

**INTERNATIONAL
COMMISSION OF JURISTS**

**Executive Action and
the Rule of Law**

**A REPORT ON THE PROCEEDINGS
OF THE INTERNATIONAL CONGRESS OF JURISTS,
RIO DE JANEIRO, BRAZIL**

DECEMBER 11 - 15, 1962



TABLE OF CONTENTS

PREFACE	v
I. DEVELOPMENT OF THE RULE OF LAW	1
ACT OF ATHENS (1955)	3
DECLARATION OF DELHI (1959).	4
CONCLUSIONS OF NEW DELHI CONGRESS	5
LAW OF LAGOS (1961)	16
CONCLUSIONS OF THE LAGOS CONFERENCE	17
RESOLUTION OF RIO (1962)	23
CONCLUSIONS OF THE RIO CONGRESS	24
II. PROCEEDINGS OF THE CONGRESS	35
LIST OF PARTICIPANTS AND OBSERVERS	37
OPENING PLENARY SESSION	59
FIRST PLENARY SESSION	71
COMMITTEE I — Procedures utilized by Administrative Agencies and Executive Officials	75
COMMITTEE II — Control by the Legislature and the Courts over Executive Action	105
COMMITTEE III — The Role of Lawyers in a Changing World	127
COMMITTEE IV — The Role of Legal Education in a Changing Society	155
SUMMARY OF PROCEEDINGS AT THE CLOSING PLENARY SESSION	183

The subjects for discussion at the Congress were distributed among four Committees. Committee One concerned itself with "Procedures utilized by Administrative Agencies and Executive Officials", Committee Two with "Control by the Legislature and the Courts over Executive Action", Committee Three with "The Responsibility of Lawyers in a Changing World" and Committee Four with "The Role of Legal Education in a Changing Society". A summary of the discussions as well as the Conclusions reached by each of these Committees appear in this Report.

The exchange of views among nearly 300 jurists from 75 countries, representing different social and legal systems, was invaluable in establishing principles and rules common to all communities of the free world.

The unfolding concept of the Rule of Law in modern society, as developed at the various Congresses and Conferences held under the aegis of the International Commission of Jurists, will be seen in the First Part of this Report. The Second Part, dealing with the actual proceedings of the Rio de Janeiro Congress, indicates the detailed examination and analysis of the respective topics by the Committees and the trends of thought of participants on the questions raised.

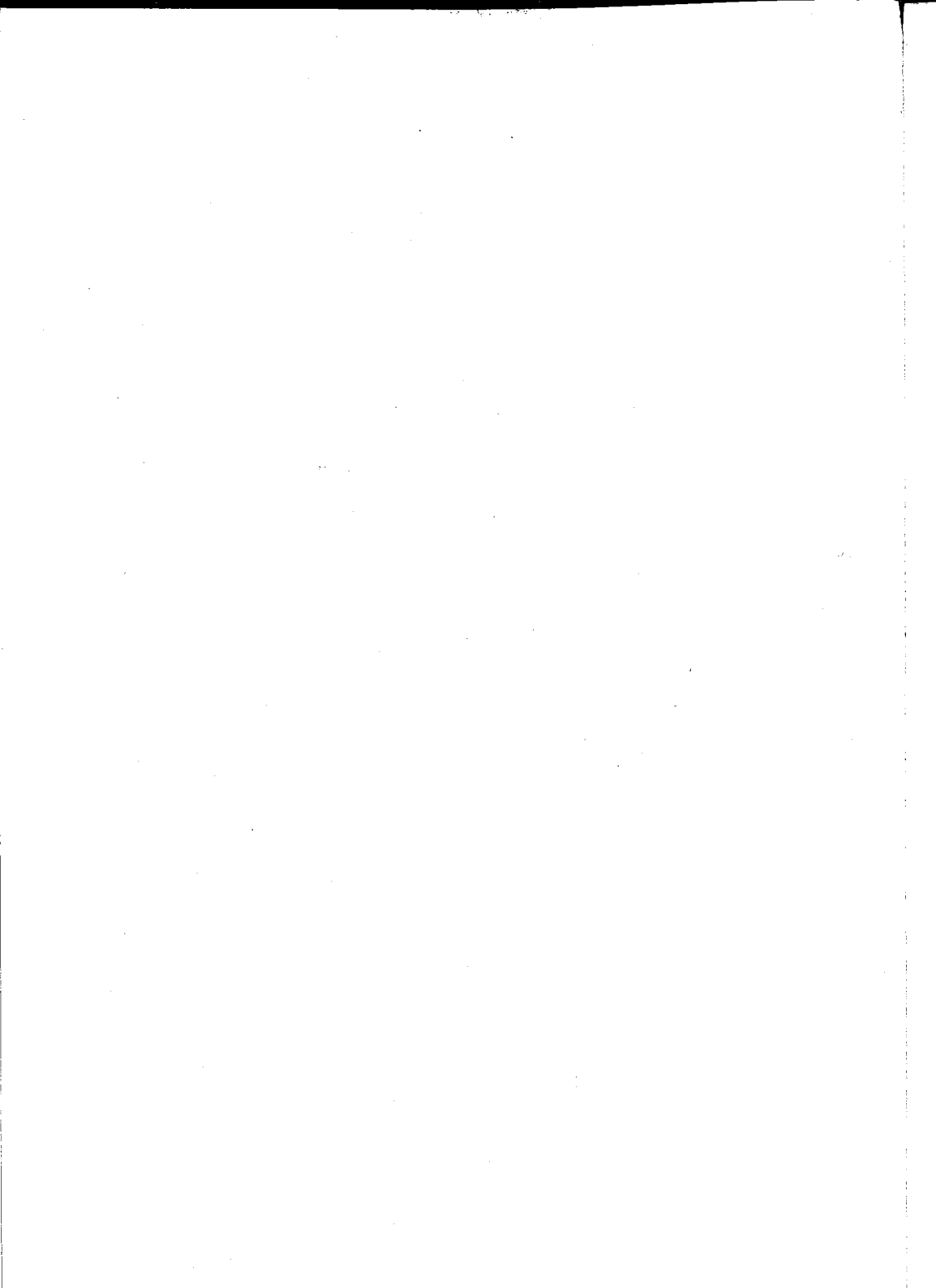
The Working Paper is not reproduced in this Report, but printed copies of it are obtainable from the Commission on request. Prior to the preparation of the Working Paper, a Questionnaire was sent out to National Sections and individual jurists soliciting information as to conditions in their respective countries which had a bearing on the theme of the Congress. Replies were received from 55 countries and were of considerable help in the preparation of the Working Paper.

In presenting this Report, I must express the gratitude of the International Commission of Jurists to all those who played a part in the extensive advance work for the Congress, including the drafting of the Working Paper. The Commission's thanks are also due to its hosts in Brazil, as well as to the many jurists whose attendance at and participation in the debates of the Congress contributed in such large measure to its success. Last but not least, I wish to pay tribute to my predecessor, Sir Leslie Munro, who supervised the preparatory work for the Congress and presided over its deliberations.

Seán MACBRIDE
Secretary-General

I

**DEVELOPMENT OF THE
RULE OF LAW**



ACT OF ATHENS

We free jurists from forty-eight countries, assembled in Athens at the invitation of the International Commission of Jurists, being devoted to the Rule of Law which springs from the rights of the individual developed through history in the age-old struggle of mankind for freedom; which rights include freedom of speech, press, worship, assembly and association and the right to free elections to the end that laws are enacted by the duly elected representatives of the people and afford equal protection to all,

Being concerned by the disregard of the Rule of Law in various parts of the world, and being convinced that the maintenance of the fundamental principles of justice is essential to a lasting peace throughout the world,

Do solemnly Declare that:

1. The State is subject to the law.
2. The Governments should respect the rights of the individual under the Rule of Law and provide effective means for their enforcement.
3. Judges should be guided by the Rule of Law, protect and enforce it without fear or favour and resist any encroachments by governments or political parties on their independence as judges.
4. Lawyers of the world should preserve the independence of their profession, assert the rights of the individual under the Rule of Law and insist that every accused is accorded a fair trial.

And we call upon all judges and lawyers to observe the principles and

Request the International Commission of Jurists to dedicate itself to the universal acceptance of these principles and expose and denounce all violations of the Rule of Law.

Done at Athens this 18th day of June 1955.

DECLARATION OF DELHI

This International Congress of Jurists, consisting of 185 judges, practising lawyers and teachers of law from 53 countries, assembled in New Delhi in January 1959 under the aegis of the International Commission of Jurists, having discussed freely and frankly the Rule of Law and the administration of justice throughout the world, and having reached conclusions regarding the legislative, the executive, the criminal process, the judiciary and the legal profession, which conclusions are annexed to this Declaration,

Now solemnly

Reaffirms the principles expressed in the Act of Athens adopted by the International Congress of Jurists in June 1955, particularly that an independent judiciary and legal profession are essential to the maintenance of the Rule of Law and to the proper administration of justice;

Recognizes 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;

Calls on the jurists in all countries to give effect in their own communities to the principles expressed in the conclusions of the Congress; and finally

Requests the International Commission of Jurists

1. To employ its full resources to give practical effect throughout the world to the principles expressed in the conclusions of the Congress.
2. To give special attention and assistance to countries now in the process of establishing, reorganizing or consolidating their political and legal institutions.
3. To encourage law students and the junior members of the legal profession to support the Rule of Law.
4. To communicate this Declaration and the annexed conclusions to governments, to, interested international organizations, and to associations of lawyers throughout the world.

This Declaration shall be known as the Declaration of Delhi.

Done at Delhi this 10th day of January 1959.

INTERNATIONAL CONGRESS OF JURISTS ON THE RULE OF LAW IN A FREE SOCIETY

NEW DELHI, INDIA

January 5-10, 1959

CONCLUSIONS

REPORT OF COMMITTEE I

The Legislative and the Rule of Law

CLAUSE I

The function of the legislature in a free society under the Rule of Law is to create and maintain the conditions which will uphold the dignity of man as an individual. This dignity requires not only the recognition of his civil and political rights but also the establishment of the social, economic, educational and cultural conditions which are essential to the full development of his personality.

CLAUSE II

(1) In many societies, particularly those which have not yet fully established traditions of democratic legislative behaviour, it is essential that certain limitations on legislative power referred to in Clause III hereof should be incorporated in a written constitution, and that the safeguards therein contained should be protected by an independent judicial tribunal; in other societies, established standards of legislative behaviour may serve to ensure that the same limitations are observed, and a lawyer has a positive interest, and duty to assist, in the maintenance of such standards of behaviour within his particular society, notwithstanding that their sanction may be of a political nature.

(2) To implement the principles set forth in the preceding Clause I it is essential that the powers of the Legislature be fixed and determined by fundamental constitutional provisions or conventions which:

- (a) guarantee the organisation of the Legislature in such a way that the people, without discrimination among individuals, may directly, or through their representatives, decide on the content of the law;
- (b) confer on the Legislature, especially with regard to the matters set out in Clause I, the exclusive power of enacting general principles and rules as distinct from detailed regulations thereunder;

- (c) provide for control, by the representatives of the people, over the exercise by the Executive of such subordinate legislative functions as are necessary to give effect to legislation; and
- (d) organise judicial sanctions enforcing the principles set out in this Clause, and protect the individual from encroachments on his rights under Clause III. The safeguards contained in the constitution should not be indirectly undermined by devices which leave only the semblance of judicial control.

CLAUSE III

(1) Every legislature in a free society under the Rule of Law should endeavour to give full effect to the principles enunciated in the Universal Declaration of Human Rights.

(2) The governments of the world should provide the means whereby the Rule of Law may be maintained and furthered through international or regional agreements on the pattern of the European Convention on the Protection of Human Rights and Fundamental Freedoms, signed in Rome on November 4, 1950, or otherwise. Such agreements should provide an opportunity of appeal to an international body for a remedy against denial of the rights implicit in the Rule of Law in any part of the world.

(3) Every legislature should, in particular, observe the limitations on its powers referred to below. The failure to refer specifically to other limitations, or to enumerate particular rights is not to be construed as in any sense minimizing their importance.

The Legislature must:

- (a) not discriminate in its laws in respect of individuals, classes of persons, or minority groups on the ground of race, religion, sex or other such reasons not affording a proper basis for making a distinction between human beings, classes, or minorities;
- (b) not interfere with freedom of religious belief and observance;
- (c) not deny to the members of society the right to elected responsible Government;
- (d) not place restrictions on freedom of speech, freedom of assembly or freedom of association;
- (e) abstain from retroactive legislation;
- (f) not impair the exercise of fundamental rights and freedoms of the individual;
- (g) provide procedural machinery ("Procedural Due Process") and safeguards whereby the abovementioned freedoms are given effect to and protected.

CLAUSE IV

(1) The principles stated in the foregoing Clauses represent the proper aspirations of all men. Every legislature and every government should endeavour to give full effect to the foregoing principles, not only in relation to their own countries, but also in relation to any territories under their administration or protection, and should take steps to abrogate any existing laws which are inconsistent therewith.

(2) The legislatures and the governments of the world should advance by every means in their power the ultimate and universal application of the principles here enunciated.

REPORT OF COMMITTEE II

The Executive and the Rule of Law

The Rule of Law depends not only on the provision of adequate safeguards against abuse of power by the Executive, but also on the existence of effective government capable of maintaining law and order and of ensuring adequate social and economic conditions of life for the society.

The following propositions relating to the Executive and the Rule of Law are accordingly formulated on the basis of certain conditions which are either satisfied, or in the case of newly independent countries still struggling with difficult economic and social problems are in the process of being satisfied. These conditions require the existence of an Executive invested with sufficient power and resources to discharge its functions with efficiency and integrity. They require the existence of a Legislature elected by democratic process and not subject, either in the manner of its election or otherwise, to manipulation by the Executive. They require the existence of an independent Judiciary which will discharge its duties fearlessly. They finally call for the earnest endeavour of government to achieve such social and economic conditions within a society as will ensure a reasonable standard of economic security, social welfare and education for the mass of the people.

In the light of the foregoing the following propositions have been agreed upon.

CLAUSE I

In modern conditions and in particular in societies which have undertaken the positive task of providing welfare services for the community it is recognized that legislatures may find it necessary to delegate power to the Executive or other agencies to make rules having a legislative character.

The grant of such powers should be within the narrowest possible limits and should carefully define the extent and purpose of delegated

legislation and should provide for the procedure by which it can be brought into effect.

Public emergency threatening the life of a nation may require extensive delegation of powers. Even in such cases, however, the Rule of Law requires that every attempt be made by the Legislature to define as carefully as possible the extent and purpose of the grant of such delegated powers, and the procedure by which such delegated legislation is to be brought into effect.

In no event shall fundamental human rights be abrogated by means of delegated legislation.

CLAUSE II

To ensure that the extent, purpose and procedure appropriate to delegated legislation are observed, it is essential that it should be subject to ultimate review by a judicial body independent of the Executive.

CLAUSE III

Judicial review of delegated legislation may be usefully supplemented by procedure for supervision by the Legislature or by a committee or a commissioner of the Legislature or by other independent authority either before or after such delegated legislation comes into effect.

CLAUSE IV

In general, the acts of the Executive which directly and injuriously affect the person or property or rights of the individual should be subject to review by the Courts.

CLAUSE V

The judicial review of acts of the Executive may be adequately secured either by a specialized system of administrative Courts or by the ordinary Courts. Where specialized Courts do not exist it is essential that the decisions of *ad hoc* administrative tribunals and agencies, if created (which include all administrative agencies making determinations of a judicial character), should be subject to ultimate review by ordinary Courts.

Since this supervision cannot always amount to a full re-examination of the facts, it is essential that the procedure of such *ad hoc* tribunals and agencies should ensure the fundamentals of fair hearing including the rights to be heard, if possible, in public, to have advance knowledge of the rules governing the hearing, to adequate representation, to know the opposing case, and to receive a reasoned judgment.

Save for sufficient reason to the contrary, adequate representation should include the right to legal counsel.

CLAUSE VI

A citizen who suffers injury as a result of illegal acts of the Executive should have an adequate remedy either in the form of a proceeding against the State or against the individual wrongdoer, with the assurance of satisfaction of the judgment in the latter case, or both.

CLAUSE VII

Irrespective of the availability of judicial review to correct illegal action by the Executive after it has occurred, it is generally desirable to institute appropriate antecedent procedures of hearing, enquiry or consultation through which parties whose rights or interests will be affected may have an adequate opportunity to make representations so as to minimize the likelihood of unlawful or unreasonable executive action.

CLAUSE VIII

It will further the Rule of Law if the Executive is required to formulate its reasons when reaching its decisions of a judicial or administrative character and affecting the rights of individuals and at the request of a party concerned to communicate them to him.

REPORT OF COMMITTEE III

The Criminal Process and the Rule of Law

The rights of the accused in criminal trials, however elaborately safeguarded on paper, may be ineffective in practice unless they are supported by institutions, the spirit and tradition of which limit the exercise of the discretions, whether in law or in practice, which belong in particular to the prosecuting authorities and to the police. Bearing that qualification in mind, an attempt has been made to answer the question: If a citizen of a country which observes the Rule of Law is charged with a criminal offence, to what rights would he properly consider himself entitled? This question has been considered under the heads which follow. It is for each country to maintain and develop in the framework of its own system of law the following rules which are regarded as the minimum necessary to ensure the observance of the Rule of Law.

I. CERTAINTY OF THE CRIMINAL LAW

It is always important that the definition and interpretation of the law should be as certain as possible, and this is of particular importance in the case of the criminal law, where the citizen's life or liberty may be at stake. Certainty cannot exist in the criminal law where the law, or the penalty for its breach, is retrospective.

II. THE PRESUMPTION OF INNOCENCE

The application of the Rule of Law involves an acceptance of the principle that an accused person is assumed to be innocent until he has been proved to be guilty. An acceptance of this general principle is not inconsistent with provisions of law which, in particular cases, shift the burden of proof once certain facts creating a contrary presumption have been established. The personal guilt of the accused should be proved in each case.

III. ARREST AND ACCUSATION

- (1) The power of arrest, whether in flagrante delicto or not, ought to be strictly regulated by law, and should only be exercisable on reasonable suspicion that the person concerned has committed an offence.
- (2) On any arrest the arrested person should at once be told the grounds of his arrest.
- (3) On any arrest the arrested person should at once and at all times thereafter be entitled to the assistance of a legal adviser of his own choice, and on his arrest should at once be informed of that right in a way which he would clearly understand.
- (4) Every arrested person should be brought, within as short a period as possible, fixed by law, before an appropriate judicial authority.
- (5) After appearing before such judicial authority, any further detention should not be in the hands of the police.

IV. DETENTION PENDING TRIAL

- (1) No person should be deprived of his liberty except in so far as may be required for the purposes of public security or the administration of justice.
- (2) Every arrested person should have a right, renewable at reasonably short intervals, to apply for bail to an appropriate judicial authority. He should be entitled to bail on reasonable terms unless either:
 - (a) the charge is of an exceptionally serious nature, or
 - (b) the appropriate judicial authority is satisfied that, if bail is granted, the accused is not likely to stand his trial, or
 - (c) the appropriate judicial authority is satisfied that, if bail is granted, the accused is likely to interfere with the evidence, for example with witnesses for the prosecution, or
 - (d) the appropriate judicial authority is satisfied that, if bail is granted, the accused is likely to commit a further criminal offence.

V. PREPARATION AND CONDUCT OF DEFENCE

The Rule of Law requires that an accused person should have adequate opportunity to prepare his defence and this involves:

- (1) That he should at all times be entitled to the assistance of a legal adviser of his own choice, and to have freedom of communication with him.
- (2) That he should be given notice of the charge with sufficient particularity.
- (3) That he should have a right to produce witnesses in his defence and to be present when this evidence is taken.
- (4) That, at least in serious cases, he should be informed in sufficient time before the trial of the nature of the evidence to be called for by the Prosecution.
- (5) That he should be entitled to be present when any evidence for the Prosecution is given and to have the witnesses for the Prosecution cross-examined.

VI. MINIMUM DUTIES OF THE PROSECUTION

The duty of the Prosecution should be fairly to place the relevant evidence before the Court, and not to obtain a conviction at all costs. If the Prosecution has evidence favourable to the accused which it does not propose to use, it should put such evidence at the disposal of the accused or his legal adviser in sufficient time to enable him to make proper use of it.

VII. THE EXAMINATION OF THE ACCUSED

No one should be compelled to incriminate himself. No accused person or witness should be subject to physical or psychological pressure (including anything calculated to impair his will or violate his dignity as a human being).

Postal or telephone communications should not be intercepted save in exceptional circumstances provided by law and under an order of an appropriate judicial authority.

A search of the accused's premises without his consent should only be made under an order of an appropriate judicial authority.

Evidence obtained in breach of any of these rights ought not to be admissible against the accused.

VIII. TRIAL IN PUBLIC

The Rule of Law requires that criminal trials should ordinarily take place in public. The proper existence of exceptions to this rule is, however, recognized. The nature of these exceptions should be laid down by law and their application to the particular case should be decided by the Court.

Criminal trials should be open to report by the press but it is not compatible with the Rule of Law that it should be permissible for newspapers to publish, either before or during a trial, a matter which is likely to prejudice the fair trial of the accused.

IX. RETRIAL

After a final conviction or acquittal no one should be tried again on the same facts, whether or not for the same offence.

X. LEGAL REMEDIES, INCLUDING APPEALS

Every conviction and sentence and every refusal of bail should be challengeable before at least one higher Court.

It is essential that there should be adequate remedies for the breach of any of the rights referred to above. The nature of those remedies must necessarily depend on the nature of the particular right infringed and the system of law which exists in the country concerned. Different systems of law may provide different ways of controlling the activities of the police and of the prosecuting and enquiring authorities.

XI. PUNISHMENT

The Rule of Law does not require any particular penal theory but it must necessarily condemn cruel, inhuman or excessive preventive measures or punishments, and supports the adoption of reformatory measures wherever possible.

REPORT OF COMMITTEE IV

The Judiciary and the Legal Profession under the Rule of Law

CLAUSE I

An independent Judiciary is an indispensable requisite of a free society under the Rule of Law. Such independence implies freedom from interference by the Executive or Legislative with the exercise of the judicial function, but does not mean that the judge is entitled to act in an arbitrary manner. His duty is to interpret the law and the fundamental principles and assumptions that underlie it. It is implicit in the concept of independence set out in the present paragraph that provision should be made for the adequate remuneration of the Judiciary and that a judge's right to the remuneration settled for his office should not during his term of office be altered to his disadvantage.

CLAUSE II

There are in different countries varying ways in which the Judiciary are appointed, re-appointed (where re-appointment arises) and promoted, involving the Legislative, Executive, the Judiciary itself, in some countries the representatives of the practising legal profession, or a combination of two or more of these bodies. The selection of judges by election and particularly by re-election, as in some countries, presents special risks to the independence of the Judiciary which are more likely to be avoided only where tradition has circumscribed by prior agreement the list of candidates and has limited political controversy. There are also potential dangers in exclusive appointment by the Legislative, Executive, or Judiciary, and where there is on the whole general satisfaction with the calibre and independence of judges it will be found that either in law or in practice there is some degree of co-operation (or at least consultation) between the Judiciary and the authority actually making the appointment.

CLAUSE III

The principle of irremovability of the Judiciary, and their security of tenure until death or until a retiring age fixed by statute is reached, is an important safeguard of the Rule of Law. Although it is not impossible for a judge appointed for a fixed term to assert his independence, particularly if he is seeking re-appointment, he is subject to greater difficulties and pressure than a judge who enjoys security of tenure for his working life.

CLAUSE IV

The reconciliation of the principle of irremovability of the Judiciary with the possibility of removal in exceptional circumstances necessitates that the grounds for removal should be before a body of judicial character assuring at least the same safeguards to the judge as would be accorded to an accused person in a criminal trial.

CLAUSE V

The considerations set out in the preceding paragraph should apply to: (1) the ordinary civil and criminal Courts; (2) administrative Courts or constitutional Courts, not being subordinate to the ordinary Courts. The members of administrative tribunals, whether professional lawyers or laymen, as well as laymen exercising other judicial functions (juries, assessors, Justices of the Peace, etc.) should only be appointed and removable in accordance with the spirit of these considerations, in so far as they are applicable to their particular positions. All such persons have in any event the same duty of independence in the performance of their judicial function.

CLAUSE VI

It must be recognized that the Legislative has responsibility for fixing the general framework and laying down the principles of organization of judicial business and that, subject to the limitations on delegations of legislative power which have been dealt with elsewhere, it may delegate part of this responsibility to the Executive. However, the exercise of such responsibility by the Legislative including any delegation to the Executive should not be employed as an indirect method of violating the independence of the Judiciary in the exercise of its judicial functions.

CLAUSE VII

It is essential to the maintenance of the Rule of Law that there should be an organized legal profession free to manage its own affairs. But it is recognized that there may be general supervision by the Courts and that there may be regulations governing the admission to and pursuit of the legal profession.

CLAUSE VIII

Subject to his professional obligation to accept assignments in appropriate circumstances, the lawyer should be free to accept any case which is offered to him.

CLAUSE IX

While there is some difference of emphasis between various countries as to the extent to which a lawyer may be under a duty to accept a case it is conceived that:

- (1) wherever a man's life, liberty, property or reputation are at stake he should be free to obtain legal advice and representation; if this principle is to become effective, it follows that lawyers must be prepared frequently to defend persons associated with unpopular causes and minority views with which they themselves may be entirely out of sympathy;
- (2) once a lawyer has accepted a brief he should not relinquish it to the detriment of his client without good and sufficient cause;
- (3) it is the duty of a lawyer which he should be able to discharge without fear of consequences to press upon the Court any argument of law or of fact which he may think proper for the due presentation of the case by him.

CLAUSE X

Equal access to law for the rich and poor alike is essential to the maintenance of the Rule of Law. It is, therefore, essential to provide adequate legal advice and representation to all those, threat-

ened as to their life, liberty, property or reputation who are not able to pay for it. This may be carried out in different ways and is on the whole at present more comprehensively observed in regard to criminal as opposed to civil cases. It is necessary, however, to assert the full implications of the principle, in particular in so far as "adequate" means legal advice or representation by lawyers of the requisite standing and experience. This is a question which cannot be altogether dissociated from the question of adequate remuneration for the services rendered. The primary obligation rests on the legal profession to sponsor and use its best effort to ensure that adequate legal advice and representation are provided. An obligation also rests upon the State and the community to assist the legal profession in carrying out this responsibility.

LAW OF LAGOS

The African Conference on the Rule of Law consisting of 194 judges, practising lawyers and teachers of law from 23 African nations as well as 9 countries of other continents,

Assembled in Lagos, Nigeria, in January 1961 under the aegis of the International Commission of Jurists,

Having discussed freely and frankly the Rule of Law with particular reference to Africa, and

Having reached conclusions regarding Human Rights in relation to Government security, Human Rights in relation to aspects of criminal and administrative law, and the responsibility of the Judiciary and of the Bar for the protection of the rights of the individual in society,

NOW SOLEMNLY

Recognizes that the Rule of Law is a dynamic concept which should be employed to safeguard and advance the will of the people and the political rights of the individual and to establish social, economic, educational and cultural conditions under which the individual may achieve his dignity and realize his legitimate aspirations in all countries, whether dependent or independent,

Reaffirms the Act of Athens and the Declaration of Delhi with special reference to Africa and

Declares

1. That the principles embodied in the Conclusions of this Conference which are annexed hereto should apply to any society, whether free or otherwise, but that the Rule of Law cannot be fully realized unless legislative bodies have been established in accordance with the will of the people who have adopted their Constitution freely;
2. That in order to maintain adequately the Rule of Law all Governments should adhere to the principle of democratic representation in their Legislatures;
3. That fundamental human rights, especially the right to personal liberty, should be written and entrenched in the Constitutions of all countries and that such personal liberty should not in peacetime be restricted without trial in a Court of Law;
4. That in order to give full effect to the Universal Declaration of Human Rights of 1948, this Conference invites the African Governments to study the possibility of adopting an African Convention of Human Rights in such a manner that the Conclusions of this Conference will be safeguarded by the creation of a court of appropriate jurisdiction and that recourse thereto be made available for all persons under the jurisdiction of the signatory States;
5. That in order to promote the principles and the practical application of the Rule of Law, the judges, practising lawyers and teachers of law in African countries should take steps to establish branches of the International Commission of Jurists.

This Resolution shall be known as the Law of Lagos.

AFRICAN CONFERENCE ON THE RULE OF LAW

LAGOS, NIGERIA,

January 3-7, 1961

CONCLUSIONS

COMMITTEE I

Human Rights and Government Security—the Legislative, Executive and Judiciary

CLAUSE I

1. The exigencies of modern society necessitate the practice of the Legislature delegating to the Executive the power to make rules having the force of legislation.

2. The power of the Executive to make rules or regulations having legislative effect should derive from the express mandate of the Legislature; these rules and regulations should be subject to approval by that body. The object and scope of such executive power should be clearly defined.

3. The Judiciary should be given the jurisdiction to determine in every case upon application whether the circumstances have arisen or the conditions have been fulfilled under which such power is to be or has been exercised.

4. Every constitution should provide that, except during a period of emergency, legislation should as far as possible be delegated only in respect of matters of economic and social character and that the exercise of such powers should not infringe upon fundamental human rights.

5. The proclamation of a state of emergency is a matter of most serious concern as it directly affects and may infringe upon human rights. It is the sense of the Conference that the dangers of survival of the nation such as arise from a sudden military challenge may call for urgent and drastic measures by the Executive which by the nature of things are susceptible only to *a posteriori* legislative ratification and judicial review. In any other case, however, it is the Parliament duly convened for the purpose that should declare whether or not the state of emergency exists. Wherever it is impossible or inexpedient to summon Parliament for this purpose, for example during Parliamentary recess, the Executive should be competent to declare a state of emergency, but in such a case Parliament should meet as soon as possible thereafter.

6. The Conference is of the opinion that real danger exists when, to quote the words of the General Rapporteur, "The citizenry, whether by legislative or executive action, or abuse of the judicial process, are made to live as if in a perpetual state of emergency."

7. The Conference feels that in all cases of the exercise of emergency powers, any person who is aggrieved by the violation of his rights should have access to the courts for determination whether the power has been lawfully exercised.

CLAUSE II

The Conference, having considered the relative rights and obligations of legislative, executive and judicial institutions and their functions as affecting human rights and government security with particular reference to the observance of the Rule of Law in both independent and dependent countries in Africa and elsewhere; and having taken cognizance of allegations that discriminatory legislation based on race, colour or creed exists to the detriment of fundamental human rights of large sections of the population,

Requests the International Commission of Jurists to investigate, examine, consider and report on the legal conditions in Africa and elsewhere with particular regard to the existence of the Rule of Law and the observation of fundamental human rights.

COMMITTEE II

Human Rights and Aspects of Criminal and Administrative Law

The Rule of Law is of universal validity and application as it embraces those institutions and principles of justice which are considered minimal to the assurance of human rights and the dignity of man.

Further as a preamble to these *Conclusions* it is decided to adopt the following text from the *Conclusions* of the Second Committee of the International Congress of Jurists, New Delhi, India, 1959:

The Rule of Law depends not only on the provision of adequate safeguards against abuse of power by the Executive, but also on the existence of effective government capable of maintaining law and order and of ensuring adequate social and economic conditions of life for the society.

The following propositions relating to the Executive and the Rule of Law are accordingly formulated on the basis of certain conditions which are either satisfied, or in the case of newly independent countries still struggling with difficult economic and social problems are in process of being satisfied. These conditions require the existence of an Executive invested with sufficient power and resources to discharge its functions with efficiency and integrity. They require the existence of a Legislature elected by democratic process and not subject, either in the manner of its election or otherwise, to manipulation by the Executive. They require the existence of an independent Judiciary which will discharge its duties fearlessly. They finally call for the earnest endeavour

of government to achieve such social and economic conditions within a society as will ensure a reasonable standard of economic security, social welfare and education for the mass of the people.

1. Taking full cognizance of and incorporating herein by reference Clause III 3 (a) of the *Conclusions* of the First Committee of the above-mentioned International Congress of Jurists in New Delhi ¹ it is recognized and agreed that legislation authorizing administrative action by the Executive should not be discriminatory with respect to race, creed, sex or other such reasons and any such discriminatory provisions contained in legislation are considered contrary to the Rule of Law.

2. While recognizing that inquiry into the merits of the propriety of an individual administrative act by the Executive may in many cases not be appropriate for the ordinary courts, it is agreed that there should be available to the person aggrieved a right of access to:

- (a) a hierarchy of administrative courts of independent jurisdiction; or
- (b) where these do not exist, to an administrative tribunal subject to the overriding authority of the ordinary courts.

3. The minimum requirements for such administrative action and subsequent judicial review as recommended in paragraph 2 above are as follows:

- (a) that the full reasons for the action of the Executive be made known to the person aggrieved; and
- (b) that the aggrieved person shall be given a fair hearing; and
- (c) that the grounds given by the Executive for its action shall not be regarded as conclusive but shall be objectively considered by the court.

4. It is desirable that, whenever reasonable in the prevailing circumstances, the action of the Executive shall be suspended while under review by the courts.

5. (i) No person of sound mind shall be deprived of his liberty except upon a charge of a specific criminal offence; further, except during a public emergency, preventive detention without trial is held to be contrary to the Rule of Law.

(ii) During a period of public emergency, legislation often authorizes preventive detention of an individual if the Executive finds that public security so requires. Such legislation should provide the individual with safeguards against continuing arbitrary confinement by requiring a prompt administrative hearing and decision upon the need and justification for detention with a right to judicial review.

¹ See *supra* p. 6

It should be required that any declaration of public emergency by the Executive be reported to and subject to ratification by the Legislature. Moreover, both the declaration of public emergency and any consequent detention of individuals should be effective only for a specified and limited period of time (not exceeding six months).

(iii) Extension of the period of public emergency should be effected by the Legislature only after careful and deliberate consideration of the necessity therefor. Finally, during any period of public emergency the Executive should only take such measures as are reasonably justifiable for the purpose of dealing with the situation which exists during that period.

6. The courts and magistrates shall permit an accused person to be or to remain free pending trial except in the following cases which are deemed proper grounds for refusing bail:

- (a) in the case of a very grave offence;
- (b) if the accused is likely to interfere with witnesses or impede the course of justice;
- (c) if the accused is likely to commit the same or other offences;
- (d) if the accused may fail to appear for trial.

7. The power to grant bail is a judicial function which shall not be subject to control by the Executive. Although a court should hear and consider the views and representations of the Executive, the fact that investigation of the case is being continued is not a sufficient ground for refusing bail. Bail should be commensurate with the economic means of the accused and, whether by appeal or independent application, a higher court should have the power to release provisionally an accused person who has been denied bail by the lower court.

8. After conviction and pending review, the trial or appellate court should have discretionary power to admit the convicted person to bail subject to the grounds set forth in paragraph 6 above.

9. It is recommended that greater use be made of the summons requiring appearance in court to answer a criminal charge in place of arrest and the consequent necessity for bail and provisional release.

COMMITTEE III

The Responsibility of the Judiciary and of the Bar for the Protection of the Rights of the Individual in Society

The Conference reaffirms the *Conclusions* reached by the Fourth Committee of the International Congress of Jurists, New Delhi, India, 1959, which are appended hereto¹; and having regard to the

¹ See supra pp. 12-15

particular problems of emerging states, wishes to emphasize certain points in particular, and to add others.

1. In a free society practising the Rule of Law, it is essential that the absolute independence of the Judiciary be guaranteed. Members of the legal profession in any country have, over and above their ordinary duties as citizens, a special duty to seek ways and means of securing in their own country the maximum degree of independence for the Judiciary.

2. It is recognised that in different countries there are different ways of appointing, promoting and removing judges by means of action taken by the Executive and Legislative powers. It is not recommended that these powers should be abrogated where they have been universally accepted over a long period as working well—provided that they conform to the principles expressed in Clauses II, III, IV and V of the Report of the Fourth Committee at New Delhi.

3. In respect of any country in which the methods of appointing, promoting and removing judges are not yet fully settled, or do not ensure the independence of the Judiciary, it is recommended:

- (a) that these powers should not be put into the hands of the Executive or the Legislative, but should be entrusted exclusively to an independent organ such as the Judicial Service Commission of Nigeria or the *Conseil supérieur de la magistrature* in the African French-speaking countries;
- (b) that in any country in which the independence of the Judiciary is not already fully secured in accordance with these principles, they should be implemented immediately in respect of all judges, especially those having criminal jurisdiction.

4. It is recommended that all customary, traditional or local law should be administered by the ordinary courts of the land, and emphasized that for so long as that law is administered by special courts, all the principles enunciated here and at New Delhi, for safeguarding the Rule of Law, apply to those courts.

5. The practice whereby in certain territories judicial powers, especially in criminal matters, are exercised by persons who have no adequate legal training or experience, or who as administrative officers are subject to the control of the Executive is one which falls short of the Rule of Law.

6. (a) To maintain the respect for the Rule of Law it is necessary that the legal profession should be free from any interference.
- (b) In countries where an organised Bar exists, the lawyers themselves should have the right to control the admission to the profession and the discipline of the members according to rules established by law.

- (c) In countries where an organised Bar does not exist, the power to discipline lawyers should be exercised by the Judiciary in consultation with senior practising lawyers and never by the Executive.

7. The Conference reaffirms Clause X of the *Conclusions* of the Fourth Committee at New Delhi, and recommends that all steps should be taken to ensure equal access to law for both rich and poor, especially by a provision for and an organisation of a system of Legal Aid in both criminal and civil matters.

8. The Conference expressly re-affirms the principle that retroactive legislation, especially in criminal matters, is inconsistent with the Rule of Law.

RESOLUTION OF RIO

This International Congress of Jurists, of judges, lawyers in private and government practice, and teachers of law from 75 countries, has assembled in December 1962 in Brazil under the aegis of the International Commission of Jurists.

The Congress has reached these conclusions. It considers that the protection of the individual from unlawful or excessive interference by government is a foundation of the Rule of Law. The Congress has observed with concern that the rights of the individual have been trespassed upon or ignored in many places in the world and that in many cases this arises from the over-reaching by the Executive unrestrained by an independent Judiciary. Accordingly the Congress, having discussed appropriate measures to remove improper and excessive encroachment by government on the rights of the individual in the field of executive action,

NOW SOLEMNLY

Adopts the *Conclusions* annexed to this *Resolution* and reaffirms the *Act of Athens* and the *Declaration of Delhi* adopted by earlier International Congresses of Jurists which were again sanctioned in the *Law of Lagos* by the African Conference on the Rule of Law; and accordingly

Calls upon the International Commission of Jurists to give its attention to the following matters which were of concern in the debates of this Congress:

1. The conditions in varying countries relating to the independence of the Judiciary, its security of tenure and its freedom from control, direct or indirect, by the Executive;
2. The encouragement of the establishment of International Courts of Human Rights on a regional basis;
3. The role and responsibility of lawyers in a changing world to concern themselves with the prevalence of poverty, ignorance and inequality in so many parts of the world, and to inspire and promote economic development and social justice;
4. The improvement of legal education so that the understanding of the Rule of Law in the best traditions of the Bench and of the Bar is inculcated in those entering the profession of the law;
5. The continuance of its important work in investigating and reporting on violations of the Rule of Law wherever they occur;

And accordingly and by way of emphasis calls upon the Commission to examine and report upon the conditions affecting the independence of the Judiciary which is the first indispensable condition of the existence of the Rule of Law in any country.

This resolution shall be known as the *Resolution of Rio*.

Done this 15th day of December 1962.

INTERNATIONAL CONGRESS OF JURISTS ON

EXECUTIVE ACTION AND THE RULE OF LAW

RIO DE JANEIRO (PETRÓPOLIS), BRAZIL

December 11-15, 1962

CONCLUSIONS

REPORT OF COMMITTEE I

Procedures Utilized by Administrative Agencies and Executive Officials

CLAUSE I

To maintain the Rule of Law there must be on the one hand effective government capable of maintaining order and promoting social and economic development, and on the other adequate safeguards against the abuse of State power. Today all societies face the need for adjustment to the requirements of technological change and of social and economic development. In various areas of activity the Executive branches are compelled to deal with problems for the solution of which no adequate machinery may exist and which may constantly require governmental and legislative intervention for the good of society and of the individuals within it. A major dilemma confronting governments and citizens alike is how to balance the freedom of the Executive to act effectively with the protection of the rights of the individual. It is the duty of all States in coping with this dilemma to preserve and advance the Rule of Law while undertaking measures of social and economic development.

CLAUSE II

The first guarantee of good administration and of the protection of the individual is the procedural framework used by the Executive in making decisions affecting his rights. Judicial procedure for protection of the individual has evolved over a long period, but in modern societies the Executive acts through various agencies which have no uniform rules of procedure and in which the Rule of Law is inadequately safeguarded. The conclusions which follow set out the principles and procedures which should be observed.

CLAUSE III

In nearly every country one type of action of administrative agencies and executive officials is in the nature of adjudication, and the decisions made are similar to judicial decisions. Whatever variations in procedure may be appropriate to this kind of Executive action, there are certain fundamental principles that must be followed if the Rule of Law is to be preserved. These are:

- (1) adequate notice to the interested parties of the nature and purpose of the proceedings;
- (2) adequate opportunity for them to prepare the case, including access to relevant data;
- (3) their right to be heard, and adequate opportunity for them to present arguments and evidence, and to meet opposing arguments and evidence;
- (4) their right to be represented by counsel or other qualified person;
- (5) adequate notice to them of the decision and of the reasons therefor;
- (6) their right of recourse to a higher administrative authority or to a Court.

CLAUSE IV

To ensure the independence of the members of the administrative bodies which customarily render decisions similar to judicial decisions, and to protect them from undue interference, such members must not be removable during their term of office, except for good cause and by due process of law.

CLAUSE V

Decisions taken by the Executive not involving adjudication may still vitally affect the freedom and interests of individuals. Therefore, it is necessary that in these cases certain minimum safeguards for the Rule of Law be preserved.

1. Regarding the adoption of administrative regulations and decisions of broad scope, it is desirable that the administration secure expert advice when necessary, consult organizations representing citizens or groups interested in the contemplated measures, and give an opportunity to interested individuals to present their views.
2. Regarding individual decisions, the procedure in all cases where the administration is about to impose sanctions on a citizen or to take measures liable to affect detrimentally his vital interests should include the following:
 - (a) notification of the contemplated measure and the reasons for its adoption;

- (b) right of access to the relevant data;
- (c) right to be heard;
- (d) notice of the decision.

CLAUSE VI

It is essential that effective publication be made promptly of all decisions of a legislative character made by the Executive, so that interested parties may be advised of measures adopted affecting their interests.

CLAUSE VII

This Congress reaffirms the principles adopted by the Lagos Conference relating to the declaration of a state of emergency and to the exercise of emergency powers, including preventive detention.¹

The principles set out in these *Conclusions* must be maintained at all times, except in a period of national emergency duly declared by the State, or in exceptional circumstances and for limited periods in coping with public calamity or necessity, directly affecting the life or livelihood of the people. At such times, certain of those principles may have to be temporarily relaxed. This relaxation is justified only to the extent actually required and should be confined to the Executive agencies directly concerned. In no case should fundamental Human Rights and the dignity of the individual be disregarded.

The conditions under which an emergency may be declared should be formulated in a law which determines the authority capable of proclaiming it, as well as the relevant procedures, duration and appropriate methods of control.

CLAUSE VIII

The fundamental principles referred to above should not be left to the discretion of governments, but should be clearly formulated and adopted in all countries in the most appropriate manner (Constitution, law, decree, administrative code, etc.).

CLAUSE IX

It is desirable that States should prepare and adopt international conventions providing a right of appeal to individuals and interested groups before an international tribunal to guarantee, in exceptional as well as in normal circumstances, the protection of the prescribed rights.

¹ See Lagos Conclusions, Committee I, Clause I, (*supra* p. 17); and Committee II, Para. 5, (*supra* p. 19).

REPORT OF COMMITTEE II

Control by the Courts and the Legislature over Executive Action

The existence of effective safeguards against the possible abuse of power by the Executive is an all-important aspect of the Rule of Law. Judicial and Legislative control of the Executive are such safeguards.

A. *Judicial Control*

1. Judicial control must be effective, speedy, simple and inexpensive.
2. The exercise of judicial control demands full independence of the Judiciary and complete professional freedom for lawyers.
3. Judicial control over the acts of the Executive should ensure that:
 - (a) the Executive acts within the powers conferred upon it by the Constitution and such laws as are not unconstitutional;
 - (b) whenever the rights, interests or status of any person are infringed or threatened by Executive action, such person shall have an inviolable right of access to the Courts and unless the Court be satisfied that such action was legal, free from bias and not unreasonable, be entitled to appropriate protection;
 - (c) where Executive action is taken under a discretionary power, the Courts shall be entitled to examine the basis on which the discretion has been exercised and if it has been exercised in a proper and reasonable way and in accordance with the principles of natural justice;
 - (d) the powers validly granted to the Executive are not used for a collateral or improper purpose.
4. In establishing the purpose for which a power has been used it should be for the Court to decide on evidence whether any claim not to disclose State documents is reasonable and justified.
5. When the infringement complained of is one affecting Human Rights, the Courts should be entitled to take into consideration at least as an element of interpretation and as a standard of conduct in civilized communities the provisions of the Universal Declaration of Human Rights adopted by the General Assembly of the United Nations.
6. It is considered to be necessary that at least in cases involving Human Rights there should be an international court to which final recourse might be had by an individual whose rights have been infringed or threatened. Such an international tribunal would be a World Court of Human Rights, its writ effective in any jurisdiction.
7. The first step in this direction could be regional conventions with optional clauses analogous to the European Convention for the Protection of Human Rights and Fundamental Freedoms and the Inter-American Draft Convention on Human Rights, and regional courts analogous to the European Court of Human Rights. Close

liaison between such regional courts would have to be established in order to develop a common case law.

B. *Legislative Control*

1. The complexity of modern society may necessitate the delegation of legislative power by the Legislature to the Executive, particularly where requirements of fair practice demand frequent changes or where the Legislature cannot reasonably be expected to deal with technical details.
2. The enactments by which such legislative powers are delegated should carefully define the extent, purpose and where necessary duration of delegated legislation and should provide for the procedure by which it can be brought into effect.
3. Delegated legislation should always be fair and reasonable and should be drafted in clear form. In no circumstances should it deviate from general principles of legislation or from the directions laid down by the Legislature.
4. To ensure that the Executive should loyally discharge its legislative mandate, the Legislature should entrust appropriate organs, such as standing committees, with the task of scrutinizing all delegated legislation and reporting to it at fixed intervals the results of their scrutiny.
5. Attention is called to the powers of the Legislature to exercise control through its right to appropriate public money. Such control can be strengthened by a high and independent official, like a Controller or Auditor-General, appointed by Parliament, who exercises control over expenditure of public money.
6. A high official, such as the *Ombudsman* in the Scandinavian countries and in New Zealand, should be appointed by the Legislature for a fixed period. He should be entirely independent of the Executive, be responsible only to the Legislature and be remunerated directly by it. He should be entitled and under an obligation to act either on his initiative or on complaints from any individual. He should have full access to all government documents and files. He should have the power of summoning and examining witnesses as in a court of law. His reports should be made at least once a year and should be given due publicity.

REPORT OF COMMITTEE III

The Role of Lawyers in a Changing World

In a changing and interdependent world, lawyers should give guidance and leadership in the creation of new legal concepts, institutions and techniques to enable man to meet the challenge and the dangers of the times and to realize the aspirations of all people.

The lawyer today should not content himself with the conduct of his practice and the administration of justice. He cannot remain a stranger to important developments in economic and social affairs if he is to fulfil his vocation as a lawyer: he should take an active part in the process of change. He will do this by inspiring and promoting economic development and social justice.

The conditions to be fulfilled and the steps to be taken in order to enable the lawyer to play this role effectively were dealt with to some extent in the *Conclusions* of the Fourth Committee of the International Congress of Jurists, New Delhi, India, 1959, and of the Third Committee of the African Conference on the Rule of Law, Lagos, Nigeria, 1961.¹

This Congress adopts the following further conclusions.

CLAUSE I

The skill and knowledge of lawyers are not to be employed solely for the benefit of clients, but should be regarded as held in trust for society.

CLAUSE II

It is the duty of lawyers in every country, both in the conduct of their practice and in public life, to help ensure the existence of a responsible Legislature elected by democratic process and an independent, adequately remunerated Judiciary, and to be always vigilant in the protection of civil liberties and Human Rights.

CLAUSE III

Lawyers should refuse to collaborate with any authority in any action which violates the Rule of Law.

CLAUSE IV

Lawyers should be anxiously concerned with the prevalence of poverty, ignorance and inequality in human society and should take a leading part in promoting measures which will help eradicate those evils, for while they continue to exist, civil and political rights cannot of themselves ensure the full dignity of man.

CLAUSE V

Lawyers have a duty to be active in law reform. Especially where public understanding is slight and the knowledge of lawyers is of importance, they should review proposed legislation and present to the appropriate authorities programmes of reform.

¹ See pages 12 and 20 *supra* respectively.

CLAUSE VI

Lawyers should endeavour to promote knowledge of and to inspire respect for the Rule of Law, and an appreciation by all people of their rights under the law.

CLAUSE VII

If lawyers are to discharge their obligations under the Rule of Law they will need to exercise individual initiative and to act through every available organization, including in particular self-governing lawyers' associations. Such associations must be entirely free of interference and control by the Executive.

CLAUSE VIII

The Rule of Law requires lawyers of competence and integrity who are available to, and do in fact represent the whole community regardless of racial, religious, political, geographical or other differences. Lawyers should be numerous and diverse enough to serve the needs of the community and to ensure that every person can obtain adequate representation by a lawyer of his own choice.

Individual lawyers and their associations have the duty to work with judges, other officials and community organizations to provide indigent persons with adequate legal service.

CLAUSE IX

The Rule of Law requires an authority which has the power to, and does in fact, exact proper standards for admission to the legal profession and enforces discipline in cases of failure to abide by a high standard of ethics. Those functions are best performed by self-governing democratically organized lawyers' associations, but in the absence of such associations the Judiciary should act instead. Discipline for violations of ethics must be administered in substantially the same manner as courts administer justice. Associations exercising those functions must be open to all qualified lawyers without discrimination based on race, religion or political persuasion. Lawyers' associations should encourage reciprocal agreements or other procedures to eliminate the requirement of citizenship as a prerequisite to the right to practise law.

CLAUSE X

This Congress specifically endorses the *Conclusions* of Delhi ¹ regarding the relationship between lawyers and clients, and in addition stresses the following matters.

¹ See New Delhi, Conclusions, Committee IV, *supra* p. 12.

1. In order to ensure adequate representation, it may be essential in some cases to allow lawyers from foreign countries to appear.
2. Lawyers' associations must take all necessary steps to ensure the representation of clients whose causes may be unpopular.
3. It is essential to the Rule of Law that the client be free to discuss all matters with his lawyer without fear of disclosure by the lawyer, either voluntarily or by compulsion.

CLAUSE XI

In an interdependent world, the lawyer's responsibilities extend beyond national boundaries. They require his deep concern for peace, and support for the principles of the United Nations and the strengthening and development of international law and organizations. The lawyer should also promote an increased application of arbitration, adjudication and other legal procedures in the settlement of disputes among nations. Finally, the lawyer should support the negotiation and conclusion of international conventions and agreements on human rights and fundamental freedoms, thus leading to the day when the universality of the Rule of Law may be achieved.

CLAUSE XII

At all times the lawyer should strive to be a visible example of the ideals of his profession—integrity, competence, courage and dedication to the service of his fellow men.

REPORT OF COMMITTEE IV

The Role of Legal Education in a Changing Society

Introduction

To keep the action of the Executive within the limits of the Rule of Law, it is necessary for all branches of the legal profession—judges, teachers and practitioners to play a significant role in the community. This is particularly important in communities where there is a rapid and profound process of change. For the legal profession to be able to perform its social function satisfactorily it is necessary that the teaching of law should lay special emphasis on three points:

- (1) reveal the processes through which law can evolve, promoting orderly and significant changes in the social and economic organization of society leading to improved standards of living;
- (2) stress the study of the principles, institutions and proceedings that are related to the safeguarding and promotion of the rights of individuals and groups;

- (3) imbue students with the principles of the Rule of Law, making them aware of its high significance, emphasizing the need of meeting the increasing demands of social justice, and helping develop in the student the personal qualities required to uphold the noble ideals of the profession and secure the effective enforcement of law in the community.

For the achievement of these ends, it is considered indispensable that:

- (1) in the countries which do not yet have Faculties of Law or other institutions especially designed for the training of jurists, there should be priority for the establishment thereof;
- (2) the Faculties of Law do not restrict their activities only to the education of practitioners, judges and law teachers, in numbers they deem sufficient to meet social requirements, but that they also supply training in the principles and practice of law to public officials, managers in private business, leaders of professional or trade unions, journalists and publicists. Furthermore, Faculties of Law should pursue, to the extent permitted by the stage of development reached by each particular community, a campaign for the public dissemination of the basic principles related to the Rule of Law. These activities must be carried out, with a view to acquainting the people with the principles of the Rule of Law in addition to similar activities being pursued at other levels of education, both public and private;
- (3) it is not enough that Faculties of Law and other institutions specially engaged in the teaching of law endeavour to attain the highest levels of technical preparation of students. They must also make a special effort to shape their characters, to develop their sense of social responsibility and to strengthen their moral discipline: these requirements will have to be all the more keenly met in communities where there are no other organizations to serve those ends.

I. Legal Studies

It is accepted that Law Schools should organize their courses so as to contribute as much as possible to the recognition and implementation of the Rule of Law. The nature of these arrangements will differ according to the speed of social changes within a particular country and according to the extent of pre-legal education available, but some general conclusions may be drawn.

There are two interdependent factors: the content of courses and teaching methods. What follows is in no sense a suggested complete curriculum for law students. Obviously important subjects for the establishment of the Rule of Law are those which stress the content

of human freedoms and the protection of the individual from arbitrary action: constitutional and administrative law, criminal law and international legal studies. The importance of procedural safeguards for Human Rights makes the study of procedural law indispensable. Students must be instructed both in general legal principles and in reasoning on specific legal problems. All courses must be taught with emphasis on their social, economic, political and historical background.

A reference should be made regularly to other legal systems and comparisons drawn between them so as to allow a more precise evaluation of the merits and defects of the students' own legal system.

Law Schools should be an active forum for all matters of legal interest and not merely function for the training of law students. They should therefore organize discussions of topics relating to legal reform which concern the area served by them. They should provide refresher courses in new developments of law.

II. *Students of Law*

Admission to Faculties of Law presupposes a certain level of academic achievement and of preparation for legal studies. This requirement is satisfied either by completing prescribed pre-legal studies or by passing an entrance examination. It is recognized that in developing societies some modification of these requirements may be necessary in order to assure an early supply of needed personnel.

There must be no discrimination on account of race, nationality, religion, sex, political beliefs or social or economic position, either with regard to a student's admission or during his course of studies. All reasonable means (such as grants and loans) must be used to ensure that no student is denied admission to a Law School or prevented from completing his legal training because the student lacks financial resources; there must be no arbitrary demands of a financial nature made on students at any time.

III. *Teachers of Law*

Teachers of law must be appointed and continue to hold their appointments without regard to consideration of race, nationality, religion, sex, political beliefs or social or economic position. All Law Faculties, whether State or private, should appoint their own teachers, preferably in open competition, or take an active part in the process of appointment. When making appointments, Law Faculties should attach importance not only to technical or scholarly competence, but also to the following qualities: moral integrity, civic spirit and sense of social responsibility. Teachers of law should be given adequate remuneration and enjoy security of tenure so that their freedom of expression is not impaired.

In those countries where Faculties of Law are controlled by the State there is a special need for protecting the independence of the teaching staff by firm guarantees such as faculty appointments by open competition, security of tenure and the recognition of the traditional academic freedoms.

There is no objection to law teachers participating in public activities, including the holding of public office; it could sometimes be advantageous. But academic freedom must not be compromised and these activities must not lead to the introduction of improper influence into university life.

It is desirable that exchange of teachers on a national as well as on an international level should take place regularly.

Finally, Law Schools should provide facilities for training teachers of law and should assist them in improving their qualifications and experience.

IV. *Regulation of the Teaching of Law*

With a view to attaining the goals defined in the *Introduction* to the conclusions of this Committee, it is considered that legal education should be controlled by Faculties of Law themselves, free from any influence foreign to the interests of scholarship and education. Members of the teaching staff should have a major share in such control.

The power of regulating the teaching of Law should be used in such a way that freedom of teaching and research be firmly guaranteed. Furthermore, Law Schools should be responsive to the needs of developing societies.

Faculties of Law controlled by the State should enjoy a wide measure of autonomy in administrative and academic matters and should be entitled to apply their financial resources as they think fit for purposes of legal education. It would be desirable if their resources were obtained not from their pupils but from general taxes paid by the community which would thus be made aware of its contribution to the promotion of the Rule of Law. Those who support private Faculties of Law serve equally the same generous purpose.

Faculties of Law are advised to pay very close attention to the pertinent recommendations of the specialized agencies of the United Nations and associated regional agencies.

II

PROCEEDINGS OF THE CONGRESS

LIST OF PARTICIPANTS AND OBSERVERS

ABREU CASTILLO MANUEL / *Puerto Rico*

President of the Bar Association of Puerto Rico; Vice-President of the Inter-American Bar Association; Puerto Rican delegate to the Congress on the Unification of National Legislation

ABU RANNAT Mohammed Ahmed / *Sudan*

Chief Justice, Supreme Court of the Sudan

ADEMOLA ADENEKAN / *Nigeria*

Barrister-at-Law; Chairman, Nigerian Bar Association (Ibadan); Executive Member of "Liberty", Nigerian Section of the International Commission of Jurists

AGAOGU SÜREYYA (Mrs.) / *Turkey*

Attorney-at-Law; Past President, International Federation of Women Lawyers

ALAFRIZ ARTURO A. / *Philippines*

Member of the International Commission of Jurists; Solicitor-General of the Philippines; former President of the Federation of Bar Associations of the Philippines; former President of the Philippines Lawyers' Association; former Judge, Court of First Instance

APONTE GARCÍA JOSÉ C. / *Puerto Rico*

Attorney-at-Law; Special General Prosecutor of Puerto Rico; Chief of Criminal Investigations, Department of Justice of Puerto Rico

ARAMBURÚ Y MENCHACA ANDRÉS A. / *Peru*

Attorney-at-Law; Professor of Law

ASCHOFF ALBRECHT / *Germany*

Attorney-at-Law; Member, German Federal Parliament; Member, European Parliament

ATALLA FOUAD B. / *Jordan*

Attorney-at-Law; former Judge

BAKMAS IVAN / *Argentina*

Attorney-at-Law

BAKOUSH ABDULHAMID N. / *Libya*

Attorney-at-Law

BARRIOS ESCALONA JONÁS / *Venezuela*

Vice-President of the Supreme Court of Justice

BECHGAARD KAI / *Kenya*

Q.C.; former Crown Counsel and Attorney-General, Aden; former Assistant Legal Secretary, East Africa High Commission

BELBEZ HIKMET / Turkey

Attorney-at-Law; former Dean and Professor, School of Law, University of Ankara; former Judge, Commercial Court

BENNAZAR VICENS ANTONIO / Puerto Rico

Attorney-at-Law; Executive Director, Bar Association of Puerto Rico; former District Judge; former District Prosecutor, Ponce

BENGZON CÉSAR / Philippines

Chief Justice, Supreme Court of the Philippines; former Solicitor-General; former Under Secretary of Justice

BENTOUMI AMAR / Algeria

Minister of Justice of Algeria

BETTIOL GIUSEPPE / Italy

Member of the International Commission of Jurists; Professor of Penal Law; Member of Parliament; Chairman of the Committee on Foreign Affairs of the Italian Parliament; former Minister

BIEL ULRICH EDUARD / Germany

Attorney-at-Law

BOKA ERNEST / Ivory Coast

Chief Justice, Supreme Court of the Ivory Coast; former Minister of Education

BONSAL DUDLEY B. / USA

Member of the International Commission of Jurists; United States District Judge for the Southern District of New York; Past President, Association of the Bar of the City of New York

BORGIO BUSTAMANTE ENRIQUE / El Salvador

Attorney-at-Law, Central Reserve Bank of El Salvador; former Judge of the Court of the First Instance; Professor of Law, University of El Salvador

BOSE VIVIAN / India

President of the International Commission of Jurists; former Judge, Supreme Court of India

BRENTA HÉCTOR LUIS / Argentina

Attorney-at-Law; former Counsellor and Under Secretary of the Ministry of Labour and Pensions

BRIGHT CHARLES HART / Australia

Q.C.; President, Law Society of South Australia; Member, Executive Law Council of Australia

CÁCERES-LEHNHOFF EDUARDO / Guatemala

Attorney-at-Law and Notary; Member of Parliament; former President of the Bar Association of Guatemala; former Judge representing Guatemala on the Permanent Court of Arbitration

CASELL CHRISTIAN ABAYOMI / *Liberia*

Counsellor-at-Law; former Attorney-General of Liberia

CASSANO GIUSEPPE / *Italy*

Counsellor, Italian Association of Jurists, Italian Section of the International Commission of Jurists; Attorney-at-Law, Court of Cassation and the *Sacra Romana Rota*, Rome; Secretary, Catholic Jurists, *Pax Romana*

CISNEROS SÁNCHEZ MÁXIMO / *Peru*

Attorney-at-Law; Professor of Law, National University of San Marcos; former President, National Federation of Bar Associations of Peru

CHRISTOPHERSEN ROLF / *Norway*

Advocate, Supreme Court of Norway; Secretary-General, Norwegian Bar Association; Secretary-General, International Legal Aid Association

COHN HAIM H. / *Israel*

Judge, Supreme Court of Israel; former Attorney-General; former Minister of Justice

COMMON WILLIAM BELMONT / *Canada*

Q.C.; Deputy Attorney-General, Province of Ontario

COMTE PHILIPPE / *France*

Legal Officer, International Commission of Jurists

COROMINAS SEGURA RODOLFO / *Argentina*

Attorney-at-Law; Member, Superior Council, University of Mendoza; *Doctor Honoris Causa*, National University of Cuyo; former Governor of Mendoza; former Executive Director, International Monetary Fund

CREPPY GEORGES APÉLÉTÉ / *Ivory Coast*

Judge of the Supreme Court of the Ivory Coast

CRUZ UCLÉS RAMÓN ERNESTO / *Honduras*

Attorney-at-Law; Professor of Law; former Rector, and former Dean of the Faculty of Law, University of Honduras

CUMMINGS PERCIVAL AUGUSTUS / *British Guiana*

Barrister-at-Law; President, British Guiana Bar Association; former Member, State Council (Upper House); former Minister of Labour Health and Housing

CURTIS GEORGE FREDERICK / *Canada*

Q.C.; Dean, Faculty of Law, University of British Columbia

VAN DAL ALBERT J. M. / *Netherlands*

Member of the International Commission of Jurists; Attorney-at-Law at the Supreme Court of the Netherlands; former Secretary-General, International Commission of Jurists

D'ALMEIDA BENJAMIN / *Dahomey*

Attorney-at-Law, Court of Appeal

DEBEVOISE ELI WHITNEY / *USA*

Member of the International Commission of Jurists; Attorney-at-Law, New York City; former General Counsel, Office of the U.S. High Commissioner, Germany

DEGOUY RENÉ / *France*

Judge, Court of Cassation; Vice-President of *Libre Justice* French Section of the International Commission of Jurists

DELOUKAS NICHOLAS / *Greece*

Attorney-at-Law; Professor of Law, Thessalonika University

DOMÍNGUEZ SERGIO / *Mexico*

Attorney-at-Law

DUMBUTSHENA ENOCH / *Southern Rhodesia*

Barrister-at-Law

DIARRA KOUNTOU / *Mali*

Attorney-at-Law; Head of the Legal Department, Secretary-General of the Council of Ministers

DURÓN JORGE FIDEL / *Honduras*

Attorney-at-Law; former Minister of Public Education; former Minister of Foreign Affairs; former Rector of the University of Honduras

ECONOMOU DEMETRIUS / *Greece*

Attorney-at-Law; Lecturer in Public Law

EHMKE HORST PAUL AUGUST / *Germany*

Professor of Law, University of Freiburg-B.

ESCOBEDO MANUEL / *Mexico*

Member of the International Commission of Jurists; Attorney-at-Law; Professor of Law, University of Mexico; former President, *Barra Mexicana*

ESEN BÜLENT NURI / *Turkey*

Attorney-at-Law; Professor of Law, University of Ankara

FAUTEUX GERALD / *Canada*

Puisne Judge, Supreme Court of Canada; former Professor and Dean, Faculty of Law, McGill University; former Dean of the Faculty of Law, University of Ottawa

FEBRES CORDERO CARLOS LUIS / *Venezuela*

Attorney-at-Law

FEDERSPIEL PER T. / *Denmark*

Member of the International Commission of Jurists; Attorney-at-Law; President of the Consultative Assembly of the Council of Europe; Member, Danish Parliament; former Minister; former Delegate, United Nations General Assembly

FERNANDO THUSEW SAMUEL / *Ceylon*

Member of the International Commission of Jurists; Judge, Supreme Court of Ceylon; former Attorney-General

FOURNIER FERNANDO / *Costa Rica*

Member of the International Commission of Jurists; Attorney-at-Law; former President of the Bar Association of Costa Rica; Professor of Law; former Ambassador to the United Nations and to the Organization of American States

GALIB-FRANGIE YANIL / *Puerto Rico*

Attorney-at-Law

GALLARDO VÁSQUEZ GUILLERMO / *Mexico*

Attorney-at-Law; Professor of Law

GARDINER GERALD / *United Kingdom*

Q.C.; former Chairman of the General Council of the Bar of England and Wales; Benchers, Inner Temple; Member, Committee on Supreme Court Practice and Procedure; Member, Lord Chancellor's Law Reform Committee

GARRETT GEOFFREY ELMER / *United Kingdom*

Solicitor of Supreme Court of England

GILLI JEAN-PAUL / *France*

Professor of Law, University of Aix-Marseille

GODOY HORACIO H. / *Argentina*

Legal Officer, International Commission of Jurists

GROSS BROWN SIGFRIDO / *Paraguay*

Professor of Law; Member, National Codification Commission

GOLDIE LOUIS FREDERICK EDWARD / *Australia*

Barrister-at-Law; Lecturer, University of California; former Senior Lecturer, Australian National University

GUANDIQUE FÉLIX E. / *Nicaragua*

Attorney-at-Law

GUIGA BAHRI / *Tunisia*

Attorney-at-Law; Member of Parliament

HAMBRO EDVARD / *Norway*

Professor of Law; Member of Parliament; former Registrar, International Court of Justice, The Hague

HAYEM Jr. CARLOS / *El Salvador*

Attorney-at-Law and Notary; former Chief Justice; former Minister of Interior

HERRARTE GONZÁLEZ ALBERTO / *Guatemala*

Attorney-at-Law; former Judge, Supreme Court; former President, Bar Association of Guatemala

HOUMAN AHMAD / *Iran*

Attorney-at-Law; Professor of Law, University of Teheran; former Judge; former Prosecutor, Teheran; former President, Court of Appeal; former President, Court of First Instance

HOYTE DESMOND / *British Guiana*

Barrister-at-Law; Secretary of the Bar Association of British Guiana

HUNTER A. A. DE C. / *United Kingdom*

Legal Officer, International Commission of Jurists

IKKALA OLLI / *Finland*

Associate Professor of Public Law, University of Helsinki

ILLANES BENÍTEZ OSVALDO / *Chile*

Member of the International Commission of Jurists; Judge, Supreme Court of Justice

JIMÉNEZ DE ARÉCHAGA JUSTINO / *Uruguay*

Attorney-at-Law; Professor Emeritus of Constitutional Law former Professor of Constitutional Law; former Dean, Faculty of Humanities and Sciences; former Delegate to the United Nations; former Delegate, Inter-American Conference at Caracas

KABES VLADIMIR M. / *USA*

Legal Officer, International Commission of Jurists

KAMBA WALTER JOSEPH / *Southern Rhodesia*

Solicitor

KAZEMI PARVIZ / *Iran*

Attorney and Counsellor-at-Law; Secretary-General of the Iranian Jurists Association; former Deputy Prosecutor-General of the Court of First Instance, Teheran; former President of the Criminal Court of Teheran; former Professor of Civil Law and Fiscal Law (College of Finance) Teheran; former Senator

KAZZORA JOHN W. R. / *Uganda*

Barrister-at-Law; Legal Adviser to the Government and King of Ankole

KORANTENG-ADDOW GUSTAV / *Ghana*

Barrister-at-Law

KOZERA EDWARD S. / *USA*

Administrative Secretary, International Commission of Jurists

KRÉHER JEAN HENRI / *France*

Member of the International Commission of Jurists; Attorney-at-Law at the Court of Appeal, Paris; Vice-President of the World Federation of United Nations Associations

LACONICH ARQUIMEDES / *Paraguay*

Attorney-at-Law; former Secretary of the Supreme Court

LALIVE JEAN-FLAVIEN / *Switzerland*

Attorney-at-Law, Geneva; former Secretary-General, International Commission of Jurists; former First Secretary, International Court of Justice; former General Counsel, United Nations Relief and Works Agency, Beirut

LEAL MORALES ÁLVARO / *Columbia*

Attorney-at-Law; Professor of Law, National University; Member of Parliament; former Chief Justice

LEVASSEUR GEORGES / *France*

Professor of Law, University of Paris

LUMBARD J. EDWARD / *USA*

Chief Judge, United States Court of Appeals, Second Circuit; former Justice of the Supreme Court of the State of New York; former Assistant Attorney-General of the State of New York

LUNA ARROYO ANTONIO / *Mexico*

Professor of Law

MACBRIDE SEÁN / *Ireland*

Senior Counsel; former Minister of External Affairs; former Chairman, Council of Ministers of Council of Europe; former Vice-President, O.E.E.C.

MCAUSLAN JOHN P. W. B. / *Tanganyika*

Barrister-at-Law; Lecturer in Law, University College, Dar-es-Salaam

MACHACEK RUDOLF / *Austria*

Attorney-at-Law

MALEKI MEHDI / *Iran*

Attorney-at-Law

MARCUS-JONES JEREMIAH BANKOLE / *Sierra Leone*

Puisne Judge, Supreme Court of Sierra Leone

MARKOSE ANITHOTTAM THOMAS / *India*

Advocate; Director of Research Indian Law Institute, New Delhi

MARSH NORMAN S. / *United Kingdom*

Barrister-at-Law; Director, British Institute of International and Comparative Law; former Secretary-General, International Commission of Jurists; former Fellow, University College, Oxford

MAST ANDRÉ-JOSEPH / *Belgium*

Professor of Law, University of Ghent; Councillor of State

MAWALLA JUMA R. SAWAYA / *Tanganyika*

Barrister-at-Law and Advocate

M'BAYE KÉBA / *Senegal*

Judge, Supreme Court of Senegal; former Director, Cabinet of the Minister of Transport and Telecommunications

MELGUIZO ESCOBAR GERARDO / *Colombia*

Attorney-at-Law; Permanent Secretary, Colombian Academy of Jurisprudence

MÉNDEZ BRAÑAS RAMIRO / *Chile*

Judge, Supreme Court of Justice; Professor of Law

MITCHLEY ANTHONY O. R. / *Northern Rhodesia*

Barrister-at-Law and Solicitor

MOLINA MAYORQUÍN CARLOS / *Nicaragua*

Attorney-at-Law and Notary; former District Judge

MORALES DÁVILA MANUEL / *Bolivia*

Attorney-at-Law; former Secretary-General, National Confederation of Professional Persons

MOSER RUDOLF / *Switzerland*

Professor of Law; Attorney-at-Law

MUNRO SIR LESLIE / *New Zealand*

Member of the International Commission of Jurists; Secretary-General of the International Commission of Jurists; former President of the General Assembly of the United Nations; former Ambassador of New Zealand to the United Nations and United States of America

MURSHED SYED MAHBUB / *Pakistan*

Judge, High Court, Dacca, East Pakistan

MUTUC AMELITO R. / *Philippines*

Philippines Ambassador to the United States of America; former Executive Secretary, Government of the Philippines; former Professor of Law

NEGRÓN FERNÁNDEZ LUIS / *Puerto Rico*

Chief Justice of Puerto Rico; former Attorney-General of Puerto Rico

NEWMAN FRANK C. / *USA*

Dean and Professor of Law, School of Law, University of California, Berkeley

NGUINI MARCEL / *Cameroon Republic*

Doctor of Law; Judge of the Supreme Court of the Cameroon Republic

NJONJO CHARLES / *Kenya*

Barrister-at-Law; Deputy Director of Public Prosecutions

NJOYA AROUNA / *Cameroon Republic*

Minister of Justice of the Cameroon Republic

OGUNBANJO Chief CHRISTOPHER OLADIPO / *Nigeria*

Barrister-at-Law; Chairman of "Liberty", Nigeria Section of the International Commission of Jurists

OMOLOLU Chief OLUMIDE OLUSANYA / *Nigeria*

Solicitor-General of the Federation of Nigeria; former Deputy High Commissioner of Nigeria in the United Kingdom; former Delegate to the United Nations

ORTIZ TORO JORGE / *Puerto Rico*

Attorney-at-Law

OSUSKY STEFAN / *USA*

Member of the International Commission of Jurists; former Minister of Czechoslovakia to Great Britain and France; former Member of the Czechoslovak Government

PADILLA TORRE JUAN ANÍBAL / *Puerto Rico*

Attorney-at-Law

PASOS ARGÜELLO LUIS / *Nicaragua*

Attorney-at-Law and Notary; former District Judge (Managua); Professor of International Law, University of Central America (Managua); Founding Member and Treasurer, Bar Association of Nicaragua

PATTABONGSE PRAWAT / *Thailand*

Chief Judge, Appeal Court; Vice-President of the Bar Association of Thailand

PEÑA TREJO FRANCISCO / *El Salvador*

Judge, Supreme Court of El Salvador

PÉREZ GUERRERO ALFREDO / *Ecuador*

Rector and Professor of Law, Central University; Member of Parliament; former Attorney-General of Ecuador

PETREN B. E. GUSTAF / *Sweden*

Judge of Court of Appeal; Assistant Professor of Law; Secretary-General, Nordic Council in Sweden

PETTITI LOUIS EDMOND / *France*

Attorney-at-Law, Court of Appeal, Paris; Secretary-General, International Federation for European Law; Secretary-General for France of the International Movement of Catholic Jurists (*Pax Romana*); Lecturer in Law, Free Faculty of Law of Paris

QUÍÑE ARISTA LUIS / *Peru*

Attorney-General of Peru; Attorney-at-Law

RAJAONSON GABRIEL / *Malagasy Republic*

Bâtonnier, Order of Advocates of the Malagasy Republic

RAKOTOBÉ RENÉ HENRI ALFRED / *Malagasy Republic*

Attorney-at-Law; President of the Superior Council of the Institutions of the Malagasy Republic; former Minister of Justice

RAMANI RADHAKRISHNA / *Malaya*

Barrister-at-Law; President, Malayan Section of the International Commission of Jurists; Chairman, Bar Council of the Federation of Malaya; Member, Rule Committee for Regulating and Prescribing the Procedure in the Supreme Court

RAMÍREZ BAGES MARIANO H. / *Puerto Rico*

Judge, Supreme Court of Puerto Rico

RAMSAHOYE F. H. W. / *British Guiana*

Attorney-General of British Guiana

RAMZY OSMAN / *Egypt*

Former Justice of the Supreme Court of Egypt

RAVELO GARCÍA ERNESTO / *Dominican Republic*

Attorney-at-Law; Assistant Attorney-General

RAZAQ ABDUL / *Nigeria*

Ambassador of Nigeria to Ivory Coast; Barrister-at-Law

RENGIFO VILDOSOLA OSVALDO / *Chile*

Attorney-at-Law; Member of the Council, Inter-American Bar Association

RETANA SANDI GONZALO / *Costa Rica*

Professor of Civil Procedural Law; Judge of the Administrative Disputes Division of the Treasury

RIVIEREZ HECTOR JOSEPH / *Central African Republic*

Chief Justice, Supreme Court of the Central African Republic; former Attorney-at-Law, Court of Appeal of Paris; former Councillor, Court of Arbitration of the French Community; former Attorney-General of Bourges

ROCHETTE JACQUELINE / *France*

Attorney-at-Law, Court of Appeal, Paris; former Lecturer, Faculty of Law, University of Paris; Deputy Secretary-General of *Libre Justice*, French Section of the International Commission of Jurists

ROSENTHAL WALTER P. G. / *Germany*

Chairman, Investigating Committee of Free Jurists, Berlin; former High Court Judge

SAAVEDRA DAZA MARÍA JOSEFA / *Bolivia*

Attorney-at-Law; former Professor of Law University of San Andrés, La Paz; former Head of the Institute for Social Security Legislation

SANTIAGO WILLIAM FRED / *Puerto Rico*

Attorney-at-Law

SCOTT FRANCIS REGINALD / *Canada*

Q.C.; Professor and Dean, Faculty of Law, McGill University; former United Nations Technical Assistance Representative in Burma

SEPÚLVEDA CÉSAR / *Mexico*

Professor of Law and Dean, Faculty of Law, University of Mexico

SHERIDAN LIONEL ASTOR / *Singapore*

Barrister-at-Law; Professor of Law and Dean, Faculty of Law, University of Singapore

SHROFF I. N. / *India*

Attorney-at-Law, High Court, Bombay; Advocate, Supreme Court of India, New Delhi; Standing Counsel for State of Madhya Pradesh, Supreme Court of India

SIMANTIRAS CONSTANTIN / *Greece*

Professor of Civil Law, University of Thessalonika

SOLER SEBASTIÁN / *Argentina*

Member of the International Commission of Jurists; Professor of Law, National University of Buenos Aires; former Attorney-General of Argentina

ST. JOHN EDWARD / *Australia*

Q.C.; Challis Lecturer in Legal Interpretation, University of Sydney; Member, Council of the New South Wales Bar Association; Member, Malta Constitutional Commission

STOREY ROBERT GERALD / *USA*

President, Southwestern Legal Foundation, Dallas; Vice-Chairman Civil Rights Commission; former Dean, Southern Methodist University Law School; former President, American Bar Association; former President, Inter-American Bar Association

STREET HARRY / *United Kingdom*

Professor of Law, University of Manchester

SUFFIAN Mohammed BIN HASHIM / *Malaya*

Judge, Supreme Court of Malaya; former Solicitor-General of Malaya

TAFAZOLI ABOLGHASSEM / *Iran*

Attorney-at-Law; Member of Council of the Bar Association of Teheran; former Juridical Councillor, Ministry of Labour; former Member of Parliament

TEEHANKEE CLAUDIO / *Philippines*

Attorney-at-Law; former Chairman of the Civil Liberties Union of the Philippines

THOMPSON DUDLEY JOSEPH / *Jamaica*

Q.C.; President, Bar Association of Jamaica; Senator

THORSON JOSEPH T. / *Canada*

Honorary President, International Commission of Jurists; President of the Exchequer Court of Canada; Member, Privy Council of Canada; former Member, Canadian House of Commons; former Dean, Manitoba Law School

TIRADO LUIS / *Puerto Rico*

Attorney-at-Law

TOVAR GUTZLAFF CARLOS / *Bolivia*

Attorney-at-Law; former President of the National Court of Labour and Social Security

TRIKAMDAS PURSHOTTAM / *India*

Member of the International Commission of Jurists; Senior Advocate Supreme Court of India; Secretary, Indian Bar Association; Member Executive Council, Indian Law Institute; former Delegate to the United Nations

TSHISEKEDI ETIENNE / *Congo - Leopoldville*

Director of the School of Law and Administration, Leopoldville

TYABJI HATIM BUDRUDIN / *Pakistan*

Member of the International Commission of Jurists; Barrister-at-Law; Legal Adviser, State Bank of Pakistan; former Chief Draftsman, Ministry of Law of Pakistan; former Judge of the Chief Court of Sind

UCLÉS RODRÍGUEZ ENRIQUE B. / *Honduras*

Attorney-at-Law and Notary; former Judge

URIBE VARGAS DIEGO / *Colombia*

Professor of Law; Director of the Institute of Diplomatic and International Studies of the University of Bogota Jorge Tadeo Lozano; Member of Parliament; President of the Committee of Foreign Relations of the Colombian Parliament

VAKIL NAVROZ BEHRAM / *India*

Attorney-at-Law; former Solicitor to the Central Government at Bombay

VALERA BENÍTEZ RAFAEL / *Dominican Republic*

Attorney-General of the Dominican Republic

VARGAS SOLERA MARIA EUGENIA / *Costa Rica*

Attorney-at-Law; Judge, Minors' Court, Province of San José

VIERA MORALES DE LOS RÍOS MANUEL / *Uruguay*

Professor of Law, University of Montevideo

VILLAGRA MAFFIODO SALVADOR / *Paraguay*

Attorney-at-Law; Professor of Law; National University; former Director of the Institute of Agrarian Reform; former Minister of Justice; former President of the Bar Association

VU-QUOC THUC / *Viet-Nam*

Dean of the Faculty of Law, University of Saigon; Vice-President of the National Economic Council; former Minister of Education

WADE ABDOULAYE / *Senegal*

Attorney-at-Law; Assistant Professor of Law, University of Dakar

WALTERS KURT H. / *Germany*

Attorney-at-Law; former Secretary-General of the Federation of German Bar Associations

WEERAMANTRY LUCIAN GREGORY / *Ceylon*

Legal Officer, International Commission of Jurists

WELSH REX SIMPSON / *South Africa*

Q.C.; Advocate, Supreme Court of South Africa

WILD HERBERT R. C. / *New Zealand*

Q.C.; Solicitor-General of New Zealand; Vice-President, New Zealand Law Society; former President, Wellington District Law Society

WILICKOND HONORÉ / *Central African Republic*

Judge of the Court of Bangui; Member of the *Conseil Supérieur de la Magistrature*; Member of the Constitutional Council; former Minister

WOLD TERJE / *Norway*

Chief Justice, Supreme Court of Norway; Member, European Court of Human Rights; former Minister of Justice

WOODING HUGH O. B. / *Trinidad*

Chief Justice, Supreme Court of Trinidad and Tobago; former President, West Indies Bar Association

YEPES DEL POZO JUAN / *Ecuador*

Director of the Ecuadorian Institute of Sociology and Technology; Secretary-General of the Ecuadorian Section of the International Commission of Jurists

YONG-PUNG HOW / *Malaya*

Advocate and Solicitor; Member, Bar Council of the Federation of Malaya

* * *

COMMITTEE OF HONOUR AND BRAZILIAN HOSTS

CARNEIRO LEVI (President)

Former Judge of the International Court of Justice (The Hague)

LAFAYETTE DE ANDRADA ANTONIO CARLOS

Chief Justice of the Supreme Court of Brazil

LIMA HERMES

President of the Council of Ministers and Minister of Foreign Relations of Brazil

MANGABEIRA JOÃO

Minister of Justice of Brazil

SAMPAIO COSTA ARMANDO

President of the Federal Court of Appeal

LINS E SILVA EVANDRO

Attorney-General of the Republic of Brazil

BALBINO ANTONIO

Solicitor-General of the Republic of Brazil

* * *

AGUIAR RIBEIRO PE. BENEDITO DE

Dean of the Catholic Faculty of Law of Petropolis

ALBUQUERQUE LIMA ROBERIO

Attorney-at-Law

ALEIXO PEDRO

Professor of Criminal Law at the University of Minas Gerais; Member of the Federal Parliament and Leader of the Opposition

ALMEIDA JOSÉ BARBOSA DE

President of the Bar Association of São Paulo

ALMEIDA BRANT FRANCISCO JOSÉ DE

Dean of the Faculty of Law of the University of Minas Gerais

ALMEIDA MAGALHÃES DARIO

Attorney-at-Law, Bar of Rio de Janeiro

ALTAVILA MELLO ANFILOGIO JAYME DE

Dean of the Faculty of Law of the University of Alagoas

ALVES DE MELLO DAVID

President of the Bar Association of the State of Amazonas; Professor of Law of the University of Amazonas

ANDRADE CLAUDIONOR TELÓGIO DE

President of the Bar Association of the State of Rio Grande do Norte

ANDRADE PE. SOANE DE

Dean of the Catholic Faculty of Law of Ilhéus

ANDRADE BRANDÃO WILSON DE

Dean of the Faculty of Law of Piauí

ARAUJO LOPES DA COSTA ALFREDO DE

Dean of the Faculty of Law of the Catholic University of Minas Gerais

ARAUJO SOARES HÉLIO DE

Dean of the Faculty of Law of the University of Paraíba

ATHAYDE AUSTREGÉSILO DE

President of the Brazilian Academy of Letters

AZEVEDO FRANCO ARY

Dean of the Faculty of Law of the University of the State of Guanabara

AZEVEDO NOÉ

President of the Bar Association of the State of São Paulo

BAHIA RENATO

President of the Bar Association of the State of Bahia

BANDEIRA DE MELLO OSWALDO ARANHA

Judge of the Court of São Paulo

BARBOSA BALTAZAR DA G.

Dean of the Faculty of Law of the Catholic Pontifical University of Rio Grande do Sul

BARROS PORTO ALOYSIO HENRIQUE DE

Dean of the Catholic Faculty of Law of the Catholic Union of Salvador

BASILIO CELESTINO

President of the Institute of Brazilian Lawyers; Attorney-at-Law and Professor of Law at the Catholic University of Rio de Janeiro

BONASSIS JOÃO BAPTISTA

President of the Bar Association of the State of Santa Catarina

BONILHA PAULO

Dean of the Faculty of Law of the Catholic Pontifical University of São Paulo

BORGES FORTES BETTY B.

Attorney-at-Law, Pôrto Alegre

BORGES DE MATOS MOACYR

Rector of the University of Juiz de Fôra

BRITTO EDUARDO CHERMONT DE

Member of the Bar of Rio de Janeiro; Editor of the *Jornal do Brasil*

CALMON PEDRO

Rector of the University of Brazil; Professor of Constitutional Law

CAVALCANTE CARLOS POVINA

President of the Federal Bar Association of Brazil

CAVALCANTI NEVES JOSÉ

President of the Bar Association of the State of Pernambuco

CAVALCANTI THEMISTOCLES

Professor of Public Law at the University of Brazil

CEZAR MOREIRA JORGE R.

Attorney-at-Law

CHAVES ANTIIOGENES

Attorney-at-Law, Pernambuco

CORDEIRO LIMA DALTON

President of the Bar Association of the State of Amapá

CORREIA LIMA HÉLIO MARTINS

President of the Bar Association of the State of Piauí

COSTA CHAVES ALOYSIO DA

Dean of the Faculty of Law of the University of Pará

COSTA PAULO JOSÉ DA

Professor of Criminal Law, São Paulo

COUTO E SILVA CLÓVIS VERISSIMO DO

President of the Bar Association of Rio Grande do Sul; Professor of Law

CUNHA RIBEIRO RAUL DA

President of the Bar Association of the State of Guanabara

COSTA VAMBERTO

President of the Bar Association of the State of Paraíba

DANTAS F. C. SAN THIAGO

Professor of Civil Law at the University of Brazil; Member of the Federal Parliament; former Minister of Foreign Relations

EMERENCIANO JORDÃO

First Secretary of the Bar Association of the Province of Pernambuco

FERNANDEZ ADAUCTO D'ALENCAR

Dean of the Faculty of Law of the Federal University of the State of Rio de Janeiro

FERNANDES RAUL

Attorney-at-Law, Rio de Janeiro; former Minister of Foreign Relations

FERREIRA DA COSTA ANTÔNIO FRANCO

Dean of the Faculty of Law of the Catholic University of Paraná

FIGUEIREDO BRASIL EURICO DE

Dean of the Cândido Mendes Faculty of Law, Rio de Janeiro

FIGUEIREDO PALMEIRINDA

President of the Bar Association of the State of Acre

FONTOURA JOÃO NEVES DA

Former Minister of Foreign Relations

FRAGOSO HELENO CLAUDIO

Professor of Law, University of Brazil

GALVÃO DE SOUZA JOSÉ PEDRO

Professor of Law, São Paulo

GAMA E SILVA LUIZ ANTONIO DA

Dean of the Faculty of Law of the University of São Paulo

GARCIA BASILEU

Professor of Criminal Law at the University of São Paulo

GIL OTTO

President of the Brazilian Institute of Law

GONÇALVES RÔMULO

President of the Bar Association of the State of Goiás

GOUVÊA VIEIRA JOÃO PEDRO

Attorney-at-Law, Rio de Janeiro

GUIMARÃES MARIO

Former Judge of the Supreme Court

LACERDA TEIXEIRA EGBERTO

Member of the Court of Ethics of the São Paulo Bar

LANDAU GEORGES D.

Adviser on international affairs to the Rector of the University of Brasília

LEITE GERVÁSIO

President of the Bar Association of the State of Mato Grosso

LEME ERNESTO

Professor of Commercial Law at the University of São Paulo; former Ambassador of Brazil to the United Nations

LOPES ALFREDO CECILIO

Dean of the Faculty of Law of Mackenzie University, São Paulo

MADUREIRA DE PINHO DEMÓSTHENES

Professor of Criminal Law at the University of Brazil

MAROTTA RANGEL VICENTE

Professor of Law, University of São Paulo

MARQUES IDELFONSO

Dean of the Faculty of Law of the University of Paraná

MARQUES JOSÉ FREDERICO

Judge of the Court of the State of São Paulo

MARQUES LOPES TULLIO

President of the Bar Association of the State of Minas Gerais

MARTINS COSTA ANTONIO

Attorney-at-Law, Rio Grande do Sul

MARTINS COSTA CAMILLO

Attorney-at-Law, Rio Grande do Sul

MARTINS COSTA CELSO

Attorney-at-Law

MARTINS RODRIGUES CARLOS ALBERTO

President of the Bar Association of the State of Ceará

MASSA HILTON

Attorney-at-Law

MATOS JOÃO HERMOGENES DE

Dean of the Faculty of Law of São Luiz do Maranhão

MELLO ESMERALDO DE, PE. S. J.

Dean of the Faculty of Law of the Catholic University of Pernambuco

MELLO FRANCO AFONSO ARINOS DE

Head of the Brazilian Delegation to the United Nations General Assembly; Professor of Constitutional Law at the University of Brazil; Senator of the Republic; former Minister of Foreign Relations

MENDONÇA OTÁVIO

President of the Bar Association of the State of Pará

MENEZES DIREITO CARLOS ALBERTO

President of the Academic Center Eduardo Lustosa at the Law Faculty of the Catholic University

MESQUITA SODRÉ JOSÉ OSWALDO

Dean of the Faculty of Law of Campos

MIRANDA DECIO

President of the Bar Association, Federal District of Rio de Janeiro

MORAIS BENJAMIN DE

Dean of the Brazilian Faculty of Juridical Sciences, Rio de Janeiro

MORAIS DÍDIMO DE

President of the Bar Association of the State of Espírito Santo

MORAES NETO PRUDENTE DE

Editor-in-Chief of the *Diario de Noticias*, Rio de Janeiro

MORALES SARMENTO PINHEIRO PAULO SERGIO

Director of the Academic Center of the Law Faculty of the Catholic University

MOURA HELIO DIAS DE

Attorney-at-Law, São Paulo

MOURÃO BOGÉA ANTENOR

President of the Bar Association of the State of Maranhão; Professor of Criminal Law at the Law School of São Luiz; Public Prosecutor, Province of Maranhão

MURTA RIBEIRO JOSÉ

Dean of the Faculty of Juridical Sciences of Rio de Janeiro

NABUCO JOSÉ THOMAZ

Vice-President of the International Commission of Jurists; Attorney-at-Law, Rio de Janeiro

NASCIMENTO E SILVA GERALDO

Diplomat and Consultant in International Law

NEDER ANTÔNIO

Justice of the Peace at Petrópolis

NEVES DE CARVALHO PAULO

Professor of Administrative Law, University of Minas Gerais and Catholic University of Minas Gerais

OLIVEIRA SOBRINHO JOAQUIM DE

President of the Bar Association of the State of Paraná

PACHECO IVANIO

Attorney-at-Law

PAES BARRETO FILHO MANOEL XAVIER

Dean of the Faculty of Law of the University of Espírito Santo

PANZA SEBASTIÃO MÁRIO MIGUEL

President of the Bar Association of the State of Rio de Janeiro

PINHEIRO GUIMARÃES PLÍNIO

Attorney-at-Law, Rio de Janeiro

PINHEIRO DE VIVEIROS PAULO

Dean of the Faculty of Rio Grande do Norte

PIRES CAMPOS ROMEU

Dean of the Faculty of Law of the Federal University of Goiás

PONTES DE MIRANDA F.

Attorney-at-Law and former Judge of Rio de Janeiro

PRADO KELLO J. E.

Attorney-at-Law, Rio de Janeiro; former Minister of Justice; former President of the Federal Bar Association of Brazil

QUINTELA HEBEL

President of the Bar Association of the State of Alagoas

RAMALHO BALDUINO

President of the Bar Association of the State of Sergipe

REALE MIGUEL

Professor of Law, São Paulo

REGO MONTEIRO LUIZ AUGUSTO DE

Dean of the Faculty of Law of the Catholic Pontifical University of Rio de Janeiro

- RIBEIRO DA LUZ RAFAEL
Attorney-at-Law, São Paulo
- ROLLEMBERG LEITE GONÇALO
Dean of the Faculty of Law of Sergipe
- SÁ FREIRE BASILIO CELESTINO
Professor of General Theory of the State at the Catholic Pontifical University of Rio de Janeiro
- SÁ PEIXOTO ABDUL SAYOL DE
Dean of the Faculty of Law of the University of Amazonas
- SEABRA FAGUNDES MIGUEL
Attorney-at-Law; former Minister of Justice
- SOUZA NETO JOSÉ SORIANO DE
Professor of Law, University of Recife
- SOUZA SAMPAIO NELSON DE
Dean of the Faculty of Law of the University of Bahia
- SPIGUEL MARCOS
Attorney-at-Law
- SPINOLA E CASTRO EDUARDO
Director of the Academic Center and Faculty of Law of the Catholic University
- STODIEK HENRIQUE
Dean of the Faculty of Law of the University of Santa Catarina
- TENÓRIO OSCAR
President of the Court of Justice of the State of Guanabara
- THEILER EDUARDO
Director of the Ministry of Justice
- TRIGUEIRO OSWALDO
Judge of the Brazilian Electoral Supreme Court; Member of the Executive Council of Brasília's University Foundation
- UCHOA BARREIRA DOLOR
Dean of the Faculty of Law of the University of Ceará
- VALLADÃO HAROLDO
Professor of International Private Law at the University of Brazil and at the Catholic Pontifical University of Rio de Janeiro
- VAREJÃO CONGRO FLÁVIO
Dean of the Faculty of Law of Mato Grosso
- VELINHO DE LACERDA GALENO
Dean of the Faculty of Law of the University of Rio Grande do Sul

VERGARA OSWALDO

President of the Bar Association of the State of Rio Grande do Sul

VIEIRA OLDEGAR

Attorney-at-Law; Professor of Law, University of Bahia

VIEIRA NETTO JOSÉ RODRIGUES

Acting President of the Bar Association of the State of Paraná

WALD ARNOLD

Attorney-at-Law, Rio de Janeiro

* * *

LIST OF OBSERVERS

Organizations

American Bar Association

GEORGE N. LINDSAY, JR.

Government of the Province of Cordoba, Republic of Argentina

RODOLFO P. FERREIRA SOBRAL

International Bar Association

ROLF N. CHRISTOPHERSEN

International Institute of Administrative Sciences

CARLOS MEDEIROS SILVA

International Legal Aid Association

ROLF N. CHRISTOPHERSEN

Mouvement International des Juristes Catholiques (Pax Romana)

LOUIS EDMOND PETTITI

Special Committee to Cooperate with the International Commission of Jurists, Association of the Bar of the City of New York

GEORGE N. LINDSAY, JR.

Individuals

DE BOER HAYO

Legal Adviser, Rio de Janeiro

QUINTANO-RIPOLLES ANTONIO

Judge of the Supreme Court of Spain

RAPHAEL CHARLES G.

Attorney-at-Law, New York; Special Representative, American Fund
for Free Jurists

SHERMAN SAUL L.

Attorney-at-Law, New York; Executive Secretary, American Fund for
Free Jurists



OPENING PLENARY SESSION

Tuesday, December 11, 1962

09.00—10.30

Sir LESLIE MUNRO, K.C.M.G., K.C.V.O., Secretary-General of the International Commission of Jurists, declared open the Third International Congress held by the International Commission of Jurists. As Chairman of the Congress, he welcomed the participants and drew their attention to the four tasks which the Second Congress of Jurists held at New Delhi in 1959 had called upon the International Commission of Jurists to undertake and the steps which the Commission had taken towards their fulfilment. He also spoke on the theme and objects of the Congress. The following is the text of his address:

"I have the honour and pleasure as Chairman of this Congress and as Secretary-General of the International Commission of Jurists to declare this Congress open and to welcome you all. We are fortunate indeed to meet in this great country, the United States of Brazil. Its future, founded on a distinguished past, is pregnant with significance for all the Americas. I regret that due to unforeseen circumstances the President of Brazil is unable to be present today. We salute his distinguished representative, Dr. João Mangabeira, the Minister of Justice, who will address the Congress on his behalf.

"Nearly four years ago in New Delhi, our last Congress met. Momentous events have since occurred. They have had their impact upon us all and not least upon judges and lawyers, entrusted with the preservation of the Rule of Law in a changing and often unruly world. The profession of the law cannot divorce itself from the birth of new nations, from the division between the West and Communism, from movements towards political and economic union in Western Europe, from vast developments in science and particularly those of the space age, which have brought us within reach of the moon and stars. Not since the Renaissance and the discovery of the Americas has there been a time of such discovery beyond the earth, of reaching out into the universe and plumbing the mysteries of life and creation. The perils are great if man misuses his unparalleled achievements. But if Governments and men are ready to use the work of men of science for the purpose of peace and subject to the Rule of Law between nations and within nations, then there is no limit, under divine Providence, to the progress of mankind.

"But with all our discoveries, the men who orbit the globe look down below upon many nations which still languish in poverty and underdevelopment. Some nations produce an overabundance of food. Others, thanks to measures of health, increase in numbers but live barely above a subsistence level, yet others below it. That is why the dynamic conception of the Rule of Law formulated at Delhi proclaims that we lawyers must take into account the social and economic needs of all the peoples of the world.

"I venture to suggest that with all the help of other countries, and, in the promotion of the Rule of Law with the help of this Commission, the developing countries will finally have to work out their own well-being.

"In formulating the Rule of Law within nations, we cannot ignore the fateful consequences of breaches of the Rule of Law between nations. Aggression in the

most remote corner of this now small world may set alight a fire which can lead to universal conflagration. There has never been a time when the principles of the Charter of the United Nations require more strict observance.

"I rejoice that in this hemisphere a threat to the peace appears to have been removed. But it is terrifying to know how near to the abyss we were. Peace is still threatened in another continent. There must be no double standard with some nations mouthing words of peace but using the sword when it suits them. Today, injustice and aggression anywhere constitute a threat to freedom, peace and the Rule of Law everywhere.

"At our last Congress at New Delhi in 1959 we welcomed 185 lawyers from 53 countries. Today there are over 220 of you from 85 countries. The increase in the number of countries represented here today is eloquent of the increased number of independent nations in the world community. To the representatives of these newly independent countries I say 'welcome'. We in the Commission look forward to long and fruitful association with you.

"I speak now in sadness. The Government of Ghana has seen fit to deny Dr. Danquah, the Chairman of our Section in his country and lately in preventive detention, the right to attend this Congress. This denial is an infringement of freedom of movement and a breach of the Rule of Law.

"At New Delhi the Congress—in the Declaration of Delhi—called upon the International Commission of Jurists to undertake four tasks. I shall refer to each of them and say to you in a few words what the Commission has done towards their fulfilment.

First, the International Commission of Jurists was requested "to employ its full resources to give practical effect throughout the world to the principles expressed in the Conclusions of the Congress".

"This we have sought to do. Within the limits of our financial capacity we have enlarged our publications programme. Besides our regular publications (the Journal and Bulletins) we have produced a number of major studies where situations have called for them: since Delhi, two on Tibet, one on South Africa, one on Cuba and one on Spain. There has been a number of lesser special studies such as those on the Berlin Wall and the Cassel Case. Besides these works we have produced two full Reports: one on the Delhi Congress and one on the Lagos Conference. It behoves the Commission to encourage and to warn. And this can be done convincingly by constantly bringing to the attention of the legal community of the world in our publications the full facts, together with a thoughtful commentary on the Rule of Law aspects. We have recently paid particular attention to the law and practice relating to preventive detention. Another important part of our function as a 'watchdog' lies in speaking out boldly, urgently and in protest, when in our opinion the circumstances warrant it, by means of statements released to the press. I instance here our press release on the recent Sabotage Bill in South Africa.

"Another way of giving practical effect to the principles expressed at Delhi is through close communion with our fellow lawyers. The Commission's staff have continued to travel widely since Delhi, meeting lawyers and making known the name and purposes of the Commission all over the world. I wish to mention here the Honourable Vivian Bose, our President and a former Supreme Court Judge of India, and his tireless efforts to propagate the aims and ideals of the International Commission in his travels. In the early part of the year I myself undertook a long tour of four months in Asia, Australia and New Zealand, visiting 17 countries and seeing for myself such conditions as affect the Rule of Law. And I must say bluntly that there were occasions in Asia during my trip when I was saddened by the lack of respect accorded to the Rule of Law. Since that tour which took me round the world, I have visited the United Kingdom on three occasions, Norway, France, the Netherlands, Belgium and Berlin for the purpose of meeting sections and groups of lawyers interested in our work.

"I am not now detailing the various activities of the Commission; under this heading I simply say that the International Commission of Jurists has continued to send observers, always distinguished jurists, to trials of major political significance in which Human Rights have been at stake. The Commission has also sometimes seen fit to send its observers to countries with a specific task, not to attend a trial but to examine the application of some aspect of the Rule of Law. Usually countries have extended full facilities and courtesies to our observers. But difficulties have on occasions been placed in the way of our representatives. Some have been denied access to certain countries.

"The second mandate at Delhi was:

To give special attention and assistance to countries now in the process of establishing, re-organizing or consolidating their political and legal institutions.

"This instruction has been interpreted as giving the Commission a special responsibility towards the emerging countries.

"As you all know, the Commission held in 1961 a regional Conference of lawyers at Lagos, the capital of the Federation of Nigeria. The growing importance of the continent of Africa needs no emphasis. Eleven independent African states existed at the time of New Delhi. There are thirty-two today. At Lagos nearly two years ago in 1961 we welcomed lawyers from twenty-three African states. There was no special theme for the Conference apart from its meeting to discuss the 'Rule of Law' with 'particular reference to Africa'. The participants of the Conference fully endorsed both the Act of Athens and the Declaration of Delhi and thereby emphasized the universality of the Rule of Law. They proposed a Court to make effective the Declaration of Human Rights in Africa. This Conference then went on to elaborate two new and important extensions to the principles laid down at Delhi: They were:

"...that the Rule of Law cannot be fully realized unless legislative bodies have been established in accordance with the will of the people who have adopted their Constitution freely."

"This means in effect that the Rule of Law cannot fully exist under an oppressive colonialism which denies an orderly progress to self-determination.

"And secondly:

"...All governments should adhere to the principle of democratic representation in their Legislatures."

"These wise pronouncements aver that *all* sections of the community should be represented in parliament. I believe that the Conclusions of Lagos give very valuable guidance to the governments of *all* states—not only African—which are truly anxious to respect the Rule of Law.

"The Commission has also given special thought to the emergence of institutions for legal education in Africa. This time last year a member of the Commission's staff spent six weeks in Africa in the course of which he visited a large number of such institutions with the sphere of ascertaining what assistance, if any, the Commission could render in the object of legal education. At the end of last year the Commission seconded to the United Nations for a period of six months a legal staff officer, who was attached as a lecturer to the University of Louvanium at Leopoldville in the Congo. Earlier the Commission offered its services to the Congo government in the recruitment of the lawyers so badly required to build up the Judicial and Legal departments of that State. I should observe that Africa is not the only continent where institutions for legal education are being established and reorganised.

"The Commission is always willing to lend legal assistance to a government where appropriate, and when so requested. The initiative in this respect must

normally rest with the government concerned. We are taking a particular interest in the development of the Rule of Law in the Dominican Republic where we owe much to the visits of Dr. Soler and Dr. Fournier.

" I now come to the third mandate of the Delhi Congress:

To encourage law students and junior members of the legal profession to support the Rule of Law.

" This has been perhaps a more difficult request for us to implement. But its nature and significance have not been lost on us. After all, the future support for the Rule of Law rests on the shoulders of the young men and women of today. We older men, I trust, are in no need of conversion. I am glad to report that the Commission has undertaken three separate meetings all designed for the young law student and lawyer. In 1959 the Commission held a colloquium for 30 post-graduate students at Yvoire near Geneva on Economic Development and the Rule of Law. In October this year the Commission in cooperation with " Justice ", the British section, held at Cumberland Lodge near London a seminar on the Rule of Law in Africa, which was attended by 32 law students from 12 different African countries. Last month the Commission sponsored a seminar at Strasbourg in France, held under the auspices of the Council of Europe on the Protection of Human Rights and Fundamental Liberties. 34 law students attended. All three meetings were a success. Finally, so far as law students and legal education are concerned, you will see that the whole subject comes within the ambit of our deliberations here under the terms of reference of Committee IV.

" The last mandate at Delhi was as follows:

To communicate this Declaration and the annexed Conclusions to governments, to interested international organisations, and to associations of lawyers throughout the world.

" The whole proceedings of the Delhi Congress were recorded and reproduced in a publication entitled " The Rule of Law in a Free Society " which was prepared by Mr. Norman Marsh, a former distinguished Secretary-General of the Commission, whom I am glad to see with us here today. You may be interested to know that this Report has been very widely circulated in English, Spanish and French. Already about 37,800 copies have been despatched from Geneva.

" I trust that I have given you some indication of the major activities of the Commission in pursuance of the mandates entrusted to us by the Delhi Congress.

" We in the Commission and my able predecessor in office, Dr. Jean-Flavien Lalive, whom I am also glad to see here today, have given much thought in the last two years to the theme of this Congress. It has been no easy task, I can assure you. In our endeavour to promote and foster understanding and respect for the Rule of Law we have encountered over the years breaches of the Rule of Law—breaches perpetrated by governments and their instruments. The most powerful arm of government is indisputably the Executive, and by Executive I mean both the ruling politicians and their Administrations. The experience of the Commission shows that it is from the hands of the Executive that the ordinary citizen should have the undisputed right to vigilant and continuing protection from abuse of power. The Executive is made for the citizen, not for itself. This is why we have chosen the theme " Executive Action and the Rule of Law ". I must clearly state here and now that the Commission stands resolutely by the Declaration of Delhi and the Conclusions of that Congress. What we must do is to ascertain if those Conclusions concerning the Executive need expansion and elaboration when examined under the microscope of this Congress.

" There is another approach to this Congress. What part does the lawyer of today play in the need to check the arbitrary use of power? " Power corrupts; absolute power corrupts absolutely. " You will remember that the Delhi Congress recognised:

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...

"The word 'dynamic' has caused, I think, a little confusion. What exactly does it mean? I would suggest as aids two dictionary synonyms—'active' and 'energetic'. In my view, we can say that the Rule of Law is not stagnant; it is active, energetic, always on the move, ready to meet the requirements of society. Contemporary society moves at a bewildering speed; this is an age in new countries, of huge technological advances; the frontiers of knowledge are advancing to new horizons. Now in these times of dramatic change the Rule of Law requires that the ordinary law, whether common, customary or statutory, must keep in step with the changing needs of society. The law must not retard reform; rather the Law and lawyers must be among the first to cry for the need for reform. We must realize that a dynamic Rule of Law requires dynamic lawyers to put it into effect; lawyers and jurists who are boldly and fearlessly prepared to stand up and state the need for change in unjust or outmoded laws or for change where existing laws or behaviour are discriminatory. Too often the lawyer, in the public image, is a clever man, an honest and good friend of his clients, ensuring the status quo. But the lawyer has other responsibilities to society besides those to his clients. Here at this Congress we can help make our contribution to moulding the image of the lawyer. I believe that the International Commission of Jurists can, by convening from time to time meetings such as these, exercise a decisive influence in establishing legal standards, both in education and practice, which will open up new and exciting vistas for our profession the world over.

"During my work in the United Nations for a period of over ten years I have watched its membership double itself. I have seen in the Trusteeship Council the anxious desire of the new members for economic, social and physical development. In plans for such development lawyers and teachers of law have an important part to play, far beyond the normal duties of the profession.

"Above all, lawyers must be courageous. They have, of course, the duty to watch the interests of their clients. That duty, important as it is, is part of a larger obligation: as officers of the court, always to uphold truth and to abjure falsehood; finally, as citizens blessed with the traditions of an ancient and honourable profession, to take their part in the advance of society in the orderly process of the Rule of Law and to act fearlessly against governments whether of the right or left which ignore the dignity of man and infringe or seek to abolish his inalienable liberties. No man or woman is a true lawyer who stands mute where the Executive restricts or abolishes freedom".

Sir LESLIE MUNRO then called upon Dr. LEVI CARNEIRO, former Judge of the International Court of Justice and President of the Brazilian Section of the International Commission of Jurists, to address the Congress. Welcoming the delegates to Brazil, Dr. CARNEIRO said:

"It is a great honour, and no less a satisfaction, Members of this Congress, for me, as President of the Brazilian Section of the International Commission of Jurists, to bid you a warm welcome.

"You have come here — magistrates, professors, practising lawyers, government officials, all of you dealing with law—from 80 countries in order to pursue along with your Brazilian colleagues the highly idealistic undertaking that our Commission has been engaged in for the last ten years.

" You are giving us, apart from the pleasure of your company, the comforting feeling that, for a few days, the seat of the cultured, intrepid and efficient Commission has been transplanted from the banks of the placid traditional Lake Léman to these distant mountains, on the edge of the trackless sub-tropical forest; in this resort that for Brazilians will ever remain the Emperor's City.

The International Commission of Jurists is not solely made up of theoreticians, nor are you, fellow delegates, absorbed in the abstraction of doctrines. They are made use of to guide the construction of a grandiose work on a worldwide scale. Therein, the Commission has been called upon to develop its endeavours in two complementary forms: on the one hand, a far-reaching study of the manner of conceiving the Rule of Law, the manifold elements comprised therein, and the pre-requisites that determine its realization; on the other, a verification of the way in which the great principle is attempted, or put into practice, or disfigured, in the various countries of the world of today.

" Without exerting any coercive action, or trying to do so, the Commission has promoted, in this way, a broad movement of civic education, stimulating and enlightening public opinion, and provoking distinct, deep seated reactions.

aw in

" For this very reason, accustomed to this two-fold approach, each one of you, fellow delegates, in these few brief days, in between our meetings, is bound to feel himself drawn to a personal appreciation of conditions in our country, from the point of view suggested.

" Fortunately, there are among you many learned jurists from the new States, our vis-à-vis on the other side of the Atlantic. They will be able—perhaps better than any of you—to assess the difficulties inherent in setting up a democratic juridical system in our latitudes, in which the basic rights and freedoms of man are fully recognized, affirmed and guaranteed. About a century ago, we were stigmatized by the brilliant young English historian, Henry Thomas Buckle, who affirmed that Brazil was incompatible with civilization because here it was impossible for man to prevail over nature—rather would he be crushed by her.

" Without boasting, we may consider that we are proving the inaccuracy of this assertion. In those days, we had already gained our political emancipation without bloodshed, adopting thereupon a democratic regime. From that point on, we have made unceasing efforts to achieve and perfect it.

" The Portuguese prince that acknowledged our claims for the independence of Brazil, issued us, as Emperor, our first Constitution, drawn up by a group of distinguished public men. Substantially the same Constitution was granted by him two years later, on his ascension to the throne of Portugal, to the former mother country. Thus the Constitution of the new South American empire became that of its erstwhile colonial rulers.

" The episode, unknown or forgotten, is readily comprehensible if it is considered that Portuguese colonization imbued the young nation, apart from other indelible virtues, with a keen juridical mentality which an observer of exceptional acuity, Keyserling, recognizes as one of our national features. Thus it was that the initial constituent assembly gave rise to the immediate establishment, in the north and south of the country, of the two faculties of Law that are now the main sources of our juridical culture.

" The monarchical Constitution, impregnated with liberal broad-mindedness, lasted 67 years and contained a meticulous Bill of Rights directly inspired by the French Revolution of 1789. The same Bill of Rights reappears, amplified, in the first Republican constitution, of 1891.

" Thus, the democratic structure of Brazil was deepened and consolidated: the rights proclaimed in the Imperial Constitution, ever since the birth of the independent Nation nearly 140 years ago, were confirmed and expanded in the 1934 Constitution and survive in the 1946 Constitution, now in force, with better guarantees. Successively, each Constitution brought the preceding one up-to-date, without altering the essentially democratic structure.

"The '34 Charter embodied the formula that was described by the Argentine President, Saenz Pena, as being one of "compulsory improvement": compulsory primary education; compulsory suffrage; compulsory military service. In this Constitution also there appeared the great basic reforms that completed our democratic system: secret ballot with electoral justice, social legislation and the labour laws.

"It should not be forgotten that in 1937 there occurred a coup d'état and the Constitution ensuing therefrom took on a decidedly autocratic tinge. So foreign was it to our political mentality, our training and our background that it never took root, nor was it even fully put into practice in the course of the years that it remained in force on paper, and the same patriotic statesmen that promulgated it, began to pull it to pieces a year and a half in advance, paving the way for the new Constitution.

"The latter, still in force, and the three earlier ones—the Imperial of 1824 and the two Republican Constitutions of 1891 and 1934—are coordinated and sequential, each one fitted to take the place of the preceding one at the right historical moment.

"In the present Constitution, suffice it to stress this far-reaching provision: the law cannot exclude from the range of the Judiciary any infringement of an individual right.

"The number of its judges was proclaimed unalterable except upon proposal by the Court itself and the unalterability of its jurisdiction likewise established. Both the '46 and the '34 Constitutions guaranteed Supreme Court justices life tenure, irremovability, and a salary that cannot be lowered and comes within the highest administrative brackets.

"To complete this succinct description of our regime of guaranteeing individual rights, the situation of barristers must be considered, for rightly you have always linked the Bar with the Bench. It was we barristers who organized our Association; we have absolute control of the cadres in which those that are trained to practice are registered, the courses lasting five years in an official or officially recognized faculty of law. The Association has a federative organization extending throughout the country. It lays disciplinary penalties on practising lawyers, which may go as far as suspension or being struck off the rolls. For thirty years the Code of Professional Ethics has been in force, with its corresponding Court, created and maintained by us without any interference from the government.

"This is the legal order. We are only too well aware that laws are not always properly enforced; by themselves, they are not enough. But a start must be made with laws, for they have unbounded educational scope. When they do not constitute an occasional improvisation, they correspond rather, as in our case, to a continuous, inflexible evolution, forming quite a sound structure, capable of resisting transitory vicissitudes. Thus I believe, fellow delegates, that you will find here an atmosphere conducive to your studies and deliberations. Our people prize democracy. They know how to carry out that "noble duty of judiciary resistance". They prize freedom in every form, thought, opinion, expression, worship and the practices of religion, up to that symptomatic and most precious freedom to make mistakes.

"In the climactic days of the life of mankind, through which we are now passing, one circumstance strengthens our national system as it does all similar ones. This circumstance, to which your presence in this part of the world is linked, is the formation of the international community, the solidarity of nations cherishing the same political ideals. International Law, which used to be concerned only with States, has extended its cover to the individual. It has made a point of ensuring him his rights. From this situation there resulted the "Declaration of Human Rights", styled with some emphasis "Universal", which the United Nations Assembly proclaimed 14 years ago the day before yesterday. At the same time, a few months earlier, the American Nations at the Bogotá Conference proclaimed their own declaration of the "Rights and Duties of Man". Though dated earlier, this latter Declaration was inspired in the work of the United Nations,

**International
Conventions**

but it went further in certain directions, notably with regard to the declaration of duties correlated to rights.

Both are no more than declarations. Allow me to recall that I suggested, instead of a document of that kind, with no compulsion, a convention to which all the States would adhere, subject to the exceptions made by each as it saw fit, as occurs in all international multilateral conventions. In this way, a standard would have been set up to which the national legislations could gradually be assimilated, eliminating one by one the restrictions that had been made.

"The same suggestion occurred to more forceful mentalities and without prejudice to the "Declaration" proclaimed in the heart of the United Nations, steps were taken at once to draw up a convention of this sort. A special committee was formed with this end in view, under the chairmanship of the late Mrs. Roosevelt, but the work has not yet been completed.

"If that convention has not yet been accomplished, another, as you know, has been celebrated, though restricted to the fourteen nations forming the Council of Europe.

"The nations that were thus gathered together affirmed that they were united in the identity of their democratic ideals. They signed the Convention of Rome—to which the protocol of Paris was adjoined—envisaging the safeguarding of not all, but of the main rights only of the 1948 Declaration. To this end, they established various bodies in the same Convention, including the Court of Human Rights, which in some cases and under certain conditions, takes notice of even individual claims, and even when filed against the claimants' own governments. In this sense, the Rome Convention represents the most advanced stage of international justice and protection of the basic rights of man. More than a thousand cases have already been brought before the various organs of the Council for trial. The most significant evidence of the importance of the Convention is not, however, to be found in the multiplicity of the studies devoted to it in the important reviews of International Law, such as that written by Philippe Comte for the Review of our own Commission and that by Polys Modinos in the "International and Comparative Law Quarterly", but in the influence its decisions are having on the national law of the contracting countries. Numerous examples can be pointed to of the repeal of constitutional provisions in virtue of the precepts of the Convention. Thus, amongst others, that of Norway on the admittance of Jesuits and that of the Netherlands on religious ceremonies in public thoroughfares. The Convention assumes, then, a super-constitutional position in the hierarchy of laws, just as, in the United States, the jurisprudence of the Supreme Court has considered the effects of treaties in general.

"As has always happened the success of this initiative has encouraged an even more advanced step to be taken. In 1959, in Chile, the Inter-American Council of Jurisconsults drew up the project of a Convention for the Protection of Human Rights and Basic Freedoms, which comprised a more complete list, as well as organs for the defense of these rights and freedoms, including a court, inspired, for that matter, by the Rome Convention. The project will be submitted to the 11th Inter-American Conference to be held shortly. This being so, fellow delegates, the international guarantee of the rights and basic freedoms of man can be taken to be ready for carrying out to its fullest extent.

"The long, arduous ascent that our Commission has encouraged and guided is nearly at an end. The preeminence of Law involves the consecration of Democracy, the dignifying of the human person, and understanding, peace and collaboration among Nations.

"This is the ideal that we have before us in our meeting. For this very reason, fellow delegates, we welcome you with open arms".

* * *

Dr. JOÃO MANGABEIRA, the Minister of Justice of Brazil, speaking on behalf of His Excellency JOÃO GOULART, President of Brazil, then made the following speech:

"An unforeseen impediment prevented the President of the Republic from attending the ceremony as he would have liked to do, and he has appointed me, as Minister of Justice, to address you on his behalf on this occasion. Long having been an enthusiastic reader of juridical literature, nothing could give me more pleasure than to welcome the distinguished jurists gathered together in this Congress to promote and consolidate the Rule of Law. Never indeed has the Rule of Law been more necessary for the security of the human race and the survival of civilization as in these days. Some twenty years ago, in a book entitled "This Era of Fable", Stolf wrote that in August 1914 a world that seemed to have been built for eternity was blown to pieces and the era of fable began. It is a fact, Gentlemen, that the fable is still being enacted with the achievement of things quite beyond the imagination of the most ingenious writers of science fiction and with the fossilization of principles that seemed to be lasting and enduring.

"At the end of the last century, our Constitution of 1891, in its declaration of individual rights, provided in time of peace for the right of Brazilian subjects and foreigners freely to enter and to leave the national territory with their fortune and their goods without a passport. This was a precept in force among all civilized and semi-civilized nations with the exception of Imperial Russia, which for this reason was termed at the time, somewhat contemptuously, a backward Nation. Today, to the eyes of the rising