged in stock raising.

2. *Land Distribution.* The Spanish Colonial Government was impelled by the needs of conquest to parcel out the land in large estates. Rural settlement was very scanty. There was only one major town on the north coast of Cuba within 40 miles of Havana. Two other small towns on the coast were Cienfuegos and Santiago de Cuba. There were no towns of any size in the interior, which remained uninhabited for a long time.

Cultivation of the sugar cane began around Havana in the 18th century and led to the importation of Negro slaves from Africa.

A census held in 1899 showed that already 47% of the land under cultivation was given over to sugar cane, while small proportions of the remaining land were used to grow tobacco, coffee, bananas, maize and other foodstuffs. At that time, however, only 3% of the total area of Cuba was under cultivation. From 1900 onwards the area under sugar cane expanded rapidly. The treaty of 1901 between the United States and Cuba reduced the tariff on imported Cuban sugar by 20%. This, in turn, led to large scale investment of United States capital in Cuba, which brought about changes in the pattern of land ownership.

In 1900, there were 207 sugar mills in Cuba, most of them in the area to the south-east of Havana. Many were quite small. The influx of capital, mainly from the United States, was followed, however, by the construction of large mills.

As regards the Cuban sugar industry one point should be made concerning the development of Cuba's economy and social structure: once sugar processing became a large-scale industry, natural growth led to the replacement of foreign capital by Cuban capital. For example, in 1939, out of a total of 134 sugar mills in existence, 66 accounting for 55.07% of total production belonged to United States citizens; 56 accounting for 22.42% of production belonged to Cuban citizens; 33 accounting for 14.92% of production belonged to Spanish citizens; 10 accounting for 4.83% of production belonged to Canadian citizens; 4 accounting for 1.41% of production belonged to British citizens; 3 accounting for 0.76% of production belonged to Dutch citizens; and 6 accounting for 0.59% of production belonged to French citizens.

By 1958 the Canadian-, British- and Dutch-owned mills had all passed into Cuban hands. Of the 161 mills then in operation only one, accounting for 0.27% of production, was French-owned; 3 mills accounting for 0.95% of production were Spanish-owned, while 36 mills accounting for 36.65% of production were owned by United States firms. Cuban capital controlled 121 mills representing 62.13% of production.

It must be emphasized that sugar growing in Cuba did not go through the pre-industrial stage as it was in many other parts of Latin America. Sugar growing was organized to meet the needs of modern industry. It follows that the Cuban agrarian problem is not characteristic of Latin America as a whole.

In 1945 there were 159,958 estates or farms in Cuba with an average area of 141.75 acres. Of the total, a third had an area of less than 25 acres, approximately 70% of the holdings consisted of less than 60 acres. About 45% were between 100 acres and only about 1.5% exceeded 750 acres.

According to official sources, in 1945 about 30% of the total number of estates or farms, representing some 32% of the total area

of farmland, were cultivated by their owners. About 6% of the farms, representing some 25% of the total area under cultivation, were managed by agents, while about 30% of the total area belonging to farms or estates was cultivated by tenant farmers. Some 20% of the workers on the large estates were share farmers, and about 9%, occupying 3% of the total areas suited for cultivation, were squatters or occupants without any legal title.

The degree of concentration of land ownership is clearly brought out by the fact that farms of less than 49 acres accounted for 70% of the total number of farms but for only 11% of the total area. On the other hand, only 894 farms amounting to 0.055% of the total number of farms were in excess of 2,471 acres; yet they represented 36% of the total area.

Cubans had long been concerned about the best use and distribution of land. A report published in 1951 by the International Bank for Reconstruction and Development (the conclusions of which have been largely followed in this section) describes the historical process which led to the distribution of farm ownership in Cuba.

There were four main stages. The first was the expansion of cane-growing on a constantly increasing number of small farms. This period lasted from 1790 until 1870.

The second stage saw the appearance of large estates devoted to the growing of sugar cane. This stage lasted until the end of the War of Independence. The third stage reflected the economic influence of the United States and it was during this stage that Cuba developed into an economic power in its own right based on an industrialized type of agriculture. The large sugar mills date from this time. The fourth stage, which began around the year 1933, witnessed the slow down of the sugar industry and the placing of restrictions on the big estates. The report of the International Bank omits to mention an important fact about this last stage, viz., the gradual increase of Cuban ownership of the sugar mills in operation which was mentioned on page 13 above.

3. *The Tenant Farmer.* The Cuban sugar growers were protected by a special enactment passed on September 2, 1937, which gave all sugar growers security of tenure. In fact this right could be inherited, sold or mortgaged. For the term stipulated by law the landlord forfeited all right to the land except for this claim to a rent as fixed by the Sugar Coordination Act.

This negotiable right was worth more than the land itself. The owners of some very large estates were prevented by it from disposing of most of their land, because the sugar growers were to all intents and purposes their own masters.

Under subsequent legislation the proportion of the output to which the grower was entitled was increased to approximately 50% of the total. There was also special protection for the small grower entitling him to the whole of his output quota even when restrictions were in force. In addition, growers were guaranteed a minimum of 6 arrobas (1 arroba = 25.3 lbs.) of sugar for every 100 arrobas of cane. Thus the effect of the legislation on the sugar industry was to strengthen greatly the rights of the growers as compared with the rights of the land owners and also to strengthen the rights of the small growers as compared with the big growers.

Security of tenure¹ was subsequently extended to all tenants, sub-tenants and even squatters working on farms of less than 5 "caballerias" (1 caballeria = 33.18 acres) (Decree No. 247 of 1952). This enactment also granted the right for an indefinite period, so that it could be bequeathed to the heirs of a deceased tenant or squatter. The only condition was that the rent must have been paid, the rental rates being fixed in the same legislative decree. They were restricted to 5% of the sale price of the property given in the Municipal Land Register on January 1, 1948, and were proportionate to the area occupied by the peasant. Usually this sale price was lower than the actual value, from which it follows that the rent paid by a peasant to occupy his land indefinitely was equal to less than 5% of its true value.

Other tenants, with farms bigger than 5 caballerias, were protected in similar ways. Under an Act dated November 25, 1948, (No. 7) all leases, with a few exceptions, were to be for a minimum of 6 years and could be prolonged at will for the same period. The 6 years prescribed by the Act elapsed at the end of 1954 and the extension would have expired at the end of 1960. In other words, at the time Fidel Castro took power, all the tenant farmers in Cuba were already assured of a security of tenure of their land, for which they also paid very low rents. It appears from the foregoing that the Cuban tenant farmer had many of the rights which are normally associated with full ownership of land but without the obligations which are usually involved. Conversely, the Cuban system did not encourage the tenant farmer to make long-term plans to expand output and improve the soil.²

4. *Factors of Agricultural Evolution.* In concluding this general account of Cuban agriculture, it may be helpful to refer to the most important factors which according to the 1951 Report of the Inter-

¹ On the subject of security of tenure see Manuel Dorta Duque and Manuel Dorta Duque y Ortiz: *Derecho Agrario y Proyecto de Código Cubano de Reforma Agraria*, La Habana, Cuba, especially pp. 134-142.

² The International Bank for Reconstruction and Development, *Report on Cuba*, (The Johns Hopkins Press, 1951), p. 81-126.

national Bank for Reconstruction and Development, have influenced its evolution.

History. Cuba grew rich as the world's sugar plantation, at least until world conditions changed and revealed that this state of affairs would not continue indefinitely. But during the recovery of 1939-1948, when real income *per capita* increased by no less than one third, sugar once more gave a striking demonstration of its economic potential. Through all these periods, Cuban mental attitudes became as firmly rooted as the sugar cane itself. It will take a long time to change them.

Capital. For historical reasons the big landowners and those with sufficient capital to employ the most up-to-date agricultural methods were largely engaged in sugar production. Other crops were left to those who found it more difficult to obtain capital.

Techniques. Again for historical reasons the agricultural and technical knowledge most readily available in Cuba was connected with the growing of cane and the production of sugar.

Ease of cultivation. Sugar growing in Cuba is greatly favoured by nature. There is plenty of land available which is suited to the crop. Once it is planted it goes on giving a good harvest for many years. Compared with other crops it requires little work, at least by using the extensive farming methods employed in Cuba.

Credit. Generally speaking agricultural credit in Cuba had only been adequate and available in the case of sugar and (to a lesser extent) tobacco.

Roads. The lack of roads from the farms to the markets affected the growing of most other crops. But it did not affect the sugar industry, which among other facilities, had its own network of private railways linked with the public system and connected with the ports.

Marketing. The marketing facilities available in Cuba catered primarily for sugar. The sugar producers were fully protected in the disposal of their product, whereas the growers of other crops had to sell in a worse organized market and were defenceless against the manipulations of middlemen who were not subject to any regulation.

Uncertainty about prices. Sugar prices varied but long-term international contracts and agreements exercised a stabilizing influence. With most other Cuban crops there were far bigger and frequent price swings, unless the level was fixed by regulation.

Government control. Since the bulk of Cuba's sugar output was sold abroad, the Government did everything in its power to secure

the highest price for sugar compatible with its international relations. But as regards many other farm products, the Government pursued an opposite policy with the aim of keeping down the cost of living. Price and other controls indirectly favoured unscrupulous middlemen by giving them a weapon with which to beat down the price paid to the farmer. Similarly, price control destroyed any incentive to improve the quality of crops other than sugar and this in turn made customers less willing to buy them and encouraged the import of foreign products.

Freight charges. Flat charges for freight have also favoured sugar.

B. Mineral Resources

Cuba has metallic, non-metallic and combustible mineral resources. It is particularly rich in metallic mineral deposits, the most important among which are chrome, manganese, copper, iron and nickel. Gold, silver, zinc, tungsten and lead are also found in smaller quantities. Among the non-metallic minerals, limestone, clay and slate are found in large deposits almost everywhere in the island. Gypsum and barytes are also found in appreciable quantities. These non-metallic minerals are often found in a virtually pure state over large areas.

Cuba lacks fuel deposits of any important size. Oil and natural gas are produced in small quantities but cannot meet domestic needs. In 1954 new oil deposits were discovered and hopes were aroused that output might eventually be increased.

Nickel is Cuba's most lucrative mining industry. Production was confined almost entirely to the formerly United States-owned plant in Oriente Province. According to the Report of the International Bank for Reconstruction and Development the growth of the Cuban mining industry was promoted either by the United States Government or by North American firms. Usually the motive was the real or potential danger of war, and apart from a handful of exceptions, the Bank's Report states that the economic interest of Cuba was not considered. It should be added that owing to the attractions of growing and processing agricultural products, neither the Cuban Government nor the Cuban businessmen took any great interest in the mining industry.

Consequently the proportion of the economically active population engaged in mining was about 5% of the total—which illustrates the minor importance of this industry in Cuba.

C. Industry

The production of sugar is Cuba's biggest industry. But, as we have seen, sugar cane is also the leading product of Cuban agriculture. It is this coordination of agriculture and industry which

gives Cuba its unique economic and social structure and sets it apart from the other Latin American countries.

It also means that while Cuba is fundamentally a sugar-growing agricultural country, sugar production is on an equally high level.

The output of all other industries (including those based on sugar by-products) is of minor importance. Estimates of their contribution to the national income ranged from 10-15%.

Whereas the 161 sugar mills in operation are evenly distributed throughout Cuba, the remaining industries show a high degree of concentration in the Havana area. According to official sources, there were in 1950 in Havana Province, 8,330 industrial establishments with a declared capital of (US) \$117,400,000 which substantially exceeded the total capital investment in the remainder of the country.

Apart from sugar, the leading manufactured products have been cigars, cigarettes, rum, rayon fibre, cottons and cloth, footwear, beer, spirits, fertilizers, soft drinks, canned foods, ham, motor car tyres and inner tubes, matches, and cement.

Although there are many modern industrial plants, small business tended to predominate. Leaving aside the sugar mills, there were only 145 plants in 1953 with more than 100 workers and only 14 had more than 500.

Protective tariffs for Cuban industries date from 1927. Other Government measures to protect industry included exemption from the payment of customs duties on imported industrial machinery and on raw materials.

The "slack period" or large-scale seasonal unemployment which follows the ending of the sugar harvest is one of the chief features of Cuban economic life. Constant efforts have been made to introduce complementary industries and crops to overcome this difficulty of the "slack season".

The problem has two sides to it. On the one hand, there is unemployment which occurs when the sugar industry has dealt with the crop, and, on the other hand, there is the impact on the whole of Cuba's economic life caused by the seasonal character of the country's basic industry.

During the sugar harvest the whole of Cuba's domestic economy enjoys a boom. The farmers and the workers spend their money as it comes in. Industry, for its part, is anxious to tap this source of spending money as soon as possible. The result is that industry does not work at an even rate over the whole year; instead it tries to produce goods as quickly as they can be sold and in order to do so takes on as many workers as possible during the sugar harvesting season. This is particularly true of the consumer goods industries.

In consequence there is seasonal unemployment also in other industries which have no direct connection with sugar but have nevertheless their seasonal peaks synchronized with the sugar harvest.

This preponderance of sugar growing in Cuba, which affects the whole economic life, and makes it vulnerable to price fluctuations of the international sugar market, has led one writer to describe Cuba as a "diabetic monster".¹

D. Transport

Compared with other countries at a similar stage of economic development, Cuba has an excellent network of major and minor roads. The famous Central Highway is 710 miles long and runs from Pinar del Rio in the west to Santiago de Cuba in the east. In 1950, Cuba possessed 495 miles of good secondary roads, 1,000 miles of secondary roads under construction and about 620 miles of minor roads in bad condition. When it is borne in mind that at the time these statistics were compiled (1950) Cuba had a population of 5,200,000 and that the area of Cuba is 44,218 square miles, it will be seen that the Cuban road network reflected a considerable degree of development. The survey carried out by the International Bank for Reconstruction and Development showed that 22.1% of the roads in Cuba were hard-surfaced and considered to be in good condition, that 45.1% of the roads were under repair or being built and that 32.8% were in poor condition. Weaknesses of the Cuban road system were the lack of an intelligent maintenance policy, the absence of any well thought-out long-term building plan and high costs.

As regards transport facilities, the trucking and bus industries expanded at a remarkable rate after the second World War. In the years 1946-1950, the number of trucks in Cuba increased from 15,196 to 29,368. Of these vehicles, 18,025 were trucks of a capacity between one to three tons, 9,062 were trucks of between three and eight tons while 2,281 had a capacity of more than eight tons.

There were more than 100 trucking firms in Cuba as well as about 200 bus companies running to regular schedules. The 1953 census showed that 104,000 members of the economically active population, i.e., 5% of the total, were engaged in transport.

Cuba has an extensive railway system with about 11,000 miles of track, over one quarter of which belongs to the public system, the remainder being operated privately, mainly by the sugar mills. The largest public railway lines were the "Ferrocarriles Consolidados de Cuba" which were owned by United States investors, and the

¹ Jean-Paul Sartre, *Sartre on Cuba* (New York: Ballantine Books, 1960), pp. 38-43.

"Ferrocarriles Occidentales de Cuba" which until 1953 were British-owned.

International air communications were excellent and about 20 Cuban cities were served by local lines. The fact that there were over 90 public and private airports gives some idea of the growing importance of air transport in Cuba.

E. Communications

1. *Telephones.* The main telephone service in Cuba was provided by the *Compania Cubana de Telefonos*, which was incorporated in the United States, and controlled by the International Telephone and Telegraph Company. This company had a virtually unlimited concession to provide service throughout the whole of Cuba. It was also granted a 30-year concession to provide an international radio-telephone service. The progress in this field can be gauged from the fact that in 1935 Cuba possessed about 38,000 telephones, in 1940 there were 59,000, in 1945 the total grew to 74,000, in 1949 to 106,000 and in 1958 to 170,000.

In addition to the public telephones Cuba also had a large number of private circuits which were used by the sugar mills.

The quality of the telephone service appears to have been open to criticism, but the rapid expansion of the network reflects the rate of Cuba's economic growth.

2. *Radio and Television.* In 1958 there were in Cuba 94 radio stations and about 900,000 radio receivers. Among Latin American countries, Cuba came second after Argentina with one receiver for every 5 inhabitants. There were also 11 television stations and 365,000 receivers.

3. *Films and Press.* In 1959 Cuba possessed 519 cinemas and 58 periodical publications including daily newspapers and reviews with an average of 129 copies per 1,000 inhabitants—a figure exceeded in Latin America only by Argentina and Uruguay.¹

F. Foreign Trade

Cuba's overseas trade was dominated by two closely related factors. The first was that the country exported only one product of any importance and the second that most of its overseas trade was with the United States.

The total value of Cuban exports in 1957, 1958 and 1959 was US\$ 844.7, 763.2 and 638 million, respectively. The total value

¹ *Statistical Yearbook*, 1961, (New York: United Nations), pp. 638 and 642.

of imports in the same years amounted to US\$ 894.2, 888 and 736 million respectively.

Sugar accounted for 83% of Cuban exports.¹ The second export product in order of importance was tobacco which accounted for 7% of the total. In 1957 Cuban exports represented 30.6% of the gross national product.

Cuban exports to the United States in 1958 totalled 490.7 million dollars, i.e., 65% of the total. It is worth comparing this figure with the value of exports to some other countries during the same year: to Canada 16 million, to Latin America as a whole 10.5 million, to Japan 46.7 million, to the United Kingdom 36.6 million, to Yugoslavia 1.2 million, to the USSR 14.1 million dollars.

As regards imports the picture was the same. In 1958, total imports from the United States were valued at 557.3 million dollars, i.e., 73% of the total, as compared with imports from Canada of only 17.2 million, from Latin America of 92.4 million, from the United Kingdom of 27.2 million, from the USSR of 0.3 million, etc.

After the second World War the proportion of total exports by value accounted for by sugar and its by-products rose higher than ever. There was a ready market for sugar because of the heavy world demand during the immediate post-war years. Later the Korean War led to a further jump in world sugar prices. In 1952 there was over-production of sugar in Cuba which led to a fall in Cuban sugar prices. There was a period of recovery from 1956 onwards. This vulnerability of Cuba to fluctuations of the world sugar market was to some extent mitigated by her marketing agreements with the United States which by law fixed an annual import quota for Cuban sugar to be purchased at a higher price than that obtaining on the free world market. From 1949 onwards about 55% on the average of Cuba's total sugar exports were benefiting of this arrangement which was suspended by the United States Government on July 6, 1960. The remainder of Cuba's sugar was sold in the free market, the main buyers in recent years being Japan, Great Britain, Western Germany and the USSR. Since 1953 the amount of sugar that could be sold in the free market has been subject to quotas under the International Sugar Agreement.²

G. Finance

Financially speaking Cuba was, until mid-1960, wholly within the dollar area. Economic and financial links with the United States were so close that until 1951 the United States dollar was legal tender

¹ *International Finance Statistics*, IMF, August 1959.

² Enrique Pérez Cisneros, *Cuba y el Mercado Azucarero Mundial* (La Habana, 1957), pp. 83-127.

in Cuba. Moreover, the Cuban peso remained at par with the U.S. dollar until 1960, when Fidel Castro began his policy of confiscating American property and the United States quota for Cuban sugar was suspended.

According to the Royal Institute of International Studies, the Cuban National Bank possessed very large reserves of gold and foreign currency, which in 1955 reached a peak level of US \$493 million. In 1957 Cuba's dollar reserve at US \$441 million was among the highest in Latin America.

Foreign investment was a major factor in bringing capital into Cuba. By the end of 1956 direct United States investment in Cuba amounted to approximately 774 million dollars.¹ Other countries, such as Spain and Canada, had investments in Cuba, but they were virtually insignificant compared with those of the United States.²

IV. THE PEOPLE

A. General Features

The population of Cuba is different from that of most of the other Central American and Caribbean republics. Like in Costa Rica, its nucleus is white and of pure Spanish descent. According to estimates made during the last official census in Cuba in 1953, the white population represented 73.46% of the total. This figure also included the descendants of other European immigrants, e.g., Poles, Italians, French and Germans.

It must be stressed that Cuba, like the remainder of the Latin American republics, was not only a Spanish colony but was actually and densely settled by Spaniards. As these early Spanish settlers were followed by more Spanish and European immigrants the island came to be inhabited predominantly by whites of direct European descent.

The second group of the population, in order of size, are the descendants of the African slaves who were brought to Cuba to work on the sugar plantations. The Negro population represents 11.83% of the total.

The Mestizos produced by the mingling of the black and white races account for 13.39% of the population. This racial mixture of Spaniards with Africans is both a cause and an effect of the absence of racial prejudice—a cause because the Spaniards mingled their blood

¹ United States Department of Commerce: *Survey of Current Business*, August 1957.

² International Bank for Reconstruction and Development, *Report on Cuba* Book VII, pp. 509-776.

freely with that of the Negroes and an effect because the Mestizos and Mulattos were, and still are, a living link between the two races.¹ Persons of oriental background make up 0.38% of the population.

The aboriginal Indian population of Cuba was never very large. Unlike the Indians in many other Latin American countries, such as Mexico, Peru, Guatemala and Bolivia where they represent a substantial segment of the population, those of Cuba have virtually disappeared. Many of the original inhabitants mingled with the Europeans and Africans, and at present some Mestizos, with Indian features, can still be encountered in remote parts of the Sierra Maestra and the mountains of the Baracoa region. All these racial groups have brought their cultural traditions to the Cuban melting pot; an example of the result is Cuban music, which is known throughout the world.

According to the 1907 census Cuba had a population of 2,048,980; by 1919 the count had risen to 2,289,004 while the 1931 census showed a total of 3,962,344 inhabitants. The last population census carried out in 1953 revealed that it had increased to 5,827,000. In 1959 the population has been estimated as 6,599,000 inhabitants.

Projected population growth is as follows:

<i>Year</i>	<i>Total population</i>
1965	7,533,000
1970	8,341,000
1975	9,183,000
1980	10,175,000

Cuba has a population density of approximately 115 persons to the square mile.² During the years 1953-1957 the Economic Commission for Latin America estimated the birthrate to be 30.32 per thousand inhabitants. The death rate during the same years was estimated by the same source at 10.11 per thousand inhabitants (all figures are annual averages). Compared with other Latin American republics, the Cuban birth and death rates are fairly low.³

According to official estimates for 1960, the urban population of Cuba totalled 3,731,000 inhabitants while the rural population amounted to 3,088,000 inhabitants. Thus the proportion of town dwellers was 55%—higher than in most Latin-American countries, with the exception of Uruguay, Argentina, Chile and Venezuela.⁴

¹ Antonio Nunez Jimenez, *Geografia de Cuba* (Havana).

² *World Facts and Figures*, United Nations, New York.

³ *Economic Bulletin for Latin America*, Statistical Supplement, Vol. V, Santiago de Chile, November 1960, United Nations, p. 10.

⁴ *Op. cit.*, p. 13.

According to the 1953 census, the breakup of the economically active population by category and sex was as follows:

Employers and self-employed persons:

Men	447,000
Women	27,000

Salaried employees and wage-earners:

Men	1,195,000
Women	226,000

Unpaid family workers:

Men	74,000
Women	3,000

According to these figures the total economically active population of Cuba in 1953 was 1,972,000, i.e., 33.84% of the total population.

Again according to the 1953 census, the breakup of this economically active population by branches of the economy was as follows:¹

Agriculture and stock-raising	819,000
Services	396,000
Manufacturing	327,000
Commerce	232,000
Transport	104,000
Construction	65,000
Mining	10,000
Public utilities	8,000
Others	11,000

Illiteracy is a serious factor. According to the 1953 census, only 61.49% of the Cuban population could read. Oriente Province contained, with nearly 53%, the largest proportion of illiterates. Compared with other Latin American countries, Cuba was, however, one of the most advanced and was surpassed only by Argentina, Uruguay and Costa Rica. Its educational problems, although serious, were much less acute than those of other Latin American countries.²

In terms of popular diet, as expressed in the consumption of calories per capita per day, Cuba ranked third in Latin America as a whole with 2,730 calories, after Argentina with 3,110 and Uruguay with 2,990.

As regards housing, the 1953 census showed that there were 793,446 urban and 463,148 rural homes making a total of 1,256,594. Of the urban population, 57.7% possessed a supply of inside running

¹ *Economic Bulletin for Latin America*, op. cit., p. 15.

² *La situación educativa en América Latina*, UNESCO, 1960, pp. 55-56.

water and 78.9% possessed inside or outside running water, as compared with only 6.7 and 14.6% respectively of the rural population. Electricity was laid on in 82.9% of urban homes but in only 8.7% of rural homes. In addition, 62.4% of urban homes had baths but only 9.2% of rural homes were so equipped. It is worth mentioning that according to these statistics the average number of baths in Cuban homes (42.8% in 1953) was higher than the average for France (10.4% in 1954), and Denmark (31.6% in 1955).¹

One feature of the Cuban social structure was the existence of a large middle class². The political and economic conditions of Cuba produced a middle class made up of the descendants of the new politically minded generations and, to a large extent, of the descendants of immigrants. This middle class, as we shall see later, found two quite separate outlets for its energies. One part was attracted towards business and produced the Cuban businessman who was responsible for the growing transfer of foreign-owned concerns into Cuban hands. The other section of the Cuban middle class entered the professions, the Universities or other intellectual pursuits. Its members were to be found in the civil service, in teaching, in literary societies, in professional associations, etc.³

Side by side with this expansion and strengthening of the middle class, an energetic and progressive-minded industrial working class was growing up in Cuba. It had its origins in the sugar and tobacco industries and grew as production grew. It was a well-paid and well-protected industrial working class and, taken together with the urban and rural middle class, formed a very large segment of the population which might have served as the foundation for stable political and social institutions. Many observers of the Cuban social scene agree in emphasizing the high level of ability of the Cuban people—their intelligence, their efficiency, their manual dexterity and their energy. These same observers always refer to Cuba's human capital as one of its sources of wealth.

There was, however, a third section of the population which had not been touched by social and economic progress—the "montunos". These were the mountain folk who eked out a living by doing casual jobs and had no trade union or political party to protect them. The disparity between the sugar worker and the mountain dweller was all too apparent; it was one of the most serious problems facing Cuba, and Castro exploited it cleverly. The "montuno" was held up as typical of the rural population of Cuba. A section of the Rebel Army was also recruited from this source.

¹ *Statistical Yearbook 1961*, United Nations, pp. 597-599.

² Federico Debuyst: *Las Clases sociales en América Latina*, Oficina Internacional de Investigaciones sociales de Feres. Fribourg (Switzerland), Bogotá (Colombia), 1962, pp. 165-173.

³ Lino Novas Calvo "La Tragedia de la Clase Media Cubana", in *Bohemia Libre* (Second Stage, No. 13, January 1, 1961).

Yet it was the Cuban middle class which was the backbone of the July 26 Movement led by Fidel Castro. This comparatively large and influential class, following a young leadership and reacting against the discredited old political parties, decided to give unconditional support to the vague political programme of Fidel Castro. The main points in this programme were the assertion that Batista had held power illegally and the promise that the 1940 Constitution must be restored. The revolutionary leadership was and still is composed mostly of middle class elements. Even though Castro's programme gave no indication of what was later to happen in Cuba, it was worded in a vague and unprecise way in order to win the support of the middle class which eventually brought Castro to power.¹

B. Institutions

It may be helpful in understanding the legal position in Cuba to describe in broad outline its main sociological patterns. Comprehensive survey will be attempted of the social and political institutions which can be regarded as an integral part of the national life. They are the following:

1. political parties;
2. trade unions;
3. the Army;
4. the Catholic Church;
5. economic groupings;
6. graduates, professional men and intellectuals;
7. foreign business firms.

1. *Political Parties.* From the time Cuba became independent, her political life was marked by violence and neglect of legal forms. In this respect Cuban politics were typical of most Latin American countries.

Cuba owed its birth to political revolution. Independence from Spain did not mean that Cuba became fully sovereign. The so-called Platt Amendment to the United States Army Appropriations Bill, attached to the 1901 Cuban Constitution as an appendix, entitled the United States to intervene in Cuban national affairs and it was regarded by many political leaders as a national humiliation. The argument over the Platt Amendment accounted to a large extent for the exceptionally violent character of political strife in Cuba.

¹ See Royal Institute of International Studies: *Cuba: A Brief Political and Economic Table* (Oxford University Press, September 1958) and Theodore Draper, *Castro's Revolution* (New York: Frederic Praeger, 1962), pp. 42-48. See also the speech by Fidel Castro on December 1, 1961, in which he proclaimed his Marxist-Leninist convictions, pp. 69-71 of this Report.

It was with its repeal in 1933 that the modern history of Cuba can be said to begin. And the whole of this period until December 31, 1958, was dominated by the military figure of Fulgencio Batista.

Political democracy in Cuba had three opportunities of expressing itself freely: in 1940, by the approval of the Constitution of that year and by the election of President Fulgencio Batista; in 1944, by the election of President Grau San Martin; and in 1948, by the election of President Prio Socarras. The latter was overthrown by the coup d'état of March 10, 1952, led by Fulgencio Batista who, as we have just said, remained in power until December 31, 1958.

The most powerful parties in Cuban political life since 1933 have been the *Authentic Cuban Revolutionary Party* and the *Orthodox Cuban People's Party*, but Cuba has never possessed a majority political party with a stable organization, run in accordance with the requirements of democratic life.

The absence of majority parties, coupled with the large number of political groupings and "tickets", led to the formation of coalitions which took part as such in the election campaigns. For example, a coalition of three parties elected the President in 1936, while another coalition of seven groups or parties elected Batista in 1940. A coalition of the *Authentic Cuban Revolutionary Party*, the group known as *ABC*, and the *Republican Party* elected Grau San Martin as President in 1944.

a) Parties under the democratic régime

An analysis of the political parties at the end of the Government of Carlos Prio Socarras, i.e., at the end of the brief period of genuine Cuban democracy in 1951-1952, leads to some enlightening conclusions about their position in the institutional life of Cuba. This period of Cuban political activities may be considered as a characteristic one of Cuban democratic life.

Presidential elections were due to be held in June 1952. According to the official register of party affiliations, compiled in 1951, two and one half million persons were legally qualified to vote in June 1952. Nine political parties had declared their intention of taking part in the elections. Their order of importance, based on membership, was as follows:

Authentic Cuban Revolutionary Party . . .	621,000
Orthodox Cuban People's Party	330,000
Unitary Action	204,000
Democratic Party	195,000
Cuban National Party	189,000
Liberal Party	185,000
Cuban Party	94,000
Communist Party (Socialist People's Party)	53,000
Republican Party	40,000

The *Authentic Cuban Revolutionary Party* had its origin in the forces which fought the dictatorship of Machado in 1930. The administrations of Grau San Martin (1944-1948) and of Prio Socarras (1948-1952) figure in Cuban political history as *Authentic* governments. They were characterized by their liberal and progressive tendencies. For example, two of the main items of legislation passed under Prio Socarras were the Pensions Act and the so-called "Bateyes" Act. The former was designed to give financial security to retired government employees; and the latter aimed at preventing certain sugar companies from exploiting their workers. The "Bateyes" Act made it illegal to compel company wage-earners and salaried employees to purchase their supplies in company shops. The sugar companies were also required to provide decent housing, to ensure healthy working conditions, to provide medical care for their workers and to make cultural facilities available in the "bateyes". (A "batey" is the part of a sugar estate containing the housing, sugar mill, sheds, etc.)

In December 1951, Dr. Carlos Hevia, a possible presidential candidate of the *Authentic Cuban Revolutionary Party* in the 1952 elections and also head of the National Development Commission, defined the main points in his programme. In the first place he declared that Cuba must continue to form part of the bloc of democratic nations and to take an active share in the fight against communism. As regards domestic policy, he proposed the strengthening of the national economy and the social and economic betterment of the working masses by means of the planned development of natural resources. He urged that new industries should be established and that the land should be cultivated intensively in order to absorb the unemployed. In foreign trade matters, the programme of the *Authentic Party* called for the expansion of overseas markets for Cuban goods together with an increase in the United States sugar quota. He also defined its policy towards foreign investment, stating that it should be encouraged provided it helped to absorb the unemployed and operated to the benefit of Cuba. He concluded his programme by declaring his intention of maintaining close diplomatic relations with all the countries of the free world, and particularly with the United States.

Another feature of the two *Authentic* governments was their democratic origin. Both came to power in free elections and can be said to have represented the interests of the middle and working classes.

While not confined to the *Authentic* governments only, administrative corruption and "gangsterism" severely marred the period of their domination of Cuban politics. In November 1951, when speaking before the First National Congress of the *Authentic Cuban Revolutionary Party*, the President, Carlos Prio Socarras, after condemning the dictatorship ruling at that time in certain Latin American countries, declared, among other things, that "gangsterism" and the

embezzlement of public funds had plagued Cuban governments for the previous six years. This period covered the administration of Grau San Martin (1944-1948) and his own (1948-1951). The word "gangsterism" was used in Cuba to describe the activities of certain heavily armed private groups which tried to obtain their objectives by means of crime and violence. As regards the embezzlement of public money, it was quite common in Cuba for former office holders to be publicly denounced on this score. Grau San Martin and his circle were accused of having pocketed 174 million pesos, and similar charges were made against Prio Socarras himself after the coup d'état of Fulgencio Batista on March 10, 1952. The accusations were not always justified but they caused an immense scandal and shook popular confidence in the government.

The *Orthodox Cuban People's Party* can be regarded as an offshoot of the *Authentic Party*. Its founder, Eduardo René Chibas, was one of the group of students who, in 1930, launched the struggle against the dictator, Gerardo Machado. When the *Authentic Party* was established, Chibas was one of its members and was elected deputy and later senator for the Province of Pinar del Rio, a post which he held until his death. During the government of Grau San Martin, Eduardo Chibas left the *Authentic Party*, denouncing the government's corruption, and founded the *Orthodox Cuban People's Party*. He was its leader and its candidate for presidency of the Republic, polling 400,000 votes against the 900,000 cast for Carlos Prio Socarras.

For many years the *Orthodox Party* concentrated on making public denunciations of the corruption of the *Authentic* governments. The leader in this fight was Eduardo Chibas himself. But his denunciations were often exaggerated, and were not always backed by proof, e.g., his denunciation of Aureliano Sanchez Arango, the former Minister of Education of Grau San Martin. This denunciation was regarded as a political manoeuvre to divide the *Authentic Party* in the 1952 elections and to give a major propaganda point to the candidates of the *Orthodox Party*. During the uproar which followed this denunciation, Chibas offered to produce proof of it on television. But when the programme producers refused to adjust their schedule to meet his requirements, he shot himself during the programme and died a few days later. Before dying, Chibas managed to say that he had resorted to this extreme measure for the sake of his party and his country.

Chibas was succeeded as leader of the party by Roberto Agramonte who summed up its policy by saying that its two fundamental principles were political freedom and public morality.

A year before the presidential elections of 1952, attempts to form alliances of political parties began to take shape. In April 1951, the *Authentic Government* carried out a cabinet reorganization and brought in representatives of the political parties which would support its candidature for the 1952 elections. The Government Coalition then consisted of the *Authentic*, *Democratic* and *Liberal* parties.

Fulgencio Batista, who had been the strongman of Cuba since 1933, was the leader of the *Unitary Action Party*, later called the *Progressive Action Party*. The Party was founded in 1949, after Batista returned from Miami, where he was in exile. This party was allied with the *Cuban National Party*, headed by Nicolas Castellanos. In December 1951, Batista decided to break with Castellanos alleging that the latter had tried to reach an understanding with the government of Prio Socarras.

While these coalitions were being formed, a number of splits took place in the leadership and membership of the political parties themselves, and new splinter parties emerged. For example, the *Cuban National Party*, which has just been referred to, was founded by leaders who had formerly belonged to the *Republican Party*. Grau San Martin, the leader of the old *Authentic Party*, founded the *Cuban Party* in 1951. The expulsion or resignation of political leaders from their parties was also a salient feature of Cuban politics. Examples of this were the resignation of Manuel Bisbé (later delegate of the Castro Government to the United Nations) from his candidature for the post of Mayor of Havana in 1949, and the resignation of Jorge Manach from his post of Cultural Adviser. Both men belonged to the *Orthodox Party*. The latter announced in September 1951 that he could no longer fulfil his duties in view of the violent partisan spirit which was agitating the party. The expulsion of Miguel Suarez Fernandez, former Prime Minister in the administration of President Prio Socarras, together with that of other prominent leaders of the *Authentic Party*, is further evidence of that tendency.

Politics in Cuba were not wholly in the hands of the political parties. In addition there were also groups dedicated to revolutionary action. Their political aims varied but they agreed that violence was the only way to achieve power. These groups included the *Revolutionary Institutional Union* (UIR), the *Revolutionary Socialist Movement*, the *Guiteras Revolutionary Action*, etc.

The presidential elections planned for 1952 did not take place because of the military coup d'état led by Fulgencio Batista on March 10 of that year. This interruption in the constitutional rhythm of Cuba, after three successive periods of democratic elections, was to have serious consequences. The seizure of power by Batista intensified the violence of Cuban political life, with the result that the Government became more oppressive and the opposition more intolerant. Notwithstanding these happenings, the crisis of leadership caused by dissension, personal ambition and other characteristics of Cuban public life continued to exist.¹

¹ The above review of the activities of Cuban political parties is based mainly on information provided by the *Hispanic American Report*, a monthly publication of the Institute of Hispanic American and Luso-Brazilian Studies at Stanford University, California. This publication acquired a wide reputation for objective and independent research.

Cuba was the theatre of operations of one of the biggest and most powerful communist parties in Latin America. The *Cuban Communist Party* was of key importance for a number of reasons. It was the first communist party in Latin America to place one of its members in the National Government, thereby providing a demonstration of the way the communists often co-operate with dictatorships in order to seize power in the labour movement and eventually in the administration itself. In more recent years the Cuban Communists have given a fresh twist to the party's two-pronged tactics for dealing with the typical kind of military dictatorship encountered in Latin America.

The *Cuban Communist Party* was founded while Gerardo Machado was President in 1925. During the 1920s the communists set up "front" organizations of the classic type of which the Anti-Imperialist League was the most important. This League, for example, organized a group of 150 workers who distributed pamphlets denouncing a Pan-American Conference held in Havana in 1928. The Communists also published an illegal weekly review entitled "*El Comunista*", with a circulation of between 1,000 and 1,500 copies.

The first General Secretary of the *Communist Party* was Julio A. Mella, a student at Havana University, who was later murdered in Mexico.

The communists were particularly active in the Workers' Trade Union Movement (MSO). They organized revolutionary factions in many of the trade unions, especially among the railwaymen, the textile workers and the tobacco workers. They played a leading part in the National Cuban Workers' Confederation, which was established in 1924 under the leadership of a number of anarchist-syndicalist groups. The Confederation later passed under the control of the communists and one of them, César Vilar, became its General Secretary.

The communists also took an active part in the resistance against the dictatorship of Machado. Under their leadership, the National Cuban Workers' Confederation called a general one-day strike against Machado. Despite the fact that the Confederation was declared illegal by Machado, the unions continued their strikes, which culminated in the sugar workers' strike at the beginning of 1933. This strike was organized by the National Sugar Workers' Conference in December 1932, under the auspices of the National Cuban Workers' Confederation. The outcome of this general strike was the formation of the National Sugar Workers' Union, which was the first nationwide trade union to be formed in Cuba.

Towards the end of the Machado dictatorship, the communists were active in other fields. They tried to organize regional peasant leagues and also to infiltrate into the army. The part played by the *Communist Party* and its fellow-travelling organizations in the expulsion of Machado has not been definitely established. There can be no doubt that the general strike in 1933 did much to hasten the triumph

of the revolution, but it would be inaccurate to credit the communists with its leadership.

As a result of this strike, Machado was forced to hand over power to Manuel de Céspedes. Three weeks later, Céspedes was dislodged from power by a coup d'état organized by the army and the Student Directorate, a group of university students led by Dr. Ramin Grau San Martin, Professor of Medicine at Havana University.

Despite the fact that this government proclaimed a radical programme for Cuba, which was particularly aimed against the North American firms operating in the country, the communists blindly opposed Grau San Martin and openly called on the people to fight against the government.

During the three and one half months of Grau San Martin's government the communists played an active part in the workers' movement. The National Cuban Workers' Confederation comprised most of the Cuban trade unions. Communist agitation in the towns and in the countryside gave the United States ample justification for denying recognition to the new government on grounds that it did not control the country. As a result of this refusal to recognize the government of Grau San Martin, Colonel Batista, the unquestioned leader of the armed forces, organized a coup d'état in January 1934 and replaced Grau by Colonel Mendieta, whose government was subsequently recognized by the United States.

In early 1935, the *Cuban Communist Party* adopted the communist world strategy of the popular front. For the next two and a half years the country endured the same terror and suppression of civil liberties as under Machado. The real master of the situation was Batista. After replacing Mendieta and two of his successors, he changed course. One of the first signs of this shift in policy was the permission granted to the communists to organize a new "front" party—the *Revolutionary Union Party*—in 1937. This body was headed by Juan Marinello, one of the best known communist intellectuals in Cuba. It distinguished itself by the number of intellectuals it managed to attract, e.g., Salvador Garcia Aguero, who was its first vice-president, Nicolas Guillen, Augusto Rodriguez Miranda, Master of the Cuban Masonic Grand Lodge, and Antonio Macias.

In December 1937, Batista ordered a general political amnesty. Immediately afterwards he suggested the calling of a constituent assembly to draw up a new constitution for the Republic.

Despite the fact that the *Communist Party* was still illegal, Batista allowed it to publish a daily newspaper called *Hoy* as from May 1, 1938. Two months later, the party held its tenth general meeting which decided that the communists should adopt a more positive attitude towards Colonel Batista.

Blas Roca, whose real name is Francisco Calderio, was then General Secretary of the Party. He commented at this meeting that should Batista find the path towards democracy, the Party would help

him. A week later, Blas Roca and Joaquin Ordoqui were invited to talks with Batista at his headquarters in Columbia Camp near Havana.

It will never be possible to find out exactly what was agreed on between the communist leaders and Batista. However, the non-communist groups have asserted that the communists agreed to back Batista's plan for a new constitutional assembly in exchange for his recognition of the Party's legal existence and permission to re-organize the working class movement under communist control. To judge by later events these claims were not far off the mark.

In any event the *Communist Party* officially endorsed Batista's proposal, put forward through Juan Marinello and the *Revolutionary Union Party*, that a single party should be established comprising the *Revolutionary Union Party*, the *Authentic Party*, the *National Agrarian Party* and other groups. The *Authentic Party* rejected these overtures.

A short time after the interview of the communist leaders with Batista, the latter announced to the press that the *Communist Party*, under its constitution, was a democratic party which sought to achieve its objectives within the capitalist system and renounced violence as a political weapon. Accordingly it was entitled to the same status as other parties in Cuba. Following upon this statement, the *Communist Party* was declared legal, for the first time in the 13 years of its existence, in September 1938.

The first public demonstration by the Party was held at the Estadium Polar, which it is estimated was attended by about 80,000 persons. After this meeting, the "front" *Revolutionary Union Party* disappeared as a logical sequence of the recognition of the *Communist Party*. There were close links between the Cuban communists and the United States Communist Party, and Blas Roca paid a fraternal visit to the United States in October 1938.

In a further move, the Confederation of Cuban Workers (CTC) was founded on January 23, 1939, with Lazaro Pena as its first General Secretary. Control of the organisation was firmly assumed by the communists. Henceforth, until the end of the Batista administration in 1944, the communists were favoured by the Cuban Ministry of Labour. Under communist control of the CTC, the Cuban trade unions acquired the habit of avoiding direct collective agreements and of taking all their problems and collective disputes directly to the Ministry for settlement.

During the elections for the 1940 Constituent Assembly, the communists merged with the *Revolutionary Union Party* to form the *Communist Revolutionary Union*, which won six seats in the Constituent Assembly. The communist delegation was headed by Juan Marinello, and Blas Roca was one of the leading members.

During the following elections held in July 1940, after the convening of the Constituent Assembly, the communists backed the candidature of Fulgencio Batista for the Presidency of the Republic, as part of the *Democratic Socialist Coalition*. At these elections, the communists obtained 10 seats in the Chamber of Deputies and over 100 seats in the municipal councils.

During the first eighteen months of the Second World War, the Cuban communists followed the line of their international movement, i.e., opposition to the Allies. They used their control of the trade unions to obtain the support of the CTC for their opposition to the democratic powers.

After the USSR entered the war, the line followed by the Cuban communists was adjusted to the new policy and the party even changed its name, henceforth calling itself the *Socialist People's Party*. In 1943 Juan Marinello (now Rector of Havana University appointed by Fidel Castro) became the first communist in the whole of Latin America to be appointed a cabinet minister in a national government.

In the elections held in 1944 to choose a successor to President Batista, the communists supported Batista's candidate, who headed the coalition list. But this candidate was defeated by the *Authentic Party* represented by Dr. Grau San Martin. His election was undoubtedly a setback for the communists. It endangered their position in the trade union movement, because the CTC contained many members who followed the leadership of the *Authentic Party*.

Even before he took office, Grau declared that it was necessary to re-organize the CTC on the ground that it should not be used as a political pawn by a small group. At the same time, Eusebio Mujal, who was Chairman of the National Labour Committee of the *Authentic Party*, also attacked the communist leadership of the CTC.

Without a working majority in Congress and with the army group controlled by Batista, Grau San Martin was forced to compromise with the communists. This agreement between the latter and the *Authentic Party* broke up in May 1947, when the CTC held its Fifth Congress, and throughout that year a furious struggle was waged between the two parties, resulting in a split in the CTC. The communists then tried to organize the Independent Cuban Workers' Confederation.

By 1950, the communists had lost two-thirds of their membership and had almost completely lost control of the working class movement. At the last CTC congress there were only 11 communists among a total of 4,500 delegates. Out of 3,000 trade union organizations, only 20 were firmly in communist hands.

Batista's coup d'état on March 10, 1952, opened a new chapter in the history of the *Cuban Communist Party* (now the *Socialist People's Party*), which began to recover its lost ground. Batista announced

at the outset that he did not intend to outlaw the communists. In April 1952 the Soviet Union broke off diplomatic relations with Batista when his government refused to admit two diplomatic couriers who arrived in Cuba from Mexico without having gone through the normal customs formalities. Batista thereupon retaliated against the *Socialist People's Party*. In 1953 he arrested its main leaders and outlawed the party. For some time in the past, the communists had practiced a two-pronged strategy, benefiting from the existence of two parallel organizations under their control. One of them was the *Socialist People's Party* while the other was a clandestine organization kept ready for emergencies such as occurred in 1953. Blas Roca was the official head of both groups. Fabio Grobat, a Pole, was for a long time the leader of the underground organization. Instead of clashing openly with the government, the communists used this organization to infiltrate the party of Batista. He and his followers, for their part, welcomed support from this new quarter. When Batista seized power in 1952 he had very little support among the masses, especially among the organized workers. He willingly accepted the offer of those who promised him backing from the working class. Despite the fact that at the end of 1954 the *Socialist People's Party* was still outlawed, a number of leading communists held positions in Batista's party and even in his administration.

A study of Cuban politics at the end of the Prio Socarras regime (1952) described above, leads to the following observations and conclusions:

1. There were no parties representing a solid majority.
2. There was also a lack of ideological foundation and institutional stability among existing political parties.
3. There was a multiplicity of groupings which divided the political leaders of Cuba.
4. Movements arose which promised large-scale social and economic reforms, most of them belonging to the Left.
5. The political leaders of these parties, once in power, forgot their promises and were guilty of the same abuses and corruption they had themselves criticized.
6. The result was the discredit and popular mistrust of political parties, which went far to undermine democracy in Cuba.
7. There was a lack of responsibility on the part of Cuban leaders, whether in government or in opposition—in government because they not only failed to carry out their election promises but were often guilty of embezzlement and corruption, and in opposition because to avoid persecution they often conived in the actions of the government which they pretended to oppose.

8. Because of these conditions, no party or political grouping had the moral authority or political power to oppose the sweeping advance of Fidel Castro and his followers.¹

b) Political Life under Batista

All the characteristics of Cuban political life remained during the Batista regime, although political tension and bitter opposition were increasing. On April 4, 1952, Batista issued a Constitutional Act, reforming the 1940 Constitution (see below, Part Two, pp. 83-84). On July 26, 1953, a young student led an uprising against Batista. Batista called it "a crazy attempt"; others described it as "abortive"; to those who had wished it success, it was clearly a matter of "too little at the wrong time and the wrong place". The time was early Sunday morning; the place was the Moncada Barracks, just outside Santiago, in the eastern province of Oriente, the traditional cradle of revolutions. The leader was Fidel Castro, who was arrested and brought to trial.² His personal defence before the court is now known as *History Will Absolve Me* (see p. 55).

Batista addressed the Cuban people on July 27, from his stronghold at Camp Columbia, praising the Army and deploring what had happened. He took the opportunity to say that, in view of the circumstances, the government must be more energetic than ever "to protect the people and the nation"³

In October 1953, the *Orthodox Party* had split into five separate units, while the *Authentic Party* had formed two different groups. One group followed former president Prio Socarras, who at that time was in exile in Miami, and the other group followed former president Ramon Grau San Martin. The division of the two most important parties made it easy for Batista to maintain his position.

Batista staged elections on November 1, 1954. There were to be elected the President and Vice-President of the Republic, Governors in 6 provinces, 54 senators, 150 representatives, 126 mayors and 2,214 councillors.⁴ Nine nation-wide political parties had registered by December 10, 1953, the last date for registration of political parties which would participate in the presidential elections.

¹ The foregoing account of the history of the Cuban Communist Party has been based on *Communism in Latin America*, by Robert J. Alexander, Rutgers University Press, New Brunswick, New Jersey, 1957, pp. 270-294. The date of publication of that book is important in view of the fact that the names of leading communists mentioned there, such as Blas Roca, Joaquin Ordoqui, Anibal Escalante, Lazaro Pena reappear in the National Directorate of Combined Revolutionary Organizations which is the chief policy-making body of the Castro regime.

² *Hispanic-American Report*, Vol. VI., No. 7 (August 1953).

³ *Hispanic-American Report*, loc. cit.

⁴ *Hispanic American Report* (Stanford University, California), Vol. VII, No. 10 (November 1954).

Batista approached the elections with confidence. Strong control of the internal situation, exercised on the one hand through dictatorial measures and, on the other, through internal dissensions in the political parties and the personal rivalries among their leaders paralysed all possibility of coordinated opposition.

Under these circumstances, the *Orthodox Party* refused, from the very beginning, to take part in the elections, on the grounds that Batista was using his dictatorial power to rig the elections in his favour, and that the main objective of the dictator was to cloak his régime, which was initiated after the coup d'état of March 10, 1952, with the appearance of legality.

The *Authentic Party*, under the leadership of Grau San Martin, adopted a confused tactical attitude towards the elections. "Grau's on again, off again policy once more surprised Cuba on October 30, when he announced that he was withdrawing from the election because "it was rigged in favour of Batista".¹ Grau San Martin accused Batista followers of the arrest of and threats against *Authentic Party* voters.

Elections took place on the day appointed by the Government; Batista was the only candidate for the presidential post. But in the elections for other positions a peculiar development occurred. The ballot papers of the *Authentic Party* were already printed, as were the ballot papers of the other parties taking part in the elections. In spite of Grau San Martin's last minute withdrawal, the ballot papers printed with the full list of candidates of the *Authentic Party* were sent to the polls. A number of *Authentic Party* candidates were elected. In addition, 18 out of 54 seats in the Senate were allotted by law to the minority party, in this case the *Authentic Party*. Grau San Martin asked the elected *Authentic Party* candidates to resign or to be expelled from the party. None of the candidates did so.²

In May 1955, Batista's Congress passed the Amnesty Law. Under this law, three hundred exiles came back to Cuba and many political prisoners were released, among them Fidel Castro.³

The opposition concentrated all its forces on demanding free elections in 1956. The negative attitude of Fulgencio Batista, who considered himself to be the constitutionally elected President, stimulated violent opposition. Student riots, military plots, arrests, killings and all kinds of violence spread over Cuba.

Advocates of peaceful opposition were unable to convince Batista of the advantages of holding elections in 1956. The way was open to those proclaiming violence as the only way to remove the Batista dictatorship.

¹ *Hispanic American Report*, Vol. VII, No. 10 (November 1954).

² *Ibid.*

³ *Ibid.*, Vol. VIII, No. 5 (June 1955).

The leading figure of the *July 26 Movement* was Fidel Castro, a name remembered from the attack on the Moncada Barracks in 1953. Fidel Castro was then in Mexico training revolutionary units. He was jailed there temporarily, for his activities, but managed to land on December 2, 1956 with 82 men on the south-east coast of Cuba in his yacht "Gramma". His planned popular uprising against the Batista regime failed. "By the time of the landing, hundreds of the Santiago students and other supporters were in jail. His movement was supported neither by the general public nor by the regular opposition parties. There was no general strike and the Army remained loyal."¹

In spite of the apparent failure of Castro's forces, the landing of 1956 was the most important political fact in the fight against Batista. This event also gave to Fidel Castro a political stature as the unquestioned leader of the opposition to Batista.

The *July 26 Movement* had all the drive and dynamism of a young group. Compared with the other parties, it had one undeniable advantage—it had no past. As the old parties became discredited, all the young leaders flocked to its standard.

This Movement appeared to be inspired by what—with more romanticism than precision—was defined as "humanism". There was a crusading determination to "regenerate and renew" Cuban political life. Most, if not all, the leaders came from the Cuban middle class, mainly from the professions and the universities. A list of the Castro government as of December 1960 has been published. Of 18 members, 8 were lawyers, one a professor, one an architect, three were university students, one a naval captain, one a doctor, one an engineer, one a graduate in philosophy and one a mayor.²

In response to Castro's challenge, Batista's terror and sabotage increased. Havana University was closed. This period of Cuban history was compared to the worst days of the Machado dictatorship during the thirties. Constitutional guarantees were suspended. The United Press stated that in the 54 years of the Cuban Republic's life, censorship had been imposed 21 times, the most severe of which had been that of Batista. A campaign of hit-and-run skirmishes against units of the Army maintained the whole country in permanent tension. On March 13, 1957, a major attempt was made against Batista's life. A group of 21 rebels attacked the Government Palace and fired on the guards. "Some of the rebels actually reached the second floor and threw a hand grenade at Batista's office door before all 21 were killed. The grenade proved to be a dud. In the meantime, another rebel group led by José Antonio Echevarria, president of the student federation of the Havana University, attacked "Radio Reloj"

¹ *Ibid.*, Vol. X, December 1956.

² See Theodore Draper, *op. cit.*, p. 43.

(Clock radio station) in the large radio centre building and forced the speaker to announce Batista's death and the ousting of his army chief. Upon leaving the station and heading for the Palace, Echevarria and others were killed in an exchange of gunfire with the police. In a few hours the bloody revolt was crushed by the army."¹ A total of 40 dead and 60 wounded was reported.

Fidel Castro's programme has been rather ambiguous in regard to its ideological foundations. In July 1957, the first political manifesto was published in the Sierra Maestra. This declaration was signed by Fidel Castro and two other leaders: Felipe Pazos, the first president of the National Bank, an economist, and Paul Chibas, leader of the Orthodox Party. The declaration includes the following objectives: (1) to form a revolutionary civic front with a common purpose and strategy; (2) to establish a provisional government presided over by a well-known and respected civilian, selected by the civic leaders of the country; (3) to reject any kind of military junta; (4) to reject any mediation or intervention by a foreign government in the domestic affairs of Cuba; (5) to support the efforts of Cuban exiles at the United Nations headquarters; (6) to request the United States to suspend all shipments of arms to Batista; (7) to maintain the armed forces separated from politics; (8) to hold general elections within a year after the provisional government was established; (9) to grant a political and military amnesty; (10) to re-establish individual freedom and freedom of communications; (11) to appoint provisional mayors everywhere; (12) to hold free labour union elections; and (13) to inaugurate a new political and economic policy. This last point was the subject of more detailed elaboration. The declaration says that the new political and economic policy would include: (a) greater diversification of Cuban production and consumption; (b) the development of the merchant marine; (c) the establishment of a career civil service in order to eliminate corruption and graft; (d) the nationalization of all mining with proper compensation; (e) the use of private and foreign capital to develop the country; (f) the security of foreign investments in the sugar industry. "This document, if sincere, served to place Fidel Castro in a moderate, nationalistic, revolutionary position with emphasis on broad civic leadership rather than personal power."²

In July 1957, six opposition parties, i.e., *Autenticos Inscritos*, under Grau San Martin; *Ortodoxos Inscritos*, under Emilio Ochoa; the *Partido Nacional Revolucionario* (PNR) under Pardo Llada;

¹ *Ibid.*, Vol. X, August 1957, p. 351; see also Fidel Castro, *History will absolve me*; Draper, *op. cit.*, pp. 15-60; and below, the section on "The History of Castro's Revolution between two speeches", pp. 55-60.

² *Hispanic American Report*, March 1957, p. 125. See also: Royal Institute of International Studies: *Cuba: A Brief Political and Economic Table* (Oxford University Press, September 1958).

the *Autenticos Abstencionistas* under Antonio de Varona; the *Democratas No Inscritos* under José Raimundo Andreu; and the *Cuban Socialist Party* under Raul Lorenzo, decided to form a common front called the *Civic Political Front*, issuing a manifesto in favour of a constitutional solution to the Cuban crisis. To obtain this solution they suggested giving the post of chief executive to the senior magistrate of the Supreme Court as provided by the Constitution of 1940, and called for general elections within 90 days.

Other opposition groups were in favour of the elections that Batista was planning for June 1958. Among these groups were: the *Ortodoxos Libres* under Carlos Marquez Starling and the *Radical Liberation Movement* under Amalio Fiallo. Besides these two parties, Grau San Martin, although his party joined the *Civil Political Front*, announced that he would take part in the elections of June 1958. It was apparent that the opposition to Batista was far from reaching the unity necessary to defeat him.

The first time that the opposition parties arrived at a co-ordinated movement was in September 1957. Opposition groups met in Miami and formed the *Council of Cuban Liberation*. The Council published a ten point programme similar in content to the Manifesto of Sierra Maestra mentioned above. The opposition groups on the Council were: (1) Fidel Castro's *July 26 Movement*, represented by Felipe Pazos; (2) *Ortodoxos*, represented by Manuel Bisbe and Roberto Agramonte; (3) *Autenticos*, represented by former President Carlos Prío Socarras, Antonio de Varona and Carlos Hevia; (4) *Organización Auténtica* (the overt revolutionary sector of the Authentic Party), represented by Carlos Maristany; (5) *FEU*, Federation of University Students, represented by Ramon Prendes; (6) *Revolutionary Directorate*, represented by Faure Chaumon; (7) *Revolutionary Directorate of Workers*, represented by Angel Cofiño.

The main points of the new programme were: (1) the establishment of a provisional government; (2) the call for early general elections; (3) the promise from the future provisional president that he would not be a candidate for any kind of public office; (4) the restoration of the Cuban Constitution of 1940, that Batista pretended to have restored in 1954; (5) the release of all political prisoners, civilian and military; (6) the establishment of a career civil service; (7) the separation of the armed forces from political affairs; (8) the opportunity for Labour Unions to conduct free elections; (9) the promulgation of new economic, social and industrial reforms; (10) the rejection of Batista's proposed elections in June 1958; (11) the insistence that fighting would continue until Batista and his government were removed from power. The Council also called on the United States to cancel all shipments of arms to the Cuban government as long as the state of civil war existed and added that it would

seek recognition as a belligerent body from the United Nations and the Organization of American States.

At this time the Government had the support of a coalition formed by Batista's own *Progressive Action Party* and the Liberal, Democratic and Radical Union parties. These four parties were prepared to take part in the June 1958 elections.

The life of the *Council of Cuban Liberation* was not an easy one. On December 14, 1957, Fidel Castro published a personal letter withdrawing his *July 26 Movement* from the Council, the legalistic argument being that Felipe Pazos was not authorized to sign the programme of the Council. The main reason was that the "Council was fighting an imaginary revolution from comfortable quarters in the U.S. while the leaders of the *July 26 Movement* are fighting in Cuba a real revolution".¹ Another argument was that in any case, the *July 26 Movement* claimed for itself the function of maintaining public order and "reorganizing the armed forces of the Republic upon the fall of the Batista government".

The Castro letter of December 14, 1957, was the first recognition that the *July 26 Movement* was reserving for itself special powers to dominate the post-Batista period. The Hispanic American Report made at the time the following point: "Castro's 'take it or leave it' attitude smacked of authoritarianism which he and his followers were purportedly fighting to eliminate, and this, plus the abrupt treatment of the distinguished international economist and banker Felipe Pazos, cast a shadow of doubt on the Castro cause."²

In spite of reserving powers of control for the post-Batista period, Fidel Castro stated that the "prime duty of the provisional government was to hold general elections and to recognize the right of political parties to organize themselves and participate in the elections".³

In the February 1958 issue of *Coronet* magazine Fidel Castro published a statement entitled *Why We Fight*. Once again Castro expressed his programme in the same spirit as that prevailing in the Manifesto of Sierra Maestra and in the letter to the Council of Cuban Liberation, but in this new statement emphasis was on the corruption of Cuban political life, on illiteracy and, with respect to industrialization, on private and foreign investments. On that subject, Fidel Castro said: "I personally have come to feel that nationalization is at best, a cumbersome instrument. It does not seem to make the state any stronger, yet it weakens private enterprise ... foreign investments will always be welcome and secure here."

¹ *Hispanic American Report*, *op. cit.*, Vol. XI, No. 1 (January 1958), p. 20

² *Ibid.*

³ See: Theodore Draper, *op. cit.*, p. 16.

The Catholic Church made an unprecedented move into the political crisis of Cuba, issuing a statement calling for a "government of national unity which can prepare the return of our country to a normal and peaceful political life".

Most of the political leaders of Cuba, both oppositionist and pro-Batista, welcomed the ideas of the proposals but none did anything in practice. Batista announced that he would remain in his position until a newly elected President took power.

In July 1958, exiled revolutionary leaders met in Caracas, signing a pact among various anti-Batista groups. The "Pact of Caracas" created the Revolutionary Civic Front and announced that Manuel Urrutia, supported by Fidel Castro, had been elected as "President of Cuba in Arms", and Provisional President upon the fall of Batista.

The resistance to Batista took a variety of forms: from burning sugar fields to kidnapping American citizens or famous figures, like Juan Manuel Fangio, the world racing car champion.

The position of Batista's supporters was increasingly deteriorating. The army was included in this process of disintegration (see below pages 47-49). The suspension of constitutional guarantees was, as has been pointed out before, extended for a continuing period of 45 days. In spite of violence, revolution, and suspended constitutional guarantees, Batista insisted on holding elections on November 3, 1958. Fidel Castro called this an "electoral farce", and Grau San Martin, the *Authentic Party* leader, said that elections were to be held "under the reign of bullets and without guarantees".

Under pressure of the opposition leaders, Batista's delegate to the United Nations submitted a request for observers to be sent to watch the elections of November 3. The request was rejected by the United Nations because no facilities to observe the proceedings were available.

Finally, the elections were held. Four presidential candidates registered for the election: Andres Rivero Agüero, former Prime Minister and close friend of Fulgencio Batista, representing the coalition of four above-mentioned government parties, Carlos Marquez Sterling representing the *Free People's Party* (Partido del Pueblo Libre), former President Ramon Grau San Martin representing the *Authentic Party* and Alberto Salas Amaro for the *Union Cubana*. Only 40% of the 2,600,000 electors cast their ballots. The government coalition won the elections by a margin of 4 to 1 over the closest opposition candidate Carlos Marquez Sterling. Fidel Castro commented: "The elections will make no difference ... The revolution is proceeding in stages ... Time is on our side".¹

¹ *The New York Times*, November 5 and 10, 1958.

The growth of the Rebel Army and the defeat in November of the official army in the Battle of Santa Clara, capital of Las Villas province and the central part of the island, made a real impact on the morale of the Batista officers. At the New Year's eve banquet, the most important group of high officers of the Army advised Batista to leave Cuba; he then escaped to the Dominican Republic on January 1, 1959 followed by his closest supporters. He appointed a provisional President of the Republic, Carlos Manuel Piedra who was not recognized by Fidel Castro. On January 3, 1959, Manuel Urrutia y Lleo, already appointed President of the "Republic of Cuba in Arms", was sworn in as President of the Revolutionary Government in the Oriente Province. On January 5, President Urrutia went to Havana. "After an intentionally slow and triumphal march through the length of the island, Castro finally entered Havana on January 8, at the head of a two-mile-long column of troops and armoured vehicles. While planes flew overhead, ships in Havana's harbour fired 21-gun salutes, and church bells pealed."¹

2. *Trade Unions.* The Cuban worker has been described as possessing the following characteristics:

1. he rapidly acquires industrial skill;
2. as an individual he takes readily to team work and is intelligent and keen;
3. he has remarkable consideration for the self-respect of those around him and therefore expects the same consideration towards himself from others;
4. he dislikes being watched while at work because he considers that he is perfectly capable of doing his job without supervision or help;
5. as a consequence of these qualities, he shows a certain lack of discipline, which in turn affects his productivity;
6. his trade union movement having been influenced by politics from the start, he is strongly political-minded.

The sugar worker and, to a lesser extent, the industrial worker, were the best paid wage-earners in the whole country. The sugar worker in particular had a whole series of privileges which made him better off than workers in other industries. For example, he almost entirely tided over the slack season by the availability of credit or employment on such jobs as sowing and repairs. In addition, he was entitled to a share in the difference between the price of sugar at the time of milling and at the time of sale.

¹ *Hispanic American Report*, Vol. XII, No. 1 (March 1959), p. 24.

This privileged section of the working class also included the tobacco workers and the workers in industry. Throughout Cuba, over the past 30 years a substantial, prosperous middle class and a well-paid and apparently well-organized working class had emerged.

Until Castro's nationalization measures, the Cuban sugar worker, from the social standpoint, was in a special position. He was not a typical peasant of the kind encountered in such countries as Mexico, Brazil or Bolivia. The Cuban sugar worker was more akin to an industrial wage-earner. He did not cultivate a plot of land to feed his family; he worked for the sugar mill which paid his wage, out of which he met his own and his family's needs. Sugar production in Cuba brought about a social pattern unique in the whole of Latin America.¹

The "peasant" in the sense of a man tied to the land and cultivating a small holding from which he earns his livelihood and derives the illusion of ownership, has not been an important figure in Cuba. The only representatives of this poverty-stricken class, in great need of social betterment, are the so-called "montunos"—the minority of the population living in the Sierra Maestra and the other mountain areas. The theory of a "peasant revolution" spearheaded by this underprivileged group and forming the foundation of the *July 26 Movement* was propounded by some political writers but is not borne out by facts.²

The above described sociological pattern of the Cuban agricultural population had a decisive influence on land reform because, as was confessed by the leading Cuban communist Blas Roca, "It was a straightforward and easy matter to hand over to the tenant farmers and squatters the actual holdings they were farming ... but it was obvious that this could not be done without seriously disrupting production in the case of the large estates employing great numbers of farm labourers. To make these labourers the owners of small holdings carved out of the plantations on which they worked would have had two drawbacks: in the first place, output would have fallen because the benefits of large-scale cultivation and organization would have been lost, and in the second place it would have been a socially retrograde step to turn the workers into proprietors." The Cuban communist leader concluded by saying that "in this case" it was necessary to establish co-operatives on the sugar plantations and people's farms in the rice fields. He concluded by arguing that this new system

¹ Preston E. James, *Latin America* (3rd ed.; New York: The Odyssey Press, 1959).

² Theodore Draper: *Castro's Cuba. A Revolution Betrayed?* The New Leader, March 27, 1961, p. 11. See also, by the same author, *Castro's Revolution. Myths and Realities*. New York: Frederick A. Praeger, 1962, pp. 3-57. A contrary opinion may be found in Leo Huberman and Paul Sweezy, *Cuba. Anatomy of a Revolution*. Monthly Review, Vol. 12, special issue, pp. 78 and following.

would retain the advantages of large-scale production while at the same time making it possible to improve the living conditions of the farm workers at once.¹

If the preceding paragraph is stripped of its propagandist trimmings and the facts about Cuba given in this chapter are borne in mind, it will be seen that from the workers' standpoint, land reform has meant, if not the lowering so at least no improvement of his previous status. The big estates have been preserved because, as Blas Roca himself acknowledged, breaking them up would have meant the loss of "the benefits of large-scale cultivation and organization". Furthermore, the Government decided in August 1962 to turn the allegedly mismanaged co-operative farms into state-run "people's farms", thus abandoning any pretense of promoting a social betterment of the agrarian worker.

The history of the trade union organization of the Cuban working class is part of the political vicissitudes of the Republic. During its earliest stage, the movement came under the ideological control of the anarchist-syndicalist followers of Bakunin. This group was stamped out during the dictatorship of Machado.

Subsequently, the trade union movement became a primary target of the communists. The Communist Party was founded during the presidency of Gerardo Machado in 1925 and its members penetrated the virtually leaderless working class movement. They organized revolutionary factions in a number of unions, especially those of the railway and tobacco workers, and from 1933 to 1947, i.e., from the "Sergeants' Revolution" until the end of Batista's first presidency, they were in complete control of the Cuban trade union movement. The Confederation of Cuban Workers (CTC) which was founded on January 23, 1939, was firmly controlled by the communists and headed by Lazaro Pena.²

In 1948, the communists lost control of the working class movement to the leaders of the *Authentic Party*, which was in power at the time. The communist trade union leader Lazaro Pena reappeared, however, as General Secretary of the CTC in 1961 under the Castro régime.

The non-communist control of the Cuban working class movement continued until the fall of the Prio Socarras government on March 10, 1952, when Batista carried out his coup d'état. From then on the communists began to regain the ground they had lost.

After 1952, Batista secured the support of the trade unionist Eusebio Mujal, who had been a militant communist but had since

¹ "Nueva Etapa de la Revolución Cubana", *Revista Internacional*, No. 10, 1961, Year IV, October, p. 3.

² See *Report on Cuba*, International Bank of Reconstruction and Development, 1951, p. 365; and Robert Alexander, *op. cit.*, p. 280.

broken with the Party. Mujal was opposed to the trade union leaders belonging to the *Authentic Party*, and preferred to negotiate his "workers' conquests" by political means. His tactics were to make inflated claims and then to settle for some gains in exchange for a reduction in the claims. During Batista's second presidency, this venture of the trade union movement into politics became even more marked. Because of this political engagement of the trade union leadership, many of the senior members of the movement became strongly opposed to Batista and ended up in exile, where they joined the *July 26 Movement*, which at that time was the hope of the democratic forces.

The instability of the trade union movement and its complete domination by politically minded leaders were once more demonstrated on January 20, 1959, when, after the fall of the Batista government, the Castro régime proceeded to "re-organize" the CTC and appointed a provisional executive board.

The preamble of the relevant Act stated that: "The late tyranny used every means in its spurious power to rig the trade union elections and to fill posts in the central trade union organization, as well as in its federations and trade unions, with criminals who had no links with the working class and in fact were the servants of interests opposed to that class". Accordingly, pending the holding of "free elections", Act No. 22 authorized the appointment of nine provisional trade union officials, and named David Salvador Manso as Secretary General.¹

It should be added that David Salvador is now in a Cuban prison because he failed to follow the "line" laid down by the Castro régime. Lazaro Pena, the old guard communist, was appointed as his successor. Once again, the holders of political power have handed over control of the Cuban working class movement to their minions, in this case the communists.

To sum up the Cuban trade unions from the same standpoint as the political parties:²

1. There were many trade union organizations claiming to represent hundreds of thousands of workers. For example, in 1950 the CTC claimed to have a membership of about 800,000. The International Bank for Reconstruction and Development said in its 1951 report on Cuba that these figures were exaggerated and that no reliable figures were available. According to figures obtained at first-hand in Cuba during 1960 by well-informed observers, the largest trade unions were the Sugar Workers'

¹ See *Gaceta Oficial*, No. 8, January 23, 1959.

² This survey of the Cuban trade union movement is supplemented by the section dealing with violations of the freedom of association; see Part IV.

Union with about 400,000 members, the Tobacco Workers' Union with 200,000 members, the Dock Workers' Union with 180,000 members, the building workers with a fluctuating membership, followed by the electrical, banking, railway, printing, catering workers' unions, etc.

2. There was no relationship between the impressive numerical size of these unions and the small part they played in Cuban social and economic life.

3. The unions were permanently subject to political influences. When the CTC was under communist control, the unions began the practice of avoiding the negotiation of collective agreements with employers' organizations and tended to take all problems and collective disputes straight to the Ministry of Labour.

4. This political influence on the unions affected them in two different ways. Firstly, by distorting their purpose, it weakened them in the discharge of their true trade union functions, and prevented them from tackling production problems, training, and the education of their members in economic and social matters. Secondly, their social gains depended on the fate of the political régime in power.

5. The Cuban trade union leaders were individually very capable. First-hand interviews, initially in Cuba and later in exile, with many of these leaders show that most of them came originally from the *Authentic Party* and spent a short time in the ranks of Fidel Castro's *July 26 Movement*. All these leaders, because they remained faithful to liberal and democratic social principles, were expelled from the unions and replaced by communist officials with the approval of the Castro régime.

3. *The Army.* The Cuban army was another key national institution. Until the dictatorship of Machado it could have been regarded as a professional army on the European model. But the "Sergeants Revolution" on September 4, 1933 dealt a fatal blow to the Cuban military structure. Batista, who at the time was a sergeant, promoted himself to the rank of colonel and, having seized power, turned the professional army into his own personal instrument, dismissing the career officers and replacing them by his own men. The command structure and discipline suffered accordingly and the army became yet another tool in the hands of the political leadership. Batista filled the senior posts in the army with non-commissioned officers or appointees who had never been to a military school or undergone any training.

When Grau San Martín took over the presidency of Cuba in 1944, he obviously could not allow Batista's "officers" to remain in command of the army. By that time the army had become a kind of

personal guard instead of a national institution. Grau San Martin once more tried to make the army into a professional body, but Batista returned to power with a coup d'état on March 10, 1952. Moreover, the political crisis which gripped Cuba under Prio Socarras also affected the army, and the demagoguery and administrative corruption of Prio's last years left it powerless to resist the onslaught of Batista.

Interviews with regular army officers point to the conclusion that this coup d'état of March 10, 1952, was in the eyes of Cuban professional officers, another "Sergeants' Revolution". Batista filled the senior posts of the army with a hundred men faithful to himself, who reorganized it to buttress the Government. The corruption of the Batista régime found its most willing ally in this army. Every political intrigue and rivalry had repercussions in the barracks and at the time Batista tried to master Castro's armed revolution which was beginning in the Sierra Maestra, the whole military organization had been undermined from within. Compared with Castro's forces, it was a giant—but it was a sleeping giant.

In these circumstances, it was an easy matter for those who were fighting against Batista to create diversion within the army. Fidel Castro played off officer against officer and troops against officers. He promised all of them that revolutionary justice would only be imposed on the "guilty leaders". When the revolution triumphed, the officers and their young troops were unperturbed, believing that nobody had anything against them. They assumed that they would remain to defend the humanist revolution promised by Fidel Castro.

On January 13, 1959, 13 days after the seizure of power, the Castro Government passed Act No. 13¹.

This Act temporarily suspended the Army Act as the first step towards reorganizing the armed forces, which included not only the army but also the navy and the national police force.

The stages in the revolution carried out by the Castro Government in the Cuban armed forces were the following. (a) The old army was dissolved—a task which was entrusted to Raul Castro. Nobody supported the army which had "defended" Batista and, since it was completely discredited, it was unresistingly and ingloriously disbanded. (b) The rebel army which had fought in the Sierra Maestra took over from Batista's army. This rebel army was made up, especially in its higher ranks, of idealistic young men from the Cuban middle class, many of them university graduates. (c) The people's militias were the instrument used by Fidel Castro to overcome the inevitable resistance from the rebel army, since the shift from a democratic nationalist revolution to marxism would not be readily

¹ See *Gaceta Oficial*, No. 3, dated January 14, 1959.

accepted by the men who had launched the struggle against Batista. Castro gradually replaced the leaders of the rebel army and eliminated the soldiers who did not sympathise with his communist tendencies. The people's militias and the remainder of the rebel army were headed by Raul Castro.

The foregoing account makes it clear that the Cuban army never became a well-established, stable, non-political institution. Certain characteristics of the Cuban army are worth repeating, as they give better insight into the deep-seated crisis through which Cuba is passing:

1. the relative absence of a professionally-trained officer corps;
2. the undermining of the principles of authority and command;
3. the permanent subordination of the senior army officers to the political power;
4. the effect of the national political crisis on this disorganized army, resulting in large numbers of military conspiracies;
5. ambition for power and lack of discipline, which induced the bolder members of the army to seek rapid but undeserved promotion, thereby weakening still further the already seriously impaired command structure;
6. the embezzlement of army funds by the officers through whose hands they passed.¹

4. *The Catholic Church.* Cuba is one of the group of Latin American republics which were colonized and christianized by Spain. Consequently, ever since its origins the Republic of Cuba has belonged both in culture and religion to the Christian West. Article 35 of the 1940 Constitution, which was later taken over verbatim in the Fundamental Law of the Castro régime, allows citizens to profess any religion and to practise any faith "provided only that they respect Christian morality and public order". Article 35 also states that "the Church shall be separated from the State, which shall not subsidize any faith". To complete this picture of the position of religion in Cuba from the constitutional standpoint, Article 43, which deals with family life, states: "Marriage may be dissolved by agreement

¹ See the series of nine articles published in the review *Bohemia Libre*, Nos. 40-48, between June 9 and September 3, 1961, under the title "Por qué el Ejército no derrotó a Castro", by Colonel Petro A. Barrera Pérez, based on an account by Rodolfo Rodríguez Zaldivar. See also the "Respuesta al Colonel Barrera Pérez" by Colonel Rego Rubido, in the review *Bohemia Libre*, No. 53, on October 8, 1961. See also Edwin Lieuwen: *Arms and Politics in Latin America*, published for the Council on Foreign Relations by Frederick A. Praeger Inc., New York, 1960, especially pp. 97-100.

between the spouses or at the request of either of them for such reasons and in such manner as are prescribed by law ”.

We have referred to these constitutional clauses to make it clear that Cuba was one of the Latin American republics in which the separation of Church and State was complete. While this independence of the Church limited its moral influence on governments, it also helped to keep it above political strife.

The Catholic Church, which had played a leading part in the struggle against other Latin American dictatorships, e.g., in Argentina and Venezuela, only came down into the political arena when the fighting between the Castro rebels and Batista brought the situation in Cuba to such a critical point that intervention by a body wielding considerable moral authority became necessary. The Church, which possessed such authority, was regarded as the only body capable of inducing the two parties to agree to a truce. A letter from the Archbishop of Havana, Cardinal Arteaga, the Archbishop of Santiago, Enrique Perez Servantes, and the bishops of six provinces, was published at the end of February 1958, calling for the formation of a government of national unity to restore normal political life. This call was a blow to Batista, because it put the Government and the rebels on the same footing. Such appeals for reconciliation exercised at first some appeal, but failed ultimately to affect the developments and the revolution took its full course.¹

Cuba, before Castro's seizure of power, possessed more than 700 parish priests and members of religious order. Today, only 125 remain to minister to the entire population of the island. According to Vatican sources, 598 priests have been expelled or forced to leave the country.²

In pre-Castro Cuba there were Catholic primary and secondary schools and even a Catholic university. All of these institutions have been nationalized under the new régime.

Sociological factors help to explain the degree of religious feeling in Cuba. The majority of practising Cuban Catholics belong to the middle class.³ As a consequence, there were few native Cuban priests and the church administration in Cuba depended on large numbers of Spanish priests. The fact that they were both immigrants and Spaniards put them in a position of social inferiority, and liberal extremists tended to label them “Falangists” and “bodegueros”

¹ See: Royal Institute of International Studies, *Cuba, a Brief Political and Economic Table*, op. cit., and *Hispanic American Report*, Vol. XI, No. 2 (February 1958), p. 87.

² See *L'Osservatore Romano*, January 24, 1962.

³ The Cuban masses, while religious, are not active Catholics.

(grocers), the latter being the popular term for Spanish immigrants in Cuba. This propagandist tendency to undermine the social standing of the clergy was exploited by Fidel Castro, who finally ordered the expulsion of the Spanish priests and members of religious orders from Cuba. Once again Fidel Castro found an institution, or a group of persons within an institution, whose ability to resist had been sapped long before.

The Cuban Catholics tried to resist the new Government's openly communist policies, but their reaction came too late, when they were already helpless. The army and the police were in Government hands, the political parties had been broken and driven into exile, and the trade unions had fallen under the Government's control.

This short account may suffice to explain why, at the critical time, the Church in Cuba was unable to defend itself with the vigour it had displayed in other Latin American countries.

5. *Economic Groups and Business Interests.* Since the early thirties, a new middle class emerged in Cuba, together with an industrial working class. This middle class, which we have already described, produced the Cuban businessman. The few available surveys of Cuban business and, above all, direct research, show that the Cuban businessman is remarkable for his technical and practical abilities. His characteristics seem to be: (a) creative imagination; (b) intelligence in managerial planning; (c) practical ability in executing projects; and (d) drive. It was these qualities which led to the gradual transfer of the large United States-owned sugar mills to Cuban hands. Cuban employers and businessmen also had their own associations; e.g., the associations of landowners, sugar growers, stock breeders, manufacturers, tobacco manufacturers and wholesalers, mining employers, etc.

A very large proportion of this industrial and commercial middle class consisted of the descendants of immigrants, most of them Spaniards. This hard-working, business-like group of Cuban employers gave the country a large middle class, ranging from minor clerks to big businessmen. From the sociological standpoint, Cuba can be regarded as one of the rare Latin American countries in which social differences and class distinctions afforded little justification for social upheaval. Cuba, like Mexico, Costa Rica, Uruguay, Chile and Argentina can be considered to a considerable extent as middle class country¹. The picture of Cuba as a country dominated by a powerful, closed oligarchy while the mass of the population lived in abject poverty is a product of one-sided propaganda.

¹ Federico Debuyst: *Las clases sociales en América Latina*. See above footnote 2 p. 25. See also John J. Johnston: *Political Change in Latin America: The Emergence of the Middle Sectors*. Stanford University Press, California, 1958.

The political and social structure of Cuba was such that the middle class was to be found in the rural areas as well as in the towns. The sugar growers are one example of this semi-urban, semi-rural middle class.

But despite all this, Cuban businessmen never succeeded in achieving a clear collective awareness of their responsibilities as the representatives of the most dynamic forces in Cuba. Extensive government intervention in economic affairs had created a certain submissiveness to the political authorities, and when Cuban businessmen awoke to the danger it was too late.

6. *University Graduates, Professional Workers and Intellectual Groups.* This middle class produced another social group which entered the professions, the administration or politics. Several reasons have been given to explain the preference of sons of middle class families for professional or political careers. In the first place, this meant a higher social standing which exercised a strong attraction for young people, while at the same time removing any opposition from their parents, who themselves were often immigrants. The prospect of a university degree would, of course, add lustre to the family, and overcome parental wishes that the sons should carry on the business. There can be no doubt that in Cuba there were too many graduates in relation to the country's economic resources. This surplus group tried to enter the civil service and, together with those who remained outside, formed a kind of professional proletariat.

As a result, these offsprings of the middle class were receptive to political and social ideas which, from 1930 onwards, led to constant revolutionary ferment. It was they who provided the impetus behind Cuban social legislation, which was among the most advanced in the whole of Latin America. This can readily be confirmed by examining the rights embodied in the 1940 Constitution.

This professional proletariat was both the cause and the victim of Cuba's tumultuous political life. A period at Havana University became a compulsory stepping stone for any future political leader.

The professional organizations supported and fostered political unrest among their members. The gulf between fathers in business and sons at the universities cut off the graduates from the commercial world. The father might be a grocer, shop-keeper, manufacturer, landlord or sugar grower, but his graduate son, now a "doctor", lived in a completely different world. He had savoured the "new ideas" but made little effort to relate this new ideology to the realities of his economic and social environment. He did not realize that his freedom to think and to explore new ideas was dependent on the support from his own class. He did not realize that once his country's social structure would crumble before the onslaught of these ideas,

he and his own private world would be swept away in an almost irresistible process. This was the result of having a class of university graduates who went in for politics with more enthusiasm than wisdom and who were ready to tolerate many breaches of the fundamental principles of law for the sake of a hazy mirage of "the Revolution". These middle class graduates, so brilliant and so astute in the political struggles of by-gone years, were ultimately defeated by the sophistry, the organization and the influence of the seasoned communist leaders of the old guard. Before they were able to assemble their forces to counter-attack, the professional associations had been taken over or dissolved and individuals could only protest in isolation.¹

This account of the Cuban intellectual and professional classes helps to explain, although it in no way justifies, the breaches of human rights which have occurred in Cuba since January 1959, both in principle and in practice. They sanctioned and tried to justify to the free world the introduction of retroactive criminal legislation, the confiscation of property for political reasons and other emergency measures which, so they believed, would only apply to the principal leaders of the defeated Government. But before very long they themselves fell victim to these "emergency measures", which were extended to include everyone who refused to submit to the new régime.

7. *Foreign Business Firms.* It is impossible to survey the sociology and institutions of the Latin American countries without referring to the large foreign firms established there. These firms, backed by powerful financial interests, have played and still play a very important part in the internal affairs of these countries. The weaker a country is politically and socially, the greater the influence of such business concerns.

The case of Cuba, however, has a number of distinctive features. The fact that the country did not achieve political independence in the same way as the other Latin American republics affected the investment of foreign capital in the island. As we have seen, Cuba's achievement of independence from Spain did not immediately enable her to become a sovereign State. Besides its political effects, the Platt Amendment had also an economic significance by protecting the rights of United States capital invested in Cuba.

Moreover, Cuba's economic position at the end of the War of Independence was very critical. The War had largely destroyed the main centres of industry so that it was essential to reconstruct the island's economy. This was done initially under United States military government from 1898 until 1902 and subsequently under the

¹ See: Nino Novas Calvo, "La Tragedia de la Clase Media Cubana," in *Bohemia Libre*, Año 53 (Segunda etapa), No. 13, January 1961, and Theodore Draper; *Castro's Revolution Myths and Realities*, op. cit., pp. 10 and 42.

Government of the Republic, subject to the conditions laid down in the Platt Amendment. As was mentioned in the chapter on the Cuban economy, the 1901 Treaty between the United States and Cuba made a reduction of 20% in the tariff on imported Cuban sugar. This in turn led to heavy capital investment by the United States in Cuba, reaching over the years a total of about \$1,000 million.

Of the 207 sugar mills in existence in Cuba in 1900, the great majority were scrapped and replaced by about 60 big mills. Subsequently that number increased and reached 161 by 1952.

In this way, Cuban economic development avoided the feudal, pre-industrial stage. This, as we have seen, had a number of advantages, especially for the sugar workers themselves. But the result was a huge influx of foreign capital out of all proportion to Cuba's actual stage of political and social development. This investment therefore produced consequences in Cuba which have already been observed in Latin America as a whole.¹

In the first place, the country's political life was affected because the foreign firms made alliances with the local leaders in order to safeguard their own interests. In the second place, the arrival of these big companies had a marked social impact. It created an industrial proletariat with few skills and little social power compared with the omnipotent employer or group of employers. Moreover, the transplanting to an under-developed country of production methods evolved in a developed country led to a false emphasis. The maximum stress was laid on the economic aspect, while the social implications were completely ignored.

In the third place, these big firms influenced the whole structure of the Cuban economy by accentuating the single-crop system which had been characteristic of the country since the colonial era and by making very difficult the slow process toward diversification of the Cuban economy.

In the fourth place, industrial policies were pursued which swelled the profits of the companies but held back the country's development.

Lastly, the demand for trained workers led to the spread of technical skills without any previous fundamental education. This produced a class of skilled but almost illiterate workers.

The close links established between the big firms and members of the upper classes should be borne in mind. Several conclusions emerge from this general picture. One of them, which is perhaps the most important for the future, is the need to recognize the collective responsibility of Cuban citizens and foreign investors alike for the deficiencies of the country's economic and social situation.

¹ Raul Chavani Porpeta, "Vecindad y enemistad de los Estados Unidos e Iberoamerica," in *Revista de Estudios Políticos*, No. 116, March-April, 1961, Madrid, pp. 149-172.

This is the more important as the big firms had investments not only in the sugar industry but also in tobacco, mining, rice growing, public utilities, etc.

Conclusions. The foregoing survey of Cuba's political and social institutions reveals that for various reasons Cuba had not, by December 31, 1958, succeeded in consolidating its institutional structure. Many institutions, especially those of an industrial and economic character, were slowly maturing. But the trade unions and the army were caught up in the political crisis. This lack of general political stability reflected the weakness of Cuba's inner structure. The Republic of Cuba had an excellent written Constitution drawn up in 1940. But despite the fact that this Constitution was the work of a free constituent assembly, it did not reflect Cuba's real situation. This disparity between the written Constitution of the country and its real structure is but one aspect of the problem. Yet it does explain the lack of authority of the written Constitution, which was frequently suspended, violated or modified.

If we add to this institutional immaturity the political corruption and violence of Cuban political life, which further divided the nation, we can better understand the success of Fidel Castro and his *July 26 Movement* and the feeble resistance to its gradual evolution into a new totalitarian dictatorship.

This wholly material explanation of what happened in Cuba is in no way a justification. On the contrary, it is believed that Castro has destroyed all existing possibilities of further developing and consolidating the country's maturing social and economic institutions. In view of the course of events in Cuba, Castro's revolution can indeed be described as the final triumph of the destructive forces over the many fine qualities and developing institutions of the Cuban people.

V. THE HISTORY OF THE CUBAN REVOLUTION BETWEEN TWO SPEECHES

A. "History Will Absolve Me"

On October 16, 1953, Fidel Castro appeared before a court at Santiago de Cuba to make a plea in his defence in the criminal trial being held as a result of the armed attack on the Moncada Barracks. This speech was published after he seized power under the title *History Will Absolve Me*.¹

In this long speech, which was later amended and added to, Fidel Castro covered a wide variety of subjects, ranging from reflec-

¹ English text published in the United States by Liberal Press, Inc.

tions about himself and his associates in the attack on Moncada to scathing criticisms of the Batista régime and an account of his own plans for government. This speech in his own defence has been regarded by students of the Cuban revolution as the authentic voice of Fidel Castro. We shall examine the sections of the speech which cast the most direct light on Fidel Castro's ideas and political plans.

1. *Lawyers.* With regard to lawyers, Fidel Castro said in the first part of his plea:

Never has a lawyer had to practise his profession under more difficult conditions; never against an accused have more overwhelming irregularities been committed. Here, counsel and accused are one and the same. As attorney for the defence I have been denied even a look at the indictment. As the accused, I have been, for the past seventy-six days, shut away, in solitary confinement—held *incommunicado* in violation of every legal and human consideration.

There was no lack of generous colleagues who would have defended me and the Bar Association of Havana appointed a courageous and competent jurist, Dr. Jorge Pagliery, Dean of the Bar of the city, to represent me in this case. But he was not permitted to perform his undertaking. The prison gates were closed to him as often as he tried to see me. Only after a month and a half, and through the intervention of the Court, was he (finally) granted a ten-minute interview with me in the presence of a sergeant of the Military Intelligence Service.

It is taken for granted that a lawyer should converse privately with his client. This right is respected all over the world—except here, where a Cuban prisoner of war is in the hands of an implacable tyranny that abides by no code, legal or humane.

2. *Principles of Criminal Law.* After reviewing the proceedings of the earlier sessions (during which he was allowed at his own request to leave the dock and sit in the section reserved for counsel), Fidel Castro said:

I am going to make only one request of this court; I trust it will be granted as a compensation for the many abuses and outrages the accused have had to tolerate without protection of the law. I ask that my right to express myself be respected without restraint. Otherwise, even the merest semblance of justice cannot be maintained, and the last episode (of this trial) would be, more than any other, one of ignominy and cowardice.

Referring to the principles of Criminal Law, he stated that:

Fundamental matters of principle are being debated here, the right of men to be free is on trial, the very foundations of our existence as a civilized and democratic nation are in the balance . . .

It is a fundamental principle of Penal Law that an imputed offense must correspond exactly to the offense as described in the law. If no law applies exactly to the controversial point, there is no offense.

3. *Legislative Plans of the Future Government.* As regards the programme of his government should he ever come to power, Castro forecast his future legislation. His words were:

In the brief of this cause there must be recorded the five revolutionary laws that would have been proclaimed immediately after the capture of the Moncada barracks and would have been broadcast to the nation by radio. It is possible that Colonel Chaviano may deliberately have destroyed these documents, but even if he has done so, I conserve them in my memory.

The First Revolutionary Law would have returned power to the people and proclaimed the Constitution of 1940 the supreme law of the land, until such time as the people should decide to modify or change it. And, in order to effect its implementation and punish those who had violated it—there being no organization for holding elections to accomplish this—the revolutionary movement, as the momentous incarnation of this sovereignty, the only source of legitimate power, would have assumed all the faculties inherent to it, except that of modifying the Constitution itself: in other words it would have assumed the legislative, executive and judicial powers.

The Second Revolutionary Law would have granted property, not mortgageable and not transferable, to all planters, subplanters, lessees, partners and squatters who hold parcels of five or less 'caballerias' of land, and the state would indemnify the former owners on the basis of the rental which they would have received for these parcels over a period of ten years.

The Third Revolutionary Law would have granted workers and employees the right to share 30% of the profits of all the large industrial, mercantile and mining enterprises, including the sugar mills. The strictly agricultural enterprises would be exempt in consideration of other agrarian laws which would have been implemented.

The Fourth Revolutionary Law would have granted all planters the right to share 55% of the sugar production and a minimum quota of forty thousand arrobas for all small planters who have been established for three or more years.

The Fifth Revolutionary Law would have ordered the confiscation of all holdings and ill-gotten gains of those who had committed frauds during previous régime, as well as the holdings and ill-gotten gains of all their legatees and heirs. To implement this, special courts with full powers would gain access to all

records of all corporations registered or operating in this country (in order) to investigate concealed funds of illegal origin, and to request that foreign governments extradite persons and attach holdings (rightfully belonging to the Cuban people). Half of the property recovered would be used to subsidize retirement funds for workers and the other half would be used for hospitals, asylums and charitable organizations.

4. *Views on Cuban National Policy in the Western Hemisphere.* Fidel Castro went on to give his views on national policy under his programme:

Furthermore, it was to be declared that the Cuban policy in the Americas would be one of close solidarity with the democratic people of this continent, and that those politically persecuted by bloody tyrants oppressing our sister nations would find generous asylum, brotherhood, and bread in the land of Marti. Not the persecution, hunger and treason that they find today. Cuba should be the bulwark of liberty and not a shameful link in the chain of despotism.

5. *Fundamental Points of the Future Programme of Government.* After referring to the other fundamental laws dealing with land reform, educational reform and the nationalization of the electricity and telephone companies, he summed up his programme in the following words:

The problems concerning land, the problem of industrialization, the problem of housing, the problem of unemployment, the problem of education and the problem of the health of the people; these are the six problems we would take immediate steps to resolve, along with the restoration of public liberties and political democracy.

6. *About Political Life in Cuba before Batista's coup d'état on March 10, 1952.* With regard to political life in Cuba before the coup d'état of March 10, 1952, Castro made the following declaration:

Let me tell you a story.

Once upon a time there was a Republic. It had its constitution, its laws, its civil rights, a President, a Congress, and law courts. Everyone could assemble, associate, speak and write with complete freedom.

The people were not satisfied with the government officials at that time, but (the people) had the power to elect new officials and only a few days remained before they were going to do so!

There existed a public opinion both respected and heeded and all problems of common interest were freely discussed. There

were political parties, radio and television debates and forums, and public meetings. The whole nation throbbed with enthusiasm. This country had suffered greatly and although it was unhappy, it longed to be happy and had a right to be happy. It had been deceived many times and it looked upon the past with real horror. This country believed—blindly—that such a past could not return; the people were proud of their love of liberty and they carried their heads high in the conviction that liberty would be respected as a sacred right; they felt confident that no one would dare commit the crime of violating their democratic institutions. They desired a change for the better, aspired toward progress; and they saw all this at hand. All their hope was in the future.

7. *The Right to Resist Despotism.* Fidel Castro devoted a large part of his pleadings to justifying the right to resist despotism and quoted many thinkers in all ages, including John of Salisbury, St. Thomas Aquinas, Martin Luther, Juan Mariana, Althusius, John Milton, Jean-Jacques Rousseau, etc. He also quoted the American Declaration of Independence of July 4, 1776, and the Declaration of the Rights of Man of the French Revolution. There is not a single reference to any book or doctrine which might link him with Marxism-Leninism.

8. *The Constitution of the State.* In his lengthy speech, Fidel Castro also gave his views on the Constitution:

The Constitution is understood to be the basic and supreme law of the land—to define the country's political structure, regulate the functioning of government agencies and determine the boundaries of their activities. It must be *sui generis*, stable, enduring—and to a certain extent inflexible.

It is a fundamental principle of Civil Law that there can be no unconstitutionality where the executive and the legislative powers reside in the same body. When the Cabinet makes the laws, the decrees and the rules—and at the same time has the power to change the Constitution in ten minutes' time—then why the devil do we need a Court of Constitutional Rights?.

9. *Gratitude to the Members of the Court of Justice.* Castro concluded by expressing, in the following words, his gratitude to the members of the court who had listened to his long speech:

To the Honorable Magistrates, my sincere gratitude for having allowed me to express myself freely without petty interruptions. I hold no bitterness toward you. I recognize that in certain aspects you have been humane and I know that the Presiding Officer of this court, a man of unimpeachable private life, cannot disguise his repugnance at the current state of affairs that oblige him to dictate unjust verdicts.

These were the ideas that sustained Fidel Castro until he came to power on January 1, 1959. A very complex situation then developed as the different groupings, ranging from the most moderate to the most extreme, came into conflict.

B. Stages of the Cuban Revolution

1. Writers supporting Fidel Castro and the communists have distinguished three main stages. The first stage led up to the seizure of power and the slogan was "Freedom with bread and without fear". The declared policy was that of a liberal, democratic and progressive movement. The second stage consisted of revolutionary nationalism which, according to these writers, began with the passing of the Land Reform Act on May 17, 1959. This Act is regarded as the first measure by the Castro régime to have any far-reaching effect on Cuba's economic structure.

This second stage was completed by the passing of legislation nationalizing the public utilities and the oil and sugar companies (Act No. 851 dated July 6, 1960).

For many Cuban leaders this second stage was the final goal of the revolution. But to quote Osvaldo Dorticos, provisional President of Cuba, "these measures in themselves were not sufficient to enable our revolution to be called socialist".¹ What for many Cubans was the goal was for the communists simply the point of departure.

With the passing on October 13, 1960, of Acts Nos. 890 and 891 nationalizing the country's main industries and banking system respectively, the first step was taken in the transition towards socialism.

The third stage was the establishment of a marxist régime in Cuba. This was done publicly in a proclamation of the "socialist" character of the Cuban revolution by Fidel Castro on April 16, 1961, the day before the unsuccessful landing in the Bay of Pigs.

The machinery used by the Castro régime to establish its socialist dictatorship is defined and described by Osvaldo Dorticos:² (a) the National Land Reform Institute (INRA); (b) new ministries set up to perform new functions assumed by the State, e.g., the Ministry of Industries, the Ministry of Internal Trade, the Ministry of External Trade, etc.; (c) the Central Planning Board; and (d) the Integrated Revolutionary Organizations (ORI).

(a) *The INRA.* The National Land Reform Institute was established by Part VI of the Act introducing Land reform in Cuba and consisting of six Sections. The Institute was established as an autonomous body with incorporated status for the purpose of putting the

¹ See article by Osvaldo Dorticos Torrado entitled "Los cambios institucionales y politicos de la revolucion socialista cubana," in *Cuba Socialista*, September 1961.

² *Idem.*

Land Reform Act into effect. The work of the Institute fell into two distinct stages: during the first, it expropriated or confiscated land and organized the so-called co-operatives, while during the second it became a State agency with responsibility for directing and planning agriculture and stock raising. According to Blas Roca,¹ land distribution in Cuba over 1961 as a whole was as follows:

1. People's farms and co-operatives 3,816,100 hectares
2. Peasants with fewer than 5 caballerias
belonging to the ANAP 3,544,900 hectares
3. Farmers with between 5 and 30 caballerias 1,814,400 hectares

The "socialist" sector² accounts for 41% of the land. The peasants belonging to the ANAP (National Smallholders' Association), who receive government loans and co-operate in carrying out the agricultural plans, hold 39% of the land. The farmers with over 5 and under 30 caballerias (which is the upper limit allowed by law) own 20% of the land.

As regards the co-operatives, Section 43 of the Land Reform Act requires the INRA to promote the establishment of farm co-operatives "wherever possible", but adds that these co-operatives, when formed to farm land confiscated or expropriated by the INRA, remain subject to control by the Institute, which reserves the right to appoint managers. In other words, the Institute is empowered to expropriate or confiscate land, establish co-operatives with persons of its own choosing, appoint the managers and control them "until they are granted greater autonomy by law".

The National Smallholders' Association (ANAP) was set up by the INRA to organize the small farmers. Members of the Association receive "technical, financial and organizational assistance, guaranteed prices, and political training to strengthen the alliance between the working class and the peasants, which is the key to the triumph of the socialist revolution"³.

It can be concluded from this latter explanation by the provisional President of Cuba that 80% of the farm land of the country is directly or indirectly controlled by Fidel Castro's régime.

(b) *The New Ministries.* On February 23, 1961, the Council of Ministers passed six enactments reorganizing large sections of the country's public administration. These enactments were: Act No. 930 prescribing the functions of the Cuban National Bank; Act No. 931 defining the functions of the Cuban National Bank in the

¹ *Revista Internacional*, No. 10, October 1961 (a theoretical and informational publication issued by the communist and workers' parties), article entitled "Nueva etapa de la revolución cubana".

² Of people's farms and co-operatives

³ See article by Osvaldo Dorticos, quoted above, p. 60.

reorganization of the country; Act No. 932 establishing the Ministry of Industries; Act No. 933 establishing the Ministry of Internal Trade; Act No. 934 establishing the Ministry of External Trade; and Act No. 935 establishing the Central Planning Board¹.

The Act establishing the Ministry of Finance was passed on February 28, 1961². This Act completed the administrative machinery of the Castro Government and enabled it to plan and carry out any project affecting industrial, internal or external trade and the finances of the State.

(c) *The Central Planning Board*, which consists of senior officials of the Castro régime, was set up to plan the Cuban economy and to draw up the first four-year economic development plan.

(d) *The Integrated Revolutionary Organizations*. The culmination of this thorough-going process of centralization was the establishment of the Integrated Revolutionary Organizations (ORI). Theoretically, the purpose was to amalgamate the groups or movements which continued to support the Castro régime during 1961. The ORI was regarded as the first stage in the formation of the United Socialist Revolutionary Party. During this stage, efforts were made to establish the primary organizations and to draw up a common political programme³. The second phase entailed the formation of the *United Socialist Revolutionary Party of Cuba*. Its worth noting that the ORI claimed to contain the *July 26 Movement*, the *Revolutionary Student Directorate* and the *Cuban People's Socialist (i.e., Communist) Party*. The *July 26 Movement* is now only a facade in Cuba, because most of the leaders who founded it are either in exile or in prison; the *Revolutionary Student Directorate* has shared much the same fate. This left only the *Cuban People's Socialist Party (PSP)* and the senior members of the Castro régime. The second phase marked the beginning of the systematic transformation of Cuba into a one-party State. The formation of the ORI and the completion of the progress of centralizing power, which has been referred to, coincided with the issue of Act No. 988, dated November 29, 1961, which officially proclaimed "revolutionary terror" in Cuba. It was then, says Draper, that "Cuba entered on a stage of forced industrialization, revolutionary terror and totalitarian organization of the State."⁴

¹ *Gaceta Oficial*, Special No. 6, February 23, 1961.

² *Gaceta Oficial*, No. 40, February 23, 1961.

³ See Carlos Rafael Rodríguez, a leader of the Cuban People's Socialist (i.e., Communist) Party and a member of the executive of the ORI: "Cuba on the Threshold of 1962," *New Times*, published by *Trud* (Moscow), No. 1, January 1, 1962.

⁴ Theodore Draper, "El Comunismo de Castro", *Revista Cuadernos* (Paris), No. 58 (March 1962).

C. The Judiciary and the Bar under the Castro Régime

1. *The Judiciary* followed the same process of deterioration as other basic Cuban institutions under the Castro régime. From the very beginning of the revolutionary government, the existence of two trends regarding the reorganization of the Judiciary in Cuba was apparent. One was seeking to reorganize the Judiciary according to democratic patterns established in the 1940 Constitution. The other group demanded a "popular judiciary according to the new aims of the Cuban revolution". The first group was represented by a number of outstanding members of the Cuban legal profession. They looked with suspicion at the first attitudes of the Castro régime towards justice, and later they started a quiet resistance to avoid the total disintegration of the Judiciary in Cuba.¹

The pressure of the Castro régime on the members of the Judiciary who were willing to establish a real independent judicial power took different ways. One of the most evident was the organization of the popular militia. Those who were advocating a "popular judiciary" accepted immediately the double function of magistrates and militiamen. This double standard in the Judiciary was one of the worst violations of the internal discipline of the judicial branch.

Successive constitutional amendments to the Fundamental Law deprived the Supreme Court of its original jurisdiction in constitutional questions. These constitutional amendments also deprived the Supreme Court of its administrative functions regarding members of the Judiciary and employees, as fulfilled through the Government Division of the Supreme Court. (See Part Two, Reforms to the Fundamental Law, pages 107-110).

The revolutionary courts gave rise to conflict of jurisdiction with the Supreme Court. In October 1960, the Court of Constitutional and Social Guarantees decided a leading case in which it was recognized that there was no appeal for unconstitutionality against decisions of the Military Tribunals. The opinion of the majority was based on the legal argument that the amendment to the Fundamental Law permitted the organization of the revolutionary courts independently of the Supreme Court. The minority held that appeals for unconstitutionality should be admitted "because the social revolutionary jurisdiction applies only to crimes that should be considered as 'counter-revolutionary', and this is a matter that should be decided in the last instance by the Supreme Court. This in fact is an interpretation according to the Universal Declaration of Human

¹ For a distinction in the very beginning of the Castro régime between "revolutionary law" and "the old law", see *Bulletin* of the International Commission of Jurists, No. 9 (August 1959), pp. 36-39.

Rights adopted by the General Assembly of the United Nations on December 10, 1948.”¹ This applies especially to cases concerning the death penalty, long term imprisonment or total confiscation of property.

But the point is that members of the Judiciary were also under the jurisdiction of the Revolutionary Tribunal when accused of “counter-revolutionary” activities.

Constant talk about the necessity to “cleanse” the Judiciary in the middle of 1960, supported later by articles in government newspapers, were the prelude to a “purge” in November 1960 and a subsequent bitter attack by Fidel Castro on the Cuban Judiciary in December 1960. These rumours were to the effect that the régime was considering the creation of Soviet styled “people’s courts”.

On November 15, 1960, two members of the Supreme Court, Chief Justice Dr. Emilio Menéndez and Associate Justice Dr. José Morell Romero, resigned and took political asylum in the Argentinian and Mexican Embassies, respectively.² Dr. Menéndez had been appointed President of the Supreme Court of Cuba by Fidel Castro in January 1959. This defection came as no surprise because of the rumours mentioned above. On November 17, a special session of the Supreme Court was called to declare the two absent members “traitors”. Only 21 of the remaining 30 members of the Supreme Court appeared for the session and 9 of the 21 refused to endorse the condemnation of their colleagues. The dissenting members were “purged” within a week and went into exile.

On December 26, 1960, the Castro régime passed a decree dismissing officially 17 Supreme Court justices. Nine of them had already resigned and were in exile. In order to implement the purge, the Castro régime suspended once more the irremovability of judges for 45 days.³

On February 3, 1961, the Castro régime continued the purge of the Cuban Judiciary, dismissing for “counter-revolutionary activities” or “manifestly immoral conduct” one magistrate of the Supreme Court, the presidents of six of the seven national Provincial Appeal Courts, 26 appeal magistrates and 87 judges of lower courts throughout the country.⁴

¹ José Morell Romero, former Magistrate of the Supreme Court in Cuba, “La lucha en el Frente Jurídico,” Special Report, unpublished.

² *New York World Telegram*, November 16, 1960, and *Gazette de Lausanne*, November 17, 1960. See text of the resignations in Appendix No. 1 a, b to this part.

³ See Part Two, p. 110; also see *Hispanic American Report*, Vol. XIII, No. 12, p. 881, and *Bohemia*, published in Havana, January 1, 1961.

⁴ See *Hispanic American Report*, Vol. XIV, No. 2, p. 127; *The New York Times*, February 4, 1961, and *Bohemia*, February 12, 1961.

On August 21, 1961, the Government Division of the Supreme Court proclaimed publicly the "socialist character of the new Cuban revolutionary justice". Judges should be "active guardians of socialist legality" and to implement this trend courses on "socialism" were organized largely for members of the Judiciary. The Government Division of the Supreme Court was in charge of all administrative matters of the Judiciary and was formed by the President of the Supreme Court and six members thereof, elected annually from among the Presidents of Divisions and Magistrates of the Court (Article 159 of the Fundamental Law).

The above document was largely quoted by the Public Prosecutor of the Supreme Court, Dr. Santiago Cuba, in his speech of September 1961, delivered to initiate the judicial term 1961-1962. It was the official declaration of the objectives of the Castro régime regarding the Judiciary.

The Public Prosecutor stated that there were "two different ways taken by the counter-revolutionary activities of the Cuban Judiciary. Firstly, through decisions against the interests of the people, for instance, in agrarian matters, in a period of less than one year the former Court of Constitutional Guarantees increased the amount of the indemnization for expropriations to more than 15 million Cuban pesos which the people should pay to the big land owners, in many cases into the hands of foreign corporations. In the same period the Court of Constitutional Guarantees rejected 51 appeals submitted by INRA and accepted only 9. On the other hand, appeals of the big landowners were accepted in 64 cases while the Court rejected only 3. The second way of counter-revolutionary activity by the Cuban Judiciary was the support given by most of its members to ancient theories about the separation of powers, and about independence and political neutrality of the judicial branch. This theory was also diffused among the members of the administration of justice and, in some cases, among the people. It was an attempt to oppose the old conception of the Judicial Power to the Revolutionary Power... The power of the State, whatever the social and economic system is, is only one power. This political power is in the hands of the people or in the hands of the exploiters of the people. The power is in the hands of the working class, in the hands of the peasants, in the hands of the workers, as it is in Cuba, or the political power is in the hands of oligarchical and exploitory minorities like in the United States, Spain, the Dominican Republic or any other example of 'representative democracy'."

This long quotation contains the main points of the introduction of the Public Prosecutor's speech. In the following paragraphs the Public Prosecutor referred to the crisis of November 1960 and the subsequent "purge" of the Judiciary, saying that because of the previous suspension of the irremovability of the Judiciary, the New

Year was received "with the house clean of those who attempted to detain the course of history".

The second part of the speech was dedicated to the new tasks of the Judiciary in its new revolutionary life. To determine these tasks the Public Prosecutor referred to a resolution of the Government Division of the Supreme Court on August 21, 1961, which was mentioned previously. This document, as quoted by the Public Prosecutor, says further:

"The function of the Courts is that of deciding cases of Justice. This means that before making any judgment the legal norm to be applied to the concrete case under decision must be studied... But the socialist justice goes further. Socialist justice serves besides to build and improve socialism, because the courts, in deciding each case, are teaching the citizen to be loyal to the socialist motherland and its institutions."

With regard to the members of the Judiciary the document was quoted as follows:

The members of the Judiciary cannot make an interpretation of the revolutionary legislation without a close regard to the social reality which supports this legislation. It must be understood that the revolution has drastically eliminated the former legal régime which has been replaced by a new régime, both in its formal basis and in its profound content. Only when judges and magistrates get fully acquainted with their true mission as active guardians of socialist legality, would it be possible to create a new pattern of adjudication of the fundamental laws of the revolution.

The Public Prosecutor enumerated the new tasks of the Judiciary as follows:

To contribute to the process of establishing a new socialist state the judicial branch, as an organ of the new State, should undertake the active, efficient and energetic defence of the political, social and economic organization which the Cuban people have established in exercising their own sovereignty.

1. First of all, the Judiciary should defend the revolutionary state against attacks from internal or foreign enemies ...
2. It is also important that the Judiciary defend the social property of all people against the counter-revolutionary attacks ...
3. Another objective is the defence of the revolutionary legality ...
4. Lastly, it is of great importance to educate the masses through judicial decisions. Judicial decisions should, besides deciding the case, be inspired as a form of message for the revolutionary education of the masses.

The Public Prosecutor ended his long speech with a reference to practising lawyers, saying that there would be a great possibility for professionals in law to practise in Cuba. "Like other institutions,

the practice of the legal profession changes (in a socialist state) and the practising lawyer is no longer the intransigent defender of egoistic interests but the contributor to the general tasks of the people."¹

As stated by the Cuban Judiciary in Exile, representing more than 400 Cuban judges who left Cuba for political reasons, "all organs of the judicial Branch lack the elementary guarantees necessary for the fulfilment of their functions within the national territory and the Cuban judiciary is subject to constant threatening and vexation".²

2. *The Bar Association of Havana* is one hundred years old. Its present Statutes date from May 24, 1949, when they were approved by the competent authority, the Government Division of the Supreme Court. In accordance with the Organic Act of the Judiciary, this body rules on the constitutionality of the Statutes of the Bar Association and the appointment or election of its organs³. The last elections held in Cuba to renew the organs of the Association were held in August 1958; the term of office being three years it was to terminate on June 8, 1961. The Bar Association of Havana had four thousand three hundred registered members.

On July 5, 1960, during the night, a group of lawyers, some in militia uniform, entered the Headquarters of the Bar Association and took possession of the offices. They issued a statement to the press saying that they intended to remain in occupancy of the premises under a guard of lawyers who were members of the militia. On July 6, the group published a manifesto addressed to the Governing Board of the Bar Association of Havana, calling upon it to declare Dr. José Miro Cardona "a traitor to the Country and the Revolution". This ultimatum was accompanied by a warning that failure to comply would bring "whatever action the circumstances should require". On July 8, the militia lawyers met again and published a declaration to the effect that they were dismissing the Governing Board from office and taking over the administration and management of the Association.

Subsequently, on August 18, 1960, the same group called a meeting of the General Assembly of the Association to consider the following agenda:

First: Resignations to be submitted by all members of the two opposing Governing Boards;

Second: Crisis confronting the Bar Association and action necessary to overcome it;

¹ The foregoing statements have been taken from *Colegio de Abogados de La Habana, Boletín Oficial*, Año No. 16, Segunda Epoca, June-November 1961, Nos. 2, 3, 4, 6, 7, transcript of the speech read by Dr. Santiago Cuba, Public Prosecutor of the Supreme Court, at the inauguration of the judicial term 1960-1961.

² *Statement of the Cuban Judiciary*, published by the Cuban Judiciary Association in Exile, Miami, Florida.

³ Sections 332-335 of the Organic Act of the Judiciary.

Third: Amendment of the Statutes if necessary to achieve that aim.

The announcement of the meeting was signed by one of the lawyers, Alberto Suarez Ortega, as "officer responsible for the Secretariat" and bore the visa of another, Andrés Silva Valdés, in the function of "co-ordinator".

The meeting was finally held on December 9, 1960, after one duly announced postponement. According to available information about 100 persons attended the Assembly, including 30 who were not lawyers. The meeting adopted new Statutes and elected new organs, thus giving the usurpation an appearance of legality.

The legitimate Governing Board of the Bar Association met outside its headquarters, since these were occupied by the "militia lawyers", and unanimously decided to issue a communiqué stating that it had not called the aforesaid meeting and could not recognize it, and inviting members not to attend it. This communiqué is contained in appendix 2 to this part.

The Governing Board then appealed to the Government Division of the Supreme Court of Justice, as the authority having jurisdiction in the matter of the appointment or election of the organs of the Association, requesting it not to approve the decisions taken by the meeting called by the "militia lawyers".

The Governing Board continued to hold clandestine meetings; faced with the impossibility of continuing the struggle for the Bar Association in Cuban territory, it met in exile in the city of Miami. At that meeting it unanimously agreed to "continue to execute fully the mandate entrusted to the present Governing Board of the Bar Association of Havana by the overwhelming majority of the members of that Association in the elections held in August 1958." The complete statement is included in appendix 3 to this part.

On June 8, 1961, a "Lawyers' Day" was celebrated in Havana. The Official Bulletin published by the Bar Association of Havana, now run by the group of persons that occupied the Association's premises, printed an article entitled "A Distinguished Commemoration" which commented on "Lawyers' Day" as follows:

"What we can say about this of June 8 is that it has served to show that lawyers too are becoming impregnated with the new morality, that they are ready to combat tirelessly all tendencies towards favouritism and nepotism and all outrages to truth, that their device is one and one only: Towards socialism, with the People, under the guidance of the O.R.I." ¹

At this point in the revolutionary process in Cuba, nothing has been left of any of the principles that Fidel Castro had expounded in his defence plea on October 16, 1953. Every obstacle was placed in the way of lawyers in the exercise of their profession; the courts

¹ See Bar Association of Havana, *Official Bulletin*, 16th year, Second Period, June-Nov. 1961, Nos. 2, 3, 4, 5, 6 and 7.

of justice did not respect "the right to speak with complete freedom" which Fidel Castro had asked for and obtained during his own trial; the "elementary principles of criminal law" were violated in both law and practice; the 1940 Constitution was superseded by the so-called Fundamental Law; despite his belief that the Constitution should be "stable, lasting and on the whole inflexible", there were more than 20 constitutional reforms up to August 1961; his idea that Cuba should be a "bulwark of freedom and not a shameful link in the chain of despotism" culminated in the approval of the "law of terror". How did Fidel Castro, who had promised "bread with freedom and without fear", justify the change to "fear without bread and without freedom"?

D. Castro's Speech of December 1, 1961

This important address to students at the revolutionary training schools is an attempt to explain the ideological motives behind the revolutionary process. Its central theme was the need to establish the *United Socialist Revolutionary Party*.

In this speech, which was somewhat auto-biographical in character, Fidel Castro declared himself to be a convinced Marxist-Leninist revolutionary. Some of the views expressed in this lengthy discourse are quoted below.

1. On the "revolutionary movement":

"Finally, then, the revolution seized power. In what circumstances did the revolution seize power? Did it do so with an organized disciplined movement fully prepared to take over the tasks of government? No. Did it do so with all the revolutionary forces in the country organized within this revolutionary movement? No. There is only one revolutionary movement. There are not two or three or four revolutionary movements. And since there is only one revolutionary movement, in the last analysis we have to choose between revolution and counter-revolution. A revolutionary movement may be partial or it may not be partial. A revolution may confine itself to carrying out certain types of undeniably revolutionary tasks; it then comes to a halt and from that time onwards is no longer a genuinely revolutionary movement or, alternatively, the revolutionary movement goes on. In other words, a movement may be more radical or less radical, but you cannot have two, three or four revolutionary movements—that would be absurd. Moreover, it would be to play the game of the counter-revolution."

This statement links up with Fidel Castro's declaration that "anti-communism is counter-revolution", thereby sweeping aside all the groups which had taken part in the struggle against the Batista régime but resisted growing penetration of the communists.

2. Referring to the circumstances which favoured his revolutionary movement, he said:

" But this analysis must not be over-simplified because there was a series of circumstances which favoured our revolutionary movement, circumstances which prevented people from taking us seriously. Secondly, many people thought that we were a romantic group who were bound to die down there. Thirdly, it was believed that we were over-ambitious. Fourthly, it was believed that the revolutionary leaders had conservative rather than radical ideas. There can be no doubt that if, at the time when we began to gain strength, we had let it be known that our ideas were extremely radical, all the social classes which today are fighting against us would have fought against us at the time and not since we came to power. "

3. Dealing with the ideas put forward in his defence plea in 1953, he made the following comment:

" Am I a convinced revolutionary? Yes, I am a convinced revolutionary. For the benefit of those who have asked me whether my opinions at the time of the attack on the Moncada Barracks were the same as today, I can answer that they were *very similar* to my opinions today. This is the truth. Anyone who reads our proclamation issued at that time will see that many of the fundamental ideas of the revolution are expressed in it. That proclamation was drawn up with care. It was drawn up with sufficient care to put over a number of fundamental ideas without at the same time making commitments which might restrict our freedom of action within the revolution and without allowing our movement, which we were convinced would overthrow Batista, to be outtriled and hamstrung thereby. In other words, our movement had to be made as broadly based as possible. If we had not drawn up this proclamation with care, if it had contained a more radical programme, it is certain that, although many people were a little sceptical about political programmes and often ignored them, the revolutionary movement against Batista would not have acquired the impetus that it did and which made victory possible. Whoever reads the proclamation and the speech I made at that time will see for himself what these fundamental ideas were. "

4. Later in the speech Castro publicly confessed his marxist-leninist faith in a way which recalls a religious creed:

" Do I believe in Marxism? I believe absolutely in Marxism. Did I believe in it on January 1? I did believe in it on January 1. Did I believe in it on July 26? I did believe in it on July 26. Did I interpret it then as I interpret it today? Between the way I interpreted it then and the way I interpret it now there is a big difference. Was I prejudiced? Yes, I was prejudiced on July 26. Was I a thorough-going revolutionary on July 26? No, I could not call myself a thorough-going revolutionary. Was I a thorough-going revolutionary on January 1? No, only to a certain extent. Am I a thorough-going revolutionary today? That would mean that I was satisfied with wath

I know and I am not satisfied—far from it. Have I any doubts about Marxism and do I think that certain interpretations are wrong and should be revised? I have no doubts whatever.”

5. After several pages devoted to praising the Soviet Union, he stated:

“Our country had to choose between two policies—either the policy of capitalism, the policy of imperialism, or the policy of anti-imperialism, the policy of socialism. It is essential to bear in mind that there is no middle way between capitalism and socialism. Those who persist in looking for a third position are merely deluded seekers after Utopia.”

Later, he enlarged on this point when he said:

“It was necessary to carry out a thorough anti-imperialist revolution. But the anti-imperialist and socialist revolution must be one, a single revolution, because there cannot be more than one revolution. This is the great dialectical truth of humanity. Imperialism or anti-imperialism. The result is socialism, the triumph of socialism, the opening of the era of socialism, the end of the era of capitalism and imperialism, and the beginning of the era of socialism, followed by the era of communism. There is no cause for alarm...”

6. Dealing with the Integrated Revolutionary Organizations (ORI), Fidel Castro stated that the groups belonging to it had made the following contributions:

“The revolution was able to count on all the cadres of the revolutionary organizations. The Socialist Party made an invaluable contribution in the shape of its seasoned militants who had been educated in the school of socialism, educated by the Socialist Party. The Directorate contributed its young leaders, while as for the July 26 Movement, it supplied uncounted leaders with long years of political education behind them who were filled with their youthful revolutionary vocation and all the experience they had acquired in the struggle for power. In short, we have all contributed something. In one way or another we have represented the nation's elementary forces. These forces were bound to combine to form a single organization and this explains why they have joined the ORI.”

7. Dealing with the party programme, the final version of which was postponed until some date in the future, Fidel Castro said:

“It will be a marxist-leninist programme adapted to the specific needs of our country. In other words, we shall adopt as our own programme the fundamental principles of marxism-leninism...”

8. As regards the direction of the party, Castro proclaimed the principle of “collective leadership”. He stated:

"For some time the revolutionary leadership was in the hands of one man—of course, it was not dictatorial or capricious, nothing like that; but for some time the decisions were taken by virtue of the confidence vested in the Prime Minister of the Revolutionary Government, so that the key decisions were taken by him. I have said, I say, and I repeat, that I am firmly convinced that this is wrong. I have nothing to reproach myself with. It was simply the result of the revolutionary process.

"Well, then, what are we to think about this? We think that it is absolutely wrong. Moreover, for some time there was concern about the leaders. What would happen if a leader lost his life and the revolution was left without anyone in control? We had to make arrangements as quickly as possible. It was essential to create a revolutionary executive and party. This is the best safeguard, and in fact the only worthwhile safeguard, which can ensure that the revolutionary power and policy are continued.

"I sincerely believe that of all the political systems that have been devised by man throughout his history, his progress through history, the best is a system of government based on the control of the State by a revolutionary, democratic and collectively-run party."

E. Conclusions

The appointment of the National Directorate of the Integrated Revolutionary Organizations (ORI) was publicly announced in Cuba in March 1962. Most of the members of this Directorate belonged to the Cuban Communist Party and included such leaders of the communist old guard as Blas Roca, Anibal Escalante, Lazaro Peña, Carlos Rafael Rodríguez, Joaquín Ordoqui.

The natural conclusion to be drawn from Fidel Castro's speech on December 1 was that power would be taken over by the Cuban communist leaders as the authentic interpreters of marxism-leninism. However, the first conflict occurred on March 27, 1962, when Fidel Castro publicly condemned Anibal Escalante, one of the leading Cuban communists and a member of the National Directorate of the ORI. Anibal Escalante is now one of the six leaders of the Cuban Communist Party in exile in Czechoslovakia.¹

Another example of the struggle between the communist old guard and the leaders of the Castro movement is provided by the formation of the Secretariat of the National Directorate, which consisted of six men with Fidel Castro as first secretary and his brother Raul as second secretary. The other members of the Secretariat are: Ernesto Guevara, Osvaldo Dorticos, Emilio Aragones and Blas Roca. The last mentioned is the only old guard communist in that group.

¹ *Le Monde*, Paris, March 28 and May 12, 1962.

It is interesting to note the approval given by *Pravda*, the official organ of the Communist Party of the USSR, to Castro's condemnation of Anibal Escalante.¹

The latest attack on what might be called "communist sectarianism" was delivered by Castro on May 11, 1962. It must be emphasised, however, that Fidel Castro's criticism does always invoke the authority of marxism-leninism.²

The foregoing account provides a background to the transformation which Cuba has undergone, especially as reflected in its constitutional, criminal and administrative law. Fidel Castro's own words, which clearly reveal the final aims of his movement, explained why Cuba has had to endure the totalitarian oppression and the violations of human rights referred to in the conclusion of this report. Castro and his colleagues are forcing Cuba along the path towards communism. The growing opposition to this change was treated with the same harshness which had been meted out to the henchmen of Batista. The so-called "emergency" laws, which originally had applied to those who held posts of responsibility under Batista, were gradually extended to deal with any opposition to the Castro régime.

APPENDIX 1 a

Letter of Resignation by Supreme Court Judge José Morell Romero

Havana, 12 November, 1960.

To the President of the Republic

By courtesy of the President of the Supreme Court of Justice

Sir,

The purpose of the present is to convey to you my resignation from the office of Judge of the Supreme Court of Justice which I have occupied since the year 1950. My decision is motivated by the following facts:

1. I do not share the opinion of the majority of the members of the Court of Constitutional and Social Guarantees and the Government Division, as expressed in their judicial or executive action, concerning the scope of the powers of the *de facto* Government in respect to what they have been pleased to call its "constitutive powers". I must repeat that the constitutive power resides in the people alone and must be manifested through a public referendum, as was done in 1940 when the lawful Constitution of the Republic was adopted. The *de facto* Government, product of a revolution, must keep faith with the programme which served as its platform, and the revolution which took place in Cuba from 1952 to 1959 had as its basic programme the restoration and faithful observance of the tenets of the 1940 Constitution. Consequently, and at least as regards fundamental rights, the *de facto* Government is not empowered to take measures of a constitutive nature that conflict with those adopted by the People in lawful organisation and constitution and which form the historical basis of the Cuban nation.

¹ *Soviet News*, April 12, 1962, published by the Press Department of the Soviet Embassy in London.

² *Le Monde*, Paris, May 12, 1962.

2. Furthermore, I do not share the opinion of the majority of the members of the above mentioned Court in interpreting the Constitution and other laws presently in force. I have repeatedly made my views clear through innumerable personal votes but although they have thus been placed on record for history, I fear they cannot help to solve, in this crucial moment, the problems of the Cuban nation. Nor, after so many of my verbal declarations in the plenum and votes in judicial proceedings have met with negative results, do I nourish any hope of a change in the consensus of that body.

3. The independence of the Judiciary, which is so vital a factor in any democratic régime is increasingly threatened, so much so that it is constantly being "purged" of elements alleged to have "failed to adapt themselves to the revolutionary process".

It has been recognized that officials and auxiliaries of the Judiciary Power may belong to the militia and that they have a military mission; an attempt has even been made to oblige them to perform their judicial functions wearing the uniform of the militia. This amounts to utter disregard for the specific functions of the judicial branch as they stand at all times, whether under conditions of emergency or not, since the Constituent Assembly of 1940 entrusted the lofty mission of administering justice to the judicial branch as an independent organ, to the exclusion of any other body not permanently bound up with, and it is evident that such functions cannot but be incompatible with an interposed military régime.

4. The revolutionary tribunals have been permitted to judge the judges and magistrates to whom the Constitution adopted by the sovereign people gave special privilege and statute for the safeguard of their independent exercise of their functions. They are thus rendered defenceless and the entire judicial system is threatened.

5. With the suppression of the normal legal remedies and the appeal against breach of constitutional rights—vital safeguards of fundamental human rights—the Court of Constitutional and Social Guarantees has been rendered unfit for the accomplishment of the high ends for which the lawful constituent body designated it.

6. Mr. President: I have carefully considered the question of whether I might not be too impatient in expecting a state of lawful rule to be restored after the revolutionary process; I understand perfectly that any revolution requires a transitional régime in order to reach such a state, but I have observed with deep pain that there is increasingly less possibility of re-establishing legal order. Under the circumstances, I have preferred to resign from the charge entrusted to me by the Republic.

Yours faithfully
José MORELL ROMERO.

APPENDIX 1 b

Letter of Resignation by Supreme Court President Emilio Menéndez

Havana, 14 November, 1960.

To the President of the Republic,
Presidential Palace
Havana.

Sir,

The present letter is to beg you to accept my resignation from the office of President of the Supreme Court of Justice to which I was appointed in January, 1959, when the Revolutionary Government took up the burden of directing the nation.

To you, who have been a jurist, the reasons for my withdrawal will be obvious. The judicial branch was established and organized by the Fundamental Law promulgated by the Revolutionary Government in identical terms to those used in the 1940 Constitution, fruit of the endeavours of all sectors of Cuban public opinion and the political parties which represented it, including the Communist Party. The elements of the Government over which you preside have departed from this salutary path, taking over more openly day by day the general functions of government and depriving the judiciary power of the authority it needs in order to fulfil its rightful task and achieve its high purpose. I do not feel able to endorse by silence and abstention a process that may initially have been a natural necessity of the tumultuous and convulsive period of revolution. The fabric of government, made up of manifold powers and duties, is falling into folds which reveal with increasing clearness that the essential spirit of our Republic, its *raison d'être*, is being relegated to oblivion: I refer to the independence and well-being of all in a climate of free citizenship, whose first champion must be the Judiciary with the ample powers bestowed on it by the Constitution presently in force. That Constitution has not changed the structure of the Cuban State; it requires from all public officials, and particularly from those of the branch over which I have the honour to preside, the most scrupulous respect of human dignity and individual liberty. A state of legality like that which, according to our Constitution, governs us, implies equal privileges and restrictions for all the various organs responsible for administering it, and it is not compatible with this type of State organisation that the Executive or bodies depending from its authority should absorb those functions which in a democratic régime like ours are divided among the various sectors of government activity. I am not one of those who believe that the ills of democracy can be cured by totalitarian methods; they require, precisely, greater freedom of action and increased effectiveness in the working of democracy itself. When a Minister of State can publicly declare that the standards of officials of the Judiciary are too anti-progressive for them to be capable of interpreting what the Minister calls revolutionary standards (which amount more or less to unlimited licence without reference to any scale of values whatsoever or any rules of collective conduct), then any doubts that one might have entertained concerning the basic orientation of the government of this country are settled beyond all question. Such an attitude cannot be justified merely by parading the slogan of improving the condition of the lowly and claiming on their behalf what our previous governments were never interested enough to give them, in spite of the demagogical line taken by some of them. The rights so claimed are not something to be granted by the government as a favour; they constitute an ineluctable obligation of the government towards those who most need its help. And they can and must be given full play through other, more effective methods that respect, at one and the same time, the public weal and the freedom of each individual which no true government dare neglect.

Since it appears to me that the scope of individual liberties is narrowing day by day and that the people of Cuba are basically refractory to the measures taken to govern it, a fact which will inevitably bring days of sorrow to the entire Republic, I do not wish the judicial functions (although they are independent of and separate from those of the Executive) to suffer the repercussions of these errors that will cause the country so much suffering. I am convinced that the extreme effort which, with a group of Judges of great moral valour, I made in the Supreme Court to eradicate certain apparently endemic evils, was well worthwhile; nor do I regret the enthusiasm which led me, with my singularly courageous colleagues, to strive night and day to restore to the Judiciary Power the prestige that it had lost in part because of the unfortunate waverings of our traditional policies. Every good and honest endeavour bears its fruit and instils renewed courage into those who devote themselves wholly to it in a high and disinterested purpose and with noble intentions. God will that our Republic enjoy the days of happiness to which all peoples are entitled and especially so the noble and altruistic people of Cuba.

Emilio MENÉNDEZ y MENÉNDEZ.

APPENDIX 2

Statement by the Governing Board of the Bar Association of Havana

The Governing Board of the Bar Association of Havana, at its meeting held today, unanimously agreed to make public the following:

Firstly, that it did not summon and refuses to recognize the meeting of the General Assembly of members announced for 5 p.m. on the 9th day of the present month.

Secondly, that the members of the Governing Board have not resigned, nor do they intend to resign, from the office to which they were elected in such brutal struggle against tyranny; they do not consider that there are sufficient grounds for a decision of that nature.

Thirdly, that it reiterates its previous exhortation to all members of the Bar Association not to attend the said meeting or any meeting of the Association as long as the Headquarters are occupied as they now are.

Fourthly, that it is communicating the present statement to the Government Division of the Supreme Court of Justice, denouncing the unlawfulness of the convocation circulated for the said meeting.

Havana, 7 September 1960.

THE GOVERNING BOARD	
Silvio SANABRIA	Manuel MARIÑAS
Dean	Secretary p.s.

APPENDIX 3

COLEGIO DE ABOGADOS DE LA HABANA HAVANA BAR ASSOCIATION (IN EXILE)

1209 Huntington Medical Building
168 First Street Northeast
Miami 32, Florida

FRanklin 4-3067

In the city of Miami, Florida, on the night of December 8, 1960, the legal Governing Board of Havana Bar Association met in exile for the first time in its long history of more than one hundred years of existence.

After a thorough analysis of the dramatic situation in Cuba, the conduct of the Cuban lawyers and the complete absence of a rule of law in the Fatherland of José Martí and Antonio Maceo, the following resolutions were unanimously adopted:

First: That the Mandate conferred upon the present Governing Board in the elections of August 1958, by an enormous majority of the members is still in effect.

Second: That in the elections of August 1958, the lawyers of Havana, of their own free will, resolutely approved the conduct of repudiation of the tyrannical régime then ruling Cuba as maintained for seven long years by the Governing Board.

Third: That the physical occupation of the Havana Bar Association's offices in the month of July 1960, by a small group of lawyers, aided and abetted by well known active members of the Communist Party with the purpose of designating a Governing Board and subsequently repudiated by practically all lawyers, was carried out with the purpose of destroying the Association's structure, silencing

the voice of its governors and taking one more step in the consolidation of the totalitarian regime by eventual suppression of all free and democratic institutions.

Fourth: That this Governing Board, legitimate representation of the lawyers of Havana, continued to meet secretly in Cuba for as long as its members managed to avoid the vigilance and persecution of the repressive forces of the Communist régime until the prevailing conditions forced its members to seek the hospitality of this Republic and continue from exile the struggle to denounce, repudiate and combat the Red Tyranny.

Fifth: That in view of these exceptional circumstances, this Governing Board of the Havana Bar Association established its provisional seat in the city of Miami, Florida, from whence it shall continue to exercise all its powers and duties in defence of the supreme democratic ideals of the people of Cuba and of the profession it represents until a democratic form of government with freedom and justice for all, is reestablished in our country.

Sixth: That in this memorable meeting the Governing Board of Havana Bar Association appeals to all Cuban lawyers to intensify the struggle against the totalitarian Communistic regime ruling Cuba and renews its firm decision to continue its traditional policy defined in the Declaration of Purposes of the Code of Ethics of the Lawyers of Cuba, as "an attitude of permanent watchfulness to safeguard the rule of law and justice".

Seventh: To ratify and adhere to the statements of the President, Dr. Silvio Sanabria Santamarina, contained in his letter of December 5, 1960, to the so-called Revolutionary Board that has usurped the powers of the Board of Governors of the Havana Bar Association.

Eighth: To notify the preceding resolutions to the Division of Government of the Supreme Court of Cuba, and to all members of the Cuban Bar for all legal, regulatory and statutory effects in order.

Ninth: To notify these resolutions to the Interamerican Bar Association and to all the Bar Associations of America requesting their moral and internal help in this new struggle of the lawyers of Cuba.

Tenth: To notify these resolutions to all professional colleges and associations and to all the civic organizations of Cuba and the Free World.

Miami, December 9, 1960.

Silvio SANABRIA
President
Havana Bar Association

THE CONSTITUTIONAL LEGISLATION OF CUBA

I. INTRODUCTION

The constitutional history of Cuba may be divided into five periods: the first covers the colonial period up to the promulgation of the 1902 Constitution; the second goes from that date until July 8, 1940 when the Constitution of that year was adopted; the third reaches from that date until 1952; the fourth period begins on March 10, 1952 and ends on December 31, 1958. This period coincides with Batista's coup d'état and his abdication of power. The fifth period begins with the advent of Castro's régime.

This chapter will merely deal with the constitutional structure of Cuba during the last of these five periods. Nevertheless, it must be mentioned that in its 60 years of existence as an independent country, the Republic of Cuba has on two occasions only been governed by a constitution freely expressing the will of the people. The first occasion was in 1901, following the War of Independence against Spain. That Constitution came into force on May 20, 1902. The other period of free constitutional development was entered by Cuba on July 8, 1940, the date of the publication of the second Constitution in the *Gaceta Oficial*.

II. THE 1940 CONSTITUTION

The 1940 Constitution governed the life of Cuba for 12 years. During that period three Presidents of the Republic followed each other through free elections. They were Fulgencio Batista, Emilio Grau San Martín and Carlos Prío Socarrás. This period was the only time in the history of Cuba when its political representatives have been elected on a democratic basis. There were considerable and undoubted evils and defects in this period, but the observance of the will of the people by the rulers should not be denied. This brief period of democratic experience was interrupted on March 10, 1952, and the legal continuity of the political system acquired in 1940 was broken. The establishment of Batista's personal rule, his dictatorial methods and the growing political tension in Cuba resulted in armed resistance. The declared purpose of this strife against Batista was to restore the 1940 Constitution; an idea that united and harmonised all opposition groups. Whether it was to stimulate active strife or to promote passive resistance, the 1940 Constitution became the banner under which the citizens of Cuba fought and ultimately forced out Batista.

What were the most noteworthy characteristics of the 1940 Constitution? Drafted with the collaboration of practically all the sectors representing the Cuban political opinion, it is characterised by the rare balance it established between republican, liberal and democratic postulates on one hand and the demands of social justice and economic advancement on the other. It comprises 286 Articles, grouped in 19 Titles. It also lays down several transitional provisions the value of which from the viewpoint of constitutional law is rather dubious.

A. Dogmatic Part of the Constitution

The dogmatic part of the Constitution, laying down the principles that will govern the life of the Republic and establishing individual rights, constitutional guarantees, the rights of the family and education, the right to work and to own property, and the right of suffrage, comprises 117 articles.

Title I of the 1940 Constitution defines "The Nation, its Territory and Form of Government". It states that "Cuba is an independent and sovereign Nation organized as a unitary and democratic republic, for the enjoyment of political liberty, social justice, individual and collective welfare, and human solidarity" (Article 1). Article 2 stipulates that "Sovereignty rests in the people and from the people all public powers emanate". Title II deals with to Nationality, the right to citizenship in Cuba; Title III refers to Alienage, general rules about aliens. Title IV is concerned with the definition of Fundamental Rights (Section I). The main articles are: equality before the law (Art. 20); non-retroactive nature of criminal law; prohibition of the confiscation of property (Art. 21 and 22); prohibition of the death penalty for civilians, except in the case of spying on behalf of the enemy in time of war (Art. 25); the right to be tried (Art. 27 and 28); the right of habeas corpus (Art. 29); freedom of movement (Art. 30); the right of asylum (Art. 31); inviolability of mails (Art. 32); freedom of thought and speech (Art. 33); inviolability of domicile (Art. 34); freedom of worship (Art. 35); right to petition authorities (Art. 36); freedom to meet and to form associations for lawful purposes (Art. 37).

Section II of Title IV refers to Constitutional Guarantees and states that in cases where the security of the State should require it the above guarantees may be suspended for a period of not more than 45 days.

Title V deals with the Family and Culture. In section I, it declares that the family, maternity, and marriage have the protection of the Nation. It is stated that matrimony is the legal basis of the family which rests on absolute equality of rights for husband and wife. The principle of full civil rights of women is admitted. Marriage may

be dissolved by agreement between husband and wife or upon petition by either party, in accordance with the law (Art. 43).

With regard to culture (Section II) it is stated that free and compulsory primary education shall be granted (Art. 48). Freedom of teaching is recognized. Special mention is made of the need to eliminate and prevent illiteracy by means of rural schools (Art. 49). In addition, the autonomy of the University of Havana is guaranteed (Art. 53), and private universities are recognised (Art. 54).

Title VI refers to Labour and Property. Section I states that "labour is an inalienable right of the individual" (Art. 60). The State assumes responsibility for full employment. Foundations are laid for a minimum wage, and the principle of equal pay for equal work is adopted (Art. 62). Payment of wages in promissory notes or in kind is prohibited (Art. 64). Social security for workers is established (Art. 65). A maximum working day of eight hours and a working week of 44 hours are guaranteed (Art. 66). The right to a paid vacation of one month for each eleven months' work is proclaimed (Art. 67). No difference may be made between married and unmarried women with regard to work (Art. 68). Employers, salaried employees and wage earners are granted the right to form trade unions for the sole purpose of social and economic activity (Art. 69). Obligatory official association is established for the exercise of professions requiring university degrees (Art. 70). The 1940 Constitution recognizes the right of workers to strike and of employers to stop work under conditions stated in law (Art. 71). The system of collective labour contracts, subject to regulation by law, is also introduced (Art. 72). Cubans by birth are entitled to preferential treatment in work, with regard both to the category of employment and to salaries and wages (Art. 73). The constitutional bases for the Ministry of Labour and for the Ministry of Health and Social Assistance are established (Art. 74 and 80). The dismissal of workers without previous notice is forbidden unless it occurs for specified causes (Art. 77). The State assumes responsibility for promoting the building of inexpensive housing for workers (Art. 79). For the case of disputes in relations between management and workers, conciliation committees with equal membership from both parties are set up (Art. 84).

In Section II, the Constitution recognizes the existence and legitimacy of private property "in its broadest concept as a social function" (Art. 87). The subsoil belongs to the Nation (Art. 88). Article 90 prohibits large land ownership (*Latifundio*). It is stated that legislation will lay down the maximum land holding permissible for any person or entity, having regard to the particular use and characteristics of such property. The principle is stated that acquisition and possession of land by foreign persons and companies shall be restrictively limited by law which shall provide measures tending to restore the land to Cubans.

The contents and the extent of the above principles in themselves constitute the best definition of the spirit of the 1940 Constitution. They express the desire of the great majority of the Cuban people and thereby constitute their national political objective.

B. Organic Part of the Constitution

As explained above, Cuba was organized as a united and democratic republic (Art. 1). The organs of the State as provided for under the 1940 Constitution were the legislative, executive and judicial branches. Their functions were set up in Titles IX-XIV. The legislative power was exercised by two bodies, the House of Representatives and Senate respectively. Jointly they were called Congress (Art. 119). The executive power was a combination of a presidential and parliamentary system. The President of the Republic was the chief of the Nation and represented it. Article 138 stated: "The executive power is exercised by the President of the Republic with the cabinet in accordance with what is established in this Constitution."

The President of the Republic shall be elected, according to the 1940 Constitution, "by universal, equal, direct, and secret suffrage, on a single day, for a period of four years, in accordance with the procedure to be established by law" (Art. 140). The 1940 Constitution also organized a Cabinet. Article 151 established: "For the exercise of the executive power, the President of the Republic shall be assisted by a cabinet, composed of the number of members determined by law. One of these ministers shall have the category of Prime Minister, by designation of the President of the Republic, and can act as such with or without portfolio." Article 164 determined the relations between Congress and the Government: "The Prime Minister and the cabinet are responsible for their acts of government, before the House and the Senate. These bodies can grant confidence to or withhold it from the Prime Minister, a minister, or the cabinet as a whole, in the manner specified in this Constitution."

Administratively, the Republic of Cuba was divided into municipalities and provinces. Since this is a classic principle of modern constitutional law, details regarding the separation of powers and the respective functions of the Legislature, the Executive or the Judiciary shall be omitted. Specific reference will be made to the sections of the Constitution amended by the Fundamental Law of, and other subsequent amending legislation issued by, the Castro régime.

The municipality is autonomous, the municipal council being vested with all powers needed to perform freely the local functions of society. The Constitution lays down a detailed system of protection of municipal autonomy (Title XV).

The provincial system is organized at length by Title XVI of the 1940 Constitution. The governor is elected by direct and secret

vote and is the official representative of the province. A Council assists the governor.

Title XVII refers to the national treasury, defining the resources and property of the State, providing for procedures regarding the budget, and establishing the Tribunal of Accounts responsible for controlling the income and expenditure of the State, of the provinces and municipalities. It is stated that "the Nation shall orient the national economy for the benefit of the people, in order to insure to each individual a decorous existence" (Art. 271). The State is responsible for promoting national agriculture and industry by bringing about "the diversification thereof as sources of public wealth and collective benefit" (Art. 271).

Title XVIII of the 1940 Constitution deals with the state of emergency. Upon request by the Cabinet, the Congress may, by means of extraordinary legislation, declare a state of national emergency. This consists of authorizing the Cabinet to exercise exceptional powers when the external security or domestic order of the Nation is in danger (Art. 281). During the emergency period, a permanent Commission of Congress shall meet to watch over the use of exceptional facilities granted to the Cabinet. At the end of the emergency period the Cabinet shall give an account of the use of the exceptional facilities before the Congress (Art. 283 and 284).

Finally, Title XIX stipulates the procedure applicable for amending the Constitution. Two methods are laid down. The first, emanating from the initiative of the people, requires that not less than 100,000 electors able to read and write should propose a constitutional amendment to the Congress. Then the Congress must meet in joint session and vote without debate on a bill to call elections of delegates or a popular referendum. The second method is through the initiative of the Congress, the motion requiring the support of not less than one fourth of the members of the Senate or of the Chamber of Representatives.

A reform to the Constitution may be specific, partial or comprehensive.

III. CHANGES IN THE CONSTITUTIONAL ORDER

On March 10, 1952 a coup d'état took place in Cuba, overthrowing the constituted government, whose term of office was due to end seven months later, on October 10, 1952.

On the same day a proclamation was addressed to the people of Cuba, in which Fulgencio Batista attempted to justify his recourse to violence in overthrowing the Government by "the absence of guarantees for the life and property of the inhabitants of this country and general political and administrative corruption". He referred also to "the imminence of a coup d'état plotted by the retiring

President" with the purpose of preventing presidential elections scheduled for June 1, 1952.¹

A. The Constitutional Act of 1952

The new régime issued on April 4, 1952, a constitutional Act which was to govern the country.¹ An accurate remark about this constitutional Act was made by Fidel Castro in his speech in his own defence before Batista's court following the assault on the Moncada barracks on October 16, 1953:

"The Constitution is understood to be the basic and supreme law of the land—to define the country's political structure, regulate the functioning of government agencies and determine the boundaries of their activities. It must be *sui generis*, stable, enduring—and to a certain extent inflexible. The Statutes (of April 4th) fulfil none of these qualifications. To begin with, they harbour a monstrous, shame-less and brazen contradiction in regard to the most vital subject—the integration relation of the republican structure and the principle of national sovereignty.

"Article I says: 'Cuba is a sovereign and independent state constituted as a democratic Republic ... Article II says: 'Sovereignty resides in the will of the people, and all powers derive from this source'.

"But then comes Batista's Article 118 which says: 'The President will be nominated by the Cabinet'. So it is *not* the people who choose the president, but rather the Cabinet chooses him. And who chooses the Cabinet?

"Batista's Article 120, section 13: 'The President will be authorized to nominate and reappoint the members of the Cabinet and to replace them when the occasion arises.' So, after all, who nominates whom? Is this not the old classic of the chicken and the egg that no one has ever been able to solve?"²

An analysis of Castro's own Fundamental Law, which will follow below, reveals that while setting up an identical system, Castro too was unable to solve the problem of the chicken and the egg.

An other correct criticism by Fidel Castro of the Constitutional Act of 1952 focussed on the usurpation of popular sovereignty. He said:

"Batista's statutes contain an article that has not received much attention but which furnishes the key to this situation and is the one from which we shall derive decisive conclusions. I refer

¹ *Gaceta Oficial*, Special edition, March 10, 1952.

² *Gaceta Oficial*, Special edition, April 4, 1952.

³ Fidel Castro, *History Will Absolve Me*, New York: Liberal Press, Inc., 1959, p. 69.

specifically to the modifying clause included in Article 257, which reads: "This constitutional law is open to reform by the Council of Ministers (Cabinet) by a two-thirds quorum vote". Here mockery reached its maximum. Not only did they exercise sovereignty in order to impose upon the people a Constitution without the people's consent and to install a régime which concentrates all power in its own hands; but also, through Article 257, they assume the most essential attribute of sovereignty—the power to change the basic and supreme Law of the Land. And they have already changed it several times since the 10th of March. Yet, with the greatest gall, they assert in Article II "that sovereignty resides in the will of the people and that the people are the source of all power . . ." Castro concluded this paragraph by saying: "Such a power recognizes no limits. Under its aegis, any article, any chapter, any clause—even the whole law—can be modified . . .".

The Constitutional Act of Batista was reformed twice before the return to the 1940 Constitution. In connection with the constitutional legislation of Castro's régime, it will be seen that the Fundamental Law of 1959 authorised its own reform by the Council of Ministers. The constituent power, "the most essential attribute of sovereignty", to use Castro's own words, was used by his government five times to alter the 1940 Constitution, once in order to issue the Fundamental Law and 16 times later to modify it, all in the course of two and a half years.

B. The Short-Lived Restoration of the 1940 Constitution

Article 256 of the Constitutional Act of 1952 states, in accordance with the amendment under Legislative Decree No. 1133 of October 30, 1953¹ that the 1940 Constitution would be restored as soon as the president elect took office. The presidential elections were held on November 1, 1954, and Fulgencio Batista was elected. Batista was the only candidate in this election, which was preceded by confused political maneuvers described on p. 37 above. On February 24, 1955, Batista took the oath and resumed office as President of the Republic. Automatically, in accordance with the above-quoted clause on the reinstatement of the Constitution, the 1940 Constitution came once more into force.

After almost two years of growing and violent opposition to the Batista régime, on December 2, 1956, a contingent of men under the leadership of Fidel Castro landed on the shore of the province of Oriente, an event which marked the beginning of the armed uprising against Batista. On the same day the Executive issued Presidential Decree No. 3230, suspending the constitutional guarantees in the provinces of Oriente, Camaguey, Las Villas and Pinar del Rio. This

¹ *Gaceta Oficial*, Special edition, No. 90, November 6, 1953.

suspension was ordered for a period of 45 days. The Congress of the Republic ratified the Decree. From that time onward, every 45 days until December 1958, the Government renewed the suspension of the constitutional guarantees. There were only two brief periods during which the suspension was lifted: one from April 17 to August 1, 1957, the other from April 2 to May 17, 1958, when Special Act No. 2 declared a state of national emergency. This practice of ignoring the Constitution ended on January 1, 1959, when Batista escaped to the Dominican Republic.

IV. CONSTITUTIONAL VARIATIONS UNDER THE CASTRO REGIME

On January 1, 1959, following the abdication of power by Batista and his collaborators, Fidel Castro took over peacefully. The oft-proclaimed standard of the 1940 Constitution once again began to rule the destinies of Cuba. Once more it was to last a very short while before it underwent substantial modifications. On January 13, 1959, the process of constitutional reforms began. From then until 1959 the 1940 Constitution was amended five times. On February 7, 1959 it was directly replaced by the so-called Fundamental Law. The analysis of Castro's constitutional work has therefore to begin with a survey of the five amendments, then consider the Fundamental Law and finally examine the 16 amendments to the Fundamental Law itself.

A. Amendments to the 1940 Constitution

On January 5, 1959, in a proclamation to the people of Cuba, President Manuel Urrutia Lleó declared that it was necessary to "provide for the exercise of the legislative power properly belonging to the Congress of the Republic, in accordance with the 1940 Constitution". This implicit recognition of the Constitution was confirmed by its subsequent modifications.

(a) The first amendment to the 1940 Constitution¹ suspended the application of the constitutional provisions establishing requirements as to minimum age and minimum experience in professional activity for the discharge of public functions.

Article 2 suspended the irremovability of members of the Tribunal of Accounts until such times as it was reorganized.

This apparently harmless reform introduced the use of constituent power by the Council of Ministers. The introductory clauses state:

"The Revolutionary Government, fulfilling its obligations to the people of Cuba, interpreting the people's will and feelings and faced by the urgent necessity to use the constituent power in order to provide force for legislation enabling the acts required of the Revolu-

¹ *Gaceta Oficial*, Special edition, No. 4, January 13, 1959.

tion to be performed, using the full powers placed in the Revolution, agrees to approve, sanction and proclaim the following constitutional reform ”.

This determination to use unrestricted constituent power “in order to give force to legislation enabling the acts required by the Revolution to be performed” marks the beginning of the end of what might be considered as the restoration of the 1940 Constitution or, in the final analysis, of any written and stable constitutional system. From then on everything was to be “constitutional”.

(b) The second amendment to the Constitution was equally of January 13, 1959.¹ For a period of 30 days, the Council of Ministers suspended the irremovability of the judiciary established in Article 200 of the Constitution, as well as the irremovability of the Public Prosecutor and the Electoral Court.

Article 3 suspends for a period of three months the transitional provisions of the 1940 Constitution referring to irremovability of administrative officials.

(c) The constituent power was used by the Council of Ministers on the third occasion to establish retroactivity of criminal law, to introduce the penalty of confiscation of property and to extend the death penalty. This amendment took place on January 14, 1959.²

This amendment modified Article 21 of the 1940 Constitution which stated: “Penal laws shall have retroactive effect when they are favourable to the delinquent. There are excluded from this benefit, in cases where fraud was involved, public officers or employees who commit a crime in the exercise of their office, and those responsible for electoral crimes and crimes against the individual rights guaranteed by this Constitution. Those who commit these crimes shall have applied to them the penalties and qualifications according to the law in force at the time the crime was committed”.

The amendment was to add to the text of the above-quoted section the following paragraph:

“In cases of offences committed in the service of the dictatorship overthrown on December 31, 1958, those responsible may be tried in accordance with criminal legislation to be issued for that purpose.”

The establishment of retroactivity of criminal law in Cuba constitutes in its tragic consequences one of the worst violations of Article 10 of the Universal Declaration of Human Rights proclaimed by the General Assembly of the United Nations on December 10, 1948.

Under the above-cited provisions, death sentences and penalties of confiscation of property were meted out by the revolutionary courts.

¹ *Gaceta Oficial*, Special edition No. 4, January 13, 1959.

² *Gaceta Oficial*, Special edition No. 5, January 14, 1959.

Article 2 of the Amendment modifies Article 24 of the 1940 Constitution which provided as follows:

“Confiscation of property is prohibited. No one can be deprived of his property except by competent judicial authority and for a justified cause of public utility or social interest, and always after payment of the corresponding indemnity in cash, as fixed by court. Non-compliance with these requisites shall determine the right of the person whose property has been expropriated, to be protected by the courts, and, if the case calls for it, to have his property restored to him.

“The existence of a cause of public utility or social interest, and the need for the expropriation, shall be decided by the courts in case of impugnation.”

“The amendment inserted after the sentence stating “confiscation of property is prohibited” the following words:

“However, confiscation is authorized in the case of property of natural persons or corporate bodies liable for offences against the national economy or the public treasury committed during the tyranny which ended on December 31, 1958, as well as in the case of property of the tyrant and his collaborators.”

The rest of the article retains the original wording.

It will be shown further how the confiscation of property was gradually extended to other fields by means of subsequent amendments, making it increasingly easy for Castro's régime to exercise direct repressive action.

Article 3 of the amending legislation modified Article 25 of the 1940 Constitution, which stated:

“The death penalty cannot be imposed. Exception is made as to members of the armed forces, for crimes of a military character, and as to persons guilty of treason, or of espionage in favour of the enemy at a time of war with a foreign nation.”

After the amendment, Article 25 had the following wording:

“The death penalty may not be imposed. An exception shall apply in the case of members of the armed forces, of the repressive bodies under the dictatorship, of the auxiliary groups organised by the dictatorship, of spies guilty of offences of a military nature or committed for the purpose of the installation or defence of the régime overthrown on December 31, 1958, and the persons guilty of treason or subversion against the established order or of espionage on behalf of the enemy in time of war with a foreign power.”

From the constitutional point of view, this amendment then meant a substantial alteration of the three principles contained in the fundamental rights safeguarded under the 1940 Constitution: (a) retroactivity of criminal law was sanctioned; (b) confiscation of property was authorised in the case of specific persons and (c) the death penalty for political causes was introduced. This modification

in the dogmatic part of the Constitution enabled the Castro régime to pursue the course of violence and repression.

(d) On January 20, 1959, the Council of Ministers once again referred to its constituent power in order to do away with the system established by the 1940 Constitution for provincial and municipal government.¹

The municipal system was organised by the 1940 Constitution on a basis of autonomy. Title XV contained 23 articles setting up detailed provisions on the scope of municipal administration and the safeguards applying thereto.

As to the provincial system, Title XVI of the Constitution regulated the operation of the provinces in 19 articles. The governor was elected by direct and secret vote and represented the province.

The amendment consisted of providing that:

"The provinces and municipalities shall be governed by organs established by the Council of Ministers and the constitutional and legal provisions regulating the provincial and municipal systems shall remain in force notwithstanding. The new authorities governing the provinces and municipalities shall exercise the same functions as those held respectively by governors, councils of mayors, mayors and town councils."

The *Gaceta Oficial* published in its No. 16 of February 2, 1959, the texts of Acts Nos. 36 and 37, referring to the provincial and municipal systems respectively.

Act No. 36 provided that the government of each province should be controlled by an officer appointed by the Ministry of the Interior. Article 2 stated that this officer should have the powers granted to the governor and to provincial councillors under the existing legislation establishing provincial administration.

Article 3 stated that "decisions by the officer may be quashed or suspended by the Minister of the Interior, if he finds them prejudicial to the public interest".

This provision brought about the administrative centralisation of the provincial system. It was strengthened by Act. No. 37 establishing the system of administration for each municipality. It was provided that each municipality shall be controlled by three officers appointed by the Minister of the Interior. These officers came under the Minister of the Interior who could quash or suspend their decisions "whenever he finds this necessary on grounds of their conflict with public interests".

(e) The fifth amendment of the 1940 Constitution took place on January 30, 1959.²

¹ *Gaceta Oficial*, January 20, 1959.

² *Gaceta Oficial*, Special edition No. 16, February 2, 1959.

Article 1 suspends for a period of 90 days, beginning with publication of this amendment in the *Gaceta Oficial*, the application of Articles 27, 29, 196 and 197 of the 1940 Constitution, containing important procedural guarantees of human rights.

This suspension affected the following persons: (a) persons subject to the jurisdiction of the revolutionary courts governed by the penal system of the Rebel Army; (b) members of the armed forces; (c) members of the repressive groups organized by the tyranny overthrown on December 31, 1958; (d) members of groups armed privately and organized to defend the tyranny; (e) spies; (f) persons held by military authorities for purposes of questioning and charged with offences of a military character; (g) persons in the same situation as under (f) above charged with offences aimed at establishing or defending the tyranny; (h) persons in the same situation charged with offences against the national economy or the public treasury.

The articles suspended with regard to persons listed above read:

"Article 27: Every arrested person shall be placed at liberty, or delivered to the competent judicial authority, within twenty-four hours following his arrest.

"Every arrest shall be set aside or shall be converted into imprisonment, by a judicial decision stating the reasons for it, within seventy-two hours after the arrested person is placed at the disposition of the competent judge. The interested person shall within the same period be notified of the decision rendered.

"Persons imprisoned but not yet convicted shall be kept in places distinct and completely separate from those utilized for serving sentences, and those so imprisoned cannot be compelled to do any work whatever or be subjected to the prison regulations for those serving sentences".

The text of the above article makes any comment superfluous. With regard to persons listed, the suspension of the above constitutional guarantee means that they may remain under arrest for an unlimited period of time without being brought before the competent magistrate within 72 hours, as established under the 1940 Constitution. This is exactly what has been happening in Cuba ever since Castro came to power.

"Article 29: Everyone who is arrested or imprisoned outside of the cases or without the formalities and guarantees specified by the Constitution and the law shall be placed at liberty, on his own request or that of any other person, without the necessity of a power of attorney or the services of a lawyer, by means of summary *habeas corpus* proceedings before the regular courts.

"The court cannot decline its jurisdiction, or consider questions of competency in any case or for any reason, or defer its decision, which shall have preference over any other matter.

"Presentation, before the court which issued the writ of *habeas corpus*, of every arrested or imprisoned person, regardless of the authority or officer, person, or entity holding him, is absolutely obligatory, and no allegation of due obedience can be made.

"All provisions that impede or retard the presentation of the person deprived of liberty, as well as those causing any delay in the *habeas corpus* proceedings, shall be null, and the judicial authority shall so declare on its own initiative.

"When the arrested or imprisoned person is not presented before the court hearing the *habeas corpus* proceedings, that court shall order the arrest of the violator, who shall be judged as provided by law.

"Judges or justices who refuse to admit an application for a writ of *habeas corpus*, or who do not comply with the other provisions of this Article, shall be removed from their respective offices by the government section of the Supreme Court."

Suspension of *habeas corpus* started off as a transitional step of exceptional character. But as opposition to Castro's regime increased it very soon became permanent and general. This development is discussed in detail in Part three relating to criminal legislation under the Castro regime.

This deprivation of legal protection for persons listed in Article 1 of the constitutional amending legislation of January 30 was supplemented by the suspension of Articles 196 and 197 of the 1940 Constitution. Article 196 stated:

"The regular courts shall take cognizance of all suits, causes, or matters, whatever be the jurisdiction to which they pertain, with the sole exception of those resulting from military crimes or acts which occur in the armed service, which are subject to the military jurisdiction.

"When these crimes are committed jointly by members of the armed forces and persons who are not members thereof, they shall pertain to the jurisdiction of the regular courts."

The effect of suspending this article was to provide a legitimate basis for the operation of the revolutionary courts, which are exceptional military courts, with regard to the persons listed in the above-quoted Article 1 of this constitutional amendment.

Article 197 followed the line of the preceding article and stated that:

"There cannot be created in any case courts, commissions, or bodies of any kind to which special jurisdiction is granted to take cognizance of acts, suits, causes, proceedings, questions, or matters within the jurisdictions attributed to the regular courts."

These last two sections were incompatible with the operation of the revolutionary courts; consequently, the moderate provisions of

the 1940 Constitution fell over again under the pressure of extremist tendencies.

Article 2 of this constitutional amendment closes the way to any legal escape for persons listed in Article 1, since it suspends, also for 90 days, the application of Article 174 (d) and Article 182 (a) of the 1940 Constitution. Their provisions applied in cases where the constitutionality of government enactments were raised by persons listed in Article 1.

Section 174 (d) stated:

"In addition to the other attributes which this Constitution and the law specify for it, the Supreme Court shall have the following: ... (d) To decide on the constitutionality of laws, decree-laws, decrees, regulations, resolutions, orders, provisions, and other acts of any body, authority, or officer."

Section 182 (a) stated:

"The court of constitutional and social guarantees is competent to take cognizance of the following matters: (a) unconstitutionality appeals against laws, decree-laws, decrees, resolutions, or acts that deny, diminish, restrict, or impair the rights and guarantees specified in this Constitution or that impede the unrestricted functioning of government bodies."

This last action completed the gradual abolition of constitutional guarantees of personal freedom. The right to be brought before a judge within 72 hours of arrest was suspended. The right of *habeas corpus* was suspended. The constitutional provision whereby special courts may not be set up was likewise suspended. The operation of the so-called revolutionary courts was thereby legalized. Finally, the right to raise the constitutionality of such measures before the Supreme Court of Justice and the Court of Constitutional and Social Guarantees was suspended.

B. The Fundamental Law of the Republic of Cuba of February 7, 1959

One month and seven days after taking power, Castro's régime, which professed to have fought for the restoration of the 1940 Constitution, proceeded to repeal it. Although the Fundamental Law, like the Constitutional Act of 1952, repeats most of the articles of the 1940 Constitution almost word for word, the emphasis is not on what was retained from the earlier text but on what was altered.

An analysis of the Fundamental Law reveals the two contradictory elements which characterized the Cuban Revolution in its first months. On the one hand, there are the articles and provisions which merely transcribe the 1940 Constitution. On the other hand, there are "transitional and exceptional" provisions and reforms of the organs of the State that paved the way for the trend that was to prevail only a few months later.

(a) The *dogmatic part* of the Fundamental Law is practically identical with the 1940 Constitution, with the sole exception of the articles amended by the Provisional Revolutionary Government since January 1959 (see above pp. 85-91).

The innovations introduced by the Fundamental Law which have so serious an effect on the constitutional guarantees of individual liberty and on the very basis of Cuban criminal law do naturally affect the spirit of the law. The provisions which remained in force thus inevitably become of lesser importance. The emphasis throughout is on exceptions. For example, the Fundamental Law emphatically repeats that criminal laws shall have retroactive effect when this is favourable to the offender. However, retroactive criminal legislation is authorized under Article 21 when it is clearly to the disadvantage of the offender. The confiscation of property is prohibited but it is authorized in the case of persons listed in Article 24. Article 25 states that the death penalty shall not be imposed; however the death penalty is authorized for the military or civilian personnel listed in the same Article. The Fundamental Law established a summary procedure of *habeas corpus* in respect of all persons detained without the formalities and guarantees provided for under the Fundamental Law; however, this provision was first suspended for 90 days and its application was later denied by the Cuban criminal legislation to an ever increasing number of persons.

Though there is little purpose in repeating the sections which are merely taken over from the 1940 Constitution, it should be pointed out once more that Article 1 of the Fundamental Law restates that:

“Cuba is an independent and sovereign State, organized as an unitary and democratic republic, for the enjoyment of political liberty, social justice, individual and collective welfare, and human solidarity.”

Article 2 proclaims that “sovereignty rests in the people, and from the people all public powers emanate.”

Like the 1940 Constitution, Title I of the Fundamental Law refers to “The Nation, its Territory and Form of Government”; Title II deals with Nationality, Title III with Alienage, Title IV relates to Fundamental Rights, Title V to the Family and Culture, Title VI to Labour and Property, Title VII to Suffrage and Public offices.

Article 97 of that title states the principle of universal, equal and secret suffrage “as a right, duty and function” of all Cuban citizens. Article 102 declares that political parties and associations may be freely organized. This is the counterpart to Article 38 of the Fundamental Law stating:

“Every act which prohibits or limits the participation of citizens in the political life of the nation is declared punishable.”

However, the fifth transitory provision to Title IV adds:

" Notwithstanding the provisions of Article 38 of this Fundamental Law, laws may be promulgated that limit or prohibit the participation in the political life of the Nation to those citizens who as a result of their public action and their participation in the electoral process under the Tyranny, have aided the maintenance thereof. "

The provisions on rights and guarantees laid down in the 1940 Constitution and reproduced above should be re-read in order to contrast the legal and political principles that inspired the 1940 Constitution with the provisions of the Fundamental Law.

(b) The *organic part* of the Fundamental Law retains the semblance of division of State functions between the legislative, executive and judicial branches (Title VIII). Nevertheless, an analysis of the organization of the power of the Castro régime shows that there is no such actual division of power and that a supreme and omnipotent power has been set up concentrating the executive, legislative and even constituent functions. This supreme organ is the Council of Ministers.

The Council of Ministers. In accordance with the Fundamental Law, the Council of Ministers discharges the following functions: first, legislative power (Article 119); second, assistance to the President of the Republic in the exercise of his executive functions (Article 135); third, direction through the Prime Minister of the general government policy and, in conjunction with the President of the Republic, dispatch of administrative matters (Article 146); fourth, in case of absence, incapacity or death of the President of the Republic, designation by the Council of Ministers of the person who shall succeed him either temporarily or permanently (Article 134); fifth, authority to amend the Fundamental Law either partially or completely (Articles 232 and 233).

(i) As a legislative organ the Council of Ministers took unto itself the functions assigned to the Legislature under the 1940 Constitution. Title IX of the Fundamental Law refers to the legislative powers of the Council of Ministers, and enumerates in Article 120 the following powers properly vested in the Council of Ministers:

" a) To approve the appointments made by the President of the Republic of the permanent chiefs of diplomatic missions and of other officials whose appointment requires approval according to law.

" b) To authorise Cubans to enter the military service of a foreign country or to accept from another Government an employment or honour that carries with it authority or jurisdiction of its own.

" c) To approve the treaties negotiated by the President of the Republic with other countries.

" d) Any other powers emanating from this Fundamental Law. "

The Fundamental Law stipulates in Article 121 that the Council of Ministers as legislative organ has the following powers which may not be delegated:

"a) To draw up the codes and laws of a general character; to determine the system of conducting elections; to enact provisions relative to the national, provincial, and municipal administrations; and to enact all other laws and resolutions that it deems suitable concerning any other matters of public interest or that are necessary to make effective this Fundamental Law.

"b) To levy the taxes and imposts of a national character that are necessary for the needs of the State.

"c) To discuss and approve the budget of expenditures and revenues of the State.

"d) To resolve upon the annual reports submitted by the Tribunal of Accounts with respect to the liquidation of the budget, the condition of the public debt, and the national currency.

"e) To borrow money, and also to authorize the granting of a guarantee by the State for credit operations.

"f) To enact pertinent provisions concerning the coinage of money, determining its standard, fineness, value, and denomination and to enact what it deems necessary concerning the issuance of fiduciary devices and concerning the banking and financial system.

"g) To regulate the system of weights and measures.

"h) To enact provisions for the regimen and development of foreign trade; of agriculture and industry, insurance for labour and old age, maternity, and unemployment.

"i) To regulate communications services, taking care of the system of railroads, highways, canals, and ports, and land, air, and sea traffic, creating those which public convenience requires.

"j) To fix the rules and procedures for obtaining naturalization and regulating the status of aliens.

"k) To grant amnesties in accordance with this Fundamental Law.

"l) To fix the strength of the armed forces and determine their organization.

"m) To declare war and approve peace treaties negotiated by the President of the Republic.

"n) To enact all laws directed by this Fundamental Law and those which carry out the principles contained in its precepts."

(ii) In accordance with Title XI, the Council of Ministers assists the President of the Republic in the exercise of executive power. Article 135 states that the Council of Ministers shall consist of "the number of members determined by law". It further states that one of these Ministers shall have the function of Prime Minister. The power of appointing him belongs to the President.

Article 140 provides that Ministers "shall deliberate and decide upon all questions of general interest that are not attributed to other agencies or authorities".

The Prime Minister and the other Ministers take the oath before the President of the Republic and undertake to fulfil the obligations of their posts and to observe and enforce the Fundamental Law and the other legislation of the Republic.

Article 147 states that the functions of Ministers are:

"a) To comply with and enforce the Fundamental Law, the laws, decree-laws, decrees, regulations, and all other resolutions and provisions.

"b) To draft proposed laws, regulations, decrees, and any other resolutions and present them for consideration by the Government.

"c) To countersign, jointly with the Prime Minister, the laws and other documents authorized by the signature of the President of the Republic, except decrees appointing or removing Ministers."

(iii) Article 146 states:

"It shall be the function of the Prime Minister to direct the general policy of the Government, to dispatch administrative matters with the President of the Republic accompanied by the Ministers, upon the matters of the respective departments."

(iv) As was already pointed out, the Council of Ministers is empowered to decide who shall succeed the President of the Republic in case of death, incapacity or absence. This appointment may be either temporary or permanent. This power is of major importance if it is borne in mind that the Fundamental Law contains no provisions with regard to procedure for election of the President of the Republic or to his term of office. Article 140 of the 1940 Constitution said in this connection:

"The President of the Republic shall be elected by universal, equal, direct, and secret suffrage, on a single day, for a period of four years, in accordance with the procedure to be established by law."

This Article was not retained in the Fundamental Law. The power to appoint the President was already exercised by the Council of Ministers upon the resignation of the first provisional President of Cuba, Manuel Urrutia Lleo. He presented his resignation to the Council of Ministers, which accepted it on July 17, 1959, and at the same session appointed Osvaldo Dorticos Torrado to succeed him.¹

From the constitutional point of view, the provisions described above imply that the first provisional President of Cuba in 1959

¹ Declaration of the Secretary to the President and of the Council of Ministers, *Gaceta Oficial*, Special edition No. 9, July 18, 1959, appendix.

came to power by spontaneous generation. He then appointed his ministers, and selected one of them as Prime Minister. They made up the Council of Ministers. The provisional President presented his resignation to the Council, which thereupon appointed the new President.

Under Article 129 (*m*), "the President of the Republic freely appoints and removes the Ministers of Government and replaces them when proper in accordance with this Fundamental Law." This clearly reveals the process of reciprocal appointment practiced by Fidel Castro and his immediate collaborators, at least until December 1, 1961, the date of this Marxist-Leninist proclamation of collective leadership.¹

In his "History Will Absolve Me", Castro stated:

"One day eighteen rogues got together. Their plan was to assault the Republic and loot its 350 million dollar annual budget. Treacherously and surreptitiously they succeeded in their purpose. 'And what do we do next?' they wondered.

"One of them said to the rest: 'You name me Prime Minister and I will make you general'. As soon as this was done, he rounded up a clique of twenty men and told them: 'I will make you my Cabinet and you will make me President'.

"In this fashion they nominated each other generals, ministers and president and then took over the treasury and government, lock, stock, and barrel."²

These were Castro's comments concerning the tyrant Batista, but the similarity with his own procedure could not be more striking.

(v) The Council of Ministers has the power to amend the Fundamental Law either partially or in its entirety. This means that at any time the Fundamental Law can be modified in accordance with circumstances that require it. There is no limit whatsoever to this procedure and the Council of Ministers as the constituent organ is thereby empowered to dispose of the lives, freedom and property of citizens or inhabitants of Cuba without any limitations by positive law. Once again, the words should be quoted with which Castro condemned the Constitutional Act for the Republic of Cuba proclaimed by Batista and his Council of Ministers in April 1952.³

Article 232 of the Fundamental Law states:

"The Fundamental Law may be amended by the Council of Ministers, by a roll-call vote of two thirds of its members, ratified by a similar vote at three successive meetings, and with the approval of the President of the Republic."

¹ See above, p. 69-72.

² Fidel Castro, *op cit.*, p. 69.

³ See above, p. 83-84.

The only difference from the text of Article 257 in Batista's Act which Fidel Castro calls a "maximum of mockery" is that the Fundamental Law requires ratification by a similar vote at three successive meetings of the Council of Ministers. This formal requirement is so obviously superfluous that the *Gaceta Oficial* contains no record of its having ever been applied.

Castro concluded the lengthy section he devoted to this subject by saying:

"Since these changes can be brought about by a vote of two-thirds of the Cabinet and the Cabinet is named by the President, then the right to make and break Cuba is in the hands of one man . . . Such a power recognizes no limits. Under its aegis, any article, any chapter, any clause—even the whole law—can be modified . . . Batista and his cabinet under the provisions of Article 257 can modify all these other articles. They can say that Cuba is no longer to be a Republic but a hereditary monarchy and he, Batista, can anoint himself King. He can dismember the national territory and sell a province to a foreign country, as Napoleon did with Louisiana. He can suspend the right to life itself, and, like Herod, order the decapitation of newborn children. All of these measures would be legal and you, my friends, would have to incarcerate all those who opposed them, just as you now intend to do with me."

This extensive quotation from Castro's defence speech before Batista's court in 1953 illustrates correctly the sad and humiliating situation prevailing in the constitutional practice of Cuba today.

Since other organs established by the Fundamental Law, such as the municipal system, the provincial system, the budget, maintain the letter of the 1940 Constitution, consideration will next be given to the *Additional Transitory Provisions*.

The Additional Transitory Provisions set the tone of Castro's régime and, far from being transitional, have remained in force until now. A brief analysis is sufficient to give an approximate idea of the legal insecurity existing in Cuba.

The first such provision states that:

"All legal and regulatory criminal, civil and administrative provisions promulgated by the High Command of the Rebel Army during the progress of the armed struggle against the tyranny overthrown on December 31, 1958, shall continue in effect throughout the territory of the Nation until the Government installs popular elections, unless subsequently modified or repealed."

It will be noted that this additional provision incorporates "all legal provisions" proclaimed by the High Command of the Rebel Army, without specifying any particular item whatsoever or stating any order. What are these legal provisions? Have they been published in the *Gaceta Oficial*? In order to answer these questions the second additional transitory provision was adopted, stating that:

"in order that they (the legal provisions of the Rebel Army) shall become widely known, provision is made for publication in the Official Gazette..." No such publication has yet taken place. Many of these laws and regulations passed by the Rebel Army have been incorporated into new laws by the Castro régime. It is pointed out in the chapter on criminal legislation in Cuba that on one occasion there was modified by law a provision of the Rebel Army that had not even been published in the *Gaceta Oficial*. In other words, an Act which did not exist as such was amended. This was the case of Act No. 33 amending Regulation No. 1 of the Rebel Army.¹

The second observation regarding the first Additional Transitory Provision is that these laws and regulations cited in general terms are to apply in Cuba "until the Government installs popular elections". As Prime Minister Fidel Castro proclaimed that there was no need to call elections, the condition stated by the first Additional Transitory Provision may never be fulfilled. Consequently, the provisions quoted will remain in force as long as Castro's regime so desires.

The third, fourth and fifth Additional Transitory Provisions incorporated in the text of the Fundamental Law the amendment of the 1940 Constitution made on January 13 and 14, 1959 (See above pp. 86-88).

V. AMENDMENTS TO THE FUNDAMENTAL LAW

Between February 7, 1959 and August 23, 1961, the Fundamental Law was amended 16 times.

1. Three months after its proclamation, the first such measure took place, extending the third and fourth Additional Transitory Provisions for a further 90 days. These related to suspension for 90 days of application of Articles 27, 29, 174 and 175 of the Fundamental Law, whose text is identical to that of Articles 27, 29, 196 and 197 of the 1940 Constitution. (See above pages 89-91).²
2. The second amendment of the Fundamental Law came through the adoption of the Agrarian Reform, Act 3, June 3, 1959). This Act substantially affects the sections of the Fundamental Law referring to property, in particular Articles 24 and 87. The first constitutional modification was in fact contained in the Fundamental Law itself (third Transitory Provision relating to Section I of Title IV of the Fundamental Law), authorizing compensation for expropriation by "other means of payment, provided they meet the necessary guarantees". However, Article 31 of the Agrarian Reform Act referred directly to "agrarian reform bonds".

¹ *Gaceta Oficial*, Special edition, No. 10, January 30, 1959.

² *Gaceta Oficial*, May 6, 1959.

³ *Gaceta Oficial*, Special edition No. 7, June 3, 1959.

Any contradiction there might be between the Agrarian Reform Act and the Fundamental Law was always to be decided in favour of the former, since the final additional provision of this Act states:

“In pursuance of the constituent power vested in the Council of Ministers, this Act is declared an integral part of the Fundamental Law of the Republic, which is thereby amended.”

“In consequence, this Act has constitutional force and validity.”

In a case concerning the constitutional compatibility of the Agrarian Reform Act, the Court of Constitutional and Social Guarantees found that the argument that Articles 24 and 87 of the Fundamental Law were violated should be rejected, since “it is also the doctrine of this Court that such standards regulating the right of property cannot be invoked with regard to property falling under the special system of the agrarian reform, which is subject to special provisions laid down by that Act which is on an equal footing with the Constitution”.

With regard to Article 52 of this Act, the delegates of agrarian development areas may not be denied the power to occupy property affected by the Act; they are not required to apply to the organs of ordinary jurisdiction, nor are there provisions for prior compensation to the owners.

The Court further found that “the Agrarian Reform Act, by virtue of the vital importance of its aims, the validity of its provisions and the extent of its coverage, constitutes a dynamic and flexible system which is brought into action through those appointed to implement it, whose function it is to administer its provisions within the broad limits in which it was conceived.”¹

3. On June 29, 1959, the Council of Ministers met once more to amend the Fundamental Law. Article 25 was modified to include in what was already a large list of persons liable to the death penalty “those guilty of counter-revolutionary offences and those harming the national economy or the public treasury.”²

This amendment was followed by Act. No. 425 of July 9, 1959, defining “counter revolutionary” offences. The Act in question is analyzed in more detail in Part III below.

4. The fourth amendment of the Fundamental Law took place on November 2, 1959, and restored the operation of the revolutionary courts on a constitutional basis.³ Its object was to make permanent the suspension of constitutional guarantees decreed for a period of 90 days under the amendment of January 30, 1959.

¹ Judgment No. 45 of the Court of Constitutional and Social Guarantees. *Gaceta Oficial*, No. 109, June 7, 1961. These arguments exclude *a priori* any attack on the constitutionality of the Agrarian Reform Act.

² *Gaceta Oficial*, No. 122, July 6, 1959.

³ *Gaceta Oficial*, No. 207, November 2, 1959.

Article 1 modified Article 174 of the Fundamental Law, stating with regard to the item under consideration:

“Notwithstanding, the revolutionary courts whose operation is restored shall be competent to hear cases arising through offenses defined by the law as counter-revolutionary, whether committed by civilians or by members of the armed forces.”

This constitutional amendment was followed by Act No. 634 restoring summary trials according to the procedure fixed in the Procedural Act of the Republic of Cuba under Arms of July 28, 1896 and discussed in detail in Part III below.

5. Twenty days later, on November 22, 1959, the Council of Ministers again used its constituent power to amend Article 24 of the Fundamental Law.¹ This time it was to extend the number of persons liable to confiscation of property. In addition to the persons listed in Article 24 of the Fundamental Law,¹ this penalty was extended to: 1) persons found guilty of offences defined by law as counter-revolutionary; 2) persons evading the action of the revolutionary courts by leaving the national territory in any manner whatsoever; and 3) persons who, having left the national territory, perform conspiratorial acts abroad against the Revolutionary Government.

On the next day Act No. 664 was issued, Article 1 of which stated that in all cases of counter-revolutionary offences the court should order total confiscation of property.

6. The Fundamental Law was again amended on March 14, 1960.² This reform modified Articles 61, 84 and 160 (*e*), bringing about substantial changes in the constitutional foundations of labour law. Article 61 reads:

“A law shall establish the manner of periodical payment of minimum wages by means of Conciliation Commissions for each branch of employment.”

The amendment consisted of eliminating the word “periodical” and the reference to “Conciliation Commissions”.

Article 84 of the Fundamental Law provided that disputes arising between labour and management should be brought before “Conciliation Commissions with equal numbers of representatives of employers and workers”. The reform deletes the reference to the Conciliations Commissions and mentions merely “administrative and judicial authorities”. These were to be set up under special legislation.

Finally, Article 160 (*e*) was amended. This stated that the Court of Constitutional and Social Guarantees had the jurisdiction to hear: “... (*e*) Juridico-political questions and questions of social legislation which the Fundamental law and the Law submit to its

¹ *Gaceta Oficial*, Special edition No. 58, December 22, 1959.

² *Gaceta Oficial*, No. 50, March 14, 1960.

consideration". The amendment now reads: "... (e) Juridico-political questions and questions of social legislation which the law expressly submits to its consideration subject to the provisions on procedure and appeal laid down in the same law".

The intention of this amendment is clear: by deleting the reference to the Fundamental Law, it created the legal instrument to limit the competence of the Court of Constitutional and Social Guarantees by means of a simple law.

This amendment was followed by the adoption of Act No. 795 establishing the procedure to be followed with regard to labour disputes.¹

7. On June 29, 1960 there were deleted Articles 210, 212, 216 and 221 (b) and amended Articles 116, 203, 206, 209 and 211 of the Fundamental Law.²

Article 116 had set up an autonomous authority known as the Public Offices Tribunal. The function of this Tribunal was to deal with questions relating to public offices. The amendment eliminated the constitutional basis by stipulating that "questions concerning public offices and public officials, employees and workmen shall be dealt with according to the law".

Article 203 of the Fundamental Law stated the conditions subject to which property owned by the State might be sold. These conditions were: (a) consent of the Council of Ministers through special legislation for a reason of social necessity of convenience and subject to agreement by two-thirds of its members; (b) that the sale should be by public auction except in two exceptions stated by the law and (c) that the proceeds of such sale should be devoted to creating employment opportunities or providing public welfare. The amendment deleted the whole article and substituted another as follows: "The law shall determine the conditions for sale or lease of property owned by the State".

Once again the clear and precise constitutional provisions of the Fundamental Law were replaced by ambiguous reference to future legislation without any constitutional safeguards.

Article 3 of the amending Act dealt with Article 206 of the Fundamental Law, which referred to the annual budget. Article 206 stated:

"All revenues and expenditures of the State, with the exception of those mentioned below, shall be provided for and fixed in annual budgets and shall be in force only during the year for which they are approved.

"The moneys, special funds, or private assets of entities authorized by the Fundamental Law or by law, and destined for social security,

¹ *Gaceta Oficial*, Special edition No. 7, March 15, 1960.

² *Gaceta Oficial*, Special edition No. 10, June 29, 1960.

public works¹ development of agriculture, and the regulation of industrial livestock, commercial or professional activities, and in general to the development of the national wealth, are excepted from the provisions of the preceding paragraph. These funds or their taxes are to be turned over to the autonomous entity and administered by it, in accordance with the law that created them, subject to audit by the Court of Accounts."

This exemption was now abolished, which meant that such assets shall henceforth all be brought within the national budget.

Article 209 of the Fundamental Law stated that the Executive should prepare and submit the annual budget of the State, but that the Council of Ministers should approve or modify it in its legislative capacity. The article laid down a detailed procedure for the Executive to follow in drafting the budget.

The amendment eliminated all such constitutional guarantees, stating simply that "the legislation establishing budgets shall cover the drafting, approval, execution, liquidation and auditing of budgets, within the limits stated in this Fundamental Law".

Article 211 of the Fundamental Law provided that "allotments specified in the statement of expenses in the budget shall fix the maximum amounts allotted to each service, which may not be increased or transferred by the Executive Power without prior authorization from the Council of Ministers". The amendment deleted the whole paragraph. This left within the hands of the Executive, without any control whatsoever, the possibility of appropriating funds or granting additional credits in the following cases: (a) war or imminent danger of war; (b) serious disturbance of public law and order; (c) public disasters. The Fundamental Law provided that the Executive should grant extraordinary credits in the cases mentioned above "when the Council of Ministers is not in session".¹

By eliminating the requirement that in order to authorize the Executive to appropriate extraordinary credits the Council of Ministers should not be in session, the amendment of Article 211 makes a rule out of what used to be an exception. And the contingency which

¹ This provision gave rise to the following comment by the *Folleto de Divulgación Legislativa* (Havana, Cuba, 1959, Vol. II, p. 109), which published the legislation issued under the Castro régime: «The text of the 1940 Constitution was transcribed in so literal and mechanical a manner into the Fundamental Law of the Revolution that it was not noticed how absurd it was to enable the Executive to grant extraordinary credits when the Council of Ministers is not in session. We do not believe this contingency could ever arise, since it would imply the exercise of personal power completely incompatible with a democratic régime born out of the revolution. By rare coincidence, Article 211 of the Fundamental Law reproduces almost word for word Article 233 of the 1952 Statutes». The author of this interesting comment refers here to the Batista Constitutional Act, 1952.

the commentator believed could never arise becomes reality. The Executive of Cuba can grant whatever extraordinary credits it considers appropriate. In this respect the legal situation is worse than that set up under Batista's Statutes in 1952.

The sixth Article of this Amending Act deleted Article 221 (b), which granted the Tribunal of Accounts the power "to take cognizance of orders of the State for advancement of money in order to approve the placement of funds in accordance with the budget, in such a way that the provisions of the Fundamental Law are complied with and that the orders are handled without preference or preterition". Since this provision meant a limitation of executive power, the régime found no better solution than to eliminate it altogether.

Finally, Article 7 deleted Articles 210, 212 and 216 of the Fundamental Law. Article 210 reproduced the exact wording of Article 259 of the 1940 Constitution and provided, apart from certain formal budgetary requirements, that "the Law of Bases shall establish, with respect to the foregoing articles, the rules relative to the manner in which the amount or amounts fixed for payments during the budget period shall be prorated among creditors with liquidated claims".

Article 212 of the Fundamental Law stated the obligation to submit annual State accounts, laying down detailed provisions to be followed by the Ministry of Finance in submitting its annual report to the Tribunal of Accounts. It also required the Executive to submit monthly statements of State income and expenditure to the Council of Ministers. It seems incredible that this article of the Fundamental Law should have been deleted since such measure enables the Executive to administer public funds without any legal control. Yet this is now a constitutional principle in Cuba, by reason of the constituent power wielded by the Council of Ministers.

Article 216 provided for publication in the *Gaceta Oficial* of the liquidation of any appropriations of government funds for the execution of any public work or service. This liquidation had to be published in full, following approval by the Ministry concerned.

Similarly, the instrument of approval for any public work either totally or partially undertaken with State funds was required to be published in the *Gaceta Oficial*. This elementary requirement of publicity for administration of public funds was also eliminated.

This meant that the administration of the finances of the State remained in the hands of the Executive, without any control and without any legal duty for publication of the use made of such funds.

8. On July 5, 1960, the Council of Ministers referred once more to its constituent power in order to alter again the disputed Article 24 of the Fundamental Law.¹ At the same time Articles 30 and 147 (c)

¹ See above pp. 98-99, 100

were amended. This time, the amendment to Article 24 was not to extend the number of persons against whom general confiscation of property could be ordered but rather to alter the last paragraph which had not been affected by the preceding reforms. It stated:

“No other natural or juridical person can be deprived of his property except by competent judicial authority and for a justifiable reason of public benefit or social interest and always after payment of appropriate compensation in cash, fixed by court action. Non-compliance with these requirements shall give the person whose property has been expropriated the right to protection by the courts and, if the case so warrants, to restitution of his property.

“The reality of the grounds for public benefit or social interest and the need for expropriation shall be decided by the courts in the event of challenge.”

The amendment consisted of substituting the following paragraph for the above:

“No other natural or juridical person can be deprived of his property except by competent authority and for a justifiable cause of public utility or social or national interest. The law shall regulate the procedure for expropriation and shall establish legislation and forms of payment and shall determine the competent authority to declare the case to be of public utility or social or national interest and that expropriation is necessary.”

The effect of this amendment is perfectly clear. Where the Fundamental Law says “competent judicial authority”, the amending Act has “competent authority”, in other words, any authority, not necessarily judicial. Where the Fundamental Law says “for a justifiable cause” the amendment says “for a cause”. This means that the cause of expropriation does not call for any justification to a judicial authority. The amendment adds to the causes which may lead to expropriation instances “of national interest”.

The amending legislation deleted further the provisions under which the expropriated party may appeal to the courts and, if appropriate, have his or its property returned. Similarly, the courts of law no longer have power to decide in case of dispute whether the cause for and necessity of expropriation exist. The constitutional amendment merely states that “the law shall regulate the procedure for expropriation and shall establish legislation and forms of payment and shall determine the authority competent to declare the case to be of public utility or social or national interest and that expropriation is necessary”. This is one more proof of the way in which the right of property was stripped of all constitutional protection.

9. On September 28, 1960, a new constitutional change took place.¹ The Council of Ministers amended Article 107 (a) of the Fundamental

¹ *Gaceta Oficial*, Special edition No. 21, September 28, 1960.

Law, substituting for the words "ambassadors, extraordinary envoys and ministers plenipotentiary" the words "members of the foreign service of the Republic in all branches in which it is constituted". All such persons are thus brought under the provisions relating to "offices of a political and confidential nature".

This extension might be considered as a privilege anywhere else than in Cuba. Article 106 of the Fundamental Law states the irremovability of public officials, employees and workmen attached to any authority under the State, and provides that "their irremovability is guaranteed by this Fundamental Law, with the exception of those holding office of a political or confidential nature". The amendment means that any member of the foreign service of the Republic may be dismissed without the Fundamental Law protecting him.

10. On October 14, 1960, the Urban Reform Act was issued.¹ This Act which in itself constitutes an independent organic structure, directly and adversely affects the right of property and the freedom of contract. For instance, Article 2 of the Urban Reform Act states: "Leasing of urban property is prohibited, any contract which implies the transfer of the use of an urban property is also prohibited". The Act only permits leases of hotels, motels, pensions and houses or apartments in summer places. In these cases the rent is fixed by the National Institute of Tourist Industries. Article 5 declares null and without legal effect all leases of urban property which existed at the time of publication of the Urban Reform Act. Article 1 and Article 9 order the compulsory selling of urban houses and apartments. The sales price of such property is fixed by its rent value over a period of from five to twenty years. The Urban Reform Act sets up the administrative agencies authorised by the Urban Reform Act to fix prices and resolve all conflicts which may arise from the enactment of this Act. (Art. 7, 8, 9, 15, 16, 17, 19, 38, 39, 40, 41, 42 and 43).

Under the provisions of the Urban Reform Act, houses or apartments cannot be sold, transferred or changed to other persons without the consent of the Council of Urban Reform (Article 29). The Council of Ministers, instead of coordinating this Act with the Fundamental Law, which it affects in some of its principles, preferred to raise it to an equal footing with the Constitution. In the same way as for the Agrarian Reform Act, the Urban Reform Act contains an additional provision stating:

"In pursuance of the constituent power vested in the Council of Ministers, this Act is declared an integral part of the Fundamental Law of the Republic, to which it is thereby added. Consequently, this Act shall have constitutional force and validity from the date of its publication in the *Gaceta Oficial*."

¹ *Gaceta Oficial*, Special edition No. 23, October 14, 1960.

Thus the Urban Reform Act came to be included in this study of constitutional legislation in Cuba.

11. On December 20, 1960, nine Articles of the Fundamental Law were amended and the irremovability of officials of the judiciary once more suspended.¹

The amendments affect Articles 22, 23, 65, 150, 159, 160 and 186, and alter the heading of the third section of Title XII of the Fundamental Law.

Article 22 of the Fundamental Law read:

"No other laws shall have retroactive effect, unless the law itself so specifies for reasons of public order, of social utility, or national necessity, expressly stated in the law, approved by a vote of two thirds of the total number of members of the Council of Ministers."

This first part of Article 22 was retained, but the passage quoted below, which completed that section in the Fundamental Law, was deleted. Its text suffices to explain the reasons for its suppression:

"If the grounds for retroactivity are impugned as unconstitutional, the Court of Constitutional and Social Guarantees shall decide thereon, and it cannot for technical reasons or any other motive, refrain from doing so.

"In every case, the law itself must establish the degree, manner, and form in which indemnity shall be paid for damages, if any, which the retroactivity causes to rights legitimately acquired in accordance with previous legislation.

"A law approved in accordance with this Article shall not be valid if it produces effects contrary to the provisions of Article 24 of this Fundamental Law."

It should be recalled here that Article 24 dealing with the confiscation of property was modified in various ways referred to elsewhere in this chapter.

Article 23 of the Fundamental Law stated that:

"Obligations of a civil character arising from contracts or other acts or omissions producing them cannot be annulled or altered by either the Legislative power or the Executive power, and consequently laws cannot have retroactive effect with respect to such obligations."

The amendment consisted of inserting the following words after the words "Executive power":

"... unless the law provides otherwise for reasons of public order, social utility or national necessity expressly stated in the law by a two-thirds majority of the Council of Ministers."

This means that the firm declaration in Article 23 that civil obligations arising from contracts or other acts of commission or omission

¹ *Gaceta Oficial*, Special edition No. 26, December 2, 1960.

may not be cancelled or altered by the Legislature or by the Executive is deprived of its meaning, since it is made subject to the condition that any Act may "provide otherwise".

Article 65 of the Fundamental Law established social security as an inalienable right. The administration of the institutions set up by law such as retirement pensions and survivors' grants was placed under the authority of "joint bodies elected by management and workers including a representative of the State ...". The amendment substituted the simple statement: "The administration and regulation of the social security system shall be under the authority of the State, as determined by law".

The final paragraph of Article 65 stated that funds or reserves under the social insurance scheme should not be transferred or disposed of for purposes other than those which led to their establishment. This last part was deleted.

The amendments to Articles 150, 156, 158, 159, 160 (c) and 186 directly affect the organization of judicial power in Cuba. Article 150 of the Fundamental Law established that "The Supreme Court of Justice is composed of such divisions as the law may provide. One of these divisions shall constitute the Court of Constitutional and Social Guarantees. When it tries constitutional matters it shall be presided over by the President of the Supreme Court and shall not consist of less than fifteen Magistrates".

The new amendment reads:

"The Supreme Court of Justice is composed of such divisions as the law may provide. One of these divisions will be called Division of Constitutional and Social Guarantees and shall be presided over by the President of the Supreme Court."

The amendment substituted for the Court of Constitutional and Social Guarantees a division of the Supreme Court. Consequently, the amendment deleted the last sentence of Article 150 of the Fundamental Law stating that the number of Justices should be "no less than fifteen".

Article 156 of the Fundamental Law determined the competence of the Government Division of the Supreme Court and read as follows: "The Government Division of the Supreme Court shall determine, classify, and publish any merits that have been awarded to judicial officials in each category, for purposes of promotion". The amendment consists in adding the following enumeration of the members of the Government Division: "The Government Division of the Supreme Court shall be composed of the President of the Supreme Court, the President of the Division, the Attorney and one magistrate appointed by each of the Divisions among their members". Then follows the original text of article 156.

Article 158 was also amended. This article refers to the procedure of appointing judges of the Supreme Court. It establishes the system

of appointment by the President of the Republic from a list of three names proposed by an electoral college of nine members. Members of this electoral college were chosen as follows: four by the full bench of the Supreme Court among its members; three by the President of the Republic; two by the Law Faculty of the University of Havana. All of them were required to have the qualifications set out in the Fundamental Law for Magistrates of the Supreme Court. According to Article 158, "the President of the Supreme Court and the presidents of its divisions shall be appointed by the President of the Republic on proposal of the full bench of the Court. These appointments and those of the Magistrates of the Supreme Court must receive the approval of the Council of Ministers."

Article 6 of the Amendment Act alters Article 158 of the Fundamental Law as follows:

"The President, (of the Supreme Court) the presidents of the divisions, the Magistrates of the Supreme Court and the Presidents of the Audiences shall be appointed by the President of the Republic with the assistance of the Council of Ministers."

Through this reform, the procedure established in the Fundamental Law for the nomination of judges of the Supreme Court was oversimplified and put directly into the hands of the President of the Republic and the Council of Ministers.

Article 7 of the Amendment Act concerns Article 159. This article established that "appointments, promotions, transfers, exchanges, suspensions, disciplinary action, retirements leaves, and eliminations of positions shall be effected by a special Government Division composed of the President of the Supreme Court and six members thereof, elected annually from among the presidents of divisions and Magistrates of the Court".

The composition of the Government Division was already modified by Article 5 of the Amendment Act as was shown above when the amendment of Article 156 was explained. Article 7 refers only to the first part of Article 159 and reads as follows: "Transfers and exchanges of presidents of divisions, Magistrates of the Supreme Court shall be effected by the President of the Republic assisted by the Council of Ministers at the proposal of the Government Division."

Article 7 of the Amendment Act modifies further the already amended Article 160 (*e*) (See above pp. 100-101.) Article 160 (*e*) determined: "The Court of Constitutional and Social Guarantees is competent to take cognizance of the following matters: ... (*e*) Juridico-political questions and questions of social legislation which the law expressly submits to its consideration subject to the provisions on procedure and appeal laid down in the same law."

The amended text now reads:

"The Division of Constitutional and Social Guarantees is competent to take cognizance of the following matters: ... (*e*) Juridico-political questions and questions of social and agrarian legislation..."

Article 9 of the Amendment Act modified Article 186 of the Fundamental Law which provides the procedure to be enforced in cases of criminal liability and causes for removal that may be incurred by the President, presidents of divisions, and Magistrates of the Supreme Court of Justice. The Fundamental Law establishes that "the Council of Ministers shall be the competent body to take cognizance of denunciations against the said officials", and establishes the following procedure:

"When a denunciation is received, the Council shall appoint a committee to study it, and the committee shall submit its report to the Council. If by a vote of two thirds of its members, by secret ballot, the Council finds that there is a basis for the denunciation, appropriate proceedings shall be opened before a tribunal to be known as the Grand Jury, composed of thirteen members designated in the following manner:

"The President of the Supreme Court shall forward to the Council of Ministers a complete list of the members of that body who are not affected by the accusation.

"The Rector of the University of Havana shall send to the Council of Ministers a complete list of the full professors of its Law Faculty.

"The President of the Republic shall send to the Council of Ministers a list of fifty lawyers who have qualifications to be a Magistrate of the Supreme Court, freely designated by him.

"When these lists have been received by the Council of Ministers, it shall proceed to select the members of the Grand Jury by lot:

"Five from the Supreme Court. If there are none, or the number is insufficient, it shall be completed by the same procedure from a list composed of the President and magistrates of the Havana Court of Appeals, submitted to the Council of Ministers by the President of that Court.

"Five members of the Law Faculty of the University of Havana.

"Three members from the list of fifty lawyers.

This tribunal shall be presided over by the judicial official of highest rank and in lieu thereof by the one having greatest seniority among those composing it.

When the Grand Jury has been named, the Council of Ministers shall submit the denunciation to it for appropriate action. When a decision has been rendered, the Grand Jury shall dissolve."

This long article was replaced by the following:

"The full bench of the Supreme Court of Justice shall take cognizance of the criminal liability and causes for removal that may be incurred by the President, the Attorney, the presidents of divisions, and the Magistrates of the Supreme Court of Justice."

It may be mentioned here that this clause was made under the pressure of the final and greatest crisis of the judiciary in Cuba, in

November 1960 (see p. 64 above). This is the apparent reason for replacing the Grand Jury by the Supreme Court of Justice whose remaining members were ideologically identified with the régime of Fidel Castro.

Article 10 of the Amendment Act refers to the heading of Title XII, Section III, of the Fundamental Law and changing the name of the *Court of Constitutional and Social Guarantees* to *Division*.

Finally, to recognize the Judiciary after the crisis of November 1960, the Amendment Act suspended for 45 days the irremovability of the functionaries of the Judiciary. The President of the Republic with the assistance of the Council of Ministers may now dismiss any of the members of the Judiciary.

12. Fifteen days after the above amendment, on January 4, 1961, the Council of Ministers used its powers as a constituent organ for the twelfth time, in order to amend Article 15 of the Fundamental Law and, once again, Article 24.¹

The first Article of this amending legislation modified Article 15 which listed the cases in which Cuban citizenship might be forfeited namely if the person concerned entered the military service of another nation or performed functions subject to foreign jurisdiction; however, such deprivation of Cuban citizenship "would not be effective other than through a binding decision by court of law as provided for under the law". This provision also applied to naturalized Cuban subjects who resided for three consecutive years in their country of birth.

The amendment consisted in eliminating this passage and in completing the article as follows:

"The law may determine offences and grounds of unworthiness producing loss of citizenship through binding decision by the competent courts."

Article 2 of the Amending Act once again rewrote Article 24 of the Fundamental Law. This time it was to extend further the categories of persons against whom confiscation of property may be ordered. In addition to the wide terms of reference already existing (see p. 100, above), the following passage was included:

"... as well as those (cases) deemed necessary by the Government in order to prevent acts of sabotage, terrorism or any other counter-revolutionary activities".

In the chapter on criminal legislation in Cuba consideration will be given to Act No. 923, promulgated on the day of the above amendment, and "authorizing through the Ministry of Finance,

¹ *Gaceta Oficial*, Special edition, No. 1, January 4, 1961.

action to confiscate property where this is deemed necessary by the Government in order to prevent acts of sabotage, terrorism or any other counter-revolutionary activities ”.¹

13. On January 19, 1961,² Castro's régime amended Article 13 of the Fundamental Law, by adding to the paragraphs listing Cubans by naturalization the following paragraph (d): “ A foreigner citizen of an American nation in which exceptional conditions exist as recognized by express agreement of the Council of Ministers ”.

There must be no confusion between this constitutional amendment and the text of Article 12 (e) defining “Cubans by birth”. The latter states that “ foreigners ” who fought against Batista's régime in the Rebel Army for not less than two years and who have held the rank of Major for not less than one year “ shall be deemed Cubans by birth ”. This article 12 (e) was so conceived as to recognize Ernesto Guevara, of Argentine origin, as a native Cuban citizen. Hence the text of the paragraph, which is practically a thumb-nail biography of the chief beneficiary.

14. In pursuance of its constitutional powers, the Council of Ministers incorporated in the Fundamental Law the provisions of the so-called Nationalization of Education Act.³ It follows the same pattern as the Agrarian and Urban Reform Acts, in that the text affects vitally the constitutional rights and guarantees under the Fundamental Law. Article 1 declares that the function of education is a public one and that it is the responsibility of the State to deal with this matter through the governmental agencies. Article 2 determines the nationalisation of all centres of education existing in Cuba at the time of publication of this act. All buildings, properties, instruments of teaching are transferred to the State. Article 4 authorizes the Minister of Education to decide what indemnity will owners of educational institutions receive and who among them will be eligible for it. To decide this point the Minister of Education will have to consider the attitude of the owners of these educational institutions, or their professors, towards the interests of the Cuban revolution and of the fatherland. Contradictions between these provisions and the rights guaranteed in title IV, V and VI of the Fundamental Law are covered over by the final provision to the effect that:

“ In pursuance of the constituent power of the Council of Ministers this Act is declared to be an integral part of the Fundamental Law of the Republic, whereby it has constitutional force and validity. ”

¹ *Gaceta Oficial*, No. 1, January 4, 1961.

² *Gaceta Oficial*, Special edition No. 3, January 19, 1961.

³ *Gaceta Oficial*, No. 109, June 7, 1961.

15. On August 1, 1961, legislation was adopted amending Articles 69, 70 and 185 of the Fundamental Law¹. Articles 69 and 70 regulate the setting up of associations, while Article 185 deals with the incompatibility of public functions.

16. On August 23, 1961, the Council of Ministers amended Article 134 of the Fundamental Law.² Article 134 gave the Council of Ministers the power to appoint the person to succeed the President of the Republic in case of absence, incapacity or death. The amendment provides that in cases of incapacity or death of the President the Council of Ministers should retain the power to appoint the successor but in the case of temporary absence of the President from the national territory the Prime Minister should take his place during the interim period.

This constitutional amendment concludes the survey of the sixteen amendments to the Fundamental Law of Cuba enacted as of the end of August 1961.

VI. CONCLUSIONS

1. Between January 1, 1959 and August 23, 1961 (the date of the last document referred to in this part) the Council of Ministers used its constituent power on 22 occasions. This means that this power has been exercised approximately once every 46 days.

2. The amendments were caused by the desire to overcome obstacles arising for the Castro regime from the Fundamental Law which it had itself promulgated.

3. In most cases the amendments of the Fundamental Law were in answer to circumstantial problems. Reference has been made to a body of legislation adopted immediately after each constitutional reform. In other words, in the face of a concrete situation it was necessary to take specific action. Since such action was prohibited by the Fundamental Law, the first step was to reform that Fundamental Law. Immediately afterwards legislation adapted to the government's needs was issued and based on the precedent amendment of the Fundamental Law.

4. All the amendments to the Fundamental Law reveal a single purpose, namely to concentrate arbitrary power in the hands of the ruling group. On the one hand, every legal guarantee for the freedom, property and life of Cuban citizens is being eliminated. On the other hand, the number of persons covered by "counter-revolutionary offences" is being gradually increased. With regard to administration of State funds a similar pattern is followed. Legal means of

¹ *Gaceta Oficial*, Special edition, August 3, 1961.

² *Gaceta Oficial*, August 24, 1961.

controlling the administration of public funds are gradually eliminated, while ever greater powers are being granted to the Government. The same course was observed in the case of labour legislation, where joint worker-management councils to decide labour disputes were eliminated and this function vested directly in the State. Education is nationalized, and brought under the exclusive responsibility of the State.

5. The mechanism of the legislative process in Cuba is as follows: the Council of Ministers, acting as the *constituent* organ, amends the Fundamental Law, whereupon the same Council of Ministers, in its *legislative* capacity, issues a law which one of its members will subsequently have the *executive* authority to implement.

6. The five reforms to the 1940 Constitution, the proclamation of the Fundamental Law and the 16 subsequent amendments bear witness to the chaotic legal situation in Cuba.

7. Examination of the amendments to the Fundamental Law reveals the transformation in Castro's government and the final triumph of the extremist and totalitarian tendencies observed from the earliest days of the Revolutionary Government.

8. Examination of constitutional changes in Cuba shows that many of the changes incorporated in the Constitution or the Fundamental Law since January 1959 violated the Universal Declaration of Human Rights.

9. Careful examination of constitutional legislation in Cuba as well as of actual events shows that the constitutional chaos described above set the stage for the arbitrary despotism now controlling Cuba.

THE CRIMINAL LEGISLATION OF CUBA

The preceding part of this Report dealt in detail with the changes made in the Cuban constitutional pattern by the series of amendments to the Constitution of 1940, by the Fundamental Law of 1959 and its own sixteen amendments. Five of them referred to criminal law and have been analyzed above in connection with the chronological review of the Castro constitutional legislation.

While specific reference to these gradual changes will be omitted in the following survey of substantive and procedural legislation in force in present Cuba, it seems that the following main trends in constitutional amendments with respect to criminal law should once more be pointed out here:

(1) Retroactivity of criminal legislation may be applied to the detriment of the accused.

(2) The death sentence may be imposed for a variety of political offences.

(3) Total confiscation of property may be ordered against political offenders by a court sentence as well as in extra-judicial administrative proceedings.

(4) Those indicted for political offences are deprived of the right of *habeas corpus*.

(5) Those indicted for political offences are prevented from attacking the violation of guarantees contained in constitutional legislation before the Supreme Court of the land.

1. SUBSTANTIVE CRIMINAL LEGISLATION

The present substantive criminal legislation in Cuba consists of the following laws and regulations.

1. Regulation No. 1 issued by the High Command of the Rebel Army in the Sierra Maestra on February 21, 1958. This Regulation was never published in the *Gaceta Oficial*, following the victory of the revolution against Batista. Nevertheless, on January 29, 1959, the Castro régime issued Act No. 33,¹ which amended Regulation No. 1 of the Rebel Army. This means that an Act was thereby amended

¹ *Gaceta Oficial*, Special edition. No. 10, January 30, 1959

by law which does not exist as such and the legal existence of which is subsequent to the date of its amendment.

Act No. 39 of January 30, 1959, declared that "all laws and regulations of a penal, civil and administrative nature proclaimed by the High Command of the Rebel Army during the armed conflict against the dictatorship overthrown on December 31, 1958, shall remain in force..."² This Act provided in Article 2 that these laws and regulations should be published in the *Gaceta Oficial*.

The content of Act No. 39 was incorporated on February 7, 1959, into the Fundamental Law, Additional Transitory Provisions 1 and 2.

2. Substantive and procedural criminal law in force during the War of Independence in the Republic of Cuba in Arms. This covers the Criminal Law of Cuba in Arms and Procedural Law of Cuba in Arms, both dated 28 July 1896. These Acts, which have become known in the history of Cuban law as *Leyes Mambisas*, are a secondary source of law.

With the same supplementary power, without prejudice to Regulation No. 1, force of law was declared for the Social Defence Code, promulgated in 1938, and the Criminal Procedure Act of December 17, 1882.

3. Act No. 425 of July 7, 1959 (*G.O.*, July 9, 1959), defines so-called counter-revolutionary offenses.

4. Act No. 664 (*G.O.*, December 23, 1959) provides for confiscation of property as an additional penalty for offences defined as counter-revolutionary.

5. Act No. 719 of January 22, 1960 (*G.O.*, January 28, 1960) amends some sections of the Social Defence Code, providing for heavier penalties in respect of offences against the national economy and trade, and extending the definition of counter-revolutionary offences to other cases covered in the Social Defence Code.

6. Act No. 732 of February 16, 1960 (*G.O.*, February 22, 1960), amends the Social Defence Code in its provisions concerning misappropriation of funds, fraud, illegal exactions, etc.

7. Act No. 858 of July 20, 1960 (*G.O.*, July 20, 1960) amends section 390 of the Social Defence Code.

8. Act No. 923 (*G.O.*, January 4, 1961) amends sections 465, 468 and 469 of the Social Defence Code.

9. Act No. 988 (*G.O.*, November 30, 1961) deals with extended application of the death penalty and extrajudicial confiscation measures.

10. Act No. 1018 of 1962 establishes the jurisdiction of Revolutionary Courts in matters of unauthorized slaughter and traffic in beef.

² *Gaceta Oficial*, No. 16, February 2, 1959

All above listed laws and regulations come within the terms of reference of this chapter and will be analysed below.

A. Regulation No. 1 and Act No. 33

Regulation No. 1 was issued by the High Command of the Rebel Army in the Sierra Maestra on February 21, 1958. It was signed by Fidel Castro Ruz, Commander-in-Chief, and Dr. Humberto Sori Martin, then Attorney-General, who was condemned to death and shot in April, 1961.

This Regulation has never been published in the *Gaceta Oficial*. It is therefore particularly noteworthy that, without the fulfilment of so elementary a requirement as promulgation, this Regulation was implicitly declared valid by Act No. 33 issued on January 29, 1959¹ and amending articles 1, 2, 7, 8 and 16 of Regulation No. 1.

Furthermore, on the day on which Act No. 33 was published in the *Gaceta Oficial*, the Council of Ministers met to promulgate Act No. 39,² stating that "all laws and regulations of a penal, civil or administrative nature proclaimed by the High Command of the Revolutionary Army during the armed conflict against the dictatorship overthrown on December 31, 1958 shall remain in force throughout the national territory until such time as a popularly elected government is installed, subject to modification or cancellation".

The second article of Act No. 39 stipulated that "with a view to its widest circulation, it is hereby provided that all laws and regulations proclaimed by the High Command of the Revolutionary Army during the armed conflict shall be published in the *Gaceta Oficial*".

This obviously means that Regulation No. 1 was amended by Act No. 33 before it ever had official force of law in Cuba. It is no less patent that, once Act No. 33 had been published in the *Gaceta Oficial*, there was little point in publishing Regulation No. 1, as the former merely adapted the provisions of the latter to the changed circumstances. This is clearly shown in the introductory clauses of Act No. 33.

Subsequently, when the Fundamental Law was proclaimed, there was a second ratification of the criminal, civil and administrative provisions issued by the High Command of the Revolutionary Army during the armed conflict. The first and second Additional Transitory Provisions incorporated the above-cited provisions of Act No. 39 in the Fundamental Law.

Regulation No. 1 was the only piece of the legislation passed by the Rebel Army which has so far been published, in a modified form. It acquires consequently a special importance and will be discussed here in the version resulting from the amendment brought about by Act No. 33.

¹ *Gaceta Oficial*, January 30, 1959

² *Gaceta Oficial*, February 2, 1959

Act No. 33 contains provisions relating both to substance and to form. Of the 18 articles, 6 refer to offences and to the penalties attaching thereto. The remaining 12 refer to problems of jurisdiction and competence and of procedure.

Article 12 states: "The death penalty shall be applied in the case of the offences of murder, treason, espionage and rape." Article 13 provides as follows: "The death penalty may be applied, in accordance with the circumstances of criminal responsibility involved, in the case of the murder, armed robbery, robbery, burglary, brigandage, desertion, spying, serious insubordination, desertion of duty in combat without prior command or by unauthorized discretion or firing arms for wrongful purposes with inexcusable negligence in such a manner as to alert the enemy or to wound a companion."

Article 14 defines the offence of adverse rumours concerning decisions by authorities. It also qualifies as indictable offences negligence in handling arms and material, stealing such arms and material, trading in them, unauthorized divulging of information or providing false information.

These offences which were originally included in Regulation No. 1 in order to deal with circumstances occurring in armed conflict are now extended without any modification to conditions of everyday life in Cuba under the Castro régime.

Article 15 of Act No. 33 authorizes the Commander-in-Chief of the Rebel Army to reduce, suspend, commute or quash any sentence.

Article 16 provides for "the fundamental principles of justice and equality" to be applied in defining offences and in determining the degree and extent of penalties, and in respect of all matters not covered by Regulation No. 1. The same Article states that the substantive and procedural criminal legislation in force during the War of Independence in the Republic of Cuba in Arms shall apply with the character of supplementary positive law. Similarly and with the same force, the Social Defence Code and the Criminal Procedure Act of September 17, 1882 also apply. This law is to apply in all cases where it is not in conflict with the provisions of Regulation No. 1 (Act No. 33).

The narrow frame provided by Act No. 33 must necessarily increase the importance of supplementary legislation and facilitate resort to "the fundamental principles of justice and equality". Such practice constitutes a flagrant violation of the principle "*nullum crimen sine lege*".

B. Criminal Law of 1896

In accordance with Article 16 of Act No. 33, as described above, the Criminal Law of the Republic of Cuba in Arms of July 28, 1896 was declared to be in force as additional positive law. The contradiction between the principles underlying this law and the principles

of criminal legislation adopted by the Fundamental Law of the Castro régime are evident. It was already mentioned that the latter document provides for retroactivity of criminal legislation. However, Article 2 of the Criminal Law of Cuba in Arms of 1896 (hereinafter Criminal Law) states: "The penalties stipulated under this law shall be imposed only in cases stated herein, on the basis of a sentence pronounced by a court competent to deal with such questions, in respect of acts performed subsequent to its proclamation." Article 13 of the Criminal Law 1896 states: "Penal legislation shall not have retroactive effect and consequently no person shall be condemned except on the strength of laws or provisions adopted prior to the offence. Nevertheless, retroactive effect shall be given to in all circumstances favourable to the guilty party, even if that party has already been sentenced."

This Criminal Law authorizes the death sentence (Article 15). This sentence applies to persons sentenced for reason as defined in Article 48 of the Criminal Law. Similarly, the death penalty applies in the case of members of the armed forces deserting to the enemy in action in the time of war (Article 51).

Chapter 2 of the Criminal Law deals with offences against the Constitution, and in Article 53 of that chapter it is stated that the death penalty shall be applied "to authorities or public officials and heads or officers of the Army of Liberation using violence or intimidation to prevent a meeting of the Assembly of Representatives convened by the Council of Government or in some similar manner impeding its right to discuss and decide freely". This was how the heads of the Army of Liberation and the leaders of the Republic in Arms in 1896 expressed their endeavour to safeguard the freedom that constituted the object of their struggle.

Article 67 and 73 provide for the death penalty in the case of offences of sedition, insubordination or indiscipline committed by members of the armed forces. The death sentence is also authorized for the following cases:

(a) When a public official, irrespective of grade, abuses his authority to exact or appropriate any sum of money or embezzles funds (Article 89).

(b) In cases of assault on or disobedience of authorities (Article 99).

(c) Against persons murdering mother, father or son, child, whether legitimate or illegitimate, any other direct blood relation, or spouse (Article 112).

(d) Murder under aggravating circumstances (Article 113).

(e) Abduction or rape (Articles 120 and 121).

(f) Robbery with violence or intimidation resulting in death, mutilation or injury or when the person robbed is held prisoner for over one day. (Article 130.) Also in the case of attempted robbery or

a similar offence resulting in the same damage or injury as stated in the preceding article. (Article 131).

(g) Robbery by a number of complices (Article 136). Also, robbery on two or more occasions (Article 136).

Article 15 of the Criminal Law refers to penalties other than the death sentence. These are: public degradation, perpetual or temporary exclusion from holding office, either absolute or specific, loss of employment or grade, confinement, dismissal, arrest for over three months, suspension from public office and public reprimand.

The Criminal Law further contains provisions relating to extenuating and aggravating circumstances, exemption from liability, requirements for application and execution of penalties, and causes for expiry of criminal liability.

C. Act No. 425

Act No. 425 was promulgated on July 7, 1959. This Act followed the amendment of Article 25 of the Fundamental Law on June 29, 1959. The amendment extended the death penalty to persons guilty of counter-revolutionary offences, as defined by the Act. Act No. 425 defines those offences.

It marks the beginning of the extension of violent repression to Cuban citizens who do not agree with the course taken by the Castro régime. Consideration of the introductory clauses reveals the beginning of this new stage in the activities of the Revolutionary Government. The first of these introductory clauses invokes the need to issue legislation to prevent and put down counter-revolutionary activity. It ascribes such activities to "fugitives from revolutionary justice" and "advocates of illegitimate interests".

The second introductory clause establishes that a generic definition of counter-revolutionary activity would cover "the possibility of affecting adversely the inestimable value of individual freedom, which the Revolution undertook to guarantee". It goes on to say that it is therefore proper to define the specific offences which may be considered as counter-revolutionary acts.

The fourth introductory clause spells out, in indirect terms, the motives of this Act: to make penalties stiffer and to cut short the formalities required for condemnation of persons charged with such offences. A further introductory clause refers to Article 25 of the Fundamental Law, which had been amended a few days earlier, and which authorizes the death penalty for persons guilty of counter-revolutionary offences.

Counter-Revolutionary Offences

Act No. 425 states in the first Article that counter-revolutionary offences are those listed in Chapters I, III and IV of Part 1 of the Second Book of the Social Defence Code, amending its provisions in

accordance with the wording given in Articles 2, 3, and 4 of that Act. Similarly, offences defined in Articles 5, 6, 7 and 8 of the same Act are also held to be counter-revolutionary. This Act shall remain in force throughout the Provisional Revolutionary Government.

The Act recognizes the following categories of counter-revolutionary offences:

1. Offences against the integrity and stability of the nation.
2. Offences against State powers.

Both offences are defined in extensive terms.

Article 2 defines as offences against the integrity and stability of the nation the following acts:

1. Persons performing an action on behalf of a foreign power with the express and acknowledged objective of harming the independence of the Republic or the integrity of the national territory.
2. Persons performing actions directed expressly and knowingly at promoting war against the Republic.
3. Persons taking up arms against their country under an enemy flag.
4. Persons helping the enemy to enter national territory, to take a military post, vessel or aircraft belonging to the State or any food supplies or war materials.
5. Persons suborning members of the armed forces or persons in the service of the Republic to go over to the enemy or to desert their flag during a campaign.
6. Persons recruiting others on the territory of the Republic to fight against their country under the flag of a foreign power.
7. Persons recruiting others on the territory of the Republic for a service on behalf of an enemy power which does not involve direct participation in a war against the Republic.
8. Persons supplying funds, arms, vessels, aircraft, equipment, munitions, or other similar materials for use in hostilities against the Republic to the troops of an enemy power. This includes those helping enemy armies to advance in any manner not covered under the previous section.
9. Persons supplying the enemy with plans of fortresses, camps, military areas, defence works or any other documents or with information for use in hostilities against the Republic or to favour the advance of enemy forces.
10. Persons who in wartime prevent national troops from receiving the assistance listed under 8 or the information under 9.
11. Persons divulging political or military secrets affecting the security of the State by communicating or publishing such information.
12. Persons who, without due authorization, take plans of fortifications, of military naval vessels or aircraft, maritime or military

establishments, railways, roads or other installations of military importance.

13. Persons misusing the functions entrusted to them to deal with a foreign government with regard to matters of State interest.

14. Persons publicly abusing or offending the flag, the coat of arms or any other emblem of the Republic, as an act of disrespect to the nation.

The offences listed under 1 to 10 are punishable by penalties varying from 20 years' imprisonment to death. The offence stated under 11 is punishable by the same range of penalties if the guilty party obtained such secrets by virtue of his function or if he obtained this information through deception, collusion or violence.

Article 3 defines offences against the State powers, amending Chapter III of Part 1 of the Second Book of the Social Defence Code. These offences are:

1. Any act aimed directly at changing in whole or in part, by means of violence, the Constitution of the State or the established form of government.

2. Any act aimed at promoting an armed rising against the State powers.

3. Any act performed with a view to preventing the Council of Ministers, the President of the Republic, the Prime Minister or the Supreme Court of Justice from exercising their constitutional functions in whole or in part, even if only temporarily.

4. Interference with general elections or plebiscites.

5. The introduction, publication or intention to have performed in Cuba orders or decrees prejudicial to the independence of the nation.

6. Failure by authorities of the Revolutionary Government to resist insurrection by all means open to them.

7. Continuation in office or in employment on the part of public employees under the orders of any such insurrection.

8. Abandoning employment when there is danger of insurrection or after such insurrection has actually occurred.

9. Taking command of troops, fortresses, military posts, etc.

10. Usurpation of a function assigned by the Fundamental Law to a State power.

11. Recruitment of citizens on the territory of the Republic without Government authorization.

For the offence under 2 there is a penalty of 20 years' imprisonment. In the case of the offences under 1, 3, 4, and 5, there are penalties from 20 years' imprisonment to death if such action was supported by armed rising. The offence under 9 is punishable with penalties from 20 years' imprisonment to death. That under 11 is

punishable with the same penalties if those recruited include any members of the armed forces of the Republic.

Article 4 amends Articles 156, 157, 158 and 159, of Chapter IV of Part 1 of the Second Book of the Social Defence Code. This chapter refers to provisions laid down by the Chapters I and III discussed above. The amendment provides that:

1. Public agitation to cause action harmful to the independence of the Republic shall be punishable with imprisonment from 10 to 20 years.
2. If such agitation results either directly or indirectly in acts of violence against the Revolutionary Government, with loss of life, the penalty shall be from 20 years' imprisonment to death.
3. Persons organizing or joining an armed group in order to commit any of the offences against the State powers shall be punishable with penalties ranging from 20 years' imprisonment to death.
4. Persons sheltering, helping or supplying the armed insurgents shall be liable to imprisonment from 10 to 20 years.
5. Persons belonging to armed bands and disembarking on national territory, in order to commit any of the above listed offences shall be liable to penalties ranging from 20 years' imprisonment to death.
6. The same penalty shall apply to persons who, although not members of armed contingents, clandestinely enter Cuban territory to commit any of the above-mentioned offences.
7. Persons working or travelling on board aircraft flying over Cuban territory in order to commit any of the offences listed above shall be liable to penalties ranging from 20 years' imprisonment to death.
8. Persons operating or carried in aircraft "to observe the national territory for counter-revolutionary purposes, to alarm or confuse the population, to distribute counter-revolutionary propaganda or to perform any act detrimental to the national economy incurring peril to human life" shall be liable to penalties ranging from 20 years' imprisonment to death.

Article 7 of Act No. 425 triples the minimum and maximum penalties applying for the offence of sedition.

Article 8 provides for penalties ranging from 20 years' imprisonment to death in respect of persons guilty of either attempted or actual assassination for counter-revolutionary purposes. The same article restores the death penalty for offenses defined as "against collective security".

Article 9 contains a provision of considerable value for the interpretation of the legislation analyzed in this chapter. The wording is laconic. It simply says: "The general provision contained in Article 161 of the Social Defence Code is hereby repealed".

Article 161 of the Social Defence Code stated: "For the purposes of the provisions of Article 21 of this Code political offences shall be considered those covered by the preceding four chapters." The preceding four chapters are: I, Offences against the integrity and stability of the nation; II, Offences prejudicial to the peace of the State; III, Offences against the State powers; IV, Provisions common to the preceding chapters.

This amendment means that there shall henceforth be no special category of political offences and that these activities shall be considered by the Castro régime as common crimes.

Political prisoners enjoyed the following benefits and advantages under the Fundamental Law of 1959. In the first place, "persons arrested or imprisoned for political or social reasons shall be confined in quarters separate from common criminals and shall not be required to perform any labour whatever nor be subjected to the prison regulations for common criminals". (Article 26 of the Fundamental Law). This article is reiterated in Article 42 of the Fundamental Law where, in referring to cases of serious disturbance of public order, as a result of which the fundamental guarantees are suspended, it is stated that "persons arrested for the reasons resulting in such suspension shall be held in special places set aside for persons under trial or imprisoned in respect of political or social offences".

In the second place the Fundamental Law forbids extradition of persons guilty of political offences and specifies that the State "will not attempt to obtain extradition of Cubans guilty of (political) crimes who take refuge in foreign territory". (Article 31).

The above provisions of the Fundamental Law were similar to those contained in the 1940 Constitution and in the Social Defence Code (Articles 11 and 70 (a) and (b)). With the repeal of Article 161, actions traditionally falling under the category of political offences and susceptible of the application of the relevant principles of criminal law, have become common crimes.

Article 10 of Act No. 425 amends Article 82 of the Social Defence Code, providing for the death sentence to be carried out by shooting instead of by garroting. This amendment, however, maintains the provision that "no executions shall be carried out on public holidays".

Articles 11 and 12 refer to persons guilty of concealing or complicity, merely stating the penalties provided for under the Social Defence Code. Article 13 to 18 refer to matters of criminal procedure which will be analyzed in a separate chapter.

D. Act No. 664

This Act was issued immediately following the amendment of Article 24 of the Fundamental Law on December 22, 1959¹, author-

¹ *Gaceta Oficial*, Special edition No. 58, December 22, 1959

izing "the imposition of total confiscation of property in respect of persons guilty of counter-revolutionary offences so defined by the law". It will be recalled that this penalty was made applicable to persons who, in order to escape the action of the revolutionary courts, abandon "in any manner" (i.e. including by legal means) the national territory, and persons who, having abandoned the territory, perform conspiratorial activities abroad against the Revolutionary Government.

The following day, on December 23, there was proclaimed Act No. 664, Article 1 of which states: "In all cases of counter-revolutionary offences, the court shall impose, as additional penalty, total confiscation of property. Similarly, total confiscation may be ordered of the property of persons who, in order to escape the action of revolutionary courts, abandon the national territory in any manner whatsoever. The revolutionary courts may also order this measure with regard to persons who have left the national territory and perform conspiratorial activities abroad against the Revolutionary Government".

This means that total confiscation of property is applied in three separate instances: first, as an additional penalty in all cases where persons are condemned for counter-revolutionary offences. The Act does not specify the type of sentence, so that it may happen that a merchant sentenced to 15 days' arrest for a minor economic offence may be subjected to the "additional penalty" of total confiscation of property.

The second possibility is that in which total confiscation of property shall be ordered in the case of persons abandoning the territory of Cuba "in whatsoever manner", in order to escape the action of the revolutionary courts. This means that a simple denunciation, and a false one at that, against anyone who has left Cuba for legitimate reasons is sufficient to bring the revolutionary court into action. It could consequently be held that the person denounced left the country "in order to escape the action of the revolutionary courts". The result might be total confiscation of property.

The third instance is that of Cubans resident abroad but considered by the Revolutionary Government as "counter-revolutionaries". The Act refers to "conspiratorial activities", without specifying what these might be. If a visiting Cuban professor of constitutional law gave a lecture abroad criticising Cuban constitutional legislation, this might be regarded by the suspicious authorities as incitement to rebellion and collaboration with anti-government elements. In that case the professor would lose all his property.

It must be stressed that these examples are by no means fictitious. The evidence gathered in Part IV. of this Report proves that Cuban reality often exceeds imagination.

Article 2 of Act No. 664 provides that "the confiscated property shall pass to the State from the date of the signature of the sentence".

Article 4 authorizes the Ministry to recover misappropriated goods by "seizure of all property ordered by the court to be confiscated". The Act also states that the Ministry shall take all steps concerning administration, maintenance, protection and supervision with regard to confiscated property.

E. Act No. 719

Act No. 719 was passed by the Castro régime in order to give greater effect to the repressive action of the Social Defence Code as regards certain offences covered by Chapter VI of Part 13, "Offences against public economy", and other offences defined in Chapter VI of Part 7, "Dishonesty in commerce, industry and auction sales".

Article 1 of the Act amends Article 390 of the Social Defence Code. The effect of this amendment was to include under the same provisions laid down with regard to commerce actions peculiar to industrial, professional or agricultural activities. In other words, the field of application of Article 390 was broadened.

Article 2 amended Article 557 of the Social Defence Code, referring to dishonest practices in commerce or industry. Article 557 applies to the following cases:

(a) When fraudulent means are used in order to increase the prices of articles of prime necessity, including foodstuffs or everyday goods, or of items subject to official regulation.

(b) When any form of goods are concealed or transported illicitly or sold at prices other than those officially fixed, or when such goods are removed from industrial, commercial or agricultural operations.

(c) When a false declaration of needs or requirements is made in order to obtain allowances or quotas for the importation of articles, products, raw materials, substances, "or any other things".

(d) When articles, products, raw materials or any other things the exportation of which is subject to restriction by the competent authorities are unlawfully exported.

(e) When directions issued by the Government or by official authorities responsible for the control of prices and supplies are violated in whatever manner.

The penalties for the above offences are imprisonment and fine graduated according to the seriousness of the offence.

Article 557 (g) stated the aggravating circumstances as follows: state of hostilities against another country, or during the year following the cessation of such hostilities; disturbance of the public peace; invasion of the national territory; disaster; epidemic; serious economic hardship; or similar causes. In such instances, "penalties shall

be doubled and shall always consist of imprisonment of natural persons ”.

Act No. 719 declared the offences defined under Article 557 (a), (b), (c), (d) and (e) to be “counter-revolutionary offences” (Article 4) and subjected them to the special jurisdiction of the revolutionary courts.

F. Act No. 732

This Act amends the Social Defence Code with the familiar effect of increasing the penalties previously laid down. The motives of the law state that “it must be recognized that the provisions of the Social Defence Code have always proved insufficient owing to the leniency of the penalties provided therein”. This time the Revolutionary Government decreed an energetic repression of offences by public officials, especially “misappropriation of public funds”.

Article 1 defines the offences of misappropriation of public funds, fraud, unlawful exaction or negotiations forbidden to public officials as counter-revolutionary offences.

Article 2 amends Chapter V of Part 8 of the Second Book of the Social Defence Code, by increasing penalties against public officials in charge of public funds or property who appropriate such funds or property for their own purposes or consent to such action on the part of others. The penalty may range from imprisonment from 10 to 30 years to death. The Act defines other possible cases of misappropriation of public funds in broad terms.

Article 3 amends the provisions of the Social Defence Code relating to fraud and unlawful exaction. Article 27 (a) concerns public officials required by reason of their functions to intervene in sales, supplies, contracts or liquidation of public effects, works or property, who use any form of deceit in order to defraud the public treasury. In such cases penalties ranging from 10 to 30 years imprisonment to death may apply.

Article 4 amends Article 465 (d) of the Social Defence Code, referring to arson. It provides for penalties ranging from 10 to 30 years’ imprisonment to death against persons guilty of “setting fire to equipment or installations for sugar cane growing, woods, pasture land or crops either during or after harvest, of whatever nature”; the same penalties apply to “persons causing damage by any action whatsoever in cane fields, in processing plants or in equipment for the transport of cane”.

Article 5 states that “the revolutionary courts shall be the only authority competent to judge offences defined under sections 1, 2, 3 and 4 of this Act”.

Once again the dual purpose of the amending legislation becomes apparent: to raise penalties so as to include the death sentence, and to extend the jurisdiction of revolutionary courts.

Article 7 increases penalties against public officials engaging negotiations prohibited to them.

G. Act No. 858

Act No. 858 modifies further Articles 390 and 557 of the Social Defence Code. It will be recalled that these articles were already amended on January 22, 1960 by Act No. 719, which was analyzed earlier. This Act increased penalties and extended the jurisdiction of revolutionary courts to economic offences. Six months later, the Castro régime admitted that " notwithstanding the energetic vigilance on the part of the public officials responsible for implementation of this Act (Act No. 719), and the application of the appropriate penalties by the courts of justice, it has not been possible in certain cases to prevent dealing and speculation in articles subject to official regulation ".

Faced with this situation, Castro's régime found it necessary " to increase certain penalties laid down in the articles referred to, in order to prevent such offences ". For example, imprisonment is applied in an increased number of cases. The Act repeats quite unnecessarily many parts of Act No. 719 that were not amended, thus supplying another proof of the lack of method underlying the legislative action of the régime.

H. Act No. 923

On January 4, 1961, there was issued Act No. 923. The motives of this Act are stated in the introductory paragraphs. The Council of Ministers refers to " clandestine counter-revolutionary activity ", describing it as " financed and promoted by foreign imperialist agents ". It adds that sabotage and terrorism are used with intensity increasing every day. It then refers to the need to provide for " the indispensable measures whereby the legitimate and severe repression of counter-revolutionary crime may be implemented ".

As a result Act No. 923, Article 1 amends Articles 465, 468 and 469 of the Social Defence Code, which referred to arson and other related outrages and offences. Article 465 of the Code is kept with practically the same wording, but an important change is introduced in paragraph (b), in the provisions for penalties. The previous rate of 10 to 25 years was maintained for crimes committed " without counter-revolutionary purpose " while a stiffer rate of from 20 years to death shall punish acts committed with such purpose. The distinction between these two motives, essentially a political one, is left to the discretion of the revolutionary court.

Article 468 deals with " attempts on the life of persons " or damage caused to objects through explosive substances or instruments or other means capable of producing considerable damage. For

such cases the amendment establishes penalties ranging from 20 years' imprisonment to death.

The amendment to Article 469 (a) provided penalties ranging from imprisonment to death in the case of persons who, without proper legal authorization, have in their possession in whatsoever form or place inflammable or explosive material, bombs, live phosphorus or any other similar substance or instrument capable of causing sabotage or acts of terrorism. The original text laid down the penalty of imprisonment for six months and a day to six years for such offences.

The amendment to Article 469 (b) applies the same penalties in the case of persons who, without due authorization, "manufacture, supply, sell or transport substances or instruments of the types mentioned in the previous paragraph".

Not content with providing the death penalty for the three above mentioned offences, the régime provides in Section 2 for the same penalty in the case of "the persons either directly or indirectly responsible for the offences listed under sections 465 (a) and (e), 468 and 469 of the Social Defence Code, as well as accomplices or accessories".

To complete the round of penalties laid down under this Act, Article 3 authorises "any confiscation of property deemed to be necessary by the Government in order to prevent acts of sabotage, terrorism or any other counter-revolutionary activities".

Such action is carried out through the Ministry of Finance. The wording of this provision reveals the extent of powers arrogated by the present Cuban government over the property of its citizens. The Government need only "deem it necessary" to prevent the action of any person not in sympathy with the régime to make him liable for what the régime regards as "any other counter-revolutionary activity".

I. Act No. 988

This Act may be described as the "Act of the death sentence". Its single introductory paragraph refers at large to "counter-revolutionary activities consisting of assassination, sabotage or destruction of the national wealth". It further declares that such acts are promoted, financed and directed by North American imperialism. It "demands that the revolutionary power impose the most severe penalties".

Article 1 provides that "so long as the menace of aggression from outside or the promotion of counter-revolutionary activities within the country is maintained by North American imperialism", the sentence of death shall be applied to persons listed in the following five paragraphs: (a) Persons organizing or belonging to an armed group in order to commit any offence against the State powers;

(b) Persons responsible for the offences of arson or other outrage covered by Articles 465 (a) and (e), 468 and 469 of the Social Defence Code, as modified by Act No. 923 of January 4, 1961; (c) Persons responsible for attempted or actual assassination for counter-revolutionary purposes; (d) Persons entering the national territory from abroad in order to commit acts of sabotage or any other counter-revolutionary activity; (e) Persons invading the national territory in any manner whatsoever in armed groups to combat the Revolution”.

As will be seen, this Act eliminates any graduation of penalties “from 20 years’ imprisonment to death”, and simply imposes the death sentence. The régime could not resist the opportunity to extend the penalty of general confiscation of property to “landowners supplying, sheltering or in any manner collaborating with or abetting saboteurs, terrorists, assassins, armed groups or counter-revolutionary elements of any nature whatsoever”. (Article 2) This was ordered irrespective of the criminal liability they might incur.

This article means in fact that Cuban citizens who do not agree with the régime’s policies become “untouchables” who must be denied all forms of assistance, from medical care to a glass of water. It must be remembered, in studying this Act, that to qualify persons as “counter-revolutionary elements of any nature whatsoever” is left to the discretion of the revolutionary government and that, in its established practice, any form and degree of disagreement with the régime of Fidel Castro constitutes counter-revolutionary activity.

Article 3 places all authority for taking action required for confiscation of property on the National Land Reform Institute (INRA). In implementing this authority, the INRA is not bound by decisions of ordinary courts, indeed not even of revolutionary courts. The present Act “simplifies” the proceedings. All that is needed to order confiscation of property is a report by the revolutionary armed forces or the State security authorities. Article 3 actually reads: “For the purposes of the provisions of the preceding article, the National Land Reform Institute (INRA) shall implement the necessary measures acting on information received from the revolutionary armed forces”.

This Act authorizes the INRA to confiscate rural and other property of persons deemed guilty of helping in any way those regarded by the régime as counter-revolutionary elements. This authority applies to the exclusion of regular judicial procedure. It should be remembered here that other executive organs have been given power to confiscate property. For instance, Act No. 923 states that the Ministry of Finance shall carry out any confiscation of property considered necessary by Castro’s régime. Act No. 664 empowers the Ministry for the Recovery of Misappropriated Property to effect seizure of property the confiscation of which is decreed by a revolutionary court.

J. Act No. 1018

The new law declared unauthorized slaughter and traffic in beef a "counter-revolutionary crime" punishable by jail sentences of up to five years. Those who buy beef in any unauthorized place are liable to a one-year jail sentence. The Revolutionary Courts have special jurisdiction to decide these cases ¹.

Conclusions

1. The first criminal legislation adopted immediately after the régime came to power was aimed at crimes committed by "the tyrant Batista and his immediate collaborators".
2. Under the pretext of effective condemnation of the responsible persons under the previous régime, retroactive criminal legislation was introduced as an exceptional measure.
3. Similarly, again as an exceptional measure, the death penalty was extended to persons described as political offenders.
4. It was further stipulated that as an exceptional measure such persons should be tried by special courts following special procedures to the exclusion of regular judicial action.
5. Moreover, appeals on grounds of violation of the Constitution were forbidden in cases of political offenders.
6. These exceptional measures were gradually extended: first, to "*Latifundistas*" (big landowners), a term used by the régime to describe any conservative tendencies; second, to "agents of imperialism", a term used by Castro to describe those who in one way or another opposed his policies; third, to "counter-revolutionaries", namely those former followers who, although still collaborating with the régime, had expressed their opposition to the growing communist influence; and, fourth, the "*gusanos*", (caterpillars), the word used by the régime to designate those who are not Castro supporters.
7. Any new criminal legislation has had two aims: first, to increase penalties; second, to simplify proceedings. This dual aim reached its climax with Act No. 988, establishing the death sentence as the only penalty for a broad variety of crimes and authorizing confiscation of property without trial.
8. The legislative texts endeavoured first to provide a more or less accurate definition of offences covered by them. But gradually, as penalties increased and the possibilities of their imposition became easier, the ambiguity of texts also increased. It is common to find expressions such as "those of any nature whatsoever", "those

¹ See: *Hispanic American Report*, Vol. XV, No. 3, May 1962, p. 225

performing any activity whatsoever considered as counter-revolutionary", "those abandoning national territory in any manner whatsoever", "those having counter-revolutionary aims".

9. The Social Defence Code of 1938 is termed a secondary source of law, as pointed out in connection with Act No. 33. In the light of the Acts considered, it is apparent that Acts Nos. 425, 719, 732, 858, 923 and 988 amend the Social Defence Code, thus showing that that Code is not merely of supplementary character.

10. A study of the criminal legislation issued by the Castro régime shows the deliberate process of concentration of power on one hand and the gradual encroachment on individual freedoms on the other.

11. The painstaking concern with form, reflected in the established pattern of constitutional amendments preceding every new piece of criminal legislation, is not followed in practice, as will be shown in Part IV of this Report.

12. The criminal legislation of the Castro régime has aimed primarily at the extermination of any political opposition. The repressive machinery of the régime has been progressively increased and perfected. The broad extension of the application of the death penalty gave its legislation a terroristic character. The elimination of the distinction between political and common law offences added further to this trend. Political sentences are served in ordinary prisons together with common criminals, political offenders have not the right of asylum; they are submitted to extradition and subject to forced labour and compelled to wear a convict's uniform (see Part IV).

2. LEGISLATION ON CRIMINAL PROCEDURE

A. Regulation No. 1 and Act No. 33

As stated in the preceding chapter, Act No. 33 modified Regulation No. 1 of the Revolutionary Army. It contains provisions with regard to both substantive and procedural criminal law.

The Act established martial jurisdiction of the Revolutionary Army to hear offences committed by "members of the armed forces or civilians in the service of the tyranny". Criminal justice with regard to offences committed by such persons is to be administered in accordance with Act No. 33. This jurisdiction covers the whole territory of Cuba (Article 1).

Article 2 distinguishes between two forms of offences: *a*) offences and misdemeanours committed by members of the armed forces in active service. These acts fall specifically under military jurisdiction; *b*) assassination, murder, injury to persons under arrest or prisoners, rape, arson or damage, robbery or looting committed by "members of the armed forces or civilians in the service of the tyranny".

The Revolutionary Army has been also granted power to hear cases against the integrity and stability of the nation (Articles 128 to 161 of the Social Defence Code), against individual rights (Articles 170 to 213 S.D.C.), misappropriations of public funds (Articles 420 to 426 S.D.C.) and frauds and illegal exaction (Articles 427 to 430 S.D.C.).

Article 2 concludes: "Offences not covered by this Regulation shall come within the competence of the ordinary courts". The criminal jurisdiction of revolutionary courts within the scope defined above is exercised by Majors, Judges, Military Advisers and Heads of Military Missions (Article 3). The preliminary action concerned with investigation of an offence is ordered by a Major. He appoints a Judge, Captain or Head of Mission or any officer to carry out investigation and inform the competent authority. The Judge has to deal with any denunciations received. He may also act as secretary if so appointed, keeping all documents (Article 4).

Every Commanding Officer is required to set up his Ordinary Military Tribunal, subject to approval of his nomination by his superior officer and after having heard the opinion of the legal adviser of the unit.

The Military Tribunal is composed of a Chairman, who may be the Commander or any other person named in his place, and two members selected from among advisers and officers. These persons must be of at least equal rank with the accused.

The accused is entitled to name his defence counsel. If he does not so choose, defence counsel is appointed on his behalf. The Commander appoints the prosecutor (Article 5).

This Act also organizes the Supreme Military Tribunal. The Commander-in-Chief is the Chairman, having the right to appoint an officer to discharge this function. Members are four advisers or officers. The Court is competent to hear appeals against death sentences imposed by an Ordinary Military Court (Article 6).

Competence is determined according to the place where the offence was committed, but the office of the Advocate General of the Army may "refer the case to whatever revolutionary court or Military Tribunal it deems fit for the most effective administration of revolutionary justice" (Article 7).

Questions of jurisdiction and competence arising between revolutionary military judicial authorities and ordinary judicial authorities must be settled by the Criminal Chamber of the Supreme Court of Justice, which has seven days from the date of receiving the documents to settle the controversy (Article 8).

Summary verbal proceedings are applied and the secretary is required to note in writing what the Act describes as "essential details".

The Chairman of the Tribunal announces the date of trial, and all evidence is received and dealt with at the trial. Such trial may only be suspended at the request of the Chairman or the adviser, in order that evidence essential for clarification of the facts be obtained (Article 9).

Article 11 provides that when an Act presumed to constitute an offence is committed in an area distant from the camp the arrest of the accused person may be ordered and preliminary investigation carried out against any member of the armed forces or "any person in the service of the revolution". However, the arrested person has to be brought immediately before the nearest military authority.

Act No. 33 declares that the Criminal Procedure Act of September 17, 1882 applies with supplementary force to criminal proceedings (Article 16).

This Act marked the beginning of application of revolutionary justice to persons accused of political offences "in the service of the tyranny".

B. Criminal Procedure Act of 1882 and Procedura Law of 1896.

As described above, Article 16 of Act No. 33 established supplementary criminal legislation, both substantive and procedural. It also laid down the order of priority of such supplementary legislation: "Both in defining offences and circumstances, and in fixing the degree and extent of penalties, and with regard to all other matters not provided for in this Regulation and not contradicted thereby", the following sources are to be taken into account: *a*) the fundamental principles of justice and equity; *b*) as supplementary positive law, the substantive and procedural criminal legislation in force during the War of Independence in the Republic of Cuba in Arms is declared valid; *c*) also with supplementary character, provided that this is not contrary to the provisions of this Regulation, the criminal legislation of the Republic of Cuba in Arms shall also apply. *d*) the Social Defence Code also applies with the same supplementary force; and *e*) the same applies to the Criminal Procedure Act of September 17, 1882. The purpose of No. 33 Act is to regulate procedure with regard to offences within the scope of revolutionary military jurisdiction.

a) The provisions of Act No. 33 regarding supplementary legislation introduce vast confusion in the field of criminal law, both substantive and procedural. This is true not only of the ambiguous manner of referring to legislation in force before the War of Independence but also through specific reference to certain Acts, such as the Criminal Procedure Act of 1882.

This Act was promulgated "for the islands of Cuba and Puerto Rico" under Royal Decree of September 17, 1882 and came into

force in Cuba on January 1, 1889. The Decree was signed by Maria Christina, as Queen Regent on behalf and "in the name of her August Son the King Don Alfonso XIII". In the history of law in Cuba it is paradoxical to find the revolutionary régime of Fidel Castro restoring a Royal Decree.

The Criminal Procedure Act, true to the tendencies of its day, is a casuistic document. It comprises seven books, divided into parts, with a total of 998 articles and a final provision. It deals with the competence of judges and courts in criminal questions, exclusion and exculpation of magistrates, notification and summonses, and lays down extensive requirements with regard to preliminary hearings, regulates ordinary as well as special trial procedure, provides for appeals, outlines the procedure regarding misdemeanours, and deals with the execution of sentences.

b) On July 28, 1896, the Procedural Law of the Republic of Cuba in Arms was adopted. This law also remains in effect as supplementary legislation under the present régime. It was amended by Act No. 634 of November 20, 1959, in Articles 100, 101 and 107.

The general provisions concerning wartime jurisdiction, administration of justice, procedure, etc. as contained in Act No. 33 derive from this procedural legislation of 1896. It lays down detailed provisions with regard to the summary oral procedure. Since this is the procedure adopted under Article 9 of Act No. 33 for the revolutionary courts, we shall refer briefly to the manner in which the law of 1896 deals with this subject.

Criminal proceedings in revolutionary courts. A Military Tribunal may require the investigating judge to submit verbal reports and, if there is sufficient ground for a case to be brought, a prosecutor is appointed. The judge informs the accused that he may appoint defence counsel. If he does not choose to do so, counsel is appointed on his behalf. Proceedings are governed by Articles 80 and 88. Article 80 provides: "When the court has been constituted and the judge, the prosecutor, the accused and the defence counsel are present, the case shall be heard, and the secretary shall read the conclusions submitted by the parties and the findings of the investigating judge".

When these requirements have been fulfilled, evidence may be submitted as previously authorized. The accused, witnesses, experts, the judge and others may intervene, and any questions may be asked, subject to approval by the court, the accused and the prosecutor (Article 81).

Persons required to give evidence in court must first answer questions asked by the judge regarding their name, situation, age, occupation, domicile, etc. (Article 82).

After all evidence has been heard, the parties may alter their provisional conclusions in writing. At this stage of the proceedings, both parties, the prosecutor and the accused, may submit their final conclusions. If they do not do so the conclusions stated within the terms of Article 80 are taken as final (Article 85).

Consequently the chairman may give the floor to the prosecutor to read his final conclusions. He must then allow the defence counsel to speak, and to uphold the conclusions they have submitted. (Article 86). When these submissions are completed, the chairman must ask the accused whether he has anything else to say in his defence and will allow anything he finds suitable with regard to the facts to be stated (Article 87). Once the accused has made his statement, the chairman closes the arguments and the verdict will be pronounced.

The secretary takes note of all proceedings, mentioning only the results of each presentation of evidence, without going into discussion by the parties (Article 89). All proceedings relating to the previous points are conducted in public, except in the instance stated in Article 31 and granting courts the right to clear the courtroom when reasons of politics or public morality so require or when it is regarded as necessary for the maintenance of order.

Appeals. Article 111 of the Procedural Law of 1896 states that "there shall be no appeal against a verbal sentence by a Military Tribunal, and such sentence shall be carried out forthwith". The same section deals with the possibility of disagreement between the judge and the members of the Tribunal. In such instances, the sentence must be submitted for approval to the military authority, "which may declare the proceedings to be invalid and require the case to be re-examined through preliminary investigation or call for immediate implementation".

Nevertheless, the Law provides for two forms of appeal, in first and second instance. These possibilities were modified by Act No. 634 of November 20, 1959 which will be further analysed below.¹ The new text of Article 100 referring to first appeal now stands as follows: "When the penalty is for death, an automatic appeal may be lodged."

The other sentences in which different penalties are applied can only be reviewed. Motions for review have to be made at the time of notification of the sentence or within 24 hours thereafter (Article 100 (2)). This remedy is the only means available under the new criminal legislation with regard to sentences other than for the death penalty, and must be brought before the same court which passed the sentence. This court then hears the prosecution and decides either for or against the motion. However, Act No. 634 establishes the principle

¹ *Gaceta Oficial*. No. 222, November 23, 1959

that this decision, regardless whether upholding or rejecting the appeal, shall be final (Article 101 as amended).

Should the motion for review be rejected, the sentence must be carried out. If the motion is upheld, the procedure in the second instance is the same as in the first instance, except that no new evidence is directly admitted. The facts proved in the previous hearing are accepted and the parties must argue merely to questions of law or of equity arising in regard to the penalties imposed.

A further point of interest is in connection with the procedure against persons indicted in their absence. The Law then provides that the case shall be heard without a further summons, until a sentence be pronounced (Article 121). The Law provides that this sentence shall take effect "until such time as it is revoked by a further sentence pronounced by a new Military Tribunal" (Article 123).

Accused persons are granted the right to appear voluntarily, placing themselves at the disposal of the court. In such cases it may be requested that the case be tried again, with a new verdict.

Act No. 634 of November 1959 stipulates that cases in respect of the counter-revolutionary offences covered by Act No. 425 "shall be heard in summary proceedings by revolutionary courts and by the procedure established in the Procedural Law of the Republic of Cuba in Arms of July 28, 1896", subject to the modifications introduced by Act No. 425.

Was the Procedural Law of the Republic of Cuba in Arms of July 28, 1896 in force or not? If so, as stated by Act No. 33, article 16 (January 1959), why this new reference? If not, what is the value of Article 16?

Before proceeding to study Act No. 634, with a view to maintain the chronological order followed so far, it is necessary to analyze procedural provisions contained in Act No. 425.

C. Act No. 425.

The revolutionary courts operated in Cuba throughout the national territory, from the coming to power of the Castro régime until July 9, 1959. It was on that date that Act No. 425 suspended the operation of the revolutionary courts. They were restored by Act No. 634 of November 23, 1959. These special courts have since operated continuously.

The provisions of this Act with regard to criminal procedure are contained in Articles 13, 14, 15, 16, 17 and 19.

Article 14 declares the revolutionary courts no longer competent to deal with offences committed by members of the armed forces or civilians covered by the terms of Regulation No. 1 of the Rebel Army, as modified by Act No. 33 of January 29, 1959. The article

states: "The operation of the revolutionary courts is therefore suspended." The next paragraph states: "However, the revolutionary courts shall not be dissolved so long as the Revolutionary Provisional Government remains in office, and provided that the defence of the Revolution so requires the Council of Ministers may transfer to its jurisdiction and competence any cases initiated in connection with offences covered by this Act, if there have been no sentences."

This provision should be emphasized. A mere reading reveals the conflict between the suspension of the operation of the revolutionary courts and the reservation made in the following paragraph. This reflects two conflicting tendencies referred to earlier in Part I: those within the Provisional Government established in Cuba on January 1, 1959 which may be considered as moderate and based on law, and the extremist elements pursuing the transformation of the social and economic order in Cuba by violence. The motives of Act No. 425 strike an apologetic tone with regard to the contents of the body of the Act. For example, they are concerned over general definitions of counter-revolutionary activity "which need to be clearly defined", since they might lead to "the possibility of affecting adversely the inestimable value of individual freedom which the Revolution undertook to guarantee". With regard to the revolutionary courts it is stated in the eighth introductory paragraph: "It was the aspiration of the whole population that upon the triumph of the Revolution levelling all social inequality and restoring the democratic principles of the Rule of Law there should be no failure to ensure the proper punishment of those who, in order to retain substantially unlawful power, neglected all human rights."

The following introductory clause explains why the revolutionary courts should be suspended by the provisions of this Act. It is stated that: "Trials of the worst criminals under the tyranny in accordance with the penal provisions laid down by the Rebel High Command became imperative when the Revolution triumphed, in order to fulfil the high purposes of justice and to prevent the relatives of the innumerable victims of the official terror under the overthrown régime from exacting justice by themselves." This, it is stated, would lead to a "just but disorderly private retribution" and result in "vengeance leading the country into anarchy". This apologetic tone continues in the following introductory clause, which claims that "judicial power was in a clear state of disorganization, which caused the Government to set up revolutionary courts". This introductory paragraph concludes, in the manner of a post-mortem, by stating that the revolutionary courts "have performed their difficult task with serenity".

The intention of these introductory clauses is clear. They profess the desire to eliminate the revolutionary courts. Yet the extremist tendencies reappear in the final introductory clause: "In addition, with a view to the future, although the operation of the revolutionary courts is suspended for the present, the possibility of their restoration

must be admitted when the imminent defence of the Revolution so demands, in whatever circumstances, during the term of office of the Revolutionary Provisional Government."

The intention to restore these special courts is reflected in this provision, and this was in fact what happened four months and 14 days later by Act No. 634 of November 23, 1959.

Article 15 provides that cases pending before the revolutionary courts should be transferred within 30 workdays in the actual stage of proceedings to the ordinary courts. And it is also stated that persons held under arrest in connection with these pending cases should be placed at the disposal of the competent ordinary courts. These courts were to try cases in accordance with the criminal procedure issued by Castro's régime. Article 16 states the requirements for substantiation of cases to be referred to ordinary justice.

Article 13 states the procedure to be followed by ordinary courts in cases of counter-revolutionary offences. These offences are subject to a procedure applying in cases of *delictum flagrans* as governed by Part III of book IV of the Criminal Procedure Act at present in force.

This Criminal Procedure Act referred to here was the Act promulgated by Royal Decree in 1882.

Cases of *delictum flagrans* are subject by the Act of 1882 to special procedure. The regulations which have to govern such procedure are laid down in Articles 788 to 803 and are notable for the flexibility of the proceedings and the brief wording of the judicial terms.

Article 17 of the Act No. 425 establishes the right to appeal. This may be lodged by the prosecuting Ministry, the private parties joined with it or the defendants. The Act of 1882 established in Article 101 the right of the public to present indictments. It adds that "all Spanish citizens may bring such action according to legal provisions". Since this Act was adopted by Cuba, all Cuban citizens have been entitled to bring penal proceedings. This article is supplemented by the provisions of Article 270 of the Act, stating that all Spanish (Cuban) citizens, whether or not injured by the offence, may bring proceedings in accordance with Article 101 of that Act.

Appeals may be brought before the court which pronounced the sentence. This must be done immediately after pronouncement of the sentence or within three days thereafter. Admission of an appeal suspends the total or partial execution of the sentence. The Act admits two exceptions: a) in cases where the sentence is for discharge and the accused has served a term of preventive detention in connection with the case, such person must be released immediately; b) when the accused has been sentenced to imprisonment in excess of two years, provisional imprisonment must be ordered.

Finally, Article 19 repeals laws and regulations in conflict with the provisions of Act No. 425.

D. Act No. 634

As already stated in the chapter on the constitutional structure of Cuba, any Act containing a major alteration of Cuban law was preceded by an amendment to the Fundamental Law. The Council of Ministers (as constituent organ) reformed the Constitution, and the Council of Ministers (as legislative organ) issued legislation "in agreement with the constitutional reform", authorizing any Minister (all of them members of the Council) to apply the Act. This also happened with Act No. 634.

On October 29, 1959 a constitutional amendment act was issued amending Article 174 of the Fundamental Law, which referred to the competence of ordinary courts. This article states that, notwithstanding any provisions regarding ordinary or military jurisdiction, "the revolutionary courts, whose operation is hereby restored, shall hear cases arising from offences described by the Act as counter-revolutionary". This "constitutional restoration" of the operation of revolutionary courts, whose existence and suspension were the subject of purely legislative provisions, gives an idea of the confusion of powers in Cuba. Consequently, Act No. 634 was passed, with reference in the third introductory clause to the political motives: "It is evident that counter-revolutionary activities both within and without the national territory impede the Government's economic and social development plans." The same clause goes on to say that it is necessary to restore the revolutionary courts in order to deal with this situation.

Article 1 of Act No. 634 transfers to the competence of the revolutionary courts all cases initiated in respect of counter-revolutionary offences, as defined in the amending legislation to the Social Defence Code contained in Act No. 425. These courts are to be governed by the procedure established in the Procedural Act of the Republic of Cuba in Arms of July 28, 1896, as reformed by the present Act.

Article 2 declares that the competence of the ordinary courts is terminated with regard to hearing and judging counter-revolutionary offences covered by Act No. 425. The article repeats that "henceforth the revolutionary courts shall be the only authorities competent to judge such offences".

The Ministry of the Revolutionary Armed Forces was instructed in Article 3 to appoint the members of the revolutionary courts in each judicial district, within seven days. This had to be done in accordance with the provisions of Part IV of Book I of the Procedural Act of the Republic of Cuba in Arms of 1896. This Part IV refers to organization and powers of courts, under the headings of: a) Ordinary Military Tribunals of first instance; b) Appellate Military Tribunals; and c) the Supreme Military Tribunal.

Ordinary Military Tribunals are composed of a chairman and four members. All members must be of at least equal rank with the accused if that accused is a member of the armed forces. Military

tribunals hear all cases at the level of first or second instance which are not within the exclusive competence of the Supreme Military Tribunal (Article 20 of the 1896 Act).

When an Ordinary Military Tribunal hears a case in the second instance, it must replace the members who pronounced the sentence in the first instance. The new members must be officers of higher rank than that of the previous members (Article 21).

Appellate Procedure. Councils of Revision act as appellate courts to consider sentences pronounced by Ordinary Military Tribunals. This is the case when the right of appeal is granted to one of the parties or when the military authorities required to order execution of the sentence are not in agreement with that sentence.

The Council consists of officers of a higher rank than that of the members of the Ordinary Military Tribunal (Article 22). Members of the Council are appointed from among all officers of the ranks entitling to membership of the court. They must be present in the military camp where the Council is to meet (Article 23).

Supreme Military Tribunal. The Supreme Military Tribunal is under the chairmanship of the Commander-in-Chief. The members of the Supreme Military Tribunal shall be the Advocate-General of the Army and general officers of at least equal rank with the accused (Article 24).

Act No. 634 provided further that persons charged with counter-revolutionary offences are not entitled to release on bail when there are reasonable indications of guilt (Article 4).

Article 5 lays down requirements for transfer of cases from ordinary courts to revolutionary courts. This is the procedure covered by Act No. 425, except in the opposite direction.

Article 6 is a direct attack on the independence of the judiciary. It establishes that "members of the judiciary and of the Ministry of Justice may be seconded to serve on revolutionary courts". Each transfer may occur at the request of the Advocate-General of the Revolutionary Army. This article is based on the transitory provision to Section Eight of Title XII of the Fundamental Law, which, as already stated, provides that members of the Judiciary may be seconded to serve on military courts of criminal jurisdiction at the request of the Advocate-General of the Revolutionary Army.

Article 7, 8, and 9 of Act No. 634 modify Articles 100, 101 and 107 of the Procedural Law of the Republic of Cuba in Arms of 1896, which was discussed above.

Article 11 repeals Article 13 of Act No. 425 which provided that counter-revolutionary offences should be heard within the framework of the Criminal Procedure Act of 1882 for cases of *delictum flagrans*.

E. Act No. 925¹

This Act modified section 528 of the Criminal Procedure of 1882. This section refers to provisional imprisonment and requires that it should last only so long as the reasons causing it subsist. However, the Act says, this benefit shall not apply to those accused of non-bailable offences. Crimes defined as "counter-revolutionary" are considered by the Castro régime as "non-bailable offences".²

Conclusions

1. Military jurisdiction has been set up by the Castro régime from its early days to judge those responsible for the Batista dictatorship.
2. This special jurisdiction was acting under very flexible procedures.
3. Special jurisdiction and flexible procedures were quickly extended to trials of political opponents.
4. The main objective of the procedural legislation was to facilitate the prompt condemnation of all accused of "counter-revolutionary activities".
5. Practice proved that most of that even these inadequate rules of procedure have been continually violated by the régime. (See evidence submitted in the following part.)

¹ *Gaceta Oficial*, Special Issue No. 2, January 5, 1961

² Article 13, Act No. 425

Part Fourth

STATEMENTS BY WITNESSES

I. INTRODUCTION

The mass of factual material contained on the following pages was obtained by means of personal interviews conducted in November and December 1961 with 124 persons who suffered themselves or were eye witnesses of various violations of human rights. In all cases witnesses were asked to confine themselves to stating what had happened to them or what they had themselves seen, and to supply details of the place, time, circumstances, manner, persons involved, methods employed and the general conditions in which the events occurred. The investigation was carried out fairly and care was taken to ensure that each witness should be able to talk freely. Each statement was taken down verbatim. When it had been typed out, the witness read his statement and pointed out any corrections he thought necessary. The final version was signed by the witness in the presence of the Commission's representative in charge of this investigation and of two lawyers who were assisting him in its conduct.

The identity of all witnesses was ascertained and their names, addresses and written statements are now in the Commission's files.

The investigation covered all sections of the Cuban people ranging from the most influential classes to the poor and obscure. Interviews were held with employers and workers, manufacturers and peasants, businessmen and clerks, officers and soldiers, university graduates and illiterates, skilled workers and students, industrial workers and farm workers, farmers and fishermen, men and women, old and young.

Each of the conclusions is corroborated by several pieces of evidence and in no case is a conclusion based on the statement of a single witness. The several sections are arranged by subjects and contain statements by witnesses who are identified by their profession or by the reference numbers assigned to them in the Commission's files. The most important parts of their evidence are quoted in full.

II. THE POSITION OF THE JUDICIARY

Once the Revolution had overthrown Batista, it became apparent that there were in Cuba two completely dissimilar and barely compatible forces. On one side were the forces which looked back to

the original aims of the Revolution and tried to steer the country's political life into constitutional and legal channels. On the other side were the forces which had fought in the Sierra Maestra and their new communist allies, determined to carry out their own programme by all the means in their power.

Eye witnesses who visited Cuba on various occasions after Castro assumed power have described these two forces, which initially were in a state of uneasy equilibrium. It was not difficult for observers during the early months of the Revolution to forecast the outcome of the struggle between these two conflicting forces.

A former judge of the Supreme Court stated: "The crisis within the judiciary was acute from the start." According to officials of the judiciary, as early as October 1959 when an aircraft dropped pamphlets on Havana an attempt was made to call a plenary session of the Supreme Court to obtain its support for a protest against such acts. This support would of course have been completely unrelated to the Court's functions and therefore quite illegal; owing to the opposition of a number of the judges the idea was rejected, although it was agreed "once and once only" to issue a public statement repudiating such acts. In June 1960, when the President of the Tribunal of Accounts resigned, one of the judges asked the Supreme Court to communicate his letter of resignation to the revolutionary courts because (according to this member of the Supreme Court) the views expressed by the resigning judge "amounted to a counter-revolutionary act". Our witness added the following comment: "Although this proposal was rejected, some judges made it plain that they were willing to acquiesce in this humiliation of the Supreme Court".

On September 1, 1960, when the law courts were officially opened, the Public Prosecutor of the Supreme Court made a speech couched in such openly antidemocratic language that it was apparent that the final crisis was not far off. (see Part I, pp. 65-66).

The judges' resignations began to be known in November 1960. At this time a plenary session of the Court was held and the judges were divided into two camps—those who were determined to collaborate with the ruling régime and those who wished to confine themselves to the administration of justice in accordance with the Fundamental Law and their own oath.

On December 16, 1960, Fidel Castro made one of his customary speeches on television. During this speech Castro said in effect that the Judiciary was parasitical, that it would be better for magistrates and judges to resign because if they did not they would in any case find themselves out of a job, that their salaries were three times as high as those of a major who had fought for two years in the Sierra Maestra, and that civilian magistrates were "botelleros" (a Cuban word for civil servants who draw their pay without doing any work). Following this speech eight members of the Supreme Court drafted

a joint letter of resignation, which they submitted to a plenary session of the Court.

One of the authors of this letter stated:

"Our letter can be summarized as follows: the Revolution had proclaimed that the independence of the Judiciary in accordance with the 1940 Constitution would be one of its main pillars; that the words of Prime Minister Castro had caused a crisis within the Judiciary; that in discharging our duties in accordance with the Constitution and our oath, our only aim had been to enforce the law fairly without either favouring or opposing the Government and without either favouring or opposing any public authorities and that we would continue to do so; that the demand that we should identify ourselves with the Revolution and its ideas (as of course embodied in the Government's policies—although we did not put it in this way) would discredit our office and that if it was considered that our past conduct—which we would not alter on any account—did not warrant our continuation in office, the Government must dispense with our services, since under a law in force we were forbidden to resign our offices as a body.

"The plenary session of the Court at which the statement by the 8 judges was due to come up for consideration was to be held on December 21 at 1 p.m. But on the morning of that day the Government, which had been informed of the text of the statement, dismissed from office the 8 judges who had signed it. It subsequently dismissed 2 more judges. All told, 14 members of the Supreme Court felt bound to resign or to accept their own dismissal.

"Thus ended the story of the highest court of justice, which the Revolution itself had promised to restore but which did not in fact endure for more than 2 years."

Secretarial assistant at the Supreme Court

When the invasion of Cuba took place in April 1961, the repressive machinery of the Castro régime carried out large-scale arrests. These arrests were completely indiscriminate and affected all sections of the population.

For example, a woman employed in the offices of the Cuban Supreme Court stated that:

"At about 1 o'clock in the afternoon of April 17 of this year, I was ordered by a uniformed policeman to accompany him to the police post in the Supreme Court building. Once downstairs I was taken to the cell normally used by those awaiting trial by the Havana Court. I was guarded by militiawomen armed with sub-machine guns.

"The cell contained about 40 women, all of whom were employed in the Court offices. I witnessed about 50 men being placed in the cell next door, including Dr. Justiniani Duval, Secretary for Admin-

istrative Disputes and Special Legislation, Dr. Rafael Galeano, and various other officials of the Supreme Court.

"Our cell was too small for the number of people in it, and after 3 o'clock in the afternoon we were taken away in an armoured truck belonging to the army, in which we were guarded by soldiers armed with sub-machine guns. This time we were taken to the Sports Palace.

"It was there that our captivity really began, for the building contained over 5,000 people, both men and women, including doctors still in their operating gowns who had been taken away from their clinics and a number of working-class people, such as bus workers."

Lawyer with several years' professional experience

Ordinary Criminal Justice

"The crisis in the judiciary as regards the working of ordinary criminal justice takes the following forms:

"In the first place the police organization ignore their obligation to bring arrested persons before a court within 24 hours of their arrest, nor do they allow arrested persons to communicate with their lawyers. Cases occur daily in which people under arrest are kept *incommunicado* for up to 2 months without being allowed to see a lawyer or being brought before a court.

"The judicial authorities tolerate, and even connive in, at these irregularities for there has not been a single case in which they have taken action against those responsible for these breaches of the law.

"I had an average of 2 or 3 new cases a day and if one in 50 was spontaneously brought before a court within 24 hours it was an exceptional case. Usually no-one was brought before a court within less than 4 days, and all communication was prevented."

Justice and the People's Militia

"Each court, which nowadays has been reduced to only 3 judges, or rather 3 magistrates, usually contains 1 or 2 members of the militia. In Cuba there used to be 5 judges in each court, and although only 3 used to be present at the hearings the court itself was actually composed of 5 judges.

"Since the Castro Revolution there have been large numbers of vacancies in the law courts and magistrates' courts, and at the present time each court only contains 1 or at the most 2 proper judges.

"As these vacancies cannot be filled, magistrates from the lower courts are promoted to run the senior courts although in fact the great majority of them are unfamiliar with the operation of such courts.

"This has the drawback that hearings are suspended almost every day. It is quite common for a case to begin and to be suspended

15 or 20 times. Each suspension is for at least 10 days and at the end of nearly a year the whole case has to be cancelled and retried—while the accused is meanwhile deprived of his freedom.

“Criminal justice in Cuba at the present time has also suffered a very serious setback because of the lack of moral authority on the part of the judges, who are respected neither by the police nor by the general public, and their orders, as a result, are not obeyed.

“Many witnesses or accused belong to the militia and almost every day some of them do not trouble to appear; the courts have to resign themselves to ordering another suspension and meanwhile the accused is deprived of his freedom.”

This experienced lawyer quoted a typical example of the collusion which takes place in Cuba between the courts and the People's Militia. He stated:

“I remember one occasion when I was the counsel appointed by the court for a poor defendant accused of trafficking in heroin. The President of the court (who was also a militiaman) attended, in accordance with his usual practice, with his militiaman's uniform underneath his gown and carrying arms.

“The prosecutor (who was also a militiaman) was dressed in exactly the same way—armed, with his gown over his militiaman's uniform.

“The accused was also a militiaman and was in uniform.

“Militiamen address each other as ‘Comrade’. When the hearing opens, the President is required under our legislation to inform the accused of the charge against him and the penalty being sought and then to ask him whether he wishes to answer the questions which the prosecuting and defending counsel intend to put to him, beginning with the examination by the prosecutor.

“On this occasion the President of the court ceremoniously said to the accused: ‘Comrade, do you wish to answer the comrade prosecutor?’

“This breakdown in judicial authority is most marked in the court at Pinar del Rio, the President of which is Dr. Eloy Merino Brito, a militiaman who is known as ‘El Cabo Merino’ (Corporal Merino) while the militia commander in the court is actually the court cleaner who gives orders to the judge. He places the President on guard outside the court building and has power to give him orders and even to punish him.

“I was present once when a witness, who was also a militiaman, was making charges against the accused. At one moment during the hearing the accused jumped up and protested against what the witness was saying, alleging that it was not true. The President of the court, who was also a militiaman, told him to sit down at once and threatened him with expulsion from the court if he continued his protests because it was a militiaman who was giving evidence

and militiamen did not tell lies. The actual words by the President were: 'Accused, the witness is a militiaman and militiamen do not tell lies. What the witness is saying is the truth. Unless you are silent you will be expelled from the court and the case will go on in your absence.' Favouritism towards members of the militia is the rule. One crime of which they are often guilty is causing homicide or bodily injury through their negligence. It is a daily event for people to be killed or injured by shots fired by militiamen who are handling their arms carelessly. There is an order in existence which is not known because it has not been published, but is nevertheless common knowledge among members of the bar, to the effect that prosecutors are obliged to withdraw charges on this ground and to seek the acquittal of the accused."

This witness stated that a militiaman is only sentenced when it is considered advisable to remove him from the militia.

Obstruction of defence counsel acting for persons accused of common law crimes

"In no police station or department where the accused are first taken on being arrested for an action which is considered to be a crime are lawyers allowed to perform their duties properly.

"As an example of the hostility against lawyers let me quote the following case which happened to me. A client of mine was involved in a motor car accident. When he and his family asked me to act in his defence I went along to the police station. When I arrived he was chatting with a number of friends who had gone along to enquire about his case. It appears, and I have since been able to confirm, that he was a personal friend of one of the police officers at this station.

"When I explained that as his lawyer I wished to speak with him, permission was refused. I pointed out that other people were talking with my client, but the policeman answered: 'They are not lawyers. If you want to talk to him you can, but as a friend and not as a lawyer. Here we will not have anything to do with lawyers at any price.' Faced with this dilemma I decided to talk to him as a friend. Henceforth, the friend and the lawyer were the same person.

"To give an idea of the influence of the military organization known as the Militia in criminal justice matters, I need merely say that at the start of any case, lawyers in Cuba try to find out whether the victim or the witness or any other party to the case is a militiaman because, in the words of one witness 'nowadays, in any case before the Cuban criminal courts, the side represented by a militiaman stands the best chance of success'."

Militiamen as judges

Q. "Do you know the judges of the criminal courts and the criminal division of the Supreme Court?"

A. "Yes, I know them all and the prosecutors as well."

Q. "Do you know whether any of these judges belong to the People's Militia?"

A. "Yes."

Q. "Can you give us their names?"

A. "Yes. At the Havana law courts there are 5 criminal courts. By law each criminal court consists of 5 judges and the criminal division of the Supreme Court consists of 7 judges.

"As the Castro Government has made a number of changes in the Judiciary, while a number of other judges have resigned, the 25 judges plus the President, making a total of 26, have now been reduced in number to 6 or 7 qualified judges, the remainder having been promoted from the lower courts.

"Of the 6 or 7 remaining judges, Dr. Fabio Raimundo and Dr. Vilches in the Second Court are militiamen. In the Third Court, the President, Dr. Hernandez Llopis, is a militiaman. In the Fourth Court, Dr. Jesus Valdés is a militiaman, and in the Fifth Court, Dr. Jerez Pachero is also a militiaman.

"These judges are militiamen before they are judges to such an extent that when they are called out on parade with the militia, the cases they are hearing are suspended because they are serving as militiamen.

"As regards the criminal division of the Supreme Court, it is now reduced to 3 judges, 2 of them, Dr. José Guman and Dr. José Alvarez, are militiamen who also command the entire militia force in the Havana law courts.

"The public prosecutor's office in Havana is headed by a militiaman and the prosecutors, who used to number 12 or 14 but now only number 4 or 5, are almost all militiamen as well, such as Dr. Armando Torres, Dr. Marimon and Dr. Feliciano Maderne.

"The functions which are assigned by the Organic Law for the Judiciary to the government division of the Supreme Court and the high courts (which were collegial bodies) are now discharged by a militia commander in the Supreme Court and a militia commander in the Havana Court, neither of whom is a member of the judiciary."

Former examining magistrate

One example will suffice to illustrate cases in which judges have been arrested for carrying out their duties.

It involves an examining magistrate in one of the provinces of Cuba. The witness declares:

"In this district, proceedings were being taken in a criminal case, the serial number of which I do not remember because owing to the haste with which I went into exile I kept no notes on the case. The investigations (which took place in 1959) concerned the death of a

young man called Llabre Romani in 1958, in a camp of what was then the Rebel Army against the Government of General Batista. There can be no doubt whatsoever that an individual from the village of Colarillo named José Ramon Pérez was involved.

"During December 1960 I received a message from the commander of the barracks at Sagua La Grande informing me that the commander of the provincial military district, Major Orlando Rodriguez Puerta, had presented himself at the barracks and had set the accused free stating that he knew him to be innocent.

"Upon this the necessary orders were issued for the recapture of the accused while, at the same time, proceedings were instituted to deal with the offence of negligence in guarding the prisoner.

"On January 3, 1961, I was arrested by the local military commander at Sagua La Grande, a lieutenant named Ferrer who, despite the fact that he knew that I held the office of examining magistrate, sent me with a military escort to the town of Santa Clara, capital of Las Villas Province, some 50 kilometers from Sagua La Grande.

"There I was shut up in a cell in the barracks throughout the whole afternoon and part of the night. At about 10 o'clock in the evening I was taken before Major Orlando Rodriguez Puerta who, in an offensive and insolent way, told me that he had decided to solve the problem of the accused Pérez, that we judges must realize that under the revolutionary government we were merely instruments of the régime, and made it clear that in this as well as in other cases I dealt with in my capacity as a magistrate, I had no option but to act on his orders.

"The Major then said that he would set me free, apparently hoping that I would cancel the proceedings against José Ramon Pérez and that, in some way, I would conceal or destroy the indictment for negligence in guarding the prisoner.

"On January 13, 1961, presumably because I had not carried out this officer's wishes and because he was annoyed at having received a summons to appear before the court in connection with this case, I was once more arrested while I was at a club called 'Liceo de Sagua La Grande' and was taken to the local barracks where I once more met Major Rodriguez Puerta. On seeing me he went over the same questions and called me insolent—apart from other coarser expressions—and threatened to have me shot; all this, as on the previous occasion, was done in the presence of a number of army officers and soldiers.

"When I answered that I was unable to comply with his wish that I should terminate the case and withdraw the indictment for negligence, his anger increased and he ordered me to be placed in the barrack cells where I remained for 12 days, i.e. until January 24.

"After 7 or 8 days' imprisonment (I forget the exact date) I was taken before Lieutenant Galvan del Rio, a judge of the Santa Clara

revolutionary courts, Lieutenant Ferrer, whom I have mentioned earlier, and other officers, who offered to set me free at once on condition that I took over the district court (which was headed in those days by various substitute judges) and immediately terminated the proceedings against Pérez and rescind the indictment for negligence in guarding the prisoner (under our criminal procedure authority for this had to be given by the district court and not by the examining magistrate).

“ When I refused to do what they asked, I was sent back to the cells until January 24 . . . when I was set free. As I have said, at no time were any proceedings of any kind taken against me, nor did the authorities take a statement from me or bring any charges against me.

“ As soon as I was set free, and in view of the lack of safeguards, not only in the discharge of my duties but also as regards my personal freedom, I went to Havana where I obtained asylum in the Mexican Embassy on January 30, 1961. ”

Judge in a Court of the First Instance

Q. “ What post did you hold in Cuba ? ”

A. “ I was judge in a court of the First Instance at San Antonio de los Banos. ”

Q. “ How long were you a judge ? ”

A. “ I was a member of the Judiciary for 26 years. ”

Q. “ On what date did you leave Cuba ? ”

A. “ On September 11, 1961, after I had been taken out of the plane on two occasions. ”

Q. “ Why did you leave Cuba ? ”

A. “ Simply because life there had become impossible; I was constantly persecuted, my house was searched a number of times and in the discharge of my duties I was subject to various forms of coercion which I strongly resisted and which led to the persecution I have referred to. ”

Q. “ You say you were coerced? What did this coercion consist of? ”

A. “ There was a very serious incident with a major who was the local military commander—I think he was called San José—over an affair involving an individual called Elpidio who was said to be a drug peddler. He was arrested in the village, searched but absolutely nothing was found on him. Nevertheless a report was drawn up ordering the court in threatening language to have him deported from the village. The secretary of the court read this report out to me, but I told him not to pay any attention to it. The next day, however, the Major came to see me and said: ‘Did you take note of the request I made to the court?’ I answered: ‘Major, have you ever seen me giving orders in your barracks? You have not, have

you? Just remember the saying that the shoemaker should stick to his last.' He then asked whether I wished him to leave and I replied: 'No, but if you want to go you can.' I have since heard that this Major was later dismissed from the army because he was not a communist."

Q. "What other interference or obstruction did you encounter in the discharge of your duties?"

A. "During January I arrived at the court building and found it full of militiamen. Worse still, they were in the judge's office using cameras. I thereupon got in touch with the militia commander and said to him: 'The fact that you have been mobilized does not entitle you to enter my office. They can stand outside but they must respect my office, they must respect the majesty of the law. Please take all your men away.' He was very understanding and immediately ordered his men to leave. Another incident involved the use of the telephone..."

Q. "In other words the militia were using the court building simply as another barracks, ignoring the fact that justice was administered there?"

A. "Exactly. They tried to use the telephone and I refused to allow it. I snatched the telephone away and said: 'Get in touch with your leaders and tell them that the examining magistrate of San Antonio de los Baños has no telephone'."

Q. "What reason did they give for ordering your expulsion from the Judiciary?"

A. "My anti-Government attitudes. This took place in February 1960."

Court reporter

"My arrest was due to the fact that I was employed in the fifth criminal court at the Havana law courts. This was the court which dealt with the first *habeas corpus* case since January 1, 1959. It was on behalf of Llaca Orbiz and the court ordered him to be set free. At first this was not done but he was finally released on the second day. As court reporter in this court, I took an active part in dealing with this *habeas corpus*. Subsequently another *habeas corpus* case was submitted on behalf of Dr. Elio Alvarez Lopez, a former judge in the Havana law courts. His release was also ordered, and lest he might be arrested or accused once more on some trumped-up charge, I took him out of the Court building by the back entrance and drove him away in my car. Because of this *habeas corpus*, the secretary of the court, Dr. Pedro Pablo Villanueva, was arrested and brought before the same court. As a result, the President of the fifth court made a report to the head of the armed forces complaining that there were no safeguards for the Judiciary. I myself delivered this report at the Ministry of Armed Forces."

III. THE REVOLUTIONARY COURTS IN ACTION

The revolutionary courts are emergency tribunals. They were set up by the Castro régime to mete out summary justice to the persons responsible for the political crimes committed by the collaborators of Batista. The work of the courts can be divided into two stages. During the first the courts dealt with offences committed by members of the armed forces or civilians in the service of the Batista dictatorship, i.e. from January until May 1959. The second stage began with the re-establishment of the revolutionary courts under the amendment to the Fundamental Law of November 1959, and has continued until the present time. (See Part III, above.)

The accused were usually defended by counsel in private practice. But when the accused had not appointed a counsel, the *abogado de oficio* acted on his behalf. This lawyer was a government employee drawing an official salary and, under the Castro régime, he wore the uniform of the Rebel Army. Investigation established that the defence in the revolutionary courts was subject to the following restrictions:

1. Charges were general and ambiguous in character, and did not specify any action considered to be of a criminal nature.
2. The defence lawyer was only informed of the charges against the accused a few minutes before hearing was due to begin, with the result that, in most cases, he was unable to prepare his defence and demolish the charges against his clients.
3. Due notice of the dates on which cases were to be tried was not given to either the accused or his defence counsel.
4. The times at which hearings were held were completely arbitrary. It was common practice for them to begin after 9 o'clock in the evening when they were supposed to start at 4 or 5 in the afternoon.
5. Changes were made in the charges—when the original indictment could not be proved, a new version was put forward.
6. Constant hostility in the form of threats and insults was shown to defence counsel and witnesses. These threats were in certain established cases actually carried out. In some cases, lawyers who energetically defended their clients were even imprisoned and shot as counter-revolutionary criminals.
7. There was no consistency in the verdicts of the revolutionary courts. The review procedure was arbitrary and no rights whatsoever were allowed to the defence.
8. Whenever a case was reviewed or the court was changed, the proceedings from the re-opening of the case to sentence and its execution were so rapid that there was no time to find out what was taking place.
9. The defence was obstructed from the time when the defence counsel tried to interview his client.

10. Before entering the prison, lawyers were searched and forced to leave their effects behind; they could only interview the prisoners when permission was granted.

11. Interviews with prisoners, when possible at all, always took place in the presence of guards, who were members of the army.

12. As counsel were never notified in advance of the dates on which hearings would be held, they were forced to go to the law courts every day to try to find out which cases were being tried that day.

13. Counsel were not allowed to see the indictment and consequently did not know the charges against their clients. As the latter did not know either because they had not been officially charged, it was impossible to find out until the act of accusation was actually read out, or at least until a few minutes beforehand. Since in all these cases there were many accused and also many defence counsel, the short amount of time available to consult the indictment was completely useless.

14. The witnesses for the prosecution were publicly encouraged to testify against the accused even on matters which were not within their knowledge.

15. New types of offence were invented during the hearings, e.g., an accused who could not be proved to have committed any of the criminal acts with which he was charged would be described as, for example, a "special conspirator".

The above information about the revolutionary courts has been obtained from the following sources:

1. Lawyers who acted as *abogados de oficio* in these courts, i.e., as officials of the Castro regime during early months of the Government and who were responsible for the defence of the accused.

2. Defence counsel in private practice who took part in hundreds of cases.

3. Members of the revolutionary courts now in exile because they did not bring in a verdict of guilty.

4. Eye witnesses of the proceedings, members of the families of the accused who witnessed the gestures and behaviour of the public prosecutors and the judges when insulting the accused, defence counsel and defence witnesses.

5. Accused who were unable to communicate with their lawyers, who were not allowed to defend themselves even though they were themselves qualified lawyers, who were unable to bring forward witnesses, etc.

6. Court reporters in the revolutionary courts who took down a verbatim account of the entire proceedings.

7. Priests who were present at the trials and gave spiritual comfort to individuals sentenced to death.

A lawyer's experience

A Cuban lawyer, who appeared before the revolutionary tribunals from January 1959 until August 1960, acted as *abogado de oficio* during the early months of the Castro régime and subsequently was a defence counsel in private practice, has described his experience in some 900 cases in which he acted for the defence. Because of his experience and ability this lawyer was interviewed by the Commission and was asked to describe some actual cases within his personal knowledge.

"1. One example was the case of José Castaño Quevedo, who was the second head of the BRAC (*Buro de Represión de Actividades Comunistas*). For two months I had daily talks with Castaño, during which he gave me full details on every point because he himself considered that he would be brought to trial. On the evening when the case was due to be heard and only a few minutes before it began, to the great surprise of both of us—his wife had appointed my colleague, Dr. Anibal Pacheco, for the defence and I gave him full details of the case—Dr. Pacheco was not allowed to see the file or any form of indictment. At this same hearing, Dr. Pérez Sigla, who worked in the same organization and whom I likewise defended, was also on trial. Dr. Pérez Sigla was a lawyer in the BRAC. During this case I noted the following anomalies. Firstly, throughout the time that Castaño was imprisoned, no statement was taken from him nor was he informed of the charges against him. His case was heard in the fortress of La Cabana as being the most important, but no explanation of the reasons for this importance was ever given to us. Secondly, Castaño, like all the accused who were in prison, was not given any inkling of the day or time at which the hearing would be held or of the facts on which the charge was based, it being common knowledge that although sittings of the court were called for 4 or 5 o'clock in the afternoon, hearings did not begin until 9 in the evening. Thirdly, counsel did not have access to the indictment. Accordingly they were unaware of the charges against the accused and the defence had to be prepared on the basis of the facts which emerged during the hearings."

At this point the witness was asked at what date this had occurred and he replied:

"In March 1959. In this particular case the accused, Castaño was charged with the following offence: murder, rape, robbery, larceny, ill-treatment of prisoners and other offences. The charge of murder was withdrawn for lack of evidence as was the most important of the other charges—rape—since the woman stated to be involved, a radio and television performer called Agramonte, if I remember rightly, flatly denied that it had ever taken place. The other charges were all demolished with the exception of one made by the single prosecution witness—a tailor—who informed the court that Castaño, together with a group of subordinates, had entered his shop and carried out a search and allowed a number of lengths of cloth to be taken

away. This could not be corroborated because there was only one piece of evidence and only one witness. As there was no evidence on which to condemn the accused the prosecutor, in summing up, charged him with theft under Section 12 of Regulation No. 1 issued in the Sierra Maestra on February 22, 1958, by virtue of which he asked for the death penalty against the accused.

"In this case Dr. Pérez Sigla was sentenced to 10 years' imprisonment on the ground of a single piece of evidence put forward by one of the communist witnesses who accused him of having allowed him (the witness) to be ill-treated during an interrogation at the BRAC headquarters."

"2. Another example of the way in which judicial standards were violated is provided by the trial of ex-Major José Hernandez Leiva, in the town of Placetas.

"During April 1959, the trial opened of Colonels Manuel Larubia Paneque, Azcuy and others on charges of murder, ill-treatment of prisoners, unlawful entry, etc. Colonel Larubia had been chief of operations in Santa Clara. After the case had been heard, Colonels Larubia and Azcuy were both sentenced to death. During the trial, the name of Major Hernandez Leiva, who had been on the staff of Colonel Larubia, happened to crop up. It was Major Hernandez Leiva who had signed the surrender of Santa Clara. He was an army officer of long service and high reputation, and after the army surrendered to revolutionary forces, he had been retired and was allowed to draw his pension unmolested for the first three months following the triumph of the revolution.

"When his name came up in the trial of Colonels Larubia and Azcuy, his arrest was ordered in Havana. He was then brought to Placetas and the case I have just referred to was re-opened. Colonel Azcuy was shot, but not Colonel Larubia, so as to enable him to take part in the trial of Major Hernandez Leiva.

"All the witnesses who had appeared in the earlier trial were produced once more, but none of them made accusations against Major Hernandez Leiva. A good many details were brought to light in the confrontation between Colonel Larubia and Major Hernandez Leiva, and the prosecutor, who had originally demanded the death sentence for Major Hernandez Leiva, altered this to a request for 10 years' imprisonment on the ground of concealment. The court sentenced Major Hernandez Leiva to 30 years' imprisonment and the following day, without any justification and without any request to this effect from the prosecutor—who, under the Cuban Military Law Procedure Act of July 28, 1896, which was operative in this case, was the only person with power to ask for a review of a case—he was taken before another court without the knowledge of any member of his family or myself, despite the fact that I had been his defence counsel during the earlier trial at which he had been sentenced to

30 years' imprisonment, and there he was sentenced to death and shot together with Colonel Larubia Paneque.

"3. Another flagrant breach of judicial standards is the case of M.M.¹ He was a hot-headed, somewhat unruly young man who one day happened to be leaning over the balcony of his home when some boys started to explode fireworks in the street opposite him. When the police arrived they arrested the young man and in the report drawn up at the police station stated that they heard some explosion and on reaching the spot saw M.M. laughing and therefore arrested him. When M.M. asked why he had been arrested the police answered: "For laughing" and as they saw that he was drunk they had taken him into custody. On the way M.M. asked if he could drink a glass of beer and permission was granted. It was then that he added that the fireworks had been set off by some boys.

"The policeman repeated this statement at the hearing, at which I was defence counsel for M.M. I argued that his behaviour was not a matter which fell within the competence of the court, but this was disallowed.

"The hearing continued and the policeman confirmed that M.M. had not exploded the firework but added that he was laughing. I thought that the prosecutor would withdraw the charge or, since the case was not within the competence of a military court, that he would ask for a fine to be imposed but instead he asked for 15 years' imprisonment. I made my case for the defence and argued that the court was not competent to judge this case and that even if it were, in view of the statement by the policeman himself that M.M. was not guilty of the action in question, the only penalty which could be imposed under the Social Defence Code was 30 days' imprisonment or a corresponding fine. Nevertheless the court sentenced him to 15 years' imprisonment. This occurred on February 17, 1961.

"4. Another actual case was the trial of R.R. for whom I acted as defence counsel. He was arrested on April 17, 1961 and released 20 days later but re-arrested and tried on a charge of armed insurrection and sabotage. The prosecution witness was an agent of the G-2² named Xiqués. The original charge accused R.R. of having committed sabotage in the Guanabacoa power station, of having organized an armed group, of having been in touch with the Central Intelligence Agency, together with Justo Cavillo, Toni Varona, Miro Cardona and others. Subsequently the agent I have referred to made an investigation in the case, gave his report and confirmed the initial charge. During the hearing the accused, R.R., denied the charges and they were withdrawn, but the court claimed that he was a "special conspir-

¹ For reasons of security of persons involved, true names have in some instances been altered or deleted.

² This abbreviation is commonly used to designate the Cuban Secret Police.

ator". On being asked what this meant, the court replied that the accused harboured a number of counter-revolutionary thoughts which were Utopian and could never be achieved. He was sentenced to 2 years despite the fact that no proof had been produced.

" 5. Another case concerns M.F.B., a Spaniard by birth but a naturalized Cuban, who was a hotel proprietor. He was charged with having contributed financially towards the counter-revolution. I was responsible for his defence. At the trial a woman called Georgina was coerced by the G-2 into appearing as prosecution witness. She said that she had never seen any money actually being handed over by M.F.B. but that a woman friend of hers had shown her some money and had said that he had given it to her for the counter-revolution. This woman Georgina later went to the house of M.F.B. and told his wife that she had been coerced and forced by the G-2 to testify against her husband, but that everything she had said in court was untrue.

" I placed all this on the record at the hearing but despite the fact that there was no proof against M.F.B. he was sentenced to 10 years' imprisonment and all his property was confiscated. I lodged an appeal which was not rejected within the time limit prescribed by law; in fact even one year after the sentence no ruling had been given on the appeal."

Another witness was examined as follows

Q. " Did you serve as counsel in the revolutionary courts? "

A. " Yes, I did. "

Q. " Can you describe what your work consisted of in these courts? "

A. " They withheld the files of the cases we wished to defend. They did not allow us to see indictments. They also made it very difficult indeed for us to visit our clients. We only knew of the charges against the accused when the hearings were about to begin. "

Q. " Were you allowed to produce defence witnesses and evidence? "

A. " We were not allowed to produce evidence. Evidence by witnesses was allowed on rare occasions but even then only during the hearings. Many documents were not accepted and those that were, tended to be ignored. My impression of the trials was that they were all a foregone conclusion. "

Q. " Regarding evidence by witnesses, were the witnesses you proposed summoned to court? "

A. " I had to bring them because they were never summoned. "

Q. " Did witnesses of this type have free access to the court room? "

A. " Hardly ever. I remember the case of Monsignor Villaverde, a very old clergyman, whom I brought in as a defence witness in a

case, and who was kept standing from 4.30 in the afternoon until 3.30 in the morning. He was the Bishop of the Matanzas Province in Cuba."

Q. "Did the revolutionary courts exercise any coercion on the defence witnesses?"

A. "Yes and on counsel as well."

Q. "Do you know of any case in which a witness was arrested for having testified?"

A. "I remember very many cases in which defence witnesses were arrested and charged. One actual case was that of an ex-Mayor of a major town, who was sentenced to 56 years' imprisonment. At the trial his private secretary testified on his behalf and was himself charged and sentenced to 20 years' imprisonment. In this case, too, I must ask you not to disclose their names since both men are still in prison."

Q. "What was the composition of the revolutionary courts?"

A. "They were composed of illiterates, most of them criminals and some of them even under age. Many of them had gone off to the Sierra Maestra to avoid punishment for crimes they had committed."

"In fact on one occasion I met some members of revolutionary courts who greeted me and reminded me that some time before I had defended them in court on charges of minor thefts, larcenies and offences of that kind."

Q. "Were these courts independent?"

A. "No, they were subject to the military judge advocate's office. In the early days the Major known as Che Guevara handled everything connected with the revolutionary courts. He decided what penalties should be inflicted, as I was able to confirm myself on one occasion when I managed to secure an interview with him because I was interested in the case of a woman friend of mine who was awaiting trial and was unjustly imprisoned in the fortress of La Cabana (in the interests of her personal safety I will not give her name). This Major Guevara, after behaving towards me with gross discourtesy, said—and these were his actual words: 'I do not know how you dare to take an interest in this person . . . I will have her shot . . . if any person has a good word to say for the previous government, that is enough for me to have him shot' . . ."

Composition of the revolutionary courts

"Initially the military courts in the Province of Havana were made up of 2 or 3 lawyers who acted either as president or as member of the courts, while the military prosecutor himself was almost always a lawyer."

"Subsequently all military courts were converted into people's courts, made up of 5 members and a prosecutor. None of the 5 mem-

bers was a lawyer, and as many of them were illiterate militiamen and peasants, they often passed death sentences. Some of the militiamen sitting on these courts signed with their fingerprints, as happened in Case No. 333 of 1960, when the accused, Balbino Diaz Balboa, was sentenced to death after a trial lasting 7 hours on January 15, 1961. An appeal was lodged but was rejected. The execution took place on the morning of January 16, 1961."

The practice of the defence

As was already stated above, the defence is obstructed by the revolutionary courts. When a lawyer who had taken part in more than 50 cases as defence counsel for persons accused by the revolutionary courts was asked what form these obstructions took he replied:

"In the first place, after the military courts were established in 1959, defence counsel were never allowed to see the indictment.

"The obstacles were so great that it was impossible to produce evidence or to supply lists of witnesses; nor was it possible for lawyers to discover to which investigating body they should apply in order to find out the truth about the charges against the accused.

"When, as defence counsel, we visited the gloomy cells of the G-2 in a Havana suburb, we were prevented from seeing our clients, our briefcases were searched, the clothing we were wearing was searched and at best we were only allowed to talk with our clients for 5 minutes and even then in the presence of heavily armed guards.

"As time went by the hostility we encountered from guards and members of the courts in the exercise of our profession became increasingly marked.

"The armed guards on duty at the entrance to the fortress of La Cabana in Havana used every device in their power to keep us waiting for hours outside for permission to go in to defend our clients."

Q. "Can you quote an actual case to illustrate your statements?"

A. "Case No. 549 (1960) of the Havana district military court. The military prosecutor, Armando Torres, in his written provisional conclusions dated November 25, 1960, accused my client, Roger Garcia Gonzalez, of blowing up bridges, demolishing telephone and electricity installations and setting fire to poultry sheds and farm buildings. He asked for a sentence of 9 years' imprisonment. A photostat copy of these conclusions was sent to the defence counsel—there were many of us because there were 29 accused—together with a summons to appear at 2 p.m. on the same day, November 25, for the trial.

"Owing to a special combination of circumstances I succeeded in interviewing one of the accused on the evening of November 24, during which the prisoner himself said that the hearing would be the

following day, i.e. the 25th, at 2 p.m. But it so happened that I had to go to La Cabana (the prison) at 10 o'clock on the morning of the 25th to hand in a written statement connected with another case. To my great surprise I saw a squad of handcuffed men being marched under guard towards the officers' club. I asked one of the escort what was going on and he replied that the hearings for Case No. 549 were due to begin in 10 minutes."

Q. "Did you have an opportunity to examine the indictment in order to prepare your defence?"

A. "I then asked the president of the court, Dr. Pelayo Fernandez Rubio, who was himself a lawyer—we had been students together and I had known him for more than 10 years—to postpone the hearings by 4 hours, in other words to the time stated on the summons. Failing this I asked permission to bring the other defence counsel since there were 29 accused. He replied that the court had been properly convened and would continue to sit. When I refused to take part in the proceedings, they sent to the regimental headquarters for an *abogado de oficio* who defended the 29 accused with disastrous results.

"The hearings began without any private lawyers being present—there was only the official defence counsel and myself. At the request of my client I took part in the proceedings which lasted from 10.30 a.m. until 8.30 p.m. In time the remainder of the defence counsel arrived one after the other.

"Another handicap that should be mentioned is the prohibition in many cases of any direct contact between the accused and their lawyer. There were times when I was detained for 2 days at the Havana police department because I took an interest in the cases of various prisoners."

Q. "Did the prosecutor charge the accused with a crime which was specified as such by law?"

A. "The essential conditions were hardly ever fulfilled because 95% of the indictments of the military prosecutor's department fell under the broad heading of crimes against the State. In fact the prosecutor's conclusions were invariably headed with the words 'Crimes against the State'. They even distorted the qualification of the crime, because in certain cases in which fire-arms had simply been discharged in the direction of certain individuals without any aggravating circumstances, charges of attempted murder were brought and the death penalty was sought. An example of this was the case of Balbino Diaz Balboa, which I have referred to earlier. In this case (No. 333 of 1960), the Havana military court passed a sentence of death within 7 hours on the accused who was charged with an attempt to kill the commentator Pardo Llada."

In some cases there were so many accused that it was virtually impossible for the lawyers to defend them:

" In the case of the Trujillo conspiracy, which involved a number of leading political figures in Cuba as well as business men, doctors, lawyers and others, there were 178 accused, 43 defence counsel, 309 witnesses, 12 experts, 4 secretaries and about 10 stenographers taking notes. In addition, there were a large number of spectators from the armed forces who applauded the statement of the witnesses for the prosecution. Many of them were communists in the government and they included the brother of Fidel Castro (Raul Castro) who testified during the case. These spectators made it almost impossible for the lawyers to make themselves heard, although this did not apply to the prosecutor, who had a microphone and a loud-speaker.

The revolutionary courts held their sessions at the most unusual times I can think of. For example hearings usually began at 2 o'clock in the afternoon and went on without interruption until 11 o'clock at night, when there was a short 15-minute interval to allow us all to relieve ourselves, after which the hearings went on until 2 and 3 o'clock in the morning. "

As regards the arguments put forward by defence counsel, the witness said:

" We always tried to prove that our clients were not in fact involved in the episodes with which they were charged and at the same time we tried to demolish the evidence of the witnesses, many of whom had been coached by the military prosecutor."

This Cuban lawyer stated that he left Cuba " in the normal way by plane on January 23, 1961, after a blood bath in the fortress of La Cabaña on January 18, 1961, during which 12 prisoners, 3 of them clients of mines, were executed in one night.

" I therefore left Cuba because it was impossible for me to exercise my profession and because of the complete denial of all human rights."

A wife testified as follows on the imprisonment of her husband

Q. " When did he enter La Cabaña? "

A. " On January 5, 1959."

Q. " Did judicial proceedings take place immediately? "

A. " He was imprisoned for several months without any proceedings being taken."

Q. " Were you able to see him during this time? "

A. " Yes, I was."

Q. " Could he appoint a lawyer for his defence? "

A. " I was not able to appoint a lawyer during his detention. Lawyers were not allowed to enter La Cabaña."

Q. " How were you able to assist your husband? "

A. "I received a call at 9 o'clock in the morning on the day of the trial telling me to find a lawyer, because the trial would begin at 10 o'clock sharp. This was on March 10. Dr. D. A. undertook to defend him although he knew nothing about the case beforehand. He was only given 10 minutes to read the charges."

(19)

Many of the items of evidence received by the Commission were supplied by lawyers who were sentenced for one reason or another had either served their sentence in prison or escaped and are now in exile.

One of them stated:

"I was arrested on February 27, 1959. When I was arrested the reason was not given. Two days later I was brought before the court without any prior investigation and there I was informed that the charge against me had been brought by a captain, a member of the communist party, who accused me of having given him a blow or a slap on some previous occasion for which I was sentenced by the court to 10 years' imprisonment.

"In July 1959 when the relevant legislation suspended the revolutionary courts, I appealed to the Cuban Supreme Court against this sentence of 10 years' imprisonment, which was thereupon reduced to 2 years."

Q. "Who was your defence counsel?"

A. "Before the hearing began I asked to be allowed to defend myself, since I happen to be a lawyer. This was flatly refused despite the fact that it was not prohibited by law. I thereupon pointed out to the president of the court that when Fidel Castro was being tried at Moncada, nobody had stopped him from defending himself. When my request was once more refused, Dr. Morales Castellon, a captain in the Rebel Army, was appointed as my '*abogado de oficio*'.

"I took advantage of the law which they themselves had issued in the Sierra Maestra to request a confrontation with the witness who was accusing me. The president of the court, Lieutenant Armando Rivero, a former member of the army of Batista, who was expelled from the armed forces as a communist, replied that during these hearings any confrontation with the witnesses was absolutely prohibited. After this the president asked me whether I was a Catholic. When I said I was, he answered in the following words: 'May your God forgive you'.

"The prosecutor in this case was known within La Cabaña by the nickname 'Pool of blood' because he was the prosecutor who was present at all the executions and who had himself sent the largest number of persons to their death—out of 65 shootings which took place at La Cabaña during this time, over 30 accused at his instigation.

"This prosecutor completely forgot that he was a lawyer himself. He showed no respect towards the accused, nor towards a fellow lawyer like myself."

Q. "Where did you serve your sentence?"

A. "I served 5 months in the prisons of La Cabaña and Castillo del Principe and 19 months on the Isla de Pinos."

(22)

A witness who used to be a lawyer and left Cuba in September 1961 stated that he was arrested "for the crime of assisting the flight from Cuba of 2 lawyers in the Rebel Army. In August 1960 I was taken to the prison of Pinar del Rio. My house was searched without a warrant by the political police of the G-2 on the orders of Captain Llibre and Captain Valdivia together with 12 or 14 soldiers. I was arrested together with the 2 officers who were in my house." The following exchange then took place with the witness:

Q. "As a lawyer, did you defend yourself?"

A. "No, I was advised not to do it because the revolutionary courts greatly disliked this practice. I was defended by Dr. X."

Q. "Could you speak with your lawyer?"

A. "Only in the presence of our guards, who were members of the G-2 and other secret services."

Q. "How was the trial held?"

A. "I was informed of the prosecutor's charges at the hearing itself. The accused, who numbered 16, were not allowed to present any evidence. The only testimony allowed was given at the request of the military judge advocate. The verdict was not given by the court at Pinar del Rio which judged us, but by an officer called Ayal of the judge advocate general's department in Havana."

Q. "How did you learn about it?"

A. "We were told about it by a lawyer who had been able to see a copy of the relevant proceedings in Havana. We gathered that verdicts for courts which were not competent to pass them were decided in Havana. The judge advocate's department decided on them without taking cognizance of the court proceedings."

(21)

One of the witnesses, who was asked what were his actual duties as a stenographer in the revolutionary courts, replied:

"To take down a verbatim account of the whole proceedings, including the confession of the accused, the statements of the witnesses, the speeches of the prosecutor and defence counsel and the court's verdict."

The revolutionary courts

"The courts were made up of members of the Rebel Army. The lower courts consisted of captains and lieutenants, while the appeal

courts were presided over in each case by a major. Later when the militia was organized, the courts consisted of working-class militiamen, almost invariably representing a branch of industry, agriculture, etc."

The accused

"The accused was always given an opportunity to speak during his own examination, but he was constantly harrassed by interruptions by the members of the court and the ironical and contemptuous comments of the prosecutor. He made his statement in a completely hostile atmosphere and it should be borne in mind that the hearings were held in a fortress known as La Cabana, which served as a military prison.

"There were cases in which leading personalities under the previous régime were brought into the court together with notorious criminals. One example of this was the case of Dr. Joaquin Martinez Saenz who had been president of the Cuban National Bank. I should also mention the case of Castano, who was the second chief of the BRAC (Office of anti-communist repression) in Cuba, in which all the witnesses for the prosecution were members of the People's Socialist (communist) Party and in which the court acted with incredible speed."

Witnesses

"Except in cases where witnesses held important posts in the revolutionary movement, they were openly coerced by the prosecutor and some members of the court. The result was that the work of the defenders was extremely difficult because many witnesses went from the witness box to the dock.

"We witnessed disputes between the prosecutor, the members of the court and some witnesses of undeniably revolutionary background because the latter insisted on telling the truth, while the former felt that they were not helping the revolution thereby."

The defence counsel

"At first they were treated fairly respectfully. Later there were times when they had to endure veiled threats by the prosecutor and taunting or scathing comments from the court."

At this point the witness was asked whether lawyers were given an opportunity to familiarize themselves with a case before the hearings began. He replied:

"Yes, 10 or 15 minutes beforehand. They were shown the indictment in the law court offices, but since in almost every case there were several accused and defence counsel, many of them were forced to take notes when they read the prosecutor's provisional conclusions, whereas the prosecutor himself had full access to all the records."

The witness was asked whether, in his opinion, this time was sufficient when there were several accused to enable counsel to familiarize themselves with the charge. He replied:

"I do not think so and furthermore there were times when counsel were unaware of the charges until the hearings began, because they were not allowed to study the indictment."

The witness was asked how many trials he had attended in the discharge of his duties and he replied:

"I do not remember the exact number but it was very large. There were a number of courts sitting simultaneously in the fortress of La Cabana and I acted as court reporter in all of them. What I can say is that we court reporters virtually lived there. We worked day and night, including public holidays."

The witness was further asked:

"How did the judges conduct their deliberations?"

"They really took very little time to decide what penalty to inflict, especially since in many cases the prosecutor had asked for the death penalty by shooting."

"I should add that on some occasions I saw members of the legal department of the Rebel Army with typed lists of the penalties that were going to be imposed on the accused while the trial was still taking place."

(24)

Another of the stenographers who served in the revolutionary courts stated: "During the period when I acted as court reporter from February to June 1959 I was able to see for myself that the members of the courts were, with the exception of the prosecutors and an occasional president, in the main completely ignorant of legal procedures, quite uneducated and had come down from the Sierra Maestra filled with hatred and thirsting for vengeance."

Witnesses for the prosecution

"Moreover, during many trials when I had to go in and out of the building or in and out of a neighbouring office, I saw myself members of the Rebel Army telling witnesses what to say because the witnesses themselves did not know the person against whom they were going to testify, nor had they any idea of the charges they were supposed to make against them."

Defence counsel

"Defence counsel were not shown the indictment. They only knew about the trial a few hours before it began, and only learned of the charges against the accused from the court report which was made when the hearings opened."

"In very many cases both the court and the counsel were influenced by members of the public in the court room. Loud protests were

made whenever a lawyer ventured to defend one of the accused, while the verdicts were applauded and cheered.

"There was complete chaos during the hearings and I witnessed a very large number of cases in which the hearings were completed and a verdict was handed down only to be followed by the re-opening of the case and the infliction of a heavier sentence.

"I also observed that most of the accused were brought to trial either bound or handcuffed.

"I can state categorically that in most trials the defence was not allowed to operate properly and that in fact it was very seriously obstructed. Apart from the difficulties I have mentioned earlier, such as the coercion exercised by the public, the lawyers' ignorance of the charges and so on, there was also the fact that very often while a lawyer was defending one of the accused a member of the court or of the public would get up and hurl an accusation against the lawyer—the accusation might be of any kind but was usually political. This seriously handicapped the lawyer from every point of view, because considerable publicity would be given to the incident and of course the lawyer knew that any defence he conducted in the future would harm rather than help the accused."

The verdict

"The verdict depended on the whim of the members of the court. In most of the trials at which I was present it was entirely up to the president of the court to impose whatever sentence he thought fit.

"I know of another case in which the president of the court, when about to give the verdict, and feeling he could rely upon a comrade stenographer, asked him what sentence he should pass on the accused."

(35)

A Cuban lawyer with 25 years' experience in his profession, who had defended 65 cases in the revolutionary courts set up by the Castro régime, was asked:

"Were you in any way obstructed in discharging your duties as defence counsel?"

The reply was: "Yes. I was coerced by the so-called people's courts, especially when neither the prosecutor nor the members of the courts were lawyers. I was subject to the following forms of coercion:

"1. We were only allowed to glance at the files about 5 minutes before the opening of the trial—and you never saw such trials.

"2. We were venomously interrupted by the prosecutor whenever we tried to find out the truth and if not by him then by a member of the court, who would even threaten to have us thrown out.

"3. We were never allowed to bring defence witnesses and when we tried to put a question to a prosecution witness, we were threatened

or else the witness was told not to answer the question of the defence counsel.

"4. As we ourselves had no real safeguards, we were accused during the trials of defeatism and counter-revolutionary actions because we defended people who were not in agreement with the government.

"5. There were cases in which the hearings began at 10.30 in the morning. A break was announced for lunch—so they said—and when we returned, the verdict had been passed and the appeal rejected.

"6. A lawyer never knew when his client's case was going to be heard. We had to mount guard at the courts and make arrangements with other lawyers to notify each other. We called these trials 'surprise trials' because a lawyer never knew when his client was going to be judged.

"I can quote two cases of surprise trials which occurred despite the fact that I went to the courts every day. One day I left the courts at 4.30 in the afternoon and the following day discovered that my client had been tried and sentenced to 30 years.

"Another case occurred when, partly because I knew his family and partly out of humanity, I defended an accused called Julio Valdés Montana. I kept my eyes open every day for his case and you can imagine my surprise when I arrived at the court and discovered that he had been shot 3 hours earlier at the Pinar del Rio barracks and in the judgment that was being drawn up he was accused of having set fire to the La Epoca store in Havana when in fact he had merely been employed in the store in previous years."

The revolutionary courts

"Initially the revolutionary courts did contain some lawyers, but as the government moved steadily towards a dictatorship they were replaced by members of the Rebel Army. But even by the middle of 1960, their place had already been taken by members of the militia. Most of the members of the courts were illiterate.

"I remember a case in which one member of the court was a doctor, who was also a communist party member and acted as president, while the other 4 members were illiterate and had to sign with their fingerprints. There was an occasion when a member of this court refused to "sign" in this way because he did not know what he was putting his fingerprint on.

"The prosecutor himself was so uneducated that he did not even know how to draw up the final conclusions. He merely said: 'I ask for the death penalty for all the accused'. The president of the court, who was a doctor, pointed out to him that the provisional conclusions had only asked for the death penalty in the case of 3 out of the 22 accused. There was loud laughter among the defence when the prosecutor, instead of facing the court, faced the accused and said: 'I con-

firm all the death penalties and this is my final conclusion.' The president once more called him to order, telling him to face the court and not the accused."

The case of Major Sosa Blanco

"Sosa Blanco was defended by Dr. Aristides Acosta. As he was a man of academic distinction and a former fellow student of ours all the members of my chambers decided to be present at this notorious trial, which was witnessed by a large number of members of the public.

"There we were able to see how Dr. Acosta was coerced and threatened, not only by the prosecutor but also by the president of the court himself.

"We saw how the false witnesses, when asked by the court where they lived, answered: 'Sosa Blanco'. In other words instead of replying by giving their address they could think of nothing else but the name of the accused. I can still recall how the accused was harassed and insulted; moreover the defence counsel was treated in the same way. All of a sudden we heard the voice of the accused coming over the loudspeaker system: 'This reminds me of the Colosseum in Rome' and 'This is not a court of justice, it is a court of murder. You will one day be judged just as you are judging me now.'

"Members of the North American and Latin American press were there, and the trial was also broadcast and shown on television. There was such a scandal that all the newspapermen and lawyers were ordered out and the public hearings were suspended. The trial was concluded *in camera* at La Cabaña. The result was a death sentence for Sosa Blanco and imprisonment for Dr. Acosta."

Q. "Did you suffer imprisonment for having defended persons accused of political crimes?"

A. "Yes, I was in prison three times. In 2 cases—the first two—I was taken away from the court room itself and taken to the G-2 building in Havana on Fifth Avenue and Fourteenth Street. The other time I was taken to Empedrado and Montserrat. When they arrested me they also broke into the chambers where my brother and the other lawyers were working and you can imagine my surprise when shortly all the other members of my chambers were locked up in my own cell."

The case of Dr. Armando Escoto

"Dr. Armando Escoto was one of the most vigorous defenders of Cuban citizens who were sentenced for anti-communism. Dr. Escoto challenged Fidel Castro himself on two successive occasions and stood up to him with the utmost public spirit because he believed firmly in democratic principles. Castro tried to strike him and when Dr. Armando Escoto defended himself he was wounded by Castro's guards. A short time afterwards I myself was set free while Dr. Escoto, after his encounter with Castro, was put in jail at Pinar del Rio.

There I acted as his defence counsel assisted by a further lawyer, Dr. Portillo, in a trial in which he was charged as if he were a criminal.

"Our defence was ignored. The prosecutor and the members of the court bullied us and jeered that we were defeatists and counter-revolutionaries just like the accused, whom they sentenced to death. Finally, my client, who was a lawyer in Havana and lived in Havana, was tried and shot in another province in which he had never practised."

(37)

A former official of the judiciary (not himself a lawyer) was appointed to advise the military authorities of the Rebel Army and served in the judge advocate's office of the 5th Regiment at Marti, Vivora. He said:

"We were given the task of examining all military records and files of past trials involving members of the army during the years 1957 and 1958. They happened to include the case of a soldier named Migdonio who had been accused of the murder of a young man. When I saw that the case had been tried by the competent court and dismissed I gave the opinion that the case should go back to the file on the ground that it had already been judged. But my advice was ignored and the soldier in question was once more brought to trial before a revolutionary court, which sentenced him to the 17 years' imprisonment he is now serving."

The case of the marijuana peddler

"A drug peddler named Angel Vertermatu was arrested on a farm at San José de las Lajas and 2 bags of marijuana were found on him. He was taken to the headquarters of the 5th military district, where he was locked up and kept *incommunicado*. When I pointed out that a case of this kind did not fall under military jurisdiction because there was no law in force empowering military courts to judge such a case, Lieutenant Eustaquio R. del Castillo, who investigated and handled this case, replied that the Revolution was so wide that it had sufficient power to intervene in any matter that it thought necessary.

"On hearing this reply I refrained from expressing any other opinion at the time, but on the morning when the military court was due to try the case, I was asked by Dr. Mario Dolz, a Captain in the Rebel Army who was going to act as president of the court, whether I would serve as secretary. I flatly refused because, apart from the fact that I was aware that the court had no power to try a case of this kind, I also knew from conversations with members of the court that Vertermatu had already been sentenced to death even before he had been tried or his defence heard.

"I told Dr. Dolz that in my opinion, since his court had no jurisdiction and there was no law prescribing the death penalty for traffick-

ing in drugs, to sentence an individual to death without any legal defence and without any lawyer to represent him amounted, legally speaking, to murder.

"The captain smilingly dismissed this as pettifogging nonsense and said that the next day Vertermatu would be sentenced to death.

"The next day when I went to the office I was told that the death sentence had been passed by the military court."

The witness added:

"When the revolutionary government realized what a gross legal error had been committed, it instructed the Central Military Court to quash the verdict and to hand the case over to the appropriate judicial authority—the examining magistrate at San José de la Lajas."

The witness went on:

"The number of arrested people who passed through this military office over a period of between 8 and 10 months exceeded 500 and in view of this enormous number and the fact that I realized that no attention would be paid to my legal arguments that individuals should not be arrested if they had not committed the crimes with which they were charged, I applied several times to be transferred back to the 6th district court in Havana."

A lawyer gave the following testimony on the Sotolongo case

"1. The defence counsel attempted to talk with the accused on April 19, 20 and 21, 1959, but was unable to secure a single interview.

"2. During the morning of April 21 it was announced that the hearing would begin at midnight in a court room at Matanzas.

"3. From midnight until 4 in the morning the 53 accused who were being tried went through the ordeal of confession. At 4 in the morning the hearing was suspended and was resumed the following day at 4 in the afternoon.

"4. A member of the court which began the proceedings appeared the following day as president of the court, while the other 4 members of the army and the militia were not the same as those who constituted the court the previous night.

"5. In this way the second hearing began. The only evidence consisted of a report by a member of the G-2 accusing the 53 prisoners of conspiracy and the commission of counter-revolutionary acts, particularly Sotolongo, Abilio Abreu and another named Fernandez who, it was alleged, were the leaders of the group.

"6. The prosecutor, who was a lawyer, demanded the death penalty for these 3 leaders and between 5 and 30 years' imprisonment for the remainder of the accused.

"7. The defence was in the hands of 3 *abogados de oficio* of the Matanzas law courts. They were responsible for the defence of 53 accused.

" 8. Within less than half an hour they put forward a plea which amounted to asking for the mercy of the court because they had not been allowed to interview a single witness.

" 9. At about 5 o'clock on the same day the court went into recess and by about 7 in the evening the judgement was already being drawn up—death penalty for Julio Ramon Sotolongo and Abilio Abreu, with the added statement that the verdict was automatically subject to review and that appeal could be made to another court.

" 10. But the appeal was never made either by the accused or by the lawyers. The accused were taken straight from the court room to the Castillo de San Seberino.

" 11. The two men who had been sentenced to death were shot at 8 o'clock in the evening.

" 12. Their bodies were taken to the cemetery. Their families were not even given permission to bury them."

Another witness, also a lawyer, testified

" We were informed that hearings were due to be held one hour and often less before they actually opened. It was virtually impossible to read the indictments because there were cases in which there were more than 20 or 30 accused.

" I never saw the verdicts in writing nor were they ever notified to the defence counsel or to the accused themselves. When the families of our clients asked us to appeal against the verdict—which was verbal and communicated to counsel by court employees—we never knew by what date the appeal had to be submitted because we were never told. When the families of the accused insisted that an appeal should be lodged there were cases in which announcements were inserted in the newspapers stating that so-and-so had been sentenced to such-and-such a penalty and that as a result an appeal was being lodged.

" When death sentences were passed, appeals were lodged automatically and in each case the lawyer who had been appointed appeared before the court. But the procedure was so rapid and so contrary to legal principles—bearing in mind the nature of the penalty—that in fact it was only allowed so that it could be said that an appeal had been made."

A housewife commented as follows:

Q. " Were you ever present at hearings of the revolutionary courts? "

A. " Yes."

Q. " Can you describe what you witnessed? "

A. "I was once present at a trial of a young man accused of subversive activities. I remember that he entered the court handcuffed and wearing a blue uniform with a large letter 'P' on his back and another 'P' on each of his legs. He was accompanied by heavily armed guards.

"I noticed that one of the members of the court was constantly laughing while another member was often asleep and had a bottle by his side. All of them wore the uniform of the Rebel Army.

"This case had to be suspended for many months because the main prosecution witness, an individual known as the 'Che Rojo' had fled the country.

"More than once the hearing would be opened and the witnesses would be called and when they did not appear the case would be suspended; the date for the next hearing might be fixed, or perhaps it might not, and the case might simply be adjourned. This was a violation of the procedure, which required that once a trial began it must continue."

A woman lawyer gave the following evidence:

Q. "Were you brought to justice?"

A. "On May 10 or 11 I was charged by a trial judge who behaved properly but knew nothing at all about his job. The same day I asked the prison superintendent, Captain Corujo, for permission to get in touch with a lawyer, but this was refused. Until that date I had been ignorant of the charges against me but there is no reason to be surprised at this because it is the usual practice. To give you some idea of the extent to which persons are denied their rights, I need only quote the case of Gladys Montesinos who was imprisoned in the cell next to mine for one year and nine days without being brought to trial and then one day she was set free because there had been a mistake. It is also common practice for the prisoner to be charged the night before the trial and this charge could be quite different from the indictment which is read out in court."

Q. "Were you able to select your defence counsel?"

A. "On May 13 I was able to get a message out appointing Dr. Jorge Biago as my defence counsel. On May 15 I was brought to trial and 2 days later I gathered that I had been sentenced to 10 years' imprisonment instead of the 29 years which the prosecutor had asked for. My lawyer submitted an appeal within the prescribed time limit but as with all appeals nothing was ever heard of it. In Cuba all appeals are ignored except those against the death penalty and even they are merely used to confirm the sentence.

Q. "Did you have an opportunity of seeing the record of the proceedings and how did you manage to do so?"

A. "The trial judge was not a lawyer and thus unfamiliar with the procedure. I treated him as if he were a colleague and since I was

aware from my professional experience up to the time of my arrest that I knew more about the case than he did I succeeded in convincing him of my innocence and of the injustice of what was about to be done. As a result he handed over the charges against me and I read them in his presence. I was accused of sabotage, collaboration with undefined groups to overthrow the government, subversive propaganda, commanding insurgent groups, illegally trafficking in arms, in short, everything except contact with the CIA. In my case (No. 173/61) the other accused were Lieutenant Juventino Almeida and Mr. Armando Testa. As regards Mr. Testa there appeared to be no charge whatever in the indictment; as regards myself there were two small pieces of paper which had been handed out in the Church of Santa Rita containing an invitation to Mass on July 17 last year—this was recorded as subversive propaganda—together with two packets of cotton which were regarded as supplies. Since the police had found neither arms, nor lists of conspirators, nor inflammable material for sabotage purposes, nor anything which might compromise me in the light of the charges against me, there was a complete lack of evidence. Against Lieutenant Almeida there was, it is true, a plan of the fortress of La Cabana which had been found on his person when he was arrested, but there was nothing to link him with any counter-revolutionary group.”

Q. “What have you to say about your trial?”

A. “No two trials are the same. When there are a large number of accused in the same case—and in most instances they do not know each other—they take their oath before the so-called revolutionary court 2 or 3 at a time or perhaps they do not take it at all in order to save time. In my case we took the oath 3 at a time. Both the defence counsel and the accused were informed of the prosecutor’s conclusion in the waiting room before we went in to the court. It was only during the trial and from the statements of the accused Mr. Testa and the only witness—Captain Juvenal of the 15th police station and a member of the G-2—that I gathered what Mr. Testa was doing in my case. He had been called on the telephone by a friend who had arrived from Pinar del Rio a few days after my arrest but he could not talk to him at that particular moment as he was just taking his wife to the hospital to give birth to a child. He made a mistake in taking down his friend’s telephone number and as a result he ‘phoned my house and the call was answered by a militiawoman. She pretended that the friend (whose name I do not recall) would like to see him because he did not know Havana well—and indicated an address at which he was subsequently arrested.”

Another lawyer

Q. “In how many cases before the revolutionary courts did you take part?”

A. “In more than 20 cases.”

Q. "Did the prosecutor in his conclusion and in the oral proceedings make any specific charges?"

A. "In cases involving the possession of arms and explosives in which I took part, yes, but in the other cases, no. Usually the prosecutor in his statement described the illegal behaviour of the accused. This meant that he usually copied word for word the report of the G-2 which followed the same pattern—a number of references were made to the individual's class background; he was alleged to have links with the United States Central Intelligence Agency and with the Falangist upper clergy and after these general allegations had been made, as they were in every case, they specified the behaviour of which one was accused. These accusations of illegal behaviour were often couched in calculatedly vague language."

Q. "What opportunity did you have to conduct your defence and were you allowed to communicate with your counsel?"

A. "I was allowed no defence facilities at all. The date of the trial was announced on the day on which it was due to be held; the documents were made available only a few minutes before the hearings began; the conclusion had to be formulated verbally during the hearings, the charges put forward during the hearings often did not coincide with the charges in the indictments; to sum up, the atmosphere was such and the coercion so marked that one did not dare to ask the question one would have put in a normal court of justice."

Q. "What forms of evidence are used by prosecutors in the revolutionary courts?"

A. "Prosecutors normally put forward 3 forms of evidence. A judicial confession by the accused which, under the Constitution of the Republic, is not an appropriate means of obtaining a confession contrary to his interest; the indictment which summarizes the investigations of the police which, in turn, are never acknowledged in the courts by the agents who have signed them; and witnesses who confess that they were not eye witnesses of the events in question and have obtained their information from persons whose identity is concealed and by means of procedures which they cannot reveal "because this would involve disclosing the whole investigating machinery of the body to which they belonged."

The Revolutionary courts

Q. "How were the revolutionary courts composed?"

A. "The courts consisted of 5 members—3 officers of the Rebel Army and 2 members of the national revolutionary militia. Of those who served in the Havana district in 1961, one was a lawyer, one was a law student, one was a medical student, and one was a public prosecutor, while the militiamen were workers without any legal background."

Q. "How were the courts appointed?"

A. "They were appointed by the Ministry of Armed Forces."

Q. "Who were the prosecutors?"

A. "The prosecutors consisted of two prosecutors of the Supreme Court and one from the Havana court who belonged to the militia and wore the uniform of the militia at hearings."

Q. "Did the witnesses belong to the militia or otherbodies?"

A. "All the witnesses whom I saw testifying belonged to the Department of Investigation of the Rebel Army (G-2) with the exception of one case in which persons unconnected with the repressive bodies gave evidence, but even so one of them was a well-known militant communist."

Q. "Were hearings held on the appeals lodged by defence counsel?"

A. "The appeals lodged by defence counsel were never heard; in fact throughout the whole of 1961 the court of appeal did not meet once. Moreover it was impossible in practice to employ the appeal procedure because the judgments are not written down unless the death penalty is imposed. The accused is told verbally of the result of the trial the following day when the sentences given to each of the accused at the previous day's trial are read out. This makes it impossible to employ the appeal procedure because, under the Cuban Military Law Procedure Act, the appeal, which must be motivated, must accept the facts on which the judgment is based and can only put forward legal arguments or equity considerations as a ground for changing the verdict."

Q. "Despite this difficulty, were any appeals submitted?"

A. "Yes, most lawyers did in fact submit them. The court did not turn them down but did not hear them either in order to avoid acting unconstitutionally. Nor did it uphold them."

The following affidavit was signed by a lawyer

"I personally took part in over forty trials or cases in the revolutionary courts as a defence counsel between 1959 and 1961. I did so not in order to make money but rather for humanitarian reasons, because most lawyers were unwilling to appear before these courts knowing that they were conducted without respect for the law, for the accused, or for the lawyers.

"The times of the trials were announced unexpectedly so as to surprise the families of the accused and the accused themselves and give them no time to appoint a lawyer. The defence then had to be conducted by an official counsel who was not usually a lawyer at all but was a militiaman or soldier. There were cases in which I appeared as defence counsel when I only arrived after the trial had opened because the accused had been notified that it would start at a particular

time in the evening and despite this it actually began in the morning. It is common practice for trials to begin several hours before the time officially announced and notified to the accused.

"About ninety five per cent. of the persons accused of counter-revolutionary crimes in the province of Havana were, as I was able to see for myself in court, poor or medium peasants or working-class people from the capital or the small towns in the province. I remember one case in which all the accused, 26 in number, were peasants from the areas of San Antonio de los Baños and Alquizar.

"Witnesses favourable to the accused in the few cases in which the counsel was able to bring them before the court or who did not give evidence as hostile as the prosecutor or the court would have wished are bullied and sometimes punished. I saw many witnesses leaving the court rooms as prisoners. Most of those called on behalf of the defence can hardly ever manage to enter the military fortress and installations where the trials are held.

"If a lawyer appears as defence counsel a number of times in the revolutionary courts he becomes suspect to the military authorities, who usually notify the repressive organization known as G-2. As a result his chambers and private house are searched and he himself is taken to the G-2 headquarters for frequent interrogation. The purpose of the authorities is to let the lawyer know that he is being watched.

"The following features are typical of the procedure in the revolutionary courts: (a) the charges and the part of each of the accused in the actions concerned are not defined; (b) usually the accusation is couched in general terms, e.g. "conspiring against the government" or "collaborating" with the previous regime, in the case of trials held in 1959; (c) the principle that the punishment must be related to the actions with which the accused is charged is not followed; (d) in many cases I saw the accused sentenced for actions with which he was not charged or to a longer term of imprisonment than the prosecutor had asked for or again, the actions with which the accused was charged were described differently in the judgment so as to make them more serious crimes."

Another lawyer testified

"I was *abogado de oficio* in the court of Havana and Registrar of Deeds appointed by competitive examination. I had held the first post for 15 years when the new régime came to power in Cuba in 1959. I remember that in one of the cases in which I acted as defence counsel I was only given 5 minutes to study the indictment. The accused was charged with having caused bodily injury to a private individual and the prosecutor had asked for a few years' imprisonment; but during the hearing a witness accused the prisoner of murder and despite the fact that this was not in the charge at all and there was no appropriate investigation at the trial, the accused was sentenced to death on this ground. An appeal was lodged but was dismissed and in due course

the accused was executed. Despite my efforts he was virtually without defence since he was not allowed to bring favourable witnesses and the proof consisted solely of the evidence put forward by the prosecutor which, I can say with complete confidence from my long experience as defense counsel, would never have convinced a court of law.

" At one trial I heard conversations between members of the court and the prosecutors to the effect that it was necessary to pronounce a number of death sentences that night in order to answer the criticisms of Major Che Guevara, the Commander of the fortress of La Cabana, who at that time was responsible for the shootings and the whole so-called judicial apparatus. One of the main reasons for my fundamental repugnance for these courts was their practice at that time (1959) of applying the penal legislation (of the Sierra Maestra) retrospectively. They even applied the death penalty retrospectively to cases and crimes which are not punishable by death. Apart from this the following features were typical of their summary proceedings:

" (a) the charges and the part taken by each of the accused in the actions with which they were charged were not defined.

" (b) usually the accused were charged with general action and crimes which are not defined in any written criminal law such as the crime of " collaborating " with the previous régime. This crime, which was subject at that time to heavy penalties including death, as was the crimes of " disclosure of secrets " for which the death penalty was usually imposed, was not defined in any written law.

" (c) The principle that the sentence must be related to the actions with which the accused was charged was never observed. I witnessed the sentencing of many accused—and I heard of other cases from fellow lawyers in which the accused was punished for actions which were not mentioned in the indictment submitted by the prosecutor.

" (d) Although the procedure was subject to criminal regulation No. 1 issued in the Sierra Maestra in 1958 (and never published in full in the Official Gazette) and to an old law dating from the last century which was used by the Cuban liberation army in its fight against Spain, the charges and the courts only observed these enactments in so far as they found it convenient. Because of my long experience of criminal trials I am fully aware of the seriousness and the implications of the charge I am making—that in the revolutionary courts at that time, i.e., 1959, the most elementary principles of procedure were not observed and the lawyers, the witnesses favourable to the accused and the accused themselves lacked safeguards, were harrassed and ill-treated and did not receive justice. This is still the position in these courts (1960-61) and my evidence for this is based on reliable information from lawyers who arrive from Cuba almost every day. "

A lawyer and notary answered the following questions

Q. "Did you appear before the revolutionary courts?"

A. "Not as a defence counsel, but since I am a member of the Bar Association of Santiago de Cuba I felt bound to attend a number of these trials to see how justice was conducted, especially since the members, of these courts were not lawyers."

Q. "From what you saw, would you say that counsel were allowed to conduct their defence properly?"

A. "They were harrassed. For example in one case the prosecutor walked over to the defence counsel and said: 'That is what you say now, but we shall see what you say later'. On another occasion during the trial of the airmen Castro personally attacked the counsel through the press and television. One of them was Dr. Jorge Pagliery who, as a result, was dismissed from the office he held in the municipality and in the University of Santiago de Cuba."

Another lawyer testified

"Let us take the case of Diaz Balboa in chronological order so as to see the procedure that was followed before and after the trial. I shall never forget Monday January 16, 1961. Never did I think that I would witness such lunacy as I was to see in the ill-famed fortress of La Cabaña in the hours that lay ahead. At about 9 o'clock in the morning when I was already dressed to go to the Havana law courts, my telephone rang and a voice curtly ordered me to 'Come to La Cabaña because the trial of Diaz Balboa is beginning and they are asking for the death penalty ...'. There was no time to lose, since a man's life was at stake. I grabbed my briefcase and a few documents which I had on the accused and drove at top speed along the Malecon to save time. At that period, in order to enter La Cabana, one had to leave one's car right outside, prove one's identity, allow oneself to be searched and explain with an abundance of detail the purpose of one's visit, etc. When I requested permission to enter, I was told that an order had been received not to allow any lawyer to go in because "no trials had been announced for that morning". But I refused to take no for an answer. In the end they let me in ... but only after a number of telephone calls had been made from the gate-post to somewhere within the fortress, and all this took up more than 30 minutes. Finally I was allowed in at about 10:30 in the morning. I literally ran the 400 metres or so between the entrance near the Havana tunnel—which is where the lawyers go in—and the court room. I was allowed to go in and the accused greeted me with an unperturbed look. He had been defended hitherto by a military *abogado de oficio* named Humberto Fernandez Martinez.

" In the reply to the interrogation, nothing important had happened and during the oral evidence the presumed injured party, José Pardo Llada, proved to be unable to identify him nor was he able to pick him out as the occupant of the car numbered 290635 from which the shots had been fired. The accusation was only maintained by the G-2 agents and state prosecution witnesses, José Luis Dominguez Heruta and Felix Suarez Alvarez who claimed to have made a full investigation into the case. Whenever, as defence counsel, I tried to obtain details on where the investigator had obtained his version of the events (which had been public knowledge for over six months), I was ordered by the president of the court not to put my question in this form ... and so I had to remain silent.

" Meanwhile a few yards away another trial was being held in which 4 death penalties had been asked for ... The evidence against the accused was distinctly flimsy and the trial was being held without any members of the public or of the families of the accused being present because nobody had been notified. To all intents and purposes it was a secret trial. The only difference was that large numbers of militiamen were dozing on the wide window sills and in the seats normally occupied by the public ... The last State or prosecution witness had finished testifying without being able to produce any real evidence against my client. There was a short pause to enable the provisional conclusions of the prosecution and the defence to be given their final form. I went up to the prosecutor, Fernando Florez, whom I knew because we had been fellow students at Havana University years ago. I said that I assumed that he would now amend his conclusions because there had been no evidence to prove any clear case of guilt on the part of my client. He answered quickly that ' he had to be shot anyway as a measure of social health and that otherwise there would be a whole wave of violent crime '. And this is just what happened. In his summing up the military prosecutor repeated his demand for death by shooting. This was opposed on the ground that neither of the two crimes with which the accused was charged had been proved. He had not committed a crime against the powers of the State because, as far as we knew, Pardo Llada was not a power of the State. Nor had the charge of attempted murder been proved ... because the Cuban Criminal Code describes the discharge of a fire-arm against a passive individual and failing to hit him as ' the discharge of a fire-arm against a person known '. In any event (assuming that my client could have been proved to have taken part) the crime would have been one of homicidal attempt because only a slight wound was inflicted on the person accompanying Pardo Llada, against whom the attempt was made.

" When the hearing ended I left, first of all shaking the hand of the accused who seemed unperturbed and explaining that as the hearings had gone very well for him there should be no difficulties.

" At about 4 that afternoon I decided to return to La Cabaña. I felt worried and was disturbed by vague fears ... I had to hand in another document in connection with another case in which I was acting. When I arrived I asked the secretary of the court whether he had any news about ' this morning's case '. He looked surprised and said: ' But don't you know, Diaz Balboa is in death row ... '. I was staggered by the news. Death row is of course the block in which they place all prisoners who are due to be shot. I immediately went to the prison together with another lawyer whom I met there, Dr. Mestas, to try to find my client, while he was also looking for a client of his who had been sentenced to death. I knew that I would have to make desperate efforts to save him or even to see him because once a prisoner was in death row nobody was allowed to enter except, in some cases, his wife or mother. After much pleading on my part, a number of telephone calls were made within the prison where my unfortunate client was held. Nothing whatsoever could be done without consulting Heaven knows what high authority which, as a special favour or concession allowed me to go in to see him. At last, flanked by 2 guards with sub-machine guns, I was escorted along the damp corridors—the fortress of La Cabaña is over 300 years old. Finally we arrived at death row. This consisted of a long, narrow corridor with 5 or 6 cells on each side, in each of which was a man under sentence of death. The only ventilation in each cell was through the bars of the door opening on to the central corridor, while they were separated from each other by thick walls of brick-work to prevent one prisoner from communicating with another. The floor was of rough cement. I noticed that the barred doorways were covered from the top to about a foot from the floor by a zinc sheet of the kind widely used in Cuba to roof farm buildings. The only difference was that these sheets, instead of being corrugated, were flat. The men condemned to death could only see what was going on outside by lying flat on the damp floor of their cells and straining to look out through the opening at the bottom of the door. When I went in there was scuffling within the cells. Then a few seconds later faces began to peep out to see what was going on. Some were looking for their lawyer, some hoped to receive last messages from their parents while others again wondered whether it was their wife or child—in all more than 10 young faces looking up from the floor to the corridor. But I did not recognize Diaz Balboa until I heard a weak voice saying ' Doctor ' and I went along to one of the cells at the end. The guards opened the door and I saw how small the cell was—three feet wide and, at the most 6 or 7 feet long. My client was there lying on the floor. The cell contained no furniture or sanitary facilities. There was only a filthy towel on the floor ... and an equally filthy tin containing water. The red revolution does not give its enemies during their last hours even the meanest of beds. When he came to and managed to stagger out of the door he said to me: ' What is the meaning of this ... ?

I have not been sentenced and I have not been told anything and yet here I am in death row . . . '. I answered that it was an injustice and a breach of all human rights. I wanted to tell him that the whole thing was infamous but the armed officer was eyeing me, plainly anxious to end the interview. I promised him that I would lodge an appeal as soon as the verdict was notified to me—they had to notify me in cases involving the death penalty. His last request to me was that I should give his wife Hilda a few lines which he had written on a cigar packet. The message could hardly have been shorter. But the surly guard flatly refused. He said: 'We've been decent enough in giving you 5 minutes when we are not supposed to give you one and that is quite enough'. My interview with the condemned man had ended. As I went out a youth in one of the cells called out to me: 'Please in Heaven's name put in an appeal for me because they are going to kill me.' I stopped for a minute and listened to what he had to say. I promised that I would do as he asked and noted down his name which was José M. Mesa Lopez. I walked out feeling sure that that night there would once more be bursts of firing by squads of militiamen destroying young and innocent lives . . . and so it happened."

IV. THE CASE OF THE AIRMEN

Evidence from four witnesses was selected to illustrate this important case.

Wife of air force pilot

Q. "Can you tell us how and why your husband was arrested and sentenced?"

A. "Let me start at the beginning. My husband was a pilot in the Cuban army air force, having qualified in the U.S.A. After our wedding we went to Spain and on our return, my father told us early in the morning of January 1 that Batista had fallen. My husband then said: 'I'll go along to the airfield to see what is happening.' He had no desire to leave Cuba because there was no reason to. So he remained in the air force and the Government employed him on flights to various parts of Cuba. When Fidel Castro reached Havana on January 8 it so happened that they were on one of these trips, which had taken them to the town of Camaguey. Fidel Castro met them and asked them what types of planes they were flying. They replied that they had B-26s and Seafuries. On this occasion Fidel said the air force had been no trouble because it had not really been able to harm him, but that he had had to carry out his campaign in order to impress the public. He added that he intended to use them to bomb the Sierra, but with toys for the country children. My husband, together with another pilot, Samoano, even flew here to Miami with the films of the revolution. He returned from this flight on

January 9, and went to the airfield the following day and it was then that the pilots in this case were suddenly arrested without warning. They were not taken off to prison but were kept at the airfield while the investigation was going on. The men's families began to make enquiries because we heard the news over the radio. At the airfield statements were taken from all the pilots, who were told that a purge was going to be carried out. This lasted until February 5. On the morning of that day they were going to be taken to Santiago for trial by a revolutionary court. We immediately went to the airfield to find out what had happened. The wives and mothers who were there asked to be able to see their husbands or sons, but when we got there the men were already getting out of a truck and about to board a plane. I demanded to be allowed to speak to my husband and at this point one of the militia, Antonio Sanchez Cejas, shook me by the arm and I fell down. When my mother ran to help me up because I was expecting a baby, this individual stopped her saying that I could get up by myself. I still persisted and he then ordered me to be taken away as otherwise he would throw me out himself. I was then taken for treatment because in my fall I had hurt a foot and my mouth. It was then that a brother of Diaz Lanz, who was a Lieutenant in the Rebel Army, told me not to worry, as the case of the airmen would be settled and there were no charges against my husband. The airmen were taken off to Santiago while we looked around for a lawyer to defend my husband because the intention was to hold a quick trial."

Q. "What steps did you take in Santiago?"

A. "We tried to enlist the help of the clergy—we went and saw Monsignor Perez Serantes, because he had once helped Fidel Castro himself. We asked him to try to have the trial postponed and we also received invaluable help from Father Chabebe, who is now here in exile. But I have forgotten a detail I wish to mention. While we were in Havana the airmen's families tried to find out why they had been arrested. The prosecutor—Antonio Sanchez Cejas—who was the man who knocked me over—called all the members of the airmen's families together and told us that he was going to be the prosecutor, that he knew that all of us were the wives or mothers of the arrested airmen, mechanics and gunners and that as members of service families we must know that the death penalty was quite common, that they were all going to be shot and that it was no use crying because there was nothing that could be done about it. At this the wife of one of the airmen, who was 9 months pregnant, fainted and had to be taken to hospital. Shortly afterwards the trial began in Santiago. It was all taped but all the evidence is still in Cuba ..."

Q. "Were you present at the trial?"

A. "Throughout. The charge against my husband was that he had bombed Sagua de Tanamo. The evidence consisted of a docu-

ment showing that he had taken off from Columbia at such and such a time and landed at such and such a time. At the trial it was conclusively proved that Sagua de Tanamo was not bombed, that the only victim in the town was a girl who happened to be in a house which was struck by a case of ammunition dropped from a transport plane. Sagua de Tanamo was burned by Batista's army and Fidel Castro's army. During two years of warfare only 2 people were killed in accidents, 8 in the fighting and 16 were injured. The conclusion drawn from this evidence was that the air force was in no way responsible. One man who came forward at the trial made the remarkable claim that he had 5.50 bullets in his chest. But he was only one witness. Another man claimed that he had been hit by an air force pilot but in fact had been hit by buckshot while trying to rustle livestock."

Q. "You have described the accusation; can you tell us anything about the treatment of the witnesses and defence counsel."

A. "The defence counsel were seriously hampered in the discharge of their duties. My own husband was defended by Dr. Aristides de Acosta. But counsel were not allowed to talk to the accused before the hearing began. I gather they were only shown the indictment the evening before."

Q. "But were the counsel and witnesses harrassed?"

A. "Well, few of the accused made any statement—I think two of them did so, while the rest of the airmen refused to make any. Among the witnesses brought by the prosecution there was one—I do not remember his name but I think it was Mas Machado—who made a statement favourable to the airmen. As a result the prosecutor had him arrested and I was subsequently told that he had been tried and sentenced to 10 years' imprisonment."

Q. "What other witnesses made statements?"

A. "I do not remember how many, but there was a priest who made a statement in favour of our fellows and as a result was bullied by the prosecutor who asked him whether he thought that the airmen were war criminals since they had bombed the Sierra. The priest replied that he did not think so because they bombed military objectives and there was a war going on. The prosecutor insulted him and told him that he was not fit to wear a cassock. I should add that according to the best of my recollection the experts, pilots, mechanics, gunners and witnesses totalled about 100; the witnesses alone numbered about 80. The mechanics for example had been taken to Santiago as witnesses and not as accused and it was only when they were in Santiago that charges were made against them. The fact was that the mechanics did fly in the planes to see whether anything needed repairing or adjusting, but they were not in the same position as the pilots or gunners. Nevertheless the prosecutor claimed that they too were guilty. On this theory they should also have

charged the men who refuelled the planes. The defence counsel argued that they had not committed any crimes, but the prosecutor maintained that they had. The witnesses for the prosecution told a good many lies. I also saw the prosecutor's secretary talking to the witnesses during the hearings. The prosecutor spoke on the radio for an hour every day to stir the people up against the airmen, and the newspapers *Surco*, *Sierra Maestra* and others, including *Revolucion*, said they were not airmen but murderers because they had dropped bombs. The court deliberated and since it could find no evidence—for the good reason that there was not any—an attempt was made to manufacture some, but when this failed there was no alternative but to acquit them. They were thereupon taken to the Boniato prison to await the order for their release. Fidel Castro was informed of the court's verdict and issued a statement to the effect that he was unable to accept it and the case would have to be retried. At the new trial the prosecutor was Dr. Augusto Martinez Sanchez, while the president was called Piñeyro ("Red Beard") I believe. When the new trial opened, one of the lawyers, Pena Justiz, announced that a very serious fact had come to his notice, namely that the court had already decided on its verdict and that 8 of the accused had been sentenced to be shot. In other words the case had been judged even before the retrial began. They were unable to bring this verdict in, thanks to the efforts of Father Chabebe, but there can be no doubt that they had the spot ready where the shootings would have taken place. It was on a Saturday afternoon that we discovered that they had been sentenced to 30 years. The retrial was a farce. The prosecutor insulted Dr. Aristides de Acosta and he had to put up with violent abuse from the communist audience. In fact it seemed as if the lawyer were being tried, because the accused themselves were not present at this retrial. They remained in Boniato prison. We asked to be allowed to see them but permission was refused. Finally one Wednesday we were allowed to see them for exactly 5 minutes after queueing up for more than 9 hours. We had to buy things for them and bring them food. Finally they were taken, closely bound, to Havana by train."

Q. "Did you see them and how were they bound?"

A. "Some were bound with ropes while others were handcuffed. They were taken to El Principe and when they got out of the train at the station there, they were insulted and molested by a crowd which was waiting for them. We were not able to talk to them. We tried to follow by car because we did not know where they were being taken. My husband was tied to another airman and when they got out of the truck their arms were bound. All their belongings and the things we had bought for them were taken away. They were virtually naked. Even their underwear was taken. My husband had on a pair of trousers which were held up by a piece of string he had managed to find, but they had no buttons on them. We tried to get

camp beds for them. The commander of the prison, who I think was called Joaquin Garcia, said to us: ' Don't cry so much. Wothin 4 months or so you will have forgotten your husbands, baccuse you women need a man to keep you happy '. In the prison it was almost impossible to see our husbands except through a tiny window. The people in charge did not like us being there because there were also many common criminals. Another thing, when we visited our husbands we were searched and insulted by being called ' Esbirras ' (police hirelings). They were there for 4 or 5 days. After that they were taken away. When they boarded the plane there was some jostling because there were a large number of them and I remember that an officer called del Rio told us not to worry because it was not worth going to all the expense of keeping them in prison, to that if they tried to escape theywould be riddled with bullets. On the Isla de Pinos we had to buy them new clothing and everything else because all their belongings had been taken away from them at El Principe. "

Ex-soldier and airman, member of the revolutionary court

Q. " Can you tell us in detail about your part in the trial and its consequences? "

A. " Let me give a brief recapitulation of the circumstances which led to my appointment as a member of this court. I was studying engineering at Havana University but gave this up to join the air force cadet school, from which I graduated in October 1949, Because of my democratic convictions I conspired from 1952 onwards against the recently established dictatorship of General Batista, and as a result I was sentenced by a court martial after a very summary trial in 1953 to a term of imprisonment of 2 years, 4 months and 1 day. I was arbitrarily transferred from the military prison at La Cabaña to the prison for common criminals on the Isla de Pinos, where I met Fidel Castro who was serving his sentence after the attack on the Moncada barracks in 1953.

" Owing to the efforts of Dr. Pelayo Cuervo Navarro, who was subsequently murdered by the police of the Batista tyranny, I was included in the Amnesty Act for political prisoners in 1955 and set free. I continued conspiring in Cuba until November 1956, when I went to Miami in search of help for the revolution. While in Miami I turned down a number of invitations which I received from Fidel Castro from Mexico. In pursuit of this aim I landed on the Via Monumental in Cuba with a plane loaded with arms on August 6, 1957 and took part in the unsuccessful uprising of September 5, 1957. I returned to Miami in January 1958. In that year I took part in the Pact of Caracas as representative of the air force opposed to Batista. It was at this meeting that Dr. Manuel Urrutia Lleo was appointed President of the Republic of Cuba in Arms. Having received further invitations from Dr. Fidel Castro, who had been fighting in the Sierra Maestra since December 1956, I decided as a

military airman and as the representative of my fellow military airmen to take 2 P-51 planes to the "Frank Pais" second eastern front. While I was there I did not find any evidence of marked communist activity.

"When Batista fell on December 31, 1958 I went to Havana, arriving on January 8, 1959. There was complete anarchy and a small group of communists were already beginning to take over the key posts in the government.

"As a military airman I was selected for service in the newly established Revolutionary Air Force.

"The pilots in the former Cuban air force who had compromised themselves most under Batista went into exile, leaving on active service a group of pilots whom Fidel Castro himself had absolved of any criminal responsibility during a hearing held at Camagüey during the early part of January. However, after a violent propaganda campaign about the criminal deeds of Batista's air force against the defenceless civilian population, especially the peasants, most of this group of pilots were arrested and brought before a revolutionary court. The court was composed as follows: the president, Major Félix Lugerio Peña, commander of the "Frank Pais" operational battalion, commanding all the revolutionary forces in Oriente Province; members of the court, Lieutenant Adalberto Paruas of the Judge Advocate's Department, legal expert, and myself as the expert on air force matters. In view of the democratic convictions of the members of the court and the violent propaganda which had preceded the trial, these appointments seemed to me to be nothing less than a clever snare. Either we condemned a group of pilots whom Castro himself had exonerated at Camagüey and against whom there was no evidence, or else we followed the dictates of our conscience and acquitted them. In the former case we would make ourselves the accomplices of the régime in a pseudo-legal murder, while in the latter we would have to face an inflamed and irrational public opinion which would make it easy for the government to charge us with being "traitors to the revolution" and at once eliminate us from the revolutionary scene."

Q. "Can you describe the course of the trial?"

A. "The proceedings followed a fairly normal course. As prosecutor, the government appointed Lieutenant Antonio Cejas, Judge Advocate of the Revolutionary Air Force, who had remained in exile in Mexico throughout the struggle against Batista and who owed his post as Judge Advocate to his friendship with the commander of the Revolutionary Air Force. This man, who had acquired no lustre during the revolution, was determined to make his mark now at any cost. The defence was in the hands of Captain Aristides de Acosta, professor at the cadet school, Drs. Peña Justiz and Pagliery, both professors at the law school of Oriente University,

and Drs. Portuondo, Recaredo Garcia and Solis de Leon, who were practising lawyers. The accused were members of the former air force.

"The hearings lasted for more than 20 days while the prosecutor brought forward an interminable amount of evidence. Most of it was false, for example the claim that the church in the village of Güeybano had been bombed and that the village itself had been destroyed, when in fact there had never been a church there and the village was partly burned down by the infantry of Batista's army on the orders of Major Martinez Morejon. Several times the court had to ask the prosecutor not to call the accused by such hostile names as war criminals, murderers etc., as he did addressing the public and not the court.

"The prosecutor's charge amounted to the crime of 'genocide' which was not covered by Law No. 1 promulgated in the Sierra Maestra by Major Humberto-Sori Marin, Judge Advocate-general of the Rebel Army, who was later shot by Fidel Castro in 1961. In passing judgment the court was bound by the wording of this law. The prosecutor succeeded in proving that all in all, Batista's air force had killed 8 civilians and peasants and injured 16 more, but was unable to establish any relationship between these deaths and injuries and the flights carried out by the accused as established in the captured records of Batista's air force. In fact the court found that many of the bombs were defused before being dropped, using the device which is provided when pilots have to jettison their bomb load in an emergency. From these unexploded bombs the Rebel Army extracted the TNT it needed to manufacture anti-tank mines and other explosives for use against Batista's army. The defence argued its case brilliantly and virtually made the prosecutor look ridiculous. One of the defence counsel asked which would be the greater act of genocide—the actions which led to the death of 8 peasants, in which there was a remote and unproved possibility that the accused had taken part, or the indiscriminate shooting of 22 pilots and mechanics because of this remote and unproved possibility. The court then withdrew to deliberate.

"Being aware of our responsibilities and faithful to the principles which had led us to take up the struggle against tyranny, the members of the court independently and unanimously decided to acquit the accused of all responsibility. Some hours before passing sentence we were visited by the prosecutor who, fearing that his career might be ruined, brought the news that Major Ernesto Guevara, known as 'el Che' had sentenced a Spaniard accused of the same crime of genocide to 20 years' imprisonment. In this way the prosecutor tried to influence the court and secure an arbitrary and unjust verdict which would go down on page 1 of his book of 'revolutionary achievements'. But the court acquitted the accused."

Q. "How did the prosecutor react to this acquittal?"

A. "He went to the radio station to stir up the people against the court and the accused while a small group of communist agitators went through the streets trying to get together a crowd to protest against the acquittal but they failed to do so.

"Meanwhile the military commander in Santiago de Cuba, Major Manuel Piñeyro, alias Red Beard, ordered Captain Pepin Lopez, who was responsible for guarding the accused not to set them free. Captain Pepin Lopez, who is now in exile, still has a copy of this order.

"That night Fidel Castro in a television speech declared his disapproval of the court's verdict. He did so in his capacity as Prime Minister, a post which he had held since the resignation of Dr. José Miro Cardona. The following morning the members of the court were ordered by higher authority to appear before the Joint General Staff in Havana. Fidel Castro then appointed another court made up of men on whom he could rely absolutely to convict the accused. This court consisted of Majors Manuel Piñeyro (Red Beard), Belarmino Castilla (Anibal), Carlos Iglesias (Nicaragua), Demetrio Monseny (Villa) and Pedro Luis Diaz Lanz. This court sentenced the accused to 30 years' imprisonment."

D. "Did this court get in touch with the members of the previous court?"

A. "No, they started afresh. Major Peña remained in Santiago de Cuba for a few days in order to calm down his troops, who wanted to fight against the communists, while I went back to the Air Force in Havana. There I had an interview with President Urrutia and told him what had happened. He gave me an undertaking that he would do something about it. I went back to Santiago where the farce of the retrial had already begun and together with Peña decided to stick it out in Cuba. We flew to Havana, but were not given an opportunity to appear before the general staff. I took over the command of the Combined Tactical Group to which I had been appointed. A few days later, about half a block from my offices in the Air Force building, Major Peña was found dead in his car with a .45 bullet in his heart. Only a few minutes before he had been chatting with me in my office."

Q. "When you left Major Peña was there anybody else with him?"

A. "Yes, his nephew. According to him Peña went out on an errand and left him waiting in the Air Force building."

Q. "What is your opinion about the death of Major Peña?"

A. "I have not come to any conclusion about it. His problems were political in character—he was not a man with any personal problems. He left a note saying that his decision was his own and that he ought not to have mixed up in the revolution ... but this might have been forged."

Q. "Did you see Raul Castro after these events? What was his attitude?"

A. "I would say that Raul Castro was extremely pleased. It was one obstacle less on their path towards totalitarian communism."

Q. "What comment did Fidel Castro make?"

A. "He reacted in much the same way as Raul Castro. That night he went to watch a pelota game. Neither he nor Raul went to the funeral and neither of them sent a telegram of sympathy to Major Peña's mother. Despite this, a huge crowd turned out for Peña's funeral in Santiago. He was greatly loved by the people there. However, the press made virtually no mention of it."

Q. "After these events what happened to you?"

A. "For some time I remained in the Air Force. The commander of the Air Force, Pedro Luis Diaz Lanz, had been dismissed and had gone into exile. His place was taken by Major Juan Almeida and I went on conspiring in Cuba. After a short time I requested permission to fly for Aerovias 'Q' in order to earn some more money. One day when I flew to Key West I discovered that Diaz Lanz had come there to meet me. A member of the DIFAR who had been on board the plane reported on this when we returned and my position became impossible. Already Major Hubert Matos had been arrested and on December 15, 1959, on a flight to Key West for Aerovias 'Q', I decided to remain in exile in order to avoid being arrested on my return."

Q. "Between the trial and your departure from Cuba, were you persecuted or checked up on?"

A. "Both before and after the trial. There was a time when I was not even allowed to fly."

Q. "What happened to the other member of the court?"

A. "I do not know anything about him."

Q. "Were there any reprisals against your family after you left Cuba?"

A. "When the plane came back without me my house was searched and ransacked. Afterwards my wife, who had recently had an eye operation, was persecuted and frequently searched. They broke her down psychologically and I do not think she will ever recover completely."

Priest

Q. "Can you describe the proceedings at this trial?"

A. "The trial lasted a long time, about 20 days. The airmen's families called on the Archbishop asking for mercy for the accused. As they knew that I had a good deal of influence with the rebels they also asked me to be present at the trial. The first part was impeccable but the same cannot be said of the second part."

Q. "What do you call the first part?"

A. "The part leading up to the acquittal. The second part took place when the government called for a review of the sentence."

Q. "Do you recall the charges against the pilots?"

A. "The prosecutor, who did not know what he was talking about, accused them of *genocide* in order to attract international attention. But he himself claimed during the trial that in two years of war the pilots had killed 8 people and injured 13."

Q. "What verdict did the court bring in?"

A. "An acquittal and the court declared that the alleged events had not taken place. In other words, the first stage of the trial was held properly. However, there were occasions when the prosecutor in order to earn praise ordered 2 or 3 witnesses to be arrested and the president had to intervene in order to set them free."

Q. "What happened during the second stage?"

A. "The verdict was given at 6.30 p.m. It was an acquittal. Cejas had a quick talk with Raul Castro because Raul knew all about the case and the pilots were retained in custody. Their families thought they had been set free. After his talk with Raul Castro, the prosecutor, Cejas, went to the radio station, CMKC, to protest and stir the people up against the court's verdict."

"Later, members of the communist party organized popular demonstrations and criticized the verdict and the court over the radio. Within a matter of hours it was learned that Fidel Castro thought it necessary to hold a retrial. A few days later, another court presided over by Major Manuel Piñeyro began a second hearing. The prosecutor was the then Minister of the Armed Forces, Augusto Martinez Sanchez, who had been sent specially from Havana. During this second stage the pressure on the defending counsel from the specially drilled crowd in the court-room was much greater. The prosecutor, Martinez Sanchez, concentrated almost entirely on insulting the counsel. In fact Dr. de Acosta, one of the defence counsel, had to withdraw because of the insults he received from the prosecutor and which the court did nothing to check. During the trial the lawyers learned that it was intended to shoot 8 of a total of about 30 officers and mechanics. This fact was made public by Dr. Pena Justiz and this perhaps saved the lives of these 8 men, because his revelation disconcerted the court so much that it was unable to pronounce such a sentence. When the hearing ended the court did not announce its verdict despite the fact that these courts usually did so within a matter of minutes. Some days went by before the sentence was announced, but it was never communicated to the defence counsel. According to what I could gather in Santiago de Cuba, this procedure was followed on the government's instructions."

Q. "Can you tell us anything about the mechanics who were accused together with the pilots?"

A. "Yes. Apparently they were brought to the trial merely as witnesses but later they were accused too and then sentenced."

Lawyer and notary

Q. "Were you present at the trial of the airmen in Santiago de Cuba in 1959?"

A. "Yes."

Q. "How was the defence allowed to exercise its rights?"

A. "Counsel were coerced by criticisms directed publicly at them by Castro and other officials of the government through the powerful communist propaganda machine. I recall that the airmen were acquitted by the court. But they were not released on direct orders from Castro, who said they could not be set free because they were criminals.

"Dr. Aristides de Acosta, who brilliantly defended the airmen, was dismissed from his post and persecuted as a result, in order to serve as a warning to any lawyers who might in the future defend anyone accused of not supporting the government."

Q. "What other collective persecution of the lawyers in Santiago de Cuba do you recall?"

A. "In this actual case of the airmen, I remember that when the Bar Association of Santiago de Cuba learned that the acquitted airmen had not been released it protested and this produced direct criticism from Castro himself. Some time later the Bar Office was visited by a group of lawyers who supported the government (there were about 8 or 10 of them) who demanded the resignation of all the members. They were told that there was no reason why we should because we had merely done our duty. Later they came back to the Bar Office and threatened to denounce us to public opinion as counter-revolutionaries and bad Cubans. Accordingly all the members of the board handed in their resignations, except myself. Henceforth I was marked down as a counter-revolutionary and my house was searched 3 or 4 times without any warrant. The searches were carried out by force and I had to put up with all kind of persecution."

V. VIOLATIONS OF PERSONAL FREEDOM

A. MASS ARRESTS

After the events of April 17, 1961, thousands of persons were arrested. More than 5,000 were confined in the Sports Palace alone. The violence with which these large-scale arrests were carried out by the Castro regime has been amply proved.

Sub-machine guns used to be fired off in the direction of the prisoners in order to keep them cowed. According to several wit-

nesses, these burst of fire killed a number of people and wounded many more.

One woman witness stated

" We were then lined up in groups of 15 women and 15 men and taken by bus to various prisons such as La Cabaña, El Morro and El Principe. I myself was interned in the latter. There we were put in a makeshift cell while they took out the common criminals. We then went in in batches of 85 or 100 until there were 485 women in four halls. For the first 4 nights we slept on the floor and we were then issued with some blankets, but there were not enough for even half the women.

" Each of these large cells contained a toilet and at the end of a week we were allowed to wash ourselves for the first time. The food was inadequate and not only bad but rotten. It consisted of meat hash and was full of hair, which disgusted me so much that for 5 days out of the 9 I was in prison I had nothing but bread and water. The water was distributed by a common criminal and handed out in a condensed milk tin—one tin for every 10 women.

" In cell No. 3 on April 21, two of the prisoners who were housewives and had been denounced by their district committees and who were both pregnant, one of them 6 months and the other 3 months, had miscarriages without any medical care.

" The atmosphere there was terrible. We were kept in a constant state of mental torture and at all hours of the day and night militiamen would come and tell us what was going to be done with us. Major Escalona used to visit us at night and tell us that we would be tried and sentenced by the People's courts. This, among other things, caused three of the women in my cell to get out of their mind."

The witness concluded:

" This went on until half past one on the morning of April 26, when I was set free without any explanation being given for my arrest."

All the persons who were involved in these large-scale arrests carried out without any discrimination were card-indexed by the G-2.

Another witness employed at the Sugar Institute described how she, together with a group of her fellow workers, was arrested on April 17, 1961. The arrests were carried out by militiamen and no explanation was given. The witness said:

" At about 11 o'clock at night the militiamen searched us at the Sugar Institute itself, forcing us to strip and went through all our belongings. They made the whole process extremely humiliating. The militiamen then took me from the office to my home and in the space of a few hours carried out 3 searches and all they found was a pastoral letter, a few newspapers, my passport and some loose change which I kept in the wardrobe.

"After the last search they left me at home apparently at liberty but during the evening of Tuesday, April 18, militiamen once more came to my home and ordered me to accompany them to the Sports Palace.

"All these militiamen were armed with Czech sub-machine guns and their manner was threatening despite my being a woman and absolutely alone."

This witness was later transferred to the Blanquita theatre in the Miramar quarter. She went on:

"I was put in the theatre lobby and so I could see the arrival of thousands of people of all ages and social classes. On entering the theatre I was astonished to find thousands of arrested men inside.

"The male prisoners were not given any food, but the women who had some money on them were allowed to buy various things that were hawked about by militiamen who took advantage of the situation to overcharge us grossly. The spectacle of thousands of hungry men under the sub-machine guns of the militiamen was like something out of Dante's Inferno.

"All the prisoners were card-indexed and their fingerprints and photos were taken.

"On Sunday, April 23, a start was made on transferring the prisoners to the fortress of La Cabaña. On getting out of the bus we were divided up into groups of four and told that we were going to face the firing squad in the fortress. This announcement, which was made in the gloom of the early hours of the morning, was a tremendous shock and we were in fact actually taken up to see the wall against which the executions took place.

"We saw hundreds of men and women in prison there, but as there was no room for our party it was decided to take us away in another bus to the Castillo del Morro, another military fortress nearby.

"On arriving we saw that the moat of the fortress was full of arrested men of all ages, races and social classes. After card-indexing us for the third time, we were taken to the prison set aside for women, which already contained hundreds of women prisoners. To give some idea of how closely we were packed in I need only say that my section of the women's jail contained about 500 women who had to sleep on the floor without any hygiene whatsoever. In order to move about one had to step over the sleeping bodies.

"Our food consisted of a tin of watered milk and a slice of hard bread.

"There I developed a high temperature through a throat infection and since there were no medical facilities or medicines I asked for some bicarbonate and salt for my throat but was unable to obtain them.

" After about a week in this castle we were taken to the Castillo del Principe at 2 o'clock in the morning of April 29 or 30 and I remained there until May 7 when I was released.

An administrative secretary in judicial service testified

" At the Castillo del Principe the loudspeakers kept broadcasting a record which said: ' If the invasion continues we shall go on shooting. '

" In the castle there were whole families, including children who had been taken from their homes in the middle of the night. For example in my cell there was a girl of 12 whose aunt had been arrested and because this girl and her mother happened to be staying there, they too were taken away. The girl had to endure this atmosphere of terror for 4 or 5 days and she was released only because her father, who was divorced from her mother, was a militiaman and was able to get her out. "

A teacher of a secondary school gave the following evidence

Castillo del Morro

" We were placed in the moat of this castle, which is about 15 feet deep and surrounds the entire fortress. In colonial times it was used as a means of defence, and the moat was filled with water whenever the castle was attacked. The walls had been hewn out of the rock and part of the bottom of the moat is also of rock, but elsewhere it is covered by sand left behind by the sea and usually this sand is damp.

" During the following 3 days we were given nothing to eat or drink, after which they threw down a water hose but as the water was left running it covered the bottom of the moat and so made things worse than ever. All the prisoners in the moat were men aged anything from 14 to 90.

" From the fourth day onwards we were given a tin of water and condensed milk at midday and in the evening a meal consisting of Russian tinned meat together with rice and black beans. But in order to obtain this meal we had to queue up for 6 hours and many men fainted because they were so weak after 3 days without any food whatever.

" Naturally there were no sanitary facilities in the moat and we had to bury our own excrement in order to avoid disease. I saw several men suffering from bouts of fever without being given any medical attention. I also saw two men who went out of their minds because of the things they saw. "

A workman stated that he was one of a group of 25 transport workers who were arrested and taken to the Sports Palace on April 17. He said:

"We were taken down with our hands behind our heads and we entered the building under the sub-machine guns of the militiamen who shouted insults at us. An officer appeared who said that we would not stay there but would be taken to La Cabaña. On reaching the military fortress at La Cabaña the same thing happened—we were told that we would not stay there because there were too many prisoners there already. We were then taken to another military fortress, the Castillo del Morro. They put us in the moat of the castle because the cells and huts were used for women."

B. INDIVIDUAL ARRESTS

A salesman testified as follows

"... When they came back to arrest me in the early hours of June 19, my house was surrounded by militiamen carrying sub-machine guns who tried to knock down the front door and shouted threateningly: "Open up at once; don't try to get out because the house is surrounded". I tried to make them identify themselves but this only made them angrier and my wife opened the door. They immediately entered the house and carried out a minute search. They opened all the cupboards and closets and read all my letters and business papers—I am a publicity agent. They then asked us for our passports and car keys but they were unable to take either the keys or the car because I had sold the car beforehand. This search went on for 2 or 3 hours and then they took me away in one of the police cars. These cars contained a number of other arrested people and in all 14 of us were taken along to the G-2 building on 5th and 14th Streets. There all my personal belongings and money were taken away. We were then put in a small room which already contained about 20 people who had been there for 3 or 4 hours. We were then called out for our particulars to be noted down and after that we were placed in several different rooms. These rooms were about 12 by 12 feet and contained nothing except 8 metal bunks which were in very bad shape and many of them had caved in altogether. Accordingly most of us had to sleep on the floor. We were completely cut off from our families. Our food consisted of a little rice and meat twice a day—at 11 in the morning and 4 in the afternoon. We wore nothing but our underwear because of the great heat in that room and took our shoes off in order to keep the beds clean. An order was issued that we should be given the food that our families had been bringing all week and we finally received it at the end of the week when it had already gone bad. I remained there for 35 days and I was not told why I had been arrested until the last day.

(9)

The number of cases of persons arrested without any warrant from the appropriate authority, without any proper notification of the reason for the arrest and without allowing the defence to exercise its

rights has reached alarming proportions in Cuba. In fact it can be said without fear of exaggeration that arbitrary arrests are now commonplace in that country. These arrests are usually due to spiteful denunciations by supporters of the Castro régime who hope to gain some advantage thereby. One example is provided by the case of a journalist and lawyer who had exercised his profession in Havana for more than 30 years. This man, who was on the editorial staff of one of the biggest Havana daily newspapers, was denounced by a former friend of his. The witness stated: "The denunciation was based on a letter which had been found in a file and was signed by the former Cuban Ambassador to the United States. In this letter he mentioned a private conversation I had had with him in New York. The person who denounced me used these statements by a third person to claim that I had been an active supporter of the Batista tyranny. I was taken to a police station. Many people, most of them in the revolutionary government, tried to have me released. The person who denounced me was overcome by last-minute remorse and informed the officer on duty that he withdrew the accusation. But it was no use. The Captain in charge of the police station was a former car-park attendant. He was illiterate and a man of few words. Without drawing up any charge he had me sent in a barred van, as if I were a dangerous criminal, to the prison at the Castillo del Principe. I remained there for 53 days in circumstances of the utmost hardship, rubbing shoulders with common criminals." The witness went on: "I demanded in vain to be told what the charges against me were. In fact I never did find out. At the end of 53 days Fidel Castro himself set me free in a television programme, claiming as usual that it had all been a mistake. I came out of prison as I went in, without any record being made and without any document being given to me. Some days later the Judge Advocate in the prison told me confidentially that there had been no charge and no judicial proceedings and in fact no proceedings of any kind because there had been no evidence whatever.

"There were and still are many cases like mine in Cuba. I would say that in 60 per cent of the arrests no ordinary or even special judicial procedure is followed."

An elderly housewife stated

"At about 5 p.m. on March 18, 1961, 5 cars belonging to the G-2 pulled up outside my house and the police broke into my home without any warrant of any kind either to search my home or to arrest me. I was kept in the house for several hours while my husband, on returning home, was kept outside in the street.

"When he was arrested he was immediately taken to the G-2 building while I stayed at home until 11 o'clock in the evening, when I too was taken away to the G-2 building. Members of the G-2 had occupied my house in the meantime.

"I was tried together with a number of other prisoners, but my husband could not be present because he fell seriously ill in the prison at La Cabaña."

Q. "Why were you arrested?"

A. "We were arrested because my husband and I have the same names as our sons, whom they really wanted to arrest. When they could not find our sons they arrested us instead."

Q. "Were you allowed to bring witnesses?"

A. "No. I remember that when Major Humberto Sori Marin of the Rebel Army (who was tried at the same hearing) made his speech to the court, he called Fidel Castro and Raul Castro as witnesses. Their names were called out but they did not come.

"The trial lasted for about 12 hours and at the end of it I was sentenced to 30 years imprisonment."

Q. "Then how are you here now?"

A. "I was set free without any explanation on April 25, 1961. I was not even given a document to confirm that I had been released.

"This surprised me because I knew that I had been sentenced to 30 years and this had been confirmed by the Brazilian Ambassador, who went to the Ministry of State to enquire whether I could leave as a guest of the Embassy. He was told that I had been sentenced to 30 years and could not be released.

"The only possible explanation for setting me free, especially in view of the fact that they did not give me any document confirming that I had been released, is that they were trying to find my sons and thought they were bound to try to get in touch with me, whereupon they could be arrested.

"I finally sought asylum in the Venezuelan Embassy because one of my sons was already in the Venezuelan Embassy. I entered the Embassy on June 19, 1961 and left Cuba on September 12."

Q. "What happened to your husband?"

A. "When I was set free I went to see him in the guard room of the Columbia military hospital, where he had been placed after having suffered three heart attacks in La Cabaña prison. He died on June 12."

Q. "How old are you, and how old was your husband?"

A. "I am 65. My husband was of the same age."

(45)

One of the methods employed by the Castro régime to terrorize the Cuban people is the simulated execution. All the preparations for the execution are made, the victims are stood up against a wall and the order is even given to fire. But the shots are fired wide.

A shop worker stated that when he was arrested he was taken to "the local cemetery and put up against a wall in the cemetery as if

to be shot, although the accusations against me were completely false. But the execution was not carried out and I was taken to the nearby barracks ”.

This witness was kept a prisoner for 22 days without any charges being made or any proceedings being initiated.

(61)

One of the witnesses was arrested because he had employed men who had been soldiers in Batista's army as cane cutters on his sugar plantation. This was regarded as a counter-revolutionary activity because, said the witness: " According to them nobody should employ anyone who had belonged to the old army ”.

The witness was arrested, together with a number of other persons and taken to the headquarters of the Fifth Military District. The witness added: " They claimed that the insecticide which was used to spray cucumbers—and which as it had a sulphur base was yellow in colour—was in fact TNT or G-3 plastic explosive and that I deserved to be shot ”.

(63)

A doctor from Havana described what happened to him as a result of the events of April 17, 1961.

" On April 18 of this year I was arrested while I was working in my consulting room... where they carried out a thorough search and where I had to endure the offensive behaviour of a Lieutenant called Trujillo... who threatened me that unless I talked I would be shot instead of merely being sentenced to 30 years' imprisonment.

" From the G-2 building I was taken with a large number of other prisoners to the La Salle College which had been turned into a prison. "

The witness stated that when an air-raid alarm was sounded the lights of the college were put out and the detainees were stood against the wall in one of the lecture rooms.

" Lieutenant Trujillo then said that when the first bomb fell we would all be shot as a reprisal. His threats went so far that some of us were taken out on the roof-top terrace of the building at midnight and told that we were going to be shot. To add to the gravity of the scene they brought along a Mexican priest who was also a prisoner so that those of us who were Catholics could receive the last consolations of our faith. The priest, who was a very old man, showed signs of being under terrible strain.

" Subsequently this scene was repeated, but with militiamen wearing the clothes of the La Salle Brothers and jokingly imitating the words and gestures of the real priest. We were kept busy moving about from one room to another. "

A housewife replied to a question

Q. "Did you suffer any political persecution in Cuba?"

A. "I was arrested and charged because I complained about an unjust fine which had been imposed on somebody else and because I told the authorities that we were worse off than under Batista. They threatened to arrest me and shortly afterwards a group of armed men drew up outside my home in two police cars and took me to the police station in the Military City, formerly the Columbia camp, and drew up a report which I refused to sign because it contained so many lies. I was released on bail and then left the country without waiting for the trial to be held because I was reliably informed that I would receive a heavy sentence."

A girl student testified

Q. "When did they arrest your father?"

A. "On December 20, 1960."

Q. "Why was he arrested?"

A. "He was accused of being a counter-revolutionary leader. He was in fact arrested and his passport taken away because he owned a sugar mill. He could not go on living in Cuba because he had lost everything. So he decided to escape and a friend of ours—well, I think he was a friend—helped him to escape in a launch and it was then that he was captured at Varadero..."

Q. "How often did you visit your father in La Cabaña?"

A. "I started looking for him in December as soon as he was captured. At first 10 or 12 days went by before we could find out anything about him. We began to make enquiries and we were always told that they knew nothing about him, that he was not there—anything to put us off.

"We went to the G-2 headquarters and there too we were told that he was not there, but as we were walking along the sidewalk my grandmother and I looked up at the building occupied by the G-2, saw somebody waving a handkerchief and on looking more closely saw that it was father. My grandmother and I went in and enquired about him. We were told to wait. They said it would not take more than 10 minutes and at the end of half an hour we were told that we could see him. We talked with him for 15 minutes and they took down everything we said. He was kept *incommunicado* for 6 days. When he was captured he was beaten about the kidneys..."

A woman lawyer gave following evidence

Q. "Were you yourself imprisoned for political reasons?"

A. "I was arrested on April 17, 1961 at 9.30 p.m. together with a rebel Lieutenant named Juventino Almeida Aviles, who is still in

prison on the Isla de Pinos. My house was broken into by enough men armed with sub-machine guns to suggest that a fight was imminent. It was searched down to the last piece of paper. We were taken along to the G-2 building on 5th Avenue, 14th Street, in Miramar, Marianao."

Q. "Were you interrogated immediately?"

A. "No, they never do that because this is one of their ways of mentally torturing their prisoners. I spent 17 days there. First of all I was in the headquarters building itself in a part known as the "dog-house". About 90 women were packed into a small room containing some double bunks which were all broken down but were useful to the police because it meant they could put more people in the room. The majority of us had to stand up and from time to time we were able to sit down—there was so little room that we could not all sit down at the same time. There was no ventilation because all the windows had been walled in. Nor was there any artificial or natural light. We had to share the only bathroom with the men at specified times. We were constantly awakened at night by shouts in quite coarse language because, as one of the men told me himself, they were determined that we should not sleep while they had to work. The food they gave us was always cold and there was no supply of drinking water."

A male typist testified

"On the morning of April 17 I worked at the Havana law courts and on leaving was arrested by a militiawoman named Margarita, a fellow employee of mine in the third criminal court. I was then taken to the guard room at the Supreme Court together with about 100 other people who worked at the Court building. At about 2 in the afternoon the men and the women were divided into 2 groups and taken to the cells in the Havana law courts. At 5 in the afternoon I, and about 15 other people, was taken in a closed van to the Sports Palace but we were not allowed in because the place was completely full and so we were taken to the prison in the fortress of La Cabaña, where we arrived at about 7 at night. We were left in the open until 5 in the morning when we were placed in various cells which normally held about 80 people whereas there were 142 of us with the result that half of us had to sleep on the floor. I remained there for 11 days. For 9 days the food was very bad and during the first 2 days they only gave us water. I was in cell no. 8. On April 19 they shot Mingo Trueba and on April 20 they shot a man named Nongo at quarter to two in the morning. I heard 7 executions take place, because they shifted the place of execution to the wall behind cell no. 8. The condemned men were brought in jeeps and ordered to get out and stand opposite the firing squad. Meanwhile the worst insults than can be imagined were heaped on them. After the volley each man was given the coup de grâce. I spent 11 days in prison and was given the order for my

release on April 27 and was actually set free the following day at midday."

A secretary in the law courts related her experience as follows

"We were taken to the Sports Palace where there were about 10,000 people or more from all walks of life. There were doctors, lawyers, priests, nurses, shop-assistants from the big stores such as "El Encanto", "Fin de Siglo", the "Ten Sent" among others, bus-drivers and conductors as well as many friends from various government departments. There were about 120 fellow employees of various grades from the law courts together with journalists. I did not have any food until 6 in the morning of the day following my arrest. There was an Argentine couple there who got into an argument with some militiamen and as a result the couple were taken to an office in the Sports Palace. Fifteen minutes later the wife dashed out screaming that they were killing her husband. When the other prisoners heard this they gathered around the woman and the militiamen ordered the prisoners to fall back. Shortly afterwards we were all ordered to lie down on the floor, which we did. Sub-machine guns were then fired off in the direction of the prisoners and a number of them were wounded and later died. Several women fainted and others had to be taken away because they were on the point of giving birth. We stayed there until about 4 in the morning when we were taken away in buses without being told where we were going. We arrived at the Castillo del Principe at about 5 in the morning and were met by a crowd calling us "vermin". The women were placed in section no. 5—in all there were about 500 women. The first issue of food was at 6 in the morning and consisted of some unidentifiable liquid. I don't know whether it was chocolate or coffee with milk and it was given to us in dirty, rusty milk tins which it was impossible to drink out of. The cell I was in, which was called "Company No. 1" was apparently normally for 50 men but now there were 107 women in it. There was only one open-air W.C. and one wash bowl and to use either we had to queue up day and night. I slept on the floor just underneath the wash bowl. We were kept incommunicado in that cell without any opportunity 50 men but now there were 107 women in it. There was only 1 open-air W.C. and 1 wash bowl and to use either we had to queue up day and night. I slept on the floor just underneath the wash bowl. There were women of all classes so that one had to put up with all their habits. We were kept incommunicado in that cell without any opportunity of having a bath for 9 days. During the first night a woman who held a senior post with the electricity company went mad. There were 3 with severe attacks of asthma and one with a pulmonary oedema. I was told that they had been set free but in fact they had been taken to hospital owing to their serious condition. This was done in the early hours of the morning. There was also a woman lawyer who, for 4 or 5 days, suffered from a nephritic colic. There were no medicines in the sick bay for people who fell ill."

A decorator testified

“ At 6 o'clock on the evening of Sunday, April 16, as I was driving along in my car I was stopped and without being given any reason I was taken to the Militia Post in the Calle Zanja in Havana. There I was questioned and my car and all my belonging were searched. The questions were all about religious matters because they found religious books such as a missal, a book of meditations and so forth on me. They went on questioning me until about 9.30 in the evening without allowing me to notify my family and then took me, still incommunicado, to the district military headquarters at Cuba y Chacon, where the questioning began again. Once more the questions were about religion and politics. I was then told that I could sit down but had to squat on the floor because there were no seats. I remained there in this way until 3.30 in the morning without being given any food, at which time they appeared with my father. They took all my household money as well as my jewelry, some anti-communist reviews, etc. and never returned them. From 3.30 in the morning until 5.45 I was questioned once more. By this time I was completely exhausted through having gone so long without any food and being subjected to close interrogation. They kept on asking me whether I was a counter-revolutionary and an anti-communist and to put a stop to this I told them: “ I am Catholic, Apostolic and Roman and I am not a communist ” and as for all this talk about being a counter-revolutionary I could not be a counter-revolutionary because I regarded myself as the true revolutionary. They then said they would keep me in custody because I had 50 dollars on me, but they released my father. I was then taken to the first police station in the former Ministry of State and there I was put in a small room where there were about 30 women, most of them sleeping on the floor, but after only 5 minutes in there I was put in another room and we thought we were going to have breakfast but before it came we were taken to the Sports Palace and spent the Day of April 17 there. I managed to obtain a seat and spent the whole day sitting down but the majority had to squat on the floor. We saw hundreds and hundreds of people brought in, most of them quite poor such as transport workers, truck drivers and even dust-men. I remained there all day until 4 in the afternoon and still had no food, making a total of 24 hours without anything to eat. I was then taken to the military fortress of La Cabaña with a large party of men and women. We were treated as if we were livestock and quite often were threatened with shooting. When it was already dark they took us into the courtyard where the political prisoners receive visits and told us that we would have to spend the night in the open air. But at 11 o'clock that same night they woke us up and took us to the offices where they took down our particulars. This went on till after 1 o'clock in the morning, in other words on April 18, by which time I had still not been able to sleep or eat. We were then taken into a cell with thick stone walls and a vaulted ceiling, the only ventilation being from various small grills at one end. Most of us had to lie down on the

floor and cover ourselves with paper bags which the militiamen were kind enough to give us. The only sanitation was a hole in the floor and we had to sleep close by it despite the smell. There was no privacy and it was in full view of all the prisoners and anyone passing outside. At 8 in the morning we were given something to drink for the first time—coffee with milk which was so repulsive that I was unable to finish it. The containers were very dirty tins.”

A woman psychologist gave this testimony

“ At 10 a.m. we were taken to the G-2 building on the corner of 5th Avenue and 14th Street in Miramar. There they took our particulars together with our fingerprints and photos. They took me, together with the two maids, to a large room with all the windows bricked up containing about 100 women. The heat was unbearable because although there was an air conditioner it was inadequate for the number of people in the room. We had to sit on some bunks or squat packed together on the floor. The air was unbreathable. One sick woman began to choke and they had to make a hole in one of the bricked-up windows to enable her to breathe some fresh air.

“ When at about 9 p.m. they could see that it was impossible for us all to sleep there, they took about 30 of us to another building on 5th Avenue. The ground floor was full of men who were so packed together that they could not lie down. On seeing this one of the girls who was with us fainted.

“ We were taken upstairs where there was absolutely no furniture. We had to lie down on the dirty floor on some paper which we found lying about. We spent 5 nights in this way. After that they brought us mattresses which we rolled up by day to sit on.”

A workman's evidence

“ I was travelling in a bus from my home in San José de las Lajas in the Province of Havana to the capital when militiamen boarded the bus in the town of Cotorro and arrested me. They forced me to get out and I was driven away in a car without any official markings to the town of Guines. In a quiet back street of this town—this was at about half past 9 in the morning—the car stopped and the militiaman who was in charge said that in my town of San José de las Lajas there were many counter-revolutionaries and enemies of the government and that it was necessary to give them a warning. And so I was given 12 hours to get out of the town and not return. So that I should not forget to obey they gave me 12 blows with a kind of truncheon and 2 jabs in the back with bayonets. These jabs have left 2 scars on the left side of my back which I can show you. (The Commission representative ascertained that he was speaking the truth). As a result of all this I moved to the town of Rodas and stayed there with a relative. On April 17 of this year when the invasion took place a group of militiamen arrived at No. 39 Calle Céspedes in Rodas where I was living, arrested

me and took me to the secondary school which had been turned into a reception center for prisoners. There were about 250 people inside, all of them sleeping on the floor and without any sanitation or medical attention. I stayed there for 2 days and was then transferred to the Luisa Theatre in Cienfuegos, where I remained for 7 days, after which I was released and told to report to the G-2 in Santa Clara. I did so and was card-indexed. At no time during my detention was any charge made against me nor was any police report made nor was I brought before any court of justice."

VI. CONDITIONS IN CUBAN PRISONS

Conditions in Cuban prisons under the Castro régime are utterly incompatible with human self-respect:

- complete lack of such necessities as beds, bedding, eating utensils etc.;
- lack of cleanliness and hygiene;
- lack of proper medical care;
- physical ill-treatment and mental torture such as simulated shootings, etc.;
- very bad food;
- over-crowding of prisoners;
- arbitrary behaviour designed to humiliate visiting relatives.

One witness stated:

"Following a riot in the prison they said that the political prisoners were to blame and to punish us they compelled us to sleep on the floor. As a result, I had a heart infarct, during which I received no medical care or medicine of any kind. My relatives and friends were not allowed to visit me nor were the lawyers sent by my family to enquire into my position and handle my defence.

"Conditions in the prisons and the fortress on the Isla de Pinos are inhuman. The prisoners are packed in without food, without water, without medical care and without visits from their relatives. Nearly every night mock executions are held to frighten them."

It is a universally accepted fact that a political prisoner, because of his personal circumstances and his motives for committing the action with which he is charged, is entitled to special consideration as compared with a convict serving a sentence for a common law crime. In Cuba exactly the contrary takes place. The political prisoners receive humiliating, inhuman treatment. The Commission's investigation established that political prisoners are

- forced to do hard labour;
- moved from one place to another bound with ropes and hand-cuffed;

- exposed to insults and abuse from specially drilled crowds;
- deprived of all their belongings including food bought for them by their relatives;
- deprived of their clothing and obliged to wear a uniform.

One woman witness stated:

“They took away all their belongings as well as things that had been bought for them. They were practically naked. They even took away their underwear. My husband had on a pair of trousers held up by a string.”

Political prisoners serve their sentence side by side with common criminals.

One of the woman witnesses gave a factual account of her arrival at El Morro prison.

“On arriving at El Morro I was surprised to see thousands of faces down in the moat. There were more than 7,000 men down there exposed to all weathers and in fact 4 of the old men died.

“We had to go up some stairs and finally reached a place consisting of 2 large halls separated by 2 rows of bars. There were only women up there. As I went in one of the rooms someone tugged me by the arm and said: ‘Come in here. The people are better in here.’ There was nowhere to sleep so we slept on the floor. There was nowhere to sit down either. Someone told me that the 2 halls between them contained about one thousand women . . . We slept jammed together on the floor. We had to relieve ourselves in the same room in specially provided places. We were guarded by militiamen and militiawomen who kept on telling us that if a new landing took place we would all be shot.

“Among the prisoners I saw 6 who were in an advanced state of pregnancy. One of them actually gave birth and lost her baby.

“One of the commonest forms of torture was to announce that certain prisoners were going to be set free and then to cancel it.”

Another witness said:

“Every day they told us that we were going to die and read out the names of people who were not there. Other times they made us gather together our clothing and when we were all ready said: ‘Nobody else leaves today’.

“On the day they released me they called out my name and added the word ‘freedom’. I went down to the office where they kept me sitting for about an hour and then finally gave me my release order.”

After they leave prison those who have been arrested are constantly watched.

One witness, a lawyer, served part of his sentence in La Cabaña, part of it in the Castillo del Principe and the remainder—almost 2 years—on the Isla de Pinos.

When asked about the treatment he had received in these prisons he said: "The treatment given to all prisoners in La Cabaña was inhuman. It was even worse in the Castillo del Principe and worst of all on the Isla de Pinos."

When asked to describe the inhuman treatment he received in La Cabaña he said:

"For example we were awakened in the early hours of the morning on any pretext and taken to the office and there closely interrogated."

"It was also the practice in this prison to carry out searches in the early hours of the morning, which meant that the prisoners were stripped and taken out into the courtyard in the bitter cold while the cells were searched."

"Another form of inhuman treatment was that the cells were supposed to hold 50 people whereas in mine there were 125. We had to sleep wedged up against each other and could not move about."

Q. "When did you arrive on the Isla de Pinos?"

A. "I arrived on June, 10, 1959."

Q. "How many prisoners were there on the island?"

A. "When I arrived there were about 4,000 political prisoners but when I left there were more than 5,000. Now there are over 10,000."

This witness made some interesting statements about the treatment given to political prisoners while he was on the Isla de Pinos.

"All the political prisoners were forced to do hard labour from 6 a.m. to 4 p.m. with half an hour for the midday meal."

Q. "What did this work consist of?"

A. "There were several labour squads. One used to work in the marble quarry where the work consisted of hewing out the marble with a sledge hammer. Others worked on the farm from which came the food consumed in the fortress. Another task was to clean out the pigsties."

"Still another chore was to clean out the ditches which carried the sewage and refuse of the whole fortress to the sea. On this type of work the prisoners were forced to stand waist deep in the slime, to shovel out all the sewage and refuse. When we went back to the "round house" (a circular block of cells) at the end of the working day all covered by slime there was no water to wash ourselves with and we had to clean ourselves down with our drinking water as otherwise we would have had to spend the night covered with filth."

"Other jobs were sweeping out the entire fortress, remaking the road leading to the fortress and working in the mortar shed which meant standing up to our waists in lime. These were the kind of jobs on which we were employed."

Q. "Did you yourself perform any of these jobs?"

A. "I did all of them because the squads were rotated."

Q. "How many men were there in these squads and who commanded them?"

A. "Each squad consisted of 200 men. In charge of them were common criminals and whenever they saw that a prisoner was resting because he was tired they would come up and beat him on the back. At other times our escort forced us to work at the point of the bayonet."

Q. "Were you ever struck or jabbed with a bayonet?"

A. "Yes, many times, because, being asthmatic, I had to stop from time to time to get some air and they refused to allow it and used to strike me. Once I even fainted."

Uniform worn by political prisoners

"The common criminals on the Isla de Pinos wore ordinary clothes. The political prisoners wore the old army uniform, which was khaki, with a black 'P' painted on the back and a 'P' painted on each trouser leg."

Food

"There were two types of food—rice and soup and once a week as a special treat 2 pieces of malanga per prisoner—the same malanga which we ourselves used to plant. Many times we were unable to eat because when the food was served we found the remains of rats and mice in the containers. During June 1960 there were more than 500 cases of food poisoning."

Q. "How often did you find pieces of rats in the food?"

A. "More than 10 times."

Punishment block

For the infliction of special punishments political prisoners were taken to a wing known as the punishment block. A political prisoner now in exile described the punishment cell as follows: "The punishment cell is 6 feet wide, 9 feet long and 7 feet high and is inside the block without any daylight. Up to 10 completely stripped prisoners were placed in this cell and were forced not only to sleep but also to relieve themselves inside the cell because the door was of solid metal. The minimum punishment was 6 months. Most of the prisoners who went in this cell came out suffering from tuberculosis."

Q. "How were these prisoners fed?"

A. "The food was put in a tin and passed under the door through a special opening."

Searches

Searches are carried out every fortnight by two guards accompanied by common criminals. The searches begin at midnight and end at

11 a.m. the next day. The prisoners, who are entirely undressed, have to stand all this time outside the cell block in the open air.

(14)

One of the most striking facts to come to light is that the Castro government threatened its political prisoners by telling them that the cells in which they were housed were mined and, whenever the government felt itself endangered, would be blown up and all their occupants with them. A number of witnesses confirmed this. One of them, a woman lawyer, said:

"During my last visit I myself saw that they were digging trenches about 3 feet deep around the cell block and that machine guns had been installed in them.

"The political prisoners thought that these trenches were to hold dynamite because they were constantly being threatened not only verbally but also by actions. In the early hours of the morning the prisoners would be stripped and taken out into the courtyard where they would be kept in the open air for 4 or 5 hours and threatened and insulted in the coarsest language. They were constantly subjected to searches during which they were robbed of all their belongings and left only with the clothes they stood up in.

"These threats went so far that one day a warship came in sight and aimed its guns at the cell block. The prisoners were told that it was going to shell the fortress. I myself saw this vessel with its guns aimed at the cell block and it remained in this position for more than a week. At other times shots would be heard outside the cell block and all the prisoners would be driven out into the courtyard at bayonet point and threatened with execution."

One of the prisoners told the witness:

"During the invasion of Cuba in April 1961 they put charges of dynamite in the trenches and now (November 1961) all the trenches around the cell block are mined and can be blown up at any time."

When this witness was asked whether at any time she had seen acts of violence committed against political prisoners, she said:

"Once when I was visiting political prisoners in the Castillo del Principe, I was approached by a political prisoner, Mr. N. N., who is still in prison and whose name should therefore not be published, who showed me the weals on his back caused by blows from sub-machine gun butts. There were also weals on his wrists. He did this quite suddenly taking off his shirt when the guards were not looking. However, they immediately came up and pushed him inside.

"On another visit to the Castillo del Principe to have a talk with Mr. H. H., whom I was defending and whom I managed to have acquitted, he told me that he was unable to sit down because he had

been jabbed with a bayonet in the buttocks because he had tried to prevent one of the assaults, beatings and molestations that Dr. Joaquin Martinez Saenz, former president of the Cuban National Bank, had to endure every day.

"One of the many cases described in a complaint to the O.A.S.¹ signed by all the prisoners in block no. 2 on the Isla de Pinos and smuggled out was one of which I have personal knowledge. It involved a young man of 21 called Solis who, during one of the violent searches they carry out every day, shouted at them and received 2 bayonet jabs, one in the buttock and the other on the thigh and 2 bullets in his feet. He was then put in a cell without any medical treatment for his wounds. I heard of this during one of my visits and when I next visited the prison I enquired after him and was told that he had gone mad."

The witness concluded this part of her account by stating that she had written to the International Red Cross in Geneva denouncing all these cases and giving details.

Another witness, a lawyer, declared

"Some months before being arrested I had a heart attack and when they passed sentence I suffered another and was taken to Havana. I was put in the Castillo del Principe. In view of my condition the prison authorities did not want to take me. I was then taken to the G-2 building on 5th Avenue and 14th Street, Miramar, Marianao, where I was kept a whole afternoon in the sun despite my condition and then at night taken to the Castillo del Principe where I was placed in the sick bay."

Q. "What was the prison sick bay like?"

A. "It was about 20 ft. long and 2 or 3 ft. wide and contained about 18 or 20 sick men, all of them political prisoners because the criminals had a better sick bay. Whenever it was desired to punish a criminal he was sent to the sick bay for the political prisoners."

"It was here that I witnessed the death of a prisoner called Waldo Isaac Léon due to the fact that while in the fortress on the Isla de Pinos he did not receive medical attention. He was a political prisoner. He died through lack of medical care."

"Also in the sick bay was Dr. Juan Francisco Garvey, a lawyer and notary from Victoria de las Tunas, who was aged 84 and had been sentenced to 3 years' imprisonment for political reasons. In order to make sure that he did not die as Léon had, the prisoners made a collection and devised a plan which was carried out by Dr. X. (a doctor who was a prisoner with the witness)."

¹ Organization of American States

Political prisoners detained without trial

The witness stated:

"Throughout the time I was in prison (August 1960 until August 30, 1961) I met many political prisoners who had been there since January 1959 without appearing before any court." The witness then quoted the names of 8 political prisoners who were in La Cabaña from January 1959 until August 1960 without being tried.

"I think there were over 200 prisoners in La Cabaña who had not been tried since January 1959".

La Cabaña

"In La Cabaña there are 10 cells for political prisoners, numbered 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16. 17 and 18 are for those who have been sentenced to death and 20, 21 and 22 are full of officers, and soldiers of the Rebel Army and militiamen who have been arrested. How many political prisoners were there? About 1,400 political prisoners together with about 300 men in cells 20, 21 and 22. I do not have first-hand knowledge of the prison on the Isla de Pinos but according to prisoners who were transferred for trial or for other reasons, there were estimated to be about 10,000 political prisoners on the island. There are prisoners throughout the interior of the island. In Havana they are to be found in El Morro, in La Punta, in Columbia camp, in the Fifth Military District; in the G-2 (political police) building, in Atares and in the other military and police districts."

Medical care in prison

This witness stated:

"There was no medical care and such care as was available was given by doctors among the prisoners using medicines sent by relatives. There was no hospital or clinic. I recall the case of Doctor Enrique Vidal, a lawyer, who died without receiving the medicines sent by his family—once delivered at the prison they take 15 or 20 days to reach the prisoner. In this particular case the doctors in the prison signed a statement to the effect that he had died because of lack of medical care.

"At the time there were over 20 or 30 doctors in the prison but they had no instruments or medicines."

A witness who was in the women's prison at Guanabacoa said:

"The food consisted entirely of rice with beans, occasionally with boiled vegetables, but I never had meat while I was in prison. As regards sanitary facilities there were more than 40 of us in a small room with only one bath and toilet.

"While I was under arrest by the G-2 many women had to sleep on the floor. I did not have to do so because another woman who was released gave me her bed."

A former magistrate in the Havana law courts stated

"Apart from the daily ill-treatment to which we were subjected I should make special mention of what happened on two occasions—on March 16 and March 29, 1960. In the early hours of the morning the 500 or 600 prisoners in La Cabaña were forced to go out into the prison courtyard completely naked and there we were physically and morally ill-treated on each occasion for more than 3 hours.

"We were assaulted with bayonets and rifle butts with the result that I made a complaint to the civil authorities, who inspected the prison accompanied by police doctors and found that over 60 political prisoners—everybody in that prison was a political prisoner—were suffering from bayonet wounds.

"Conditions in La Cabaña were very bad from all points of view. There were 9 or 10 large cells each holding at times 110 prisoners and in each there was only one bath and one toilet.

"Not only was the food very bad but sometimes it did not arrive and many prisoners had nothing to eat.

"Searches were carried out once a fortnight or even more often and always in the early hours of the morning. We were compelled to strip and to go out into the courtyard. When the searches were carried out we were deprived of all our belongings whatever their nature, including medicines and foodstuffs."

Medical services

"In La Cabaña the only doctors available were fellow prisoners, but they had no medicines or instruments."

(57)

Threats of mass shooting

"When an unknown plane flew over Havana we were stood against the wall of the moat with machine guns pointing down at us and we were told: 'They are going to kill us but we will kill you first' and a number of shots were fired in the air."

This statement was made by a doctor who was arrested as a result of the events of April 17. He was further asked:

Q. "Did you give medical care to the other prisoners?"

A. "Yes."

Q. "From what diseases were they suffering?"

A. "Infections of the eyes, the throat, the ears, the skin because of the lack of cleanliness and I remember that three individuals had to be taken away because they went out of their minds.

"In my capacity as a doctor I also attended to about 600 women prisoners in 2 other sections who were suffering from the same diseases

as the men. Among the women prisoners there were 6 or 7 who were pregnant. One of them felt her birth pangs coming on and had to be taken to hospital. I heard later that her baby was stillborn. These expectant mothers had to sleep on small mattresses on the floor and remain standing during the day for many hours because there were no seats."

Q. "How long were you a prisoner?"

A. "14 days and no charge was made against me except that I was 'vermin'."

Another physician testified

Lack of medical care

"In La Cabaña there was a complete lack of medical care despite the fact that among the prisoners there was another doctor arrested because he had been a prominent medical figure in the previous régime. There was little that we could do because it was impossible to obtain drugs for any type of sickness.

"A striking example of the consequences of this state of affairs is provided by the case of Doctor Enrique Guiral Santiusti. Dr. Guiral was a diabetic and had to take medicine daily to keep his condition under control. This medicine was taken from him in the prison office and although he pleaded for it to be given back to him it was refused.

"Subsequently Dr. Guiral fell ill with bronchitis which quickly degenerated into a double broncho-pneumonia, which was quite certainly due to the fact that he had diabetes.

"His sickness was immediately reported to be serious by more than 50 doctors who happened to be in the prison. Since the other doctor and I were in cell No. 9 with Dr. Guiral, we were very concerned from the start about his prospects of survival.

"We asked either that he should be taken to hospital or that we doctors should be given the drugs needed to treat him.

"The prison commander said that he was only responsible for guarding the prisoners and that any other matters must be dealt with by the G-2.

"By the time the G-2 had decided to send him to hospital, Dr. Guiral had died in the prison."

A girl student's replies

Q. "When were you told that the prisoners had been ill-treated?"

A. "I was told one Friday afternoon. It so happened that a group of women who were due to visit the prisoners were refused permission to do so and thought that something must have happened.

In the village people were saying that they had been beaten. They then asked me if I could find out whether this was true. I managed to see my father and when he arrived he tried to hide what had happened, but later he told me. I saw a number of prisoners with lacerated arms and bayonet wounds and my father's neck was black and blue. He told me that on the floor below the room where we were, there were loud explosions by night as if they were trying to dynamite the whole building and later, after the invasion, the story went round that in fact it was all blown up . . . ”

Q. “ During subsequent visits were you able to see anything of the condition of the other prisoners ? ”

A. “ During another visit to La Cabaña I noticed that my father's nerves were in a very bad state because the night before they had been placed before a firing squad which had taken aim once, twice, and three times and had not fired. The firing squad wore police uniforms and the prisoners thought of course that they were going to be shot. It was a form of mental torture. ”

A medical doctor stated

“ During my spell in the Sports Palace the most significant event—apart from the fact that we were forced to urinate and defecate in public in front of a crowd of about 6,000 people including more than 1,000 women and were not allowed to fetch water not were we given any food—was an argument between a group of militiamen and someone whom I believe was a Latin-American diplomat. After a heated discussion the lights went out and there were burst of firing. The thousands of people who were there flung themselves on the floor of the Sports Palace. We heard the bullets whistling over our heads, and the noise of shouting and women screaming for help was deafening.

“ When the lights went on again I saw 3 men seriously injured and they were dragged out to the race track. I also saw a nurse, one of whose ears had been partly split by a bullet, and an elderly woman who had been hit in the thigh, which clearly showed that one at least of the militiamen guarding us had deliberately aimed at us in the dark.

“ Throughout that day we were constantly threatened with shooting, quite apart from scores of other insults. During April 18 we received no food at all and as this prison of ours contained no windows a group of doctors and myself dealt with more than 70 cases of asphyxia caused by lack of oxygen.

“ On Friday night we doctors were allowed to take out into the inner courtyard the prisoners who were suffering most so that they could breathe more freely. Some of these prisoners were hysterical, others were asthmatic, while the old men included one aged 95 and there were 3 lads aged 13 and 14. ”

Another doctor replied to questions

Q. "As a doctor did you attend to any prisoner who had been assaulted?"

A. "We attended to several individuals who had fallen ill because of the overcrowding and we demanded that the authorities should send them to the proper clinics. In some cases this was done but in others we had to watch them lying for 70 hours and more on beds in the barracks, as in the case of an elderly man who was suffering from an abscess and was feverish. I asked them to send him to a clinic where he could be dealt with and they replied that it was not important. He was an elderly man and his state was pitiful."

Another physician added

"The day after my arrival I was confronted with a prisoner who had taken part in an uprising and had been tortured because I noticed that he had black eyes and around his neck was an ecchymotic furrow as if he had been hung up by the neck. Those who were going to be shot were placed in the room where I was and I saw one man in despair hang himself. I myself certified his death. Two days later another man beat his head against the wall and fractured his skull."

A woman lawyer's testimony

Q. "Where were you detained?"

A. "In the headquarters of the G-2. Later I was transferred to a next door house where Doctor Hurtado had lived. The upper storey consisting of 3 rooms contained 85 women sleeping on the floor. The ground floor contained 320 men who were also "detained" and did not have enough room to sit down and took turns to sit down when they were tired out through standing up. The next day in that house, which was big enough for a small family but not for more than 400 people, the septic tank, as might have been expected, overflowed and covered the whole floor with excrement. The men had to walk about in this filth for several days and what made it even worse was that they could not have a bath, wash or change their clothing."

Q. "How long did you have to put up with these conditions?"

A. "17 days, at the end of which I was interrogated. The interrogator had no definite charges against me and as they had found nothing compromising either on me or at home, he asked me whether I had belonged to or helped the July 26 Movement and whether I was a militant Catholic. I replied in the affirmative. The next day I was transferred to Guanabacoa camp."

Q. "What were the events that occurred on May 14 which you described as serious?"

A. "It was on that day that I discovered to what extremes the guards and repressive forces of the régime now governing Cuba are prepared to go. Once I arrived at Guanabacoa prison I became familiar with the discomforts of sleeping on broken-down bunks, of dressing with all the other women in the bathroom where we had managed to hang up a curtain because the inside of the cell could clearly be seen from the guard posts and all the other discomforts I mentioned earlier. I also endured the mental torture of not knowing what had happened to relatives who were in Cuba and of being visited by them with bars in between us and of hearing Lieutenant Baranda, both while and after he was in command of the camp, with the consent of the prison commander, making jeering remarks about shootings to the relatives of the prisoners and telling us that he would do everything in his power to see that the menfolk of the women prisoners were shot as well. All of us knew what it was to be awakened in the middle of the night by a mob which assembled in a nearby street just to shout out "Shoot them" together with a series of insults and coarse remarks. But until the date I have just mentioned there was no physical assault on the political prisoners.

"I must first of all explain what led up to it. From fellow prisoners who had been sent to Guanabacoa from the national women's prison at Guanajay in the Province of Pinar del Rio after they had protested against the sub-human conditions of political prisoners there, we gathered that the women criminals at Guanajay were now militia-women and therefore privileged with the right to insult the political prisoners. They stole the clothing sent by the families of the political prisoners, who were forced to wear the left-off uniforms of the criminals. There was no water for days on end and it had to be taken from the water closet. They were not allowed out into the courtyard and were kept locked up in their narrow, sunless cells. If anyone fell sick no doctor was called despite the fact that one had offered to serve voluntarily and without charge. Immorality was rife there. The fellow prisoners who told us about this included Doctor I. R. and Doctor O. R. de M., who had been sent to the national women's penitentiary at Guanajay despite the fact that they had never been tried. In fact, up to the time when I left the prison they had still not been tried, but even so they were sent to this penitentiary. I should add that the commander of the prison at Guanajay who was called Leila Vazquez had, on May 14, 1961, 18 written complaints against her in the files of the Ministry of the Interior and was only dismissed after the scandal caused by the death of a political prisoner as a result of lack of medical care during pregnancy. This death occurred towards the end of June of 1961 and unfortunately I do not recall the name of the woman concerned. Some days before May 14, we had made a joint verbal protest to the commander of the Guanabacoa prison—because it was a prison rather than a camp—about the transfer of some of our fellow prisoners to Guanajay about

which we had heard these reports, which were also well known to the officer in charge of the section where we were, Lieutenant Manuel Graña, who undertook to take up the case with the Ministry. On Mothers' Day, May 14, relatives were allowed to visit the camp and as it was Mothers' Day they did not prevent the political prisoners who were due to be transferred to Guanajay from leaving their cells and going to the reception point to see their children and mothers. I say this because in order to be quite accurate I should add that I did not see these prisoners being brutally beaten when they resisted but I did hear desperate shrieks and the noise of blows and several days later when Dr. Marta Mendez, who has now been released because she was considered innocent of the charges against her, and Luisa Pérez returned to the camp from Guanajay, I saw the marks left by the blows on their faces and bodies. I also witnessed the display of force when we rioted in protest against the transfer like criminals of girls like the two I have mentioned without being tried. We were threatened with drawn bayonets and surrounded by a force of about 3,000 militiamen and women. There were no deaths because a soldier called Carro realized the despair of the prisoners and held up the order to attack us with bayonets. The police chief, Major Ramiro Valdés, and the representative of the Ministry of the Interior known as "El Moro" took part in these events. They turned the fire hose on us and savagely aimed at two women expecting babies. These two women were later taken to hospital together with another political prisoner who had a weak heart and suffered a seizure as a result of these events. The women who were injured had to be treated by their fellow prisoners. Fortunately there were some women doctors among the political prisoners together with some qualified nurses."

The "cold light room"

"I was put in the cold light room and kept there for about 36 hours... This room by all accounts originally had bare lights in the ceiling and the walls. When I was put in there on January 18 the lights were shielded and ringed with guards which seemed to dance before one's eyes because the light was so powerful. The lamps were shielded by a very strong metallic fabric, apparently because those who were in the cell earlier had smashed them. The room was flooded with fierce light and there was no ventilation at all. There was a cold-water fountain, but I did not drink any of the water because I felt sure there was something the matter with it. The light was so powerful that one lost any idea of the time and it was impossible to tell whether it was night or day. I lay down on the floor and tried to sleep but did not manage to do so because although I tried to shut my eyes and held my eyelids down with my fingers they rose again like a curtain. I do not know whether I slept or not while I was there. The only thing I had was coffee from a thermos flask which they left there. The light caused extreme discomfort. They

passed our food to us and we did not know whether it was morning or evening because there was always a blaze of light in there. I can tell you that the Zabala brothers came out of there mad, completely mad, saying it was a gas chamber.

The dark room

"The dark room there is called 'the prisoners coffin'. We had heard all about it. This room is little more than a cupboard and hardly big enough to hold a bird... In this room, unlike the 'cold light room', there is complete darkness. I was able to stand the darkness better than the light. The room contained a small radio which apparently was smashed on several occasions by former occupants but now was protected by a wire mesh. This radio was constantly broadcasting the speeches of Fidel and the commentaries of Pardo Llada. The first time, if I recollect rightly, someone told me that it had been broken, but the second time I was put in there it was protected by thick wire meshing. We were unable to eat in this room. Others could not stand it but I found it soothing... On January 7 they interrogated me in the cold room for 2 hours and on another occasion for 6 days. I was always interrogated by a man called Martinez and 3 or 4 times I was interrogated by a tall, grey-haired Czech.

"I was interrogated from January 7 until January 24. On January 21, 22 and 23 the interrogation took place in the 'cold light room'. On January 24 the engineer, Santos Rios, told me that the revolution was generous and that Fidel had ordered my release. They put me in a room together with two other men, one of whom was abnormal and started to strike my face.

A publicity agent recalled

"In the Country Club district, there is a house with a special room and those who are sent there are dressed in light clothing and left in this brilliantly lit room. There is no window because the whole room is sealed off and the only ventilation is through an opening 4 inches wide in the ceiling. In each room there is a radio going full blast and talking nonsense and it is impossible to tell whether it is day or night because no daylight is allowed to enter. When prisoners are overcome by fatigue they are kicked to keep them awake. In order to make them confess they are shown photos of their loved ones and then they are taken out apparently to be shot and salvos are fired at point-blank range. This happened to Mr. Pedro Figueredo. Those who spent some time in this room during my time there included Dr. Santiago Echemendia Osiris (he spent 18 days in these rooms), Guillermo Caula Ferrer, Juan Basigalupi Hornedo, Higinio Menéndez Beltran (who was in such a bad state that he seemed to have aged by several years) and we, seeing the state that they

were in, gave them the few beds available. This went on until I left, after which I had to hide in the house of friends until I was able to leave the country. ”

(47)

“ I did not actually witness the shootings which took place at 2 o'clock in the morning, but I did see the van taking them to the execution wall going slowly up the side street which my cell overlooked and I heard the volleys and the coup de grâce which followed each volley. The tension and the anguish were terrible. The only thing we could do was to offer up prayers for the souls of those who were being murdered. At these tearful moments they used to look through the barred doors and threaten to shoot us if we continued and said (and these were their actual words): ‘ You'd better get used to it because this sort of thing happens every night in La Cabaña ’— that is the way they talked about human lives. At 9 o'clock on the morning of the 18th I was taken in a bus to the prison at Castillo del Principe. There I was given my first meal since I was arrested but the food smelled so much that I was virtually unable to eat it. There were about 90 of us in a cell which was not designed for that number so that many of the occupants had to sleep on the floor. Standards of hygiene were very bad and I was only able to wash my hands and face without being able to take a bath in all the 11 days that I was under arrest because the shower bath was constantly being used by the women there as a toilet. One woman in that cell went mad because of the nervous tension and mental torture to which we were subjected. Two expectant mothers were neglected and as a result had miscarriages. When they started releasing prisoners we were also subject to acute mental torture because they read out many names of people who were not in the prison and often a whole day went by without anybody being released and the releases would take place in the early hours of the morning. I myself left the prison on the 26th and was given no explanation nor was I told why I had been arrested or released. Afterwards I went into hiding because they looked for me several times at my home and then I was granted asylum in the Brazilian Embassy where I remained for 4 months until I arrived in this country. ”

(48)

“ On May 3, I was taken to the women's prison at Guanabacoa. There were about 60 of us in that batch of prisoners. We were put in a cell about the size and shape of a railway wagon with bunks on both walls. The only ventilation and light came from the doorway at one end and a window near the ceiling at the other. The toilet consisted of a hole in the floor and was separated from the remainder of the cell by a screen which was not high enough to conceal one.

The bunks contained mattresses which were so filthy that we asked permission to throw them out because we preferred to sleep on the frames. There were so many mice that during the time that I was there 22 of them were caught in a mousetrap.

"On May 14—Mothers' Day—visitors were allowed into the prison, and a number of prisoners who were due to be taken to Guanajay were let out of their cell. They objected to being transferred to the other prison because according to all those who had been there it was a hell on earth. Most of the women guards were perverts who made life impossible for any decent woman."

VII. CRUEL, INHUMAN AND DEGRADING TREATMENT

Visits by Relatives of Political Prisoners

Under the prison systems of civilised countries, a basic human right is the right to a visit, in other words the right of any man serving a sentence to maintain direct contact with his family.

That right, which belongs to the family as well as to the prisoner, is one of those which the Castro régime has systematically violated.

Only the female relatives of political prisoners, i.e., wives, mothers and sisters, were allowed to visit them and even then only subject to certain conditions. These relatives, several hundreds in number, had to go through the following ordeal before they could talk to the prisoners:

- They had to queue up before going in for anything from ten to twelve hours in order to be allowed in on the appointed day.
- They had to remain standing in this queue in the open air, despite the heat or bad weather.
- After entering the prison, they were harassed and insulted by militiamen who tried to alarm the visitors by giving them false news, e.g., by saying: "Don't worry so much. I think they shot your husband yesterday."
- After entering, but before meeting the prisoners, visitors were searched. For this they had to strip and were examined as an obstetrician would examine his patients. One woman witness declared: "Before seeing him (the prisoner), we were stripped and searched. There was a woman there called Zenaida who was a rebel (in Castro's army) and carried out a dreadful search. She stripped us and, believe it or not, even the women who were having their difficult days were intimately examined, both externally and internally."
- Apart from the search they were insulted all the time. One woman witness stated: "At first they called us 'police hirelings' and when they saw that this did not get us down, they called us 'prostitutes'".
- Relatives were abused in foul language.

- When talking to the prisoners they were surrounded by guards with machine guns.
- They were forbidden to hold hands or exchange kisses with their husbands, fathers or sons. One witness stated: "Once when I went to see my husband, he kissed me and as a result he was hauled off to the cells, and when I protested one of the escorts kicked me." Another witness stated: "I remember one woman whispered something in her husband's ear and he was sent back to the cells because they said they were kissing each other. But they (the guards) took every opportunity to insult us."
- Families sent food and even money to enable prisoners to buy things they might need. Usually the food never reached the prisoners and the money was often mislaid. One woman witness said: "They saw to it that the food did not arrive and this went on until March of this year (1961). We (the relatives) could send the prisoners money to cover their expenses. Some of them used to receive it, but others did not. My husband several times failed to receive it. Medicines went into a common chest. Once my husband was sent to the cells for 45 days, during which he contracted an ear infection, and to have him attended to by the prison doctor I had to pay for the consultation and his journey there and back by car."

Conjugal visits

This right, granted by Cuban legislation to anyone in prison on the Isla de Pinos, was used by the Castro régime as a means of torture rather than a recognized right. These visits by their nature required complete privacy, but the prison guards used to spread news of them to the inhabitants of the area. One woman witness stated: "When these conjugal visits took place the whole Isla de Pinos, knew about them. One had to go to the prison by car and then be taken to the huts which were situated nearby. Another search was then carried out. The wife stayed in the car while the guards went to fetch the prisoner in the cell block. The soldiers on guards (in the prison) remained in the vicinity of the huts and as there were a number of them they would start making offensive comments. The huts were locked and built of stonework, but the windows were in very bad condition.

"The fare from Havana to the Isla de Pinos on a plane which stayed for half an hour was 13.37 pesos. Often the planes were full because so many people were going to visit the prisoners and in such cases the only thing was to go to the island two or three days earlier. This meant paying for a taxi and putting up at the hotel. Sometimes the visit only lasted for ten minutes.

"As regards mail, all letters are censored and many of them never reach their hands. Usually the letters which do not reach the prisoners'

hands are from their wives and it is widely believed by the relatives of the prisoners that this is done to annoy them."

A woman lawyer stated:

Visits by relatives

"As a lawyer, I once visited the fortress to see a criminal—political prisoners could not be visited by their lawyers. I was never allowed to see a political prisoner for whom I was acting as counsel.

"On this occasion when I had been given permission to visit one of the criminals, I was subjected to a violent search during which I was completely stripped of all my clothing. On dressing again I had to leave all my belongings at the entrance of the prison and I was only allowed to take a pencil and paper with me. I should add explicitly that whenever I visited friends of mine who were political prisoners—not as a lawyer but as a private individual—I was also subjected to every kind of indignity".

Q. "For example?"

A. "During the searches, which have to be endured by anyone visiting the prisoners, one has to strip completely and is spoken to in the coarsest and most foul language."

Description of a Visit to the Isla de Pinos

"One arrived on the Isla de Pinos by plane at about four or five in the afternoon. At eight in the evening one went to the fortress and waited outside in the open air. One lay down on the grass, putting up with the rain, the bad weather and the mosquitoes until five or six in the morning when the escort came out of the fortress. This escort consisted of one or two women in militia uniform who started compiling a list for the visits. When one's turn came to enter, one went into a kind of basement and stayed there until called to the visiting room, where after a wait of anything from 10 to 12 hours we were allowed, when we finally managed to meet the prisoner, to talk to him for 10 or 15 minutes."

Q. "Were there any guards while these visits were taking place?"

A. "Very many. They did not allow you to move and they always carried arms. When visits were suspended at Christmas 1959—they were not renewed until March 1960—they built fences around the circular cell blocks and allowed us to visit the prisoners in the intervening open space for longer periods, sometimes one or two hours. But, in order to get in, we invariably had to endure the same procedure and indignities. I remember that once there were so many women waiting in one of these queues to see the prisoners that they became impatient because they got the idea that they were not going to see them after having made so many sacrifices to come to the fortress. They began to protest, whereupon the guards fired some

machine gun bursts into the air and even lower down and we all felt the powder on our faces.

"In these fenced-in areas where the visits took place, there were absolutely no facilities—not a single bench, not a single toilet, and nowhere to slake one's thirst.

"When the visits were ended, the guards ordered the visitors to leave, using the coarsest language and most obscene gestures with the deliberate aim of provoking the prisoners so as to be able to punish them."

(17)

The biggest prisons in Cuba are La Cabaña, El Castillo del Principe and the Isla de Pinos.

The procedure for visiting these prisons was described by many witnesses who gave evidence to the Commission. The indignities inflicted on the relatives of political prisoners wishing to see them begin from the time they try to enter the prison.

1. They have to form a queue because of the great numbers of relatives wishing to visit the prisoners. They have to wait standing and in the open air for several hours. After three or four hours they go in and are searched.

2. During this search all the visiting women have to strip and submit to a wide variety of indignities. Several witnesses stated that in the prison at La Cabaña the visiting women were searched by lesbians. To give an idea of what this involved—and this is fully endorsed by the evidence of the other witnesses consulted—we quote the statement of a woman teacher who visited all three of Cuba's biggest prisons in order to see her husband who was himself a prisoner. This lady was asked whether during her visits to La Cabaña she knew of any cases of humiliations inflicted on the relatives of prisoners. She answered:

"I was an eye-witnesses of some cases. It is very unpleasant to have to describe it, but for the sake of the cause which you and we are trying to defend I must do so. Usually we went into the room to be searched four, five or six at a time. There were only two women there to search us all. They were both women of very low moral standards. One of them used to boast that she liked women and was delighted with this job because it gave her a chance to touch all the women she searched. She said that she was doing the job for nothing, but although it was tiring work she enjoyed it because it gave her an opportunity she had wanted all her life of fingering and touching large numbers of women.

"I saw cases in which while they were examining one woman they told another 'Go on stripping' . . . One had to strip completely and then one would be touched and fingered by one of the two

women. In some cases I saw women who did not strip completely and when ordered by these two women to do so replied that they were having a period. The immediate answer was 'That doesn't matter...'. I saw one of these women take a sanitary towel away from a visitor, pull it apart to see whether it contained money or any other article, and then hand it back to the woman to put on again.

"I recall seeing another case when they forced a woman to lie down on the floor for an examination because they had been ordered to search her thoroughly."

The same witness described her visit to the Isla de Pinos. She said:

"I paid visits to the island from June 1959 until March 1961. The preparations for each visit took up nearly a week. There was the journey by plane or by boat and the preparation of all the things one was taking to the prisoner, such as food and clothing. We had to arrive the day before and put up in the hotels that were willing to take us because the prison commander had forbidden the hotel proprietors to rent accommodation to us. Those who did accept us were labelled counter-revolutionaries. This happened to the owner of the La Americana hotel on the Isla de Pinos, whose hotel was confiscated and he himself was expelled from the island because he allowed us to stay in his establishment and sold us goods on credit and so on".

This witness described the procedure for visiting prisoners on the Isla de Pinos.

"When the authorization arrived one took a car and put all the parcels in it and went to the road leading to the prison the day before the date appointed for the visit. Some used to arrive at seven o'clock on the previous evening. I usually went along at eight o'clock. In the winter the Isla de Pinos is very cold. Those of us who were taking along baskets of food used them as pillows and tried to get some sleep lying down on the road while waiting for day to come and the order to be given to go in and be searched.

"The next day, when the visits began, we used to go into a hut where officials and common criminals took our parcels of clothing, food, etc. for our relatives in the prison. We had to leave our parcels there and go back to the road outside. When the time came for visits to begin the guards would come along and tell us to stand in line. This was usually at seven in the morning, but the visits did not begin until nine or ten, and meanwhile we had to queue up without being allowed to move about. Young children who were thirsty or wanted to relieve themselves were not allowed to leave the queue.

"From this queue we went in to be searched. The humiliations and indignities were the same as at La Cabaña.

"After the search we went into another room where we waited until there was a large enough group to be taken to the basement where the prisoners were waiting for us."

Thereupon, the following dialogue took place:

Q. "Did you see the same indignities being inflicted as in La Cabaña?"

A. "Exactly the same."

Q. "Were these indignities normally repeated at each visit?"

A. "Usually there was some surprise—some new indignity—at each visit, although I do not know whether it was spontaneous or premeditated."

"There was one visit when we were left alone while we were queuing up and the indignities and humiliations began when we were searched, while during another visit the martyrdom, the indignities and the torture began while we were still in the queue. For example, while we were trying to rest lying down on the road, a jeep full of soldiers would come dashing along so that we had to jump out of the way. Once we had lain down again another jeep would come along and tell us that we might as well go away because all visits had been suspended. Another militiaman would then come and say that there would be no visits because half the prisoners were in the punishment cells. I once saw a militiaman say to a woman: 'Does your husband look like this ...?' (and he described her husband). And when she said that he did, the militiaman added: 'He is in the cells now and they are throwing buckets of cold water over him every half hour.'

"When this woman in fact made her visit she found that what the militiaman had said was not true. The purpose was simply to shatter her nerves."

Meetings with the Prisoners

"We went down to the basement in groups. Normally these visits took place in a fairly narrow basement and we sat at a long table with the prisoners on one side and the relatives on the other. The guard walked up and down on each side. Not only did he interrupt our conversations but if, as was only human and natural, one tried to kiss one's husband or hold his hand the guard would immediately come up and in foul language would threaten to end the visit and take one's husband away to the cells."

"Subsequently, an area was fenced in outside the cell blocks and there in the open air there were fewer restrictions and one could walk about by the side of an imprisoned relative."

"The political prisoners wore a uniform which was of the same colour as the uniform of the former army with a 'P' on the back and a 'P' on each leg."

"The fenced-in areas were square in shape. There were two of these areas, one in front of the cell block and another at the side. They are surrounded by a fence of the 'Peerless type', about nine

feet high. There is a small gate through which everybody must enter. First of all, the relatives go in, followed by the prisoners, and when the visit is over the relatives come out first followed by the prisoners. The floor is stone and there are no sanitary facilities for anybody. Outside the fence are ditches containing machine gun posts and within the fenced-in areas the guards walk about in pairs armed with sub-machine guns. There are also watch-towers containing machine guns. Within the fenced-in areas there are no seats at all."

Wife of a political prisoner

Infliction of indignities on visitors

"I know of one case because I was standing at the side of the person to whom it happened and I heard the conversation. Some years ago, in the prison on the Isla de Pinos, some huts had been built for use during conjugal visits. It was the practice to allow couples to spend some time together in these huts and at the start they continued this practice. Subsequently, it has been completely forbidden. On this occasion an officer of the rebel army came up to a woman who had come to visit her husband and told her that he had given instructions that she should spend the following morning with her husband but only on condition that she spent that night with him.

"Another case which happened to me personally occurred when Captain William Galvez came up to me and said: 'Go away and buy a black dress because you are a widow ...'

"There was also the case of my mother who is 54 and suffers from a bladder complaint which forces her to wear a sanitary cloth. When she was searched she was stripped and despite her protests was forced to take off this cloth soaked in urine, and after it had been examined with dirty hands it was handed back to her to put on again.

"I also know of the case of the mother of a pilot who is a prisoner—a woman who is nearly blind and deaf—who, despite the fact that she is over 70 years of age, was forced to strip.

VIII. RELIGIOUS PERSECUTION

In Cuba, religious persecution has taken a number of forms, varying from the expulsion of priests and members of religious orders (which has reduced the number of priests from 700 to 125) to the persecution of Cubans for no other reason than because they were leaders of the Catholic community. One woman witness was asked whether the persecution she had endured was on political or religious grounds. She answered:

"It was not because of my political activities for I have never engaged in any, but it was because of my religious activities."

She was asked what this persecution consisted of. She replied:

"I was arrested several times by the G-2. Once I was kept in custody for seven hours and on another occasion for 12 hours. When the landing took place on April 17, 1961, I went—I forget whether it was on the same day or the next—to sleep in the home of a sister of mine because they were already arresting people in my neighbourhood and I had heard that they had arrested Monsignor Boza Masvidal in the parish of La Caridad. My home was searched from top to bottom by 17 militiamen. A nephew of my late husband who happened to be there was arrested and kept as a hostage until I returned. When the militiamen arrived to search my house, they knocked on the door and when my maid opened it they put their machine guns through the door way and refused to allow it to be closed. They entered by force and without any warrant. When I heard that my nephew was under arrest until I came back, I returned home and on arriving, found two militiamen sitting down in the hall. I asked them what they were doing there and they replied that they had an order to search the house and had found evidence against me and that the G-2 would soon come to fetch me.

"I saw a record-player on the floor which they had set aside as evidence claiming that there was a clandestine radio transmitter in my house.

"Another piece of evidence they claimed to have found consisted of a photograph taken when the image of the Virgin of La Caridad was taken to Havana passing through all the villages on the way. The police of the previous government appeared in this photograph and it was claimed that this proved that I was not a supporter of the present government. I replied that the police were simply there to guard the Virgin and that if the Virgin did the same journey today they themselves would guard it. They answered that they would not because they did not believe in anything.

"Later, the G-2 men came and fetched me. They questioned me about my church activities and accused me of 'financing' Monsignor Boza Masvidal because I had been treasurer of the associations attached to the church. I replied that I taught in the parish school and that these classes were given free of charge."

This witness was arrested and taken straight to El Morro.

Her account of conditions in the prison there is reproduced under the pertinent heading.

A priest observed

"I was regarded as a priest who was opposed to the regime, despite the fact that I went about my pastoral duties in my local community. From October 1959 onwards I was subjected to direct personal persecution and was prevented in various ways from carrying

out my duties as a priest. Things reached such a state that armed militiamen were posted near our chapels to coerce the faithful who wished to practise their religion and they even told me what to say in my sermons. In January 1960, seeing that they could not deter me from carrying out my christian duties, they took away my jeep which was my sole means of transport. I had managed to form a youth group along the usual boy scout lines in which, apart from the usual exercises and activities, religious and civic instruction was also given. This group was forced to establish itself in the rebel army barracks and to take with it the uniforms and other items which we had made very great sacrifices to buy.

"This sort of thing went on unceasingly for several years, but I should make special mention of the culmination of it all which occurred during the night of March 10, 1961. At one o'clock in the morning a party of armed militiamen surrounded my house which stood alone near the Senado sugarmill in Camagüey. They began to shout out all kinds of insults and abuse, slandering a number of ladies living on the plantation and making vicious remarks about my mother. Because of the scenes and fearing for my life, I fled through a window which I forced open at the back of the house. After a few minutes I heard scattered shots and bursts of machine gun fire. They emptied a can of petrol in the house and set fire to it. It was totally destroyed, together with everything in it."

A monk testified as follows

Q. "When did you leave Havana?"

A. "On September 17, 1961."

Q. "How did you leave?"

A. "I was deported by the Cuban authorities without any passport and without any explanation. I was simply put on board the steamer 'Covadonga' and left there."

Q. "Can you describe the problems you met with?"

A. "At about six in the morning my home was surrounded by a group of people armed with rifles and sub-machine guns. They entered and arrested me and made me stand against the wall for three hours with my hands up while they carried out a thorough search. They then put me on a bus and took me to the steamer 'Covadonga'."

Q. "While you were teaching, did you have any difficulties with the authorities?"

A. "The worst difficulties occurred when they tried to make us use revolutionary textbooks glorifying the achievements of the revolution and the revolutionaries. Anyone who was unwilling to distribute and use these textbooks was threatened. Subsequently, groups of indoctrinated young rebels used to wait every day for their fellow students and prevent them from attending classes. These

youths also tried to make it compulsory to sing the "Internationale" and the "July 26" anthem. Egged on and protected by the inspectors, they provoked an internal struggle which split the student body and began to persecute those who refused to go along with them. Once when Bishop Boza Masvidal had been invited to visit us, these youngsters surrounded the block containing the college building, shouting out threats against everybody inside and coercing and insulting anybody who tried to enter. One group of pupils were assaulted as they left.

"The violence got worse day by day. Everybody who went into the college, including the teachers, was searched. Above all, there was no freedom to speak.

"On two occasions, minute searches were carried out. All the teachers were taken out into the yard and after everything had been searched they went away but came back a few days later."

After further threats and persecution this priest managed to obtain asylum in the embassy of a Latin American country, where he remained for 70 days.

Another priest testified :

"The fact is that services could not be held because whenever the authorities believed that a pastoral letter was going to be read out they used to send parties of militiamen and other people armed with sticks and cudgels to the church. I remember one occasion on which a crowd appeared at the church of San Antonio de Paula, one of them being the widow of Machaco Ameijeras, the brother-in-law of the Chief of Police. These groups used to invade the church and provoke the faithful. Sometimes the priests or the faithful would be taken away."

Q. "Were you yourself arrested?"

A. "Yes, I was placed under house arrest. Once when we were celebrating mass about 20 armed militiamen and militia-women came in through the main door of the church. They closed all the doors and refused to allow anybody to leave. They guarded all the exits from the parish hall, the church and the car park. The priests were locked up in the vestry. After that the congregation were allowed to leave the church one by one through a small door. Both the men and women were searched by the militiamen and this went on for about an hour or an hour and a half. After that they began to search the church, the vestry, the parish hall and even the ciborium, but found nothing anywhere.

"This search lasted from 8 p.m. until 10 a.m.

"When the landing took place in the Bay of Pigs, we were locked up in the vestry for 11 days.

"On the day of the landing, priests were even arrested in the street and were taken by the G-2 to El Principe or La Cabaña."

The witness was asked how many Franciscan fathers there were normally in Cuba.

He replied: "105. Now only ten monks and 14 priests of our order remain in Cuba."

The witness was asked whether mass could be said freely in the Cuban churches. He answered: "Services are held, but it is forbidden to preach on Sundays. It is dangerous for a Catholic to go to church because the building is always watched."

Q. "Why did you leave Cuba?"

A. "I was warned that I was going to be arrested and, moreover, I had received an expulsion order from the Ministry of Foreign Affairs."

The witness concluded by giving the names of five priests who were sent to La Cabaña and El Principe.

A student commented

Q. "As an eye-witness of the events which occurred in the town of Guines last Holy Week what information can you give?"

A. "I was a member of the committee in charge of the proceedings. Everything began in an orderly way. But soon a noise started coming from behind the place where the performance was being held. I went along to see what was happening and found that the shouting was coming from a group of people in the police headquarters nearby. They had been assembled there to prevent the performance. Soon, militiamen started coming out of the barracks and sitting on the railings. They began to make offensive comments and to let off bursts of machine gun fire into the air. This broke up the performance and everybody tried to take cover. The audience scattered, some shouting 'Cuba, Yes; Russia, No. ... Long Live Christ the King' ... The militiamen then ran out into the middle of the car park and continued firing shots to scatter the crowd. Sometimes they fired at body-height as can be seen from the bullet marks in the adjoining buildings."

Another monk was asked

Q. "Did you witness any unlawful obstruction of freedom of worship in Santiago de Cuba?"

A. "One day when the authorities thought that a pastoral letter was going to be read out during mass protesting against the lack of freedom in Cuba, some groups of people entered the church while others stayed outside in the street and provoked the congregation attending mass with the result that there was a fight between the militiamen and the Catholics. I was accused of having struck a lady in the eye and I was charged in the magistrate's court at Santiago de Cuba with having caused bodily injury. In the early part of

March the case was taken out of the hands of the magistrate's court and transferred to the revolutionary court on March 7. I had to leave for Havana on March 20. Before this, on March 9, I was expelled from a cultural centre known as the Cuban-North American Centre, where English classes were held on ground that I was a counter-revolutionary."

Q. "While you were in Havana did you see any acts of repression by the militia?"

A. "On April 18, 1961 after the invasion I was in the monastery of San Juan de Letran, which was searched by the militia. All the monks were taken into a small room to be searched. Father José Ramón Fidalgo, parish priest of Trinidad, was taken away by the G-2. He was sent to La Cabaña and from there to the Isla de Pinos without a trial."

Q. "How long was the monastery occupied?"

A. "11 days. They searched all the private rooms of the monks and stole clothing, a radio, electric razors and cash amounting to about 7,000 pesos, of which 5,000 pesos were for the purchase of furniture for the Jesus Obrero school. They also took the monks' personal documents and the monastery records."

"On leaving the monastery of San Juan de Letrán, I sought refuge with the Papal Nuncio, who asked the Venezuelan Embassy on April 28, to grant me asylum. I entered the Embassy together with two other monks. Other monks found asylum in the Brazilian, Venezuelan and Costa Rican embassies. Cardinal Arteaga is still in the Argentine Embassy."

IX. INFRINGEMENTS OF LABOUR RIGHTS

Infringements of freedom of association

Infringements of the workers' freedom of association have occurred since the early days of the Castro régime.

After the triumph of the revolution against Batista, it was decided to hold elections of officials in the trade union federations. In these elections the representatives of the July 26 Movement, at that time anti-communists, were overwhelmingly successful.

The Government tried to impose what it called "unity of direction" meaning that in order to avoid contention, the leadership of the union movement should also comprise members of the Communist Party.

Labour union leaders testified

"After we had been elected by an overwhelming majority of our fellow workers, we concentrated on trying to guide the policy of the revolution despite the fierce attacks that were launched against us."

At this point, however, Law No. 647 was passed which virtually empowered the Minister of Labour to dictate to the workers who their leaders should be. Meetings began to be called to replace the elected leaders. One witness, who was a working-class leader, stated: "One by one the leaders who had been freely elected by the workers after the triumph of the revolution were overthrown by meetings which were packed and coerced by the rebel army."

The tactics used by the Castro régime to subdue the Cuban trade union movement were, among others:

1. At the last minute, to change the place at which the meeting was due to be held according to the convocation, in order to confuse the mass of the workers and to be able to pack the meetings with communists even though they did not belong to the trade in question.

2. Personal accusations and attacks. One witness, who was a leader of an industrial trade union, stated:

"One day they overturned my car outside the C.T.C. (Confederation of Cuban Workers), as they did with all the leaders who did not toe the Communist Party line. Their practices were exactly the same as those of the former régime—meetings were coerced, signatures were forged and there were denunciations of counter-revolutionary activity."

3. Senior posts in the Government were offered to union leaders if they would give up their positions in the movement. The witness stated:

"They offered me a senior post in the Government on condition that I gave up the leading position I occupied in the trade union movement. This I flatly refused to do. I was asked to convene the meeting, but not to appear there myself. I was told that if I did appear, Lazaro Peña himself, one of the leading Cuban communists, had threatened to have me arrested."

A leader of the Havana Construction Workers Union

Another witness described the position in the Havana Building Workers' Union, which is one of the largest.

The Union had called a meeting to elect seven delegates to the Congress of the Federation. The witness, who had attended the meeting, said:

"The communists with Cuban flags in their lapels took over control of the doorway to the C.T.C. building. When they opened it, about 130 or 140 communists went in and about 25 or 30 went up on the stage. The others occupied the front rows. While the union officials were getting ready for the meeting, the communists started to create trouble and when the General Secretary arrived they assaulted him and as a result a number of delegates were injured. I took them

away to hospital and when I came back to the C.T.C. there was an employee on duty at the door who said: 'Where are you going? You had better go away because three policemen came and arrested your colleagues and took them away.'

"So I went away and had the idea of telephoning the C.T.C. saying that I was a journalist and asking for information. The call was answered by a C.T.C. employee called Barral who was an office manager and I said to him: 'This is such-and-such a newspaper. I have just had a call to say that the Union's officers have been dismissed ... Can I go ahead and publish this?' He answered that it was true, that the Minister of Labour was there but that we should not publish it yet and should call back later. I then phoned up again saying that I was the duty officer at the Seventh Police Station. The telephone was answered by a lieutenant for the Director-General of Labour, Captain Cauce. I said to him: 'Lieutenant, this is the duty officer at the Seventh Police Station speaking. I have a party of arrested men here who want to go to the Construction Union Congress. Have a word with the Minister and find out what has to be done with them.' The lieutenant spoke with the Minister and answered: 'He says that you should keep them until he himself can come along.'

"In other words, the Minister of Labour legalized the overthrow of the Union and brought in about 80 communists, together with an inspector of the Ministry of Labour and two members of the rebel army and entered it in the minutes and took over the organization.

"That was how they operated.

"As a result, I had to leave the country by boat two days after the meeting."

Thus ended the career of a Cuban trade union leader.

The charges made by the communist leaders against the Cuban trade union leaders were:

1. that they were splitting the working-class movement;
2. that they were Mujalistas, i.e. followers of Mujal, a union leader who served the dictatorship of Batista;
3. that they were embezzling union funds.

The Metal Workers' Union suffered the same fate as the Construction Workers' Union.

A number of working-class witnesses were asked whether they knew of cases in which workers had been arrested and shot for reasons connected with trade unionism and politics.

A. "Most of those who were shot are workers. In fact, nowadays nobody who is a worker or a student can do anything. Three members of the Executive Committee of the Metal Workers' Union are serving terms of 20 years' imprisonment."

A sugar grower testified

Q. "What can you tell us about your organization and the present legal position in Cuba?"

A. "Our organization comprises 65,000 sugar growers, of whom 47,000 own small farms of 1, 2, 3 or 4 caballerias. A good deal of international attention has been attracted by Fidel's land reform, but we should like to emphasize that there is not and never has been any such land reform in Cuba. All that has happened is that the Castro régime has taken over our land and all our equipment. It is not true that they have shared out the land as they claim. What they have done is to dislodge the sugar growers from their land and rob them of everything without any compensation only because we as a class would not knuckle under to them. They also seized the buildings of many of our local branches and also those of the provincial assemblies. In Cuba, we had 161 local branches—there are 161 sugar mills with a branch in each. All these branches had their own buildings and so did the provincial assemblies and the National Assembly, which was at No. 360 calle de Aguiar in Havana, where it owned three plants as well. Everything was taken over by the communists, together with the bank accounts of all our local branches, provincial assemblies and the Association itself amounting to more than \$960,000. We also had railway shares valued at 3½ million pesos and these too were stolen from us. And all this because we refused to go to a joint meeting of the INRA and the Sugar Workers' Federation. We have our own by-laws and we abide by them, and we cannot be called to a meeting by any organization other than our own. The proposal was that the INRA, the Sugar Workers' Federation and ourselves should hold a meeting to discuss problems connected with the next sugar harvest. The only purpose of this meeting or assembly was to get us, by being present, to endorse what was about to happen—the sale of our sugar to Russia when we already had a market such as the United States where we sold 3½ million tons at 5½ and 6 centavos. They wanted us to sell our sugar to Russia at less than the world market price which, under the International Sugar Agreement, could not be less than 3.25 a pound. And yet they were selling our sugar to Russia at 2.50 a pound. That was their plan and that was why they issued a decree dissolving our Association."

Q. "When was the Association dissolved?"

A. "The Assembly was dissolved on December 18, 1960, and our properties were confiscated in January."

The militia organization covered every aspect of Cuban life. From the members of the Cuban Supreme Court down to the humblest peasant everybody was invited to join the militia. It was said that the decision to join must be voluntary, but those who refused to enter this para-military organization were persecuted and treated as counter revolutionaries.

(11)

The determination of the Castro régime to subdue the population took a variety of forms. Each section of the population and each individual were required to do things which were known to be considered highly repugnant. From the coercion brought to bear to compel people to join the militias to the pressure to contribute towards the collections which were held for a wide variety of purposes, every device was employed to make both salaried employees and wage earners conform or else resign. For example, a switchboard operator in a big Havana firm stated:

"When the Government took the firm over, the official in charge ordered the telephonists to answer calls with the words 'Fatherland or Death, We Shall Win' and then to give the firm's name followed by the word 'Nationalized'. I refused to do this. He called me into his office and told me that I must co-operate. Moreover, life in the office became impossible because they were always having collections and if you did not co-operate you were black-listed and so on until the time came when I had to leave.

"They took my flat although I was able to get all my things out (of the flat). But the only thing of value I was able to take out of Cuba was my wedding ring, and the remainder is still there."

(60)

An agricultural engineer with long experience of Cuban agriculture spoke of the position of the workers in the co-operatives organized by the Government. The witness said:

"The workers' position is pitiful. Formerly (when working for private employers) they were paid punctually and in cash. Now, they are paid with vouchers which they have to spend in the people's stores and the few articles available there are of the poorest quality. They are compelled to join the militia and are constantly watched by the authorities."

A truck driver testified

Q. "After being sacked, what did you do then?"

A. "I found a job in a rice growing co-operative and after I had been working there for about 60 days they told me that to keep my job I must join the militia. I told the militia lieutenant in the co-operative that I would think about it. At the end of the month when I was paid I did not go back. Later, talking to a lieutenant in the militia who was an acquaintance of mine, he asked me what I intended to do next. I could not help answering: 'Rather than join the militia I will take up arms against the Government'. From that time on, now that my attitude was known, I was persecuted and insulted. They called me 'vermin', which is the word normally used by communist agents and militiamen to insult anybody. Feeling

unsafe and helpless and fearing for my life because I had been labelled a counter-revolutionary, I had no option but to leave the country. Before I could do so I had to hide for 54 days in friends' houses before being able to catch the boat."

Testimony of a railway pointsman

Q. "What did you do in Cuba?"

A. "I worked on the Western Railways, now the National Railways. After that I served in the National Police in Havana for a year and a half."

Q. "How long were you in the National Police?"

A. "From January 1959 until March 1961."

Q. "Why did you leave the Police?"

A. "They made me resign."

Q. "Why did they make you resign?"

A. "On February 2, Mario Garcia, who was head of the Payments Section in the Ministry of Finance, called me to his office together with some colleagues of mine and put a number of questions to us. He asked me: 'Pacheco, whom do you sympathize with?' I answered that as a revolutionary I sympathized with everybody. Then he said: 'You know that the revolution is led by one party'. As I did not know what he was talking about, I asked him to explain to me about this party and he answered: 'The Socialist People's Party is going to take control of this revolution'. That was all he said to me and then I went back to my post. On March 9, 1961, I was called to the office of Captain Antonio Prado to sign my resignation, after which I was dishonourably dismissed."

Q. "Did you sign the resignation?"

A. "Yes."

Q. "Did they give any reason for wanting you to resign and for dismissing you dishonourably?"

A. "No."

Q. "What did you do after you left the Police?"

A. "I went to Sagua la Grande and went back to my work on the railways."

Q. "Did you have any difficulty over this?"

A. "At first no, but later on May 19, 1961, I was sent for by the Delegate of Brotherhood No. 3, who was with Captain Drake, and he asked me to give an arms drill to a squad of railway militiamen. I refused because I was not for the Government."

Q. "Did they take any steps against you for refusing?"

A. "From then on they would not let me work in my normal job as a pointsman."

"Before that, when the landing took place on April 17, I was arrested because I had friends who did not support the Castro regime."

Q. "How long were you arrested and where?"

A. "For 46 days in the prison at Sagua la Grande."

Statement of a sugar worker

"I worked until July. My position there was awkward because I was always kicking up a fuss about the working conditions. Just imagine, before the Government took over the mill I used to earn 223 pesos a month and by the time they had finished cutting it down I was left with about 80 pesos. When I complained they increased it but only up to 151 pesos. In fact, they never did pay me the wage I used to earn. Besides, now they made us work overtime every night without paying us a cent. When this went on I went and saw the manager of the mill ..."

When asked who this manager was—whether it was the former manager or a new appointee of the INRA and what he had said—the witness answered:

"The old manager did not stay. When they nationalized the mill, they put in a block-head who took his orders from the communist crowd at Quemado de Guines. Anyway, I had a word with him and told him plainly that if they wanted me to work overtime they must pay me because nobody was going to take my rights away from me. When I said that the company which owned the mill before always paid for overtime and now that we had a revolutionary government there was all the more reason to pay for it, he answered that what had happened was that I had developed into a counter-revolutionary. The problem with the revolution was that it had to be helped. In the mill there was no proper management and the work was not organized efficiently. For example, we would be doing one job and after we had spent some hours on it and were finishing, one of these fellows would come along and say: 'Never mind that. Drop it and start this.' The result was that time was wasted and production was disorganised. I attracted attention to myself there and was unpopular with the communists because I always complained that we had to spend so many hours working to no purpose and without pay."

He was asked whether because of his complaints he was victimized or ill-treated and he answered:

"Well, yes. They threatened me with the sack and with a transfer—many of my workmates were transferred to other mills on lower pay than they were earning there as a punishment for not co-operating. Several times they asked me to join the militia and I always answered no because I was only a worker and nothing else."

A fisherman replied to questions asked

Q. "Were you ill-treated in your work?"

A. "Not physically, but I had three or four tussles with the militia commander in the co-operative."

Q. "What were these tussles about?"

A. "Because he wanted me to join the militia and I said I would not. Another time I refused to produce my fisherman's licence; another tussle took place one day when he would not let me leave the co-operative, and there was another one when he would not let my brother leave. None of these went any further than words, although once he pulled out his revolver."

Q. "How many people worked with you in the co-operative?"

A. "200 or so."

Q. "Why didn't you leave the co-operative to work elsewhere?"

A. "Because I couldn't."

Q. "Were you watched by the Government forces?"

A. "Yes, by the militiamen."

Q. "How did you know they were watching you?"

A. "Because wherever I went I saw them following me."

Q. "What was the position of the fishermen belonging to the co-operative? Were conditions in accordance with the labour regulations?"

A. "The conditions were not very good. The wages were low and the workers were discontented."

Q. "How do you know?"

A. "Because they said so to me."

Q. "What kind of watch was kept on the co-operative?"

A. "There was the armed militia."

Q. "How many armed militiamen were there?"

A. "Eight or ten, who were not from the district."

Q. "What were the duties of the militiamen in the co-operative?"

A. "To keep an eye on us and see that we did not escape."

Q. "Why was this armed watch introduced?"

A. "Because before we left two other boats had escaped."

Q. "Did these militiamen interfere in the work?"

A. "No, they just guarded the co-operative buildings and kept an eye on the workers."

Q. "How long have you been a fisherman?"

A. "Since I was eight."

Q. "Had you ever seen armed guards in the fishing villages before?"

A. "Never."

A farmhand's comment on the co-operatives

"So I went to see the official in charge of a farm belonging to an American in Ciénega de Zapata which had been taken over to ask for work. But I did not accept what he offered because he said that it would mean working all the year round and at the end of the year the co-operative shared out the profits among the workers because it belonged to them. I objected that I could not accept work on those terms because I did not believe in sharing out. This started off an argument and he asked how it was possible that I could have fought Batista but now I was not willing to help the revolution. I answered that I had fought Batista because there was no freedom but that now the revolution had been achieved they should not expect us to work for nothing. Then he said that he could not give me a job, but then offered me 15 pesos a month under a special arrangement so that I could buy clothing, shoes, etc. in the people's store. I answered that I could not accept work on those terms."

(86)

"I left Cuba on August 22, 1961. I used to live in Quemado de Guines, which is a small town in Las Villas province, close to which I had a sugar farm. It was a very small one because I only milled 30,000 arrobas a year, but I got by. But it turned out that in order to go on working as I had done all my life I had to be a militiaman or a communist, and as I am not a communist and cannot be a militiaman I had to find ways and means of getting out."

(87)

"I used to work on the land—sugarcane and smaller crops. During the sugar harvest I used to drive one of the trucks hauling the sugar. I left Cuba by boat in the middle of August and arrived here about the 25th. I decided to leave the country because I was constantly being victimized by the militia at Quemado de Guines because I was never willing to be a militiaman and even less willing to become a communist. I was accused of helping the rebels against the Government and they threatened to arrest me. We were always having arguments and they kept a watch on my house and sometimes searched it. Besides, I used to be paid 1 peso for every 100 sticks of sugarcane, but they would only pay me 50 centavos. When you finally got paid, you found you had been working for nothing because everything had been deducted. Sometimes there were collections for planes, other times for arms, other times for tractors, and once even for Operation Cow ... "

(88)

"I used to work for the company which owned the Isidro mill which was nationalized and taken over by the Castro Government. Under the private company we used to work eight hours and if we did any overtime we were paid time and a half. Now, you have to work eight hours and then as much voluntary overtime without pay as they tell you. I never used to work at night; but now you have to work at night to help production. Those of us who refused to join the militia found our life at work made more difficult for us."

When asked how many fellow workers he had, he answered:

"18. Most of them are there because it is impossible to leave—if you try they arrest you. The only way to get out is to do what I did. Otherwise the only thing to do is to put up with it."

(89)

"I always worked for the San Isidor mill. Before the company was taken over by the revolutionary government we were well paid. Besides, we used to work eight hours and if we did any overtime we were always paid for it, but after the INRA (National Agrarian Reform Institute) took over the mill we had to work for up to 16 hours without any extra pay. And the important point is that if you did not work it might cost you your life. I complained from time to time that I had not helped them with the revolution to do this to me, and the communists there told me that I was a counter-revolutionary, that the revolution had to be helped by working and that my attitude was a negative one. They kept on at me."

Laboratory assistant

Q. "Why did you leave Cuba?"

A. "Because they told me that if I wanted to keep my job at the sugar mill I should join the militia, and when I refused I was cold-shouldered and treated as a counter revolutionary."

C. "Were you actually ill-treated?"

A. "No."

Q. "Were you able to change your job?"

A. "No."

Q. "Why not?"

A. "Because if you resign and apply for a job in a state co-operative, for example, and they make enquiries at your former place of work and find out that you resigned rather than join the militia, you cannot get a job."

Q. "Did they cut your wage at the sugar mill?"

A. "Yes, from 5 pesos for an 8-hour day to 2.50 pesos for a day which was increased to 10 or 12 hours. In addition, we had to give a day's pay to such causes as *Arms and Aircraft, Operation Cow, Literacy, Militias.*"

(25)

Under Fidel Castro's régime, the so-called co-operatives do not deserve the name because they can be regarded merely as off-shoots of the INRA (National Agrarian Reform Institute).

The members of the co-operatives are arbitrarily designated by the régime.

They are administered by managers appointed by the Government.

Their management is not subject to any bye-laws or internal rules.

They are not bodies corporate.

They do not own their land or their means of production.

The members of the co-operatives have no power to decide what type of crop to grow, its quantity or quality, etc.

They are compelled to sell their output to the INRA at such prices and in such a manner as the INRA may prescribe.

Several witnesses, all of them peasants who had left Cuba, agreed in stating that the so-called co-operatives of the Castro régime are an instrument of the Government.

One of the witnesses was asked whether the peasants were really the owners of their co-operatives and whether the land really belonged to the co-operatives. His answer was:

"That is absolutely untrue. I can quote one actual case—a well-known farm belonging to the brothers Remedios. They were big landowners. Their farms were taken over and now belong to the State. Yet they did not appoint an employee of the farm as manager, but brought in an outsider who belonged to the Communist Party. They did this in all the farms and in all the co-operatives."

Q. "Who formed the co-operatives?"

A. "Section 44 of the Land Reform Law laid down a period of three years for which a manager would be appointed and stated that the peasants and workers living on the estate would be asked to join. Logically, they should have elected a management committee which would then have appointed a manager. But the manager is actually appointed by the INRA and he tells every worker or peasant what to do."

The witness was questioned about the form of payment made to the workers.

A. "Payment is made through the people's stores and the farm worker has to buy his food and everything else he needs in them."

Q. "Is the co-operative lawfully organized?"

A. "The INRA appoints a manager for a period of three years, but he decides everything without any participation by a single member of the co-operative."

Q. "Do you think therefore that freedom of employment is violated in this type of organization which is described as a co-operative?"

A. "Absolutely. The workers' rights are violated because, in the first place, they are not entitled to a job or to a minimum wage and, in the second place, none of the rights laid down in the Constitution of Cuba is observed."

X. OFFENCES AGAINST PROPERTY

(90)

"Arrest entailed the confiscation of all my few belongings, including the house I lived in and the jewellery of my wife and mother-in-law."

(10)

"One day I sought permission to take a ballet to Mexico. They allowed me five days. I left and never went back. They confiscated my apartment... They did not allow me to take more than 150 dollars out of Cuba. They confiscated my furniture and all my personal belongings for the 'crime' of not returning to the communist hell of present-day Cuba."

(102)

"While we were still in Cuba they searched the house, emptied the drawers and turned everything inside out. The second search was carried out by the G-2. This time my daughter (aged one year) was asleep. I was dismayed and terrified because they (the guards) carried rifles. All the correspondence which had been stamped by the censor was read again, including my husband's letters. They broke the pictures of our wedding. They broke an album of family photographs, the television set and even took apart the mattress of the cot where my daughter was sleeping to see whether we were hiding any arms."

(13)

"All our property was first of all taken over and then confiscated by Castro. This property consisted of a sugar mill, a number of sugarcane plantations, some stock-raising farms and a milk pasteurizing plant. They claimed that this formed part of the new policy of the

revolutionary government, but I believe that they were simply determined to confiscate everything belonging to anyone who did not think as they did. We opposed Castro from the start because we thought he was a communist."

O. "Were you compensated for the property taken over by the Government?"

A. "No, not at all, and they did not even give us any explanation. Some people's militiamen turned up and said that by government order they were taking over the mill. That was all our manager was ever told and after he had left he was replaced by some individual who knew nothing about the business and had to be replaced in turn and so on."

On being asked how the milk pasteurizing plant came to be taken over, the witness stated:

"This was done at the request of two or three workers in the plant with communist sympathies, and the government militia. They moved in and stayed. There was no record; they handed over no document; they gave no explanation. Here we are and here we stay. The farms were taken over by the INRA."

One of the most common offences against property is the forcible entering and searching of people's homes. One woman witness was asked why she had to seek asylum in the embassy of a Latin American country and answered that on January 1, 1961, at 11 p.m., her home was entered by six members of the G-2 police on the pretext that they were searching all the houses near the Plaza Civica—which she discovered to be untrue because her house was the only one to be searched. She was asked whether they produced any warrant and said that they did not.

(74)

"They were armed with rifles or sub-machine guns. They even went into the room of my grandmother, who is 90 and was asleep. These armed G-2 men made a minute search of the whole place and told me to go with them to the G-2 offices. However, when we went downstairs one of them telephoned the office and seems to have been given orders to leave me at home. But they took away all the documents they had found, such as personal letters, photographs, as well as personal effects and so on. They told me that I was still under investigation and might be summoned for interrogation at any time to the G-2 offices. And so in the early hours of the following morning I sought asylum in the Mexican Embassy."

(16)

A young lawyer, who was unable to practise his profession after having defended a number of accused in the revolutionary courts, described how his property was treated:

"My house was ransacked, my files were tossed into the street, and all my books were burned. My office was stripped, the tables, typewriters and air conditioning apparatus taken away; a small farm of two caballerias in Pinar del Rio and a bank account in Havana were both taken over. Both my wife and six months' old daughter had left Cuba in the early part of January before I did."

The witness explained that he had sent away his wife and baby daughter "because they arrest and molest all lawyers who defend counter-revolutionaries and also their wives, mothers and other relatives".

(73)

"After being constantly followed by G-2 agents for three months, I arrived home on April 17, 1961 (the day of the landing) and was met by two G-2 agents who, after a minute search which lasted for more than an hour and was conducted without any warrant or explanation, asked me for the key to my car and gave it to another agent waiting outside. The car was confiscated."

A doctor testified

Q. "How often was your house searched?"

A. "Three times. The first time was a month before my first arrest; the second took place about a fortnight before the landing in the Bay of Pigs; and the third occurred on the Sunday before the landing. All these searches were carried out in the same way. There was never any warrant. A group of men armed with rifles would simply arrive, knock on the door, and without any explanation carry out a minute search of the whole apartment. Some of them used to carry sub-machine guns. For the last search about ten or 12 members of the G-2 and the militia came in two cars. They surrounded the block and tried to force their way in through a window, but when some of the neighbours saw this and protested they decided to come upstairs and knock on the door. When the door was opened they said 'G-2. We have come to search the place... Don't move anybody.' They put guards at the doorway and carried out a thorough search, still carrying rifles and sub-machine guns. They also conducted a stormy interrogation of myself and every member of my family. A maid who thoughtlessly went home, was followed and a thorough search was made of her home as well. During this search we were treated discourteously."

Another medical doctor added

Q. "Where were you taken after you were arrested?"

A. "First of all to our home. After that to the G-2 building. They occupied our home at the time that we were in the G-2 building, and during that time ate up all the food and stole clothing, personal

effects and so on. When they took us to the G-2 building they put us in a room about, 45 by 15 feet together with about 70 or 80 other people. There was only one toilet. My wife was put in a room with other women.

"They interrogated me from eight o'clock in the evening of that day until 12 o'clock at night the following day. The interrogation took place in a very cold, sound-proofed room."

A businessman answered questions put to him as follows

Q. "For what reasons did you decide to leave Cuba?"

A. "Because all my property and assets, worth about 1,000,000 pesos, were stolen from me by the Government. The Ministry for the Recovery of Embezzled Property opened proceedings against me, but was unable to prove anything and my property remained mine, but later it was stolen from me under legislation passed by the Government."

O. "What did this property consist of?"

A. "My house, 2 cinemas, an apartment block, seven small houses, various mortgages amounting to 60,000 pesos, an extensive housing estate with 200 building lots for sale and loans to the tune of 400,000 pesos. The two hundred building lots were worth about 500,000 pesos."

Q. "What reasons did they give you for depriving you of these assets?"

A. "The cinemas because they had nationalized the circuits through which they were rented and so they took them away from me. The other properties, such as the apartment building, the land, mortgages, etc., under the Urban Reform Law. The house I was living in because the whole of my family was abroad and I was living there at that time alone with a son-in-law of mine. They told us that we could not go on living there because it was too much space for two people and they needed it to house peasants whom they were going to bring to Havana. Within a month of our leaving the house, which was then occupied by an old friend of the family who was looking after it for us, a militia lieutenant whose name I do not remember off-hand and a woman known as "la China" turned up and ordered this lady to leave the house, which she had to do. Within a few days they took out all the furniture, air-conditioning equipment, clothing and other articles."

Q. "Did they give any explanation for seizing all these articles?"

A. "They said they were going to use the house to accommodate peasant lads whom they were bringing to Havana and they had to make room for bunks."

Q. "Did they give you any document certifying which properties and belongings they had taken?"

A. "No, they asked me to give them the deeds of my properties, but I played for time and gave them nothing. I still have the deeds as well as my bonds and shares in all the firms in which I had an interest."

Q. "Did the Government compensate you for your property by giving you any form of bonds or securities?"

A. "No, absolutely nothing."

Woman psychologist:

"At 4 a.m. on the following day—April 21—they carried out a much more careful search than before and found some compromising documents. They then told me that I was arrested together with everybody else in the house, which meant two maids, M.L.B., who is quite lame in one leg, and E.G. They even took away the latter's son who did not even work in my house but was staying there because transport was so difficult just then. He had spent some time in the Mazorra psychiatric hospital, but although I explained this to them and asked them to make some allowances for him they paid no attention to what I said.

"Before leaving the house they made me count all the money they had found—about 1,000 pesos—and without giving me any explanation took possession of it. I wanted to telephone to my aunts to warn them that I had been arrested by they would not allow me. They set me free in the early morning of May 24. My husband had been let out on May 1. He told me that when he went back home he found that they had stolen everything of any value—jewellery, silverware, all the electrical appliances, his clothing, etc. The typewriter and all our papers were taken away on the day he was arrested and were never returned. Our passports were also taken away when they searched the house."

XI. INFRINGEMENTS OF THE FREEDOM OF THE PRESS

Cuba was one of the Latin American republics with the largest number of newspapers, radio stations and television stations. In December 1959, 16 newspapers were published in Havana. Eight of these—*Alerta*, *Pueblo*, *Atajo*, *Avance*, *The Havana Post*, *El Mundo*, *Diario La Marina* and *Prensa Libre*—were directly taken over by the Government. Another five were immediately closed down—*El País*, *Excelsior*, *Mañana*, *Diario Nacional* and *República*. The three remaining newspapers are *Información*, *El Crisol* and *Revolución*, the latter being the official organ of the July 26 Movement. To this should be added one more newspaper—*Hoy*—which is the official organ of the Socialist People's Party, i.e., the Cuban Communist Party.¹

¹ *Hispanic American Report*, Vol. XIII, No. 5, July 1960, p. 309.

The methods employed by the Castro régime to destroy the freedom of the press in Cuba have been summed up as follows:

1. The occupation by force of newspaper offices and radio stations belonging to or connected with persons who collaborated with the Batista régime.

2. The use of these newspapers to discredit any organ with independent views.

3. Financial strangulation by bringing pressure to bear on private advertisers to cancel or reduce their advertising in independent newspapers and by making no official announcements in them.

4. Acts of coercion and violence such as the burning of newspapers, symbolical funerals, the overturning of distribution vans, threats to agents and distributors, etc.

5. Control of the journalists' associations and the printing workers' trade unions by replacing the former leaders with supporters of the régime.

6. The use of these organisations to disrupt the work of each publishing house. One method employed was the "footnote". These "footnotes" were comments attributed to the staff of the newspapers which were added at the end of cabled newstems to contradict them. Later they were extended to articles and editorials with the aim of forcing newspaper publishers to abandon publication. These "footnotes" were never signed and had to be published; they helped to foster a state of uncertainty among the staff.

7. Confiscation of the assets of newspaper owners.

8. Stirring up disputes between publishing firms and their staffs; agents provocateurs were used to take over and later confiscate newspapers.¹

Below is quoted some testimony dealing with the abolition of freedom of the press.

(8)

"As far as the press was concerned, the revolutionary régime began by taking over the newspapers which had supported the former government, but it was only the beginning. At the slightest criticism, however justified, Fidel Castro himself would go on television to denounce it and launch insults and threats of all kinds at the editor of the publication. This created a feeling of hostility among the hot heads towards the independent press. One after the other, newspapers and radio and television stations were closed down and confiscated. All those that remained belong to the Government and are its mouth-pieces."

¹ See Humberto Medrano: "Como se suprimio le libertad de prensa", published in "Cuba 1961", a supplement to *Cuadernos*, No. 47, March-April 1961, p. 8-17.

(30)

"Then came the attack on *El Crisol*, a newspaper which because it would not submit to the Castro régime was publicly denounced on television by the maximum leader Fidel Castro. Once when there was a hunger strike among the prisoners in La Cabaña, *El Crisol* gave an objective account of the facts. Fidel Castro egged on the people against the newspaper, told them not to buy it and called on the advertisers to withdraw their orders. This happened whenever any news-item appeared which did not please the régime. They ended up by confiscating it after bringing financial pressure to bear by withdrawing official announcements, which were only given to pro-government newspapers, etc. Having brought about financial collapse in this devilish way, they immediately confiscated it without any compensation, without giving a single document as receipt for the property they had taken over by force against the wishes of its owner."

(5)

"As an official of the Government of Fidel Castro Ruz in Cuba, I took the following action within my profession of journalist and publicist. When I became disillusioned with Mr. Fidel Castro Ruz and felt sure that he was steering the country towards a Red régime, I began to have fears about the disastrous consequences of this dictatorial rule. My first step was to stand for election to the post of Dean of the Provincial College of Journalists in Havana in opposition to the communists because I felt that the Government was circumscribing freedom of expression by curtailing the liberty of Cuban journalists. This large-scale attempt to mobilize the free journalists of Cuba was regarded as a serious act of opposition to the Government. Repression became even more savage and it was then that they invented a new device to prevent the free journalists from expressing their views—the so-called "footnote", which was added to every article and mocked at democratic opinions. But this device of Mr. Fidel Castro misfired because a group of fellow journalists led by myself, laughed at these "footnotes" and he could think of nothing better than to invent an excuse for taking over the newspapers on the illogical ground that they were not paying their way. As everybody knows it is up to the business itself to decide when it is not paying its way and not the State. We appealed against the "footnotes" on the ground that they were unconstitutional and subsequently my organization protested in the newspapers during March 1960. Finally, I left Cuba in August 1960 after having taken part in the underground struggle, together with groups of anti-communist journalists.

I submitted a report on all this to the Committee on Freedom of the Press of the IAPA at its meeting in Acapulco, Mexico, in 1961. Since then we have carried on the fight through various Latin American and international organizations stating our case as freenewspapermen."

XII. VIOLATIONS OF THE FREEDOM OF EDUCATION

The Castro régime has used a variety of methods to put an end to freedom of education in Cuba. From the University of Havana down to the smallest secondary or primary school, the whole educational system has been brought under State control. The Nationalization of Education Law issued in June 1961, is the most conclusive evidence of this. But even before this piece of legislation was passed, the Castro régime had made use of several methods to extirpate freedom of education. These methods, according to statements by witnesses, included the following:

1. The arbitrary dismissal of teachers under the system of "purges".
2. Physical coercion in the shape of insults, threats and the supervision of university teachers by student supporters of the Government.
3. Public accusations that certain teachers were "counter-revolutionaries".
4. A permanent watch on teachers' activities even outside the university.
5. The organisation of a university militia within each university.
6. Political interference by the Government through the University Student Federation, the President of which is a major in Castro's army.

It is worth mentioning here one of the arguments put forward in Havana against university autonomy. "University autonomy", said one witness, "was justified under a reactionary régime which the University had a duty to fight. But once the people has taken over the government through the revolution it is pointless to speak of university autonomy because a university cannot be independent of the people itself."

The history of the independence of Havana University came to an end with the appointment as Rector of Juan Marinello, one of the leading members of the Cuban communist old guard and a minister without portfolio under Fulgencio Batista in 1943. The President of Cuba, Osvaldo Dorticós, said in a speech at Havana University in tribute to the communist leader Julio Antonio Mella, murdered in Mexico 33 years ago, that the students of Havana University would graduate under "the principles of Marxism-Leninism".¹

Lawyer and university professor

"Havana University was granted autonomy in 1937 and this was reaffirmed in Article 53 of the 1940 Constitution. When Batista carried out his coup d'état on March 10, 1952, the University protested through its faculty and student groups. During the seven years of Batista's

¹ *New York Herald Tribune*, January 13, 1962.

dictatorship this autonomy was violated on a number of occasions when the police entered the university precincts without the consent of the authorities. Each time the régime suspended the constitutional safeguards, the University Council ordered the suspension of all academic activities in order to avert even greater evils. When the régime fell on January 1, 1959, the University had been inactive for more than a year.

“ At a meeting held in Caracas, Venezuela, by all the revolutionary organizations opposed to Batista’s dictatorship in July 1958, it was agreed that the 1940 Constitution—which had first been suspended and later violated by Batista tyranny—should at once be restored when the régime was overthrown. The organizations which signed this agreement included the July 26 Movement led by Fidel Castro. When the revolution triumphed, the Fundamental Law was passed reintroducing—subject to the changes made necessary by the revolutionary transition—the principles of the 1940 Constitution. These principles included that of university autonomy. Castro himself, in a speech during the early part of January 1959 in Havana University, promised to respect this autonomy. In order to draw up a scheme for university reform a joint committee of professors and students was set up on the initiative of the university bodies themselves. At the end of 1959 the completed scheme, which had been approved by the teaching faculties and the student associations, was placed before the Council of Ministers of the Revolutionary Government as a first step towards the passing of legislation. But the Council of Ministers never gave its approval to this scheme. The first time the Revolutionary Government intervened in university affairs was in connection with the elections to the post of President of the University Student Federation (F.E.U.). There were two candidates for this post—Pedro Boitel and Rolando Cubela, the latter being a major in the rebel army who was trusted by Raul Castro. The day before the election Fidel Castro himself came to the University and urged that there should only be one candidate. The student body protested against this intervention—it was the first collective protest against a proposal by Castro. Despite this, Boitel, under pressure from the Government, withdrew his candidature a few hours before the election, so that Cubela remained the only candidate. He was thereupon declared “elected”. Boitel is now in a Cuban prison. He has been there for some months but has not been brought to trial yet. Shortly after this ‘ election ’ a university militia was formed.

“ During the early part of 1960—January and February—a campaign to discredit and vilify the idea of university autonomy was carried on in the government-controlled press. It was alleged that this autonomy was used for counter revolutionary purposes, that the revolution had not yet touched the university and that autonomy was meaningless under a régime in which government was in the hands of the people. When this campaign began, the University Council—the senior university body, made up of the Deans of the 13 university

faculties and presided over by the Rector—immediately came forward to defend the University's autonomy. Thereupon, the Rector and the Council were publicly attacked as 'counter-revolutionaries'. Groups of communist students began to cause disturbances and agitation in every faculty. Anti-communist student publications were destroyed and burned on the university campus by these minority groups. It was claimed that the majority of the professors had a reactionary mentality and that a drastic purge of the teaching staff was necessary. The anti-communist students who publicly opposed this campaign against university autonomy were beaten and persecuted, and demands were made for their expulsion from the University.

" Under pressure from the Government a joint meeting was held in April 1960 of the student associations of the Universities of Havana, Oriente and Las Villas, at which a proposal was made to establish a nation-wide university body made up of representatives of the three Universities and officials of the INRA (National Agrarian Reform Institute) and the Ministry of Education to direct university activities. The University Council and the staffs of the faculties, together with most of the student associations within the university faculties, protested against this proposal. The Council drew up a statement which contained a strong defence of university autonomy and showed that this proposal would be at variance with it. This statement was followed by a campaign of insults in the official press.

" In the School of Engineering at Havana University some student leaders criticized two professors on 'academic grounds' and demanded their expulsion from the faculty. But the faculty refused to do so. The student leaders thereupon 'ordered' their expulsion and replaced the two professors by two engineers who were not professors at all; one of them was the brother-in-law of 'Che' Guevara, President of the National Bank. The engineering faculty refused to recognize these professors who had been imposed upon it and decided to suspend all academic activities. The University Council gave its backing to the engineering faculty. On July 15, 1960, a meeting was held in the lecture hall of the Faculty of Philosophy and Arts in which a minority of the students and some of the professors agreed to dismiss the University Council and to appoint a board of governors consisting of four students and four professors to direct the University. One of the professors on the board was Dr. Hector Garcini, a professor in the Faculty of Social Sciences, who had been legal adviser to the Minister of Finance and to the Mayor of Havana during the Batista dictatorship. This board then dismissed the Council and the faculty staffs. An order was issued requiring the professors to state individually whether or not they accepted the board's authority. Of the 400 university professors, two-thirds refused to acknowledge the board and were dismissed from their posts as counter-revolutionaries. The Law Faculty, to which I belonged, opposed this government manœuvre from the start. The Dean, Dr. Agustin Aguirre,

always stood up for university autonomy in the Council. Of the 31 professors in the Faculty, only four accepted the board imposed by the Government.

On August 4, 1960, the Council of Ministers endorsed the actions of the board and Law No. 859 of the same date recognised it as the policy-making body of Havana University. This Law, which violated the constitutional principle of university autonomy, confirmed the *de facto* position brought about at the Government's instigation."

A woman educationalist

Q. "What posts did you hold in Cuba?"

A. "I was Director of the Training College for Kindergarten Teachers in Oriente Province. I also held a Chair of Psychology. I had been working since 1943. On January 3 or 4, 1959, Teresa Valla Tamayo arrived and in the name of the revolution told me that she had come to take over the establishment. Later, a notary and a number of other persons came along to take over the assets and the institution. On January 31, two members of the rebel army called at my house and arrested me. They told me that I must make a statement and I was taken under arrest to the camp at Santiago de Cuba. I was kept there for three days and on February 2 I was taken to hospital because I happen to be diabetic. The prison doctor was unwilling to allow me to stay in the prison because there were 52 women there with only one bath, one toilet and wash-basin without any plumbing. They then put me in the civilian hospital where I stayed until February 19. When I arrived they wanted to put me in the convicts' ward, but the doctor said there was no room for me and I was put in a comfortable room for special patients, but the next day they put me in the convicts' ward. But Dr. Eduardo Sinca, the doctor in charge of that ward, said when he arrived that he still had no room for me. Altogether I was kept a prisoner there for 19 days. On February 18 a friend of mine who is a lawyer came to the hospital and enquired why I had been arrested. I told Dr. René Franco that I had not been told anything and they had merely said that I was under investigation. Dr. Franco went to the revolutionary courts and spoke to Major Peña—I hear that he later committed suicide—and to the secretary, Eduardo Guerra De John, who sent for a list of those who were imprisoned without any charges against them. My name was on this and they gave orders for me to be released since there was no reason why I should be deprived of my freedom.

"On February 2 I received a letter in which I was dismissed after 26 years' service, despite my teachers' diploma and the certificate I received from the Ministry of Education on completing 25 years' service. Subsequently, legislation was passed under which I became entitled to a retirement pension and this was granted to me, which proved that I had no political record that might prevent me from discharging my duties.

"I had to leave the city because whenever I went into town it was surrounded by militiamen with machine guns who made life in Santiago de Cuba impossible. We decided to leave the country because we had no security of any kind."

A woman professor

Q. "Were you directly obstructed in your teaching duties?"

A. Yes. I was a professor at the Havana Business School. When my husband, at my request, asked the revolutionary authorities to leave us alone because we were constantly being searched, the students association prevented me from going back to my post because I had been purged. I taught until March 1959."

Q. "What reasons did they give for not allowing you to teach?"

A. "The teachers were purged for three reasons: first, because they had contacts with the former régime; second, because they had belonged or had directly co-operated with the former régime; and third simply because it was considered that their services would prove harmful to the revolution. The reason they gave me was the first one—in other words that I had had contact with the former government, the link being my husband who at that time was a prisoner."

Q. "After March 1959 did you teach in any private establishment in Cuba?"

A. "I taught in a private college, the 'Loyola Military Academy' and I also gave private lessons at home."

Q. "Until when did you teach at this private college?"

A. "Until the Government took it over and sent us all home. This was about December 1960."

Q. "Is this college still functioning?"

A. "It had gone out of existence and the premises have been taken over, I believe, for a gunnery school—in other words, a government technical establishment."

XIII. THE RIGHT OF ASYLUM IN CUBA

(19)

A witness who served his sentence on the Isla de Pinos was questioned about what he did when he was released. He answered:

"After arriving at the port of Batámano, I went to Havana and remained in hiding for a week because on the very day that I was set free members of the G-2 came to my home to arrest me, and I heard about this from my family. At the end of the week I obtained asylum in the Honduran Embassy, where I stayed until September 9, 1961, under the protection of the Venezuelan Embassy, which had taken over responsibility for Honduran affairs when Honduras broke off relations with Cuba."

Q. "What were conditions like among the people who were given asylum?"

A. "In the house where we were, which was in the Cubanacan quarter, there were 185 people including 18 women and ten children under the age of five. We stayed there without being granted safe conducts for six months, until in August we began a hunger strike in protest against the Castro Government's contempt for the right of asylum."

(29)

The right of asylum is one of the characteristic principles of what might be called Latin American international law. It is one of the principles for which the American governments hold the deepest respect. Under it any citizen whose life or liberty is endangered for political reasons is entitled to seek asylum in the embassy of any foreign country. The country in which a person seeks asylum with an embassy has a duty to respect this position and to grant a safe conduct so that he can leave the country. The government must also provide him with protection so that he is not molested when accompanied by the ambassador.

Q. "What happens in Cuba?"

A. "There are hundreds of cases in which the police have prevented people from exercising their right of asylum. Very many people have obtained asylum in various embassies without being granted safe conducts. My friends Lineras and Massip, who managed to leave the country by exercising their right of asylum, only did so after an international campaign by the exiles showing how this right was not respected in Cuba."

(31)

Some witnesses described the ingenious devices they were forced to use in order to enter an embassy without being arrested by the militiamen on duty outside.

"It is almost impossible to enter an embassy in Cuba. It takes a certain amount of heroism, because entering is not as it used to be—a matter of knowing the Ambassador. One has to shoot one's way in as did my friend Massip, while I risked my life by jumping over a fence around the Costa Rican Embassy, evading 30 soldiers and militiamen to do so."

This witness said he spent six months in the embassy before being granted a safe conduct.

Another witness said:

"My entry into the Costa Rican Embassy took place in the following way. At one o'clock in the afternoon of May 4, 1961, I was told by the underground movement that the Costa Rican Embassy was only lightly guarded and since the embassy building also contained the

Consulate, there were large numbers of Cubans there applying for a visa to leave the country. There was an enormous queue and when we received word that the time had come because the militiamen were marshalling the crowd, my friend D.R. and myself hurried to the embassy and when we arrived at the gate we acted as if we intended to join the queue. We were carrying hidden arms and intended to use them if we were challenged and fired on. When we got out of the car the militiamen dashed towards us, but we pulled out our arms and threatened them and at once ran towards the embassy. We managed to get in through the garden and were followed by the militiamen who fired at us and we fired back. There were 116 people in the embassy, many of whom had fought their way in as we had."

(80)

One witness who obtained asylum in the Brazilian Embassy stated:
"Some people, in order to obtain asylum, had to jump over the railings around the embassy garden at the risk of their lives because they were fired on. Some who tried to jump over the railings were wounded and captured. The embassy building appeared to be surrounded by a military camp because there was always a heavy guard."

Medical doctor

Q. "For how long were you given asylum?"

A. "Five months."

Q. "How many people were given asylum at that time?"

A. "When I was there, there were 87 people. We were all packed in and many people slept in very small rooms. There was only one woman—my wife."

Q. "How did the guards outside the embassy behave?"

A. "Very badly. Anybody who entered or left was thoroughly searched. They made it very difficult for anyone who tried to bring us anything and were constantly threatening to make an armed assault on the embassy. During the night there used to be shooting and from time to time the guardpost outside the embassy would let off a burst of machine gun fire. Anyone who came by and looked into the embassy was arrested. When they came for me at the embassy to take me to the airport, they spoke to me very coarsely. At the airport there was a group of militiamen shouting insults. And outside the Argentine Embassy they stationed a party of children shouting out 'Vermin'."

Workman

Q. "How did you leave Cuba?"

A. "I was given asylum in the Brazilian Embassy in Cuba for five long months. I sought asylum after fighting with several others

in La Colmena, Santo Domingo, and later in Matanzas province in the town of Jaguey Grande. Our guerilla force was commanded by Captain Evelio Peña, who had been a captain in the rebel army. When we failed in our attempts to overthrow the communist government, I had to seek asylum."

Q. "What did you do in Cuba before falling out with the present regime?"

A. "I used to work on fruit farms; I was also a herdsman and I worked as well in the timber industry. Then in 1958, in November, I took up arms in El Escambray, in Las Villas province, and stayed there until February 1959. After the revolution had triumphed, I was detached to the town of Calimete in Matanzas province and ran into difficulties with the local communist party leaders, which led to my discharge from the rebel army. After that life became awkward. As I had been dishonourably discharged from the army because I would not accept communist ideas, no one would give me a job. This went on until a lieutenant who was from Oriente found me a job in the town of Calimete itself with the public works department and that lasted until they discovered that I was working there.

Lawyer

Q. "What were conditions like among those who sought asylum in the Argentine Embassy?"

A. "At a time when essential foods and medicines are short in Cuba, it was surprising to find on obtaining asylum in the Argentine Embassy that we were given two good meals a day, including meat which is short everywhere in Cuba. Medical care was available at all times from the embassy doctors, who also had the necessary medicines. The refugees were provided with money and were often given cigarettes and various other odds and ends. Above all, they encountered understanding and sympathy. Of course, there was some discomfort because there were so many refugees that several people had to be put in a single room, but these discomforts do not count at such a critical time in Cuba's history and are more than offset by the satisfaction of knowing that each person who obtains asylum represents a life that has been saved. Up to the time when I left the Argentine Embassy, 622 persons had obtained asylum there and in every case it was done free of charge.

Q. "When did you leave Cuba?"

A. "On November 9, 1961."

A monk

Q. "What did you do in Cuba?"

A. "I was the provincial conciliator of the Catholic Youth in Oriente."

Q. "Were you arrested?"

A. "I was arrested under Batista for a few hours ten days before the Government fell for having a pastoral letter in my possession."

Q. "Were you arrested afterwards?"

A. "No. I sought asylum in the Venezuelan Embassy and remained there for four months."

Q. "Why did you seek asylum?"

A. Because my life was in danger and they were going to arrest me, and I had to leave Oriente for Havana.

(99)

Q. "Can you describe the shooting accident at the Ecuadorian Embassy?"

A. "Yes, I can describe the events because I witnessed them with my own eyes. At about six or half past six in the morning, those of us who were sleeping in the tent at the entrance to the garage heard the sound of a collision against the fence at the entrance to the garden. We all realized that a vehicle must have tried or was trying to get into the embassy. A few minutes after hearing this crash we heard the first shots from the rifles known as R2s and from the machine guns. Then there was a pause and another burst of firing. The truck had entered before the first burst of firing from the machine guns and R2 rifles. Five militiamen had entered the embassy and were about five yards inside the garden. Some minutes after the second burst of firing, four refugees went up to the truck at the risk of their lives and there saw two people at least on the truck who appeared to have been shot down. They were dead. Another near the truck was badly injured and was dying, and he did die five or ten minutes later when one of the four refugees went to help him. With the help of the refugees, five people finally managed to get inside the house. Four of them had been seriously injured in vital parts of the body by the bursts of fire. We later gathered that they had been a group of eight young people, six of them farm workers from the Fajardo sugarmill in Havana, who were seeking political asylum. It is possible to state categorically that the second series of shots were fired from within the embassy by the militiamen who had entered the grounds.

XIV. ON LEAVING CUBA

There are several ways of leaving Cuba. One of the most difficult is to leave with a passport in the ordinary way. In such cases the ordeal begins as soon as a citizen applies for an exit visa.

Another way is to leave with a safe conduct after obtaining asylum in an embassy. In such cases the problem is to enter an embassy so as to obtain asylum, because the embassy buildings are watched over by militiamen and members of the Castro police.

A third way is to escape by plane or by sea.

(111)

A woman who left in the "ordinary" way recalls:

"I left on January 14, 1961. I left as a resident of Cuba. They searched me completely. I had with me some medicines for my baby daughter and they took them away saying that it was better to give them to the children of peasant families who needed them and that here in Miami I would find plenty of doctors to look after my daughter and need not worry. When we went back to the 'fishbowl'—this is the name given in Cuba to the room where they check passports, tickets, etc.—I was called into another office with about 4 or 5 people, including 3 women. A female guard told me to take off all my clothing and I stayed without any clothes on for quite some time. Then she searched me very carefully, internally as well as externally. All this was accompanied by insults and taunts. She then did the same to the 3 other women. All this lasted about an hour or more. We then had to declare to a man whether we had any money or jewels on us and I had to give a detailed list of the furniture left in my house and to say whether I had a bank account."

(15)

A leading woman Catholic, after losing her house and having been arrested a number of times without reason, decided to leave the country. On being asked whether she had any difficulty in getting out of Cuba, she said:

"They searched me twice, stripping me completely, making me take off my shoes, stockings and everything. Then when I had been there an hour they called me in once more and repeated the same search of my luggage and my person until finally, the Lord be praised, I was able to board the plane and leave that hell for good."

(45)

A shop worker, by no means well paid, said that after he had been arrested on two different occasions without any reason

"My position became impossible because both my life and my freedom were constantly threatened and I decided to leave the country. And so with five fellow countrymen I escaped from Cuba in an 18 ft. boat. We were picked up by a US coastguard vessel close to the coast of the USA near Key West."

Sugar worker

Q. "Why and when did you leave Cuba?"

A. "I left Cuba on August 19, 1961, in a small boat hardly 17 ft. long. It had a small engine and sails. We managed to get out without difficulty through the intricate channels of the north coast of Cuba. When we were 20 miles from Key West we were picked by a French vessel which took us to Key West itself."

Fisherman

Q. "How did you leave Cuba?"

A. "In a boat which I stole with another fisherman who came with me. The boat belonged to the INRA and was called the 'Patria o Muerte'."

Q. "Where did you work?"

A. "As a fisherman in the 'Ambrosio Francia Leon' fishing co-operative."

Q. "How much did you earn per day?"

A. "1.50 pesos a day with this government."

Q. "How much did you earn before?"

A. "3 to 4 pesos a day before this government."

Truck driver :

Q. "When did you leave Cuba?"

A. "I escaped from Cuba by boat together with 39 other people. The boat was called 'El Tiburon' and we reached Key West on October 15, 1961."

Q. "What did you do in Cuba?"

A. "Before January 10, 1959, I drove trucks on the Sagua-Havana express route. After Castro came to power, I stayed on for the first year and then was fired in April 1960 after they had tricked me into signing my resignation so as to give my job to a known communist who had worked for the company before. The union was communist controlled and wanted to do him a good turn."

Railway worker :

Q. "When did you leave Cuba?"

A. "On November 2, 1961."

Q. "How did you leave Cuba?"

A. "In a sailing barge together with 20 other people. We did the whole journey under sail."

Q. "Were there any accidents during the journey?"

A. "Yes. After we had been at sea for about 20 hours we were hit by a storm and the mast was carried away."

Q. "How long did the voyage last?"

A. "In all 36 hours. We landed at the Moradas Islands, 65 miles from Miami."

XV. CONCLUSIONS

The evidence given by the witnesses quoted above established the following facts:

With regard to the administration of justice :

1. Subordination of the judiciary to the political authorities.
2. Subjection of the judges to the people's militia.
3. Violation of the principle of proper jurisdiction.
4. Abolition of the irremovability of judges.

With regard to the revolutionary courts :

5. Most of their members are not lawyers, and in many cases are illiterate.

6. The accused is not aware of the charges against him until the time when the prosecutor puts forward his provisional conclusions during the trial.

7. The accused are subjected to physical and moral torture during their imprisonment.

8. The accused are not allowed to receive professional assistance from any lawyer before the trial.

9. The prosecutor coaches the witnesses for the prosecution who have been proved in many cases to be false witnesses.

10. The prosecutor proclaims his opinion publicly, making use of radio and television to prejudice public opinion against the accused.

11. The prosecutor charges the accused with vague and imprecise crimes.

12. The prosecutor, who is often ignorant of the most elementary legal matters, commits grave procedural mistakes.

13. Defence counsel only becomes aware of the charges a few minutes before the trial begins and sometimes only during the hearing itself.

14. Defence counsel are prevented from seeing their clients.

15. Defence counsel have themselves been persecuted, imprisoned and even shot for defending political prisoners.

16. There is little evidence admitted from defence witnesses.

17. Defence witnesses have been harrassed and persecuted.

18. In many cases defence witnesses have been taken from the stand to prison.

19. The witnesses for the prosecution are in the main militiamen, soldiers in the Rebel Army or members of the G-2 secret police.

20. The verdict, owing to the ignorance of the members of the court, has often been drawn up beforehand by government legal officials.

21. There have been cases in which the sentence of death has been carried out while an appeal was still pending.

22. When the death sentence was passed, appeals were entered automatically and in most cases neither the accused nor their counsel were aware of the contents of the appeals.

23. There have been cases in which a revolutionary court has acquitted the accused and the Prime Minister, Fidel Castro, has rescinded the verdict and ordered the accused to be retried.

With regard to individual freedom :

24. Personal persecution of citizens opposed to the régime, who are constantly watched and discriminated against.

25. Detention without trial, sometimes for more than two years.

26. Indiscriminate, large-scale arrests without any legitimate reason or observance of any procedure.

27. Encouragement of denunciation by "vigilante" committees in every district.

With regard to conditions in Cuban prisons :

28. Inhuman overcrowding of the prisoners in all Cuban prisons.

29. Complete lack of hygiene.

30. Lack of adequate medical care.

31. Objectionable food.

32. Constant mental torture through the system of arbitrary granting of visits by relatives, prevention of correspondence with relatives and confiscation of food and medicines sent to prisoners by their relatives.

33. Inhuman disciplinary penalties under the system of "punishment cells".

34. Physical ill-treatment in form of blows with rifle butts and bayonet jabs.

35. Simulated executions.

36. Constant subjection of prisoners to humiliating personal searches.

37. Ostentatious preferential treatment for common criminals in comparison with political prisoners.

38. Binding or handcuffing of political prisoners when being moved.

39. Exaction of forced labour from political prisoners.

40. Confiscation of all their belongings.

41. Obligation on political prisoners to wear a prison uniform.

With regard to cruel, inhuman and degrading treatment :

42. Cynical obstruction of relatives trying to visit political prisoners.

43. A system of long and exhausting wait to obtain entry to the prison.

44. Insistence on humiliating personal searches of women wishing to visit their relatives in prison.

45. Use of sexual perverts to carry out such searches.

46. Degrading treatment of sick, old and otherwise handicapped women.

47. Systematic postponements of admission to visits.

48. Arbitrary limitation of the length of visits.

49. The infliction of mental tortures on visitors by giving false information implying natural death or execution of relative.

50. Prohibition of visits by men to the political prisoners.

51. Prohibition under pain of severe penalty of the slightest gesture of endearment between prisoners and their visiting relatives.

52. Permanent guard by soldiers armed with machine guns throughout the whole duration of the visits.

With regard to religious freedom :

53. Individual persecution of priests, members of religious orders, monks and leading laymen.

54. Obstruction of Church services by means of threats outside the Church and provocations during the services.

55. Large-scale expulsions of priests and monks.

56. Closing down and confiscation of religious colleges.

57. Arbitrary arrests of priests.

With regard to labour :

58. Persecution and arrest of workers and peasants who refused to join the people's militia.

59. Loss of freedom in bargaining with the state which, through its agencies, has become the monopolistic employer.

60. Dismissal of freely-elected trade union leaders and their replacement by seasoned communist leaders and other supporters of the regime.

61. Impossibility of changing jobs without the consent of the government.

62. Abolition of all democratic rights achieved by the Cuban industrial working class.

63. Discrimination against professional workers—doctors, lawyers, engineers—who refused to join the people's militia.

64. Occupation and taking over of organizations of professional workers and academic associations by organs of the State.

With regard to property :

65. Seizure, confiscation and expropriation of economic enterprises without compensation.

66. Widespread confiscation of property on political grounds.

67. Arbitrary confiscations of personal property and household items.

68. Frequent entry into homes by armed militiamen without search warrant and resulting in indiscriminate damage and theft.

With regard to the freedom of the press :

69. Seizure of newspapers and radio and television stations.

70. Confiscation and liquidation of these establishments.

71. Interference with editorial policies.

72. Artificial creation by the government of disputes between the management and staff.

73. Gradual concentration of news media under government control and resulting complete abolition of the freedom of expression.

With regard to education :

74. Complete abolition of university autonomy.

75. Arbitrary dismissals of teachers and professors on political or religious grounds.

76. Collective purges.

77. Taking over and confiscation of private colleges.

78. Abolition of academic freedom and imposition of "socialist revolutionary doctrine".

79. Obligation on faculty and students to join the people's militia.

80. Physical coercion by means of insults, threats and surveillance of professors by government supporters among the students.

81. Public denunciations of teachers as "counter-revolutionaries".

82. Constant watch on extra-curricular activities of faculty and students.

83. Open political interference through the government-controlled students federation (FEU).

With regard to the right of asylum :

84. The embassies of Latin American countries which grant the traditional right of asylum are closely guarded by militiamen and soldiers of the Revolutionary Army.

85. Entrance to these embassies and eventual asylum may be obtained only by subterfuge or violence.

86. A safe conduct to leave the embassy and reach the country of asylum is being granted arbitrarily and often after months of procrastination.

With regard to exit from Cuba :

87. Obstruction of persons wishing to leave Cuba by all imaginable means.

88. Humiliating checking requirements such as personal searches.

89. Blatantly arbitrary practices in the granting of exit permits to persons complying with all government requirements.

CONCLUSION

The material presented in this Report suggests a great variety of conclusions of varying degrees of importance. All four parts of the Report and some chapters of these parts contain such summaries. A brief review of these conclusions appears necessary to enable a final appraisal of the Rule of Law in Cuba under the régime of Fidel Castro.

According to the outline followed in this Report, reference should first be made to the findings concerning the economic, social and political situation of the Republic of Cuba at the end of 1958. Its assessment has been a matter of great controversy between pro-Castro and anti-Castro forces inside and outside Cuba. Indeed, Fidel Castro's statements on this subject have been used to justify the revolutionary process in Cuba. The present Report reveals that in December 1958 Cuba could not be considered as a backward country facing economic collapse and undergoing an ominous social crisis. As pointed out in the Report, there was indeed a number of serious social and economic problems in Cuba. But it is also true that all those problems could have been solved by an efficient and honest government under full observance of democratic processes and human rights.

The crisis that caused Cuba's main weakness has been a political one. The Report exposes corruption and illegality in past Cuba administrations as one of the most important characteristics of Cuban public life. Under the dictatorship of Fulgencio Batista all these chronic ills were brought to a climax. The ensuing resentment explains why the revolutionary movement against Batista was mainly oriented toward a re-enactment of the 1940 Constitution. The Report also shows how that instrument with its advanced social and economic philosophy had become the symbol of the Cuban people's struggle for legality, freedom and social justice. The unequivocal implementation of its principles would have meant in the internal life of Cuba a true revolution, an orderly, democratic and peaceful one.

Most of the Cuban people hoped that such development would one day come about. Together with the free world they hailed with satisfaction the triumph of the Cuban revolutionary movement headed by Fidel Castro. But very soon Fidel Castro and his small but dynamic group of followers, including Communists and fellow-travelers, eliminated, step by step, the already weak and unorganized democratic groups who opposed the establishment of a totalitarian

régime. Extremist forces, which were at the start ready to share power with moderate elements, operated in a country which had not yet consolidated its institutional structure. As pointed out in this Report, many institutions, especially those of industrial and economic character, were only slowly maturing. Trade unions and political parties, most of them well intentioned and respectable, were caught in the political whirlwind stirred up by corruption and violence.

This unbalanced political situation facilitated the success of Fidel Castro. The world has now learned the results. As affirmed by *The Economist* (October 6, 1962), "it must be admitted that Cuba has fallen under communist influence more quickly and completely than many people thought likely a couple of years ago (including this paper)". It should be emphasized that this has happened in a country with exceptionally rich natural resources and with a considerable degree of social and economic development. How could it have occurred? In his speech of December 1961, Fidel Castro said that before his conquest of power he could not expose his ideas and projects as clearly as after he gained control; had he done so he would not have had the support of many people and the revolutionary movement against Batista would not have acquired the impetus that made its victory possible. Fidel Castro did not fight directly and openly against his former democratic partners; at least not before he had exploited their services to the original revolutionary movement. Only then did he destroy them.

The history of the Cuban revolutionary legislation is a study in concentration of power. As Part II of the Report reveals, the struggle between the Rule of Law as defined in the 1940 Constitution, for instance, and the extremist forces of the Cuban régime, has been epitomized by the five amendments to the 1940 Constitution, the Fundamental Law and the sixteen amendments to that Fundamental Law. All these amendments have been passed in the course of two and a half years. The constituent power of the Council of Ministers, which has concentrated in its hands both executive and legislative functions, has become the tool for the construction of a comprehensive totalitarian machine. After each constitutional amendment encroaching upon the remaining safeguards of life, property and personal freedom of the Cuban citizens, and passed by the Council of Ministers acting as a constituent power, legislation has been adopted by the same Council of Ministers acting as a legislative organ, empowering any of its members to implement—in his executive capacity—the relevant provisions without any further control by or appeal to, an independent authority.

Violations of the Rule of Law have been occurring in Cuba from the very beginning of the Castro régime. It has been pointed out in this Report that as early as August 1959 the International Commission of Jurists expressed its concern over the precarious situation of the Rule of Law in that country. Often the breaches of the Rule of

Law which occurred in the early days of the Castro régime were condoned even by moderate and genuine democrats as "exceptional measures" for "exceptional situations". The revulsion against Batista and his associates, guilty of untold atrocities, ran so high that almost everyone in the Cuban revolutionary government, and many observers abroad, were ready to accept the retroactivity of criminal law when detrimental to the accused, the application of the death penalty and total confiscation of property for political offences, the suspension of *habeas corpus*, etc. All that was done because it seemed "urgent, necessary and exceptional". Yet the resulting illegality gained momentum and soon the "exceptional" repressive measures began to apply to other opponents than to Batista and his henchmen. In less than three years, most of the democratic leaders who shared responsibility for the first inroads against the Rule of Law, were in exile, in prison, or executed.

Under the impact of Cuban events, the International Commission of Jurists deems it appropriate to appeal to international legal opinion. It behooves lawyers to watch jealously over the maintenance of the Rule of Law and to expose relentlessly those minor infractions which, if unnoticed and unchecked, lead to major violations and, finally, create an irreversible situation. The Cuban case is a sad example of such a development.

The Rule of Law has been violated in Cuba in a number of different but correlated ways. The first such method consisted of adding new concepts to the principles incorporated either in the Constitution of 1940, or in the Fundamental Law of 1959, or in any subsequent constitutional amendment. Moreover these new elements have been developed with more detail in subsequent enactments. An objective analysis of the Cuban revolutionary legislation reveals a consistent double approach. On one side there are the formal, traditional legal standards of a democratic and republican form of government which give the legal system the appearance of a state under the Rule of Law. On the other side, there is "special legislation" expressing definite political intentions and purporting to legalize an implacable persecution of those opposed to the totalitarian objectives of Fidel Castro and his followers.

The second type of violation of the Rule of Law in Cuba consists in implementing the decisions of the responsible leaders of the Cuban régime without regard to existing legal provisions, including those of their own special legislation. The so-called "revolutionary legislation" has been brushed aside by the Castro régime whenever it suited their needs. The resulting violations of human rights have been borne out by evidence gathered in Part IV of this Report, in which a variety of techniques of intimidation of the Cuban population is exposed.

Finally, there is still another form of violation of the Rule of Law by Fidel Castro and his followers that must be mentioned here. Cuba has been rooted by its legal tradition and thought in the continental

civil law system. The basic cultural and social values of the Cuban people are those of Western culture. Several periods of political dictatorship notwithstanding, the Cuban people strove to maintain the existing established institutions, which pointed the way towards a gradual development of a liberal and democratic republic. On the strength of such expectations and indeed of promises did the people welcome Fidel Castro and give him almost unanimous support.

If any one particular action by Fidel Castro were to be pointed out as particularly reprehensible, then it would be the betrayal of this trust of the Cuban people, the attempt to uproot their best traditions, and to break their spirit of freedom. By subjecting the country to the rule of a totalitarian machine based on alien ideology, the régime of Fidel Castro suppressed by violence the very principles which it promised to uphold. Foremost among them, the Rule of Law has disappeared from the Cuban scene.

RECENT PUBLICATIONS OF THE INTERNATIONAL COMMISSION OF JURISTS

Journal of the International Commission of Jurists

Volume III, No. 2 (Winter 1961): This Journal concludes the series on Preventive Detention with articles on Argentina, Brazil, Canada, Colombia, Ghana and Malaya. There is also an article on Emergency Powers and a document on the European Court of Human Rights. This issue is complemented with 22 pages of book reviews.

Volume IV, No. 1 (Summer 1962): The Rule of Law in the Contemporary Welfare State, by Fritz Gygi. The Lawyer in Communist China, by Shao-Chuan Leng. The Ombudsman in New Zealand, by A. G. Davis. Freedom of Movement: Right of Exit, by Rudolf Torovsky. The Application of the European Convention on Human Rights in Municipal Law, by Philippe Comte. The Power of the Judiciary in East Germany, by Walther Rosenthal. Notes: Ombudsman for Britain? by A. A. de C. Hunter. Document: Inter-American Draft Convention on Human Rights. Book Reviews.

Bulletin of the International Commission of Jurists

Number 14 (October 1962): This number deals with the various aspects of the Rule of Law and legal developments with regard to the Congo, the Eichmann Trial, Kenya, Turkey, South Africa, UAR, USSR and Yugoslavia.

Newsletter of the International Commission of Jurists

Number 13 (February 1962): Outlook for the Future, New Members of the Commission, Missions and Tours, Observers, Press Releases and Telegrams, United Nations, National Sections, Essay Contest, Organizational Notes.

SPECIAL STUDIES

The Rule of Law in a Free Society (July 1960): A report on the International Congress of Jurists held in New Delhi, 1959.

The African Conference on the Rule of Law (June 1961): Report on the first African Conference on the Rule of Law, held in Lagos, Nigeria, January 1961.

Tibet and the Chinese People's Republic (July 1960): Report to the International Commission of Jurists by the Legal Inquiry Committee on Tibet, Introduction, the Evidence Relating to Genocide, Human Rights and Progress, the Status of Tibet, the Agreement on Measures for the Peaceful Liberation of Tibet, Statements and Official Documents.

South Africa and the Rule of Law (November 1960): Detailed inquiry into the problems of *Apartheid* in the Union of South Africa. Analysis of legislation and practice compared with pertinent provisions of the Universal Declaration of Human Rights. Statements by Commission's Observer, F. Elwyn Jones, Q. C., M. P., Legislative Texts, Affidavits.

The Cassell Case: Contempt in Liberia (August 1961): A study of the disbarment of Counsellor Christian A. Cassell of Monrovia for critical observations on the administration of Justice in Liberia.

The Berlin Wall: A Defiance of Human Rights (March 1962): The Report consists of four parts: Voting with the Feet; Measures to Prevent Fleeing the Republic; the Constitutional Development of Greater Berlin and the Sealing off of East Berlin. For its material the Report draws heavily on sources from the German Democratic Republic and East Berlin: their Acts, Ordinances, Executive Instruments, published Court decisions and excerpts from the press.

South African Incident: The Ganyile Case (June 1962): This Report records another unhappy episode in the history of the arbitrary methods employed by the Government of South Africa. In publishing this report the Commission seeks to remind its readers of the need for unceasing vigilance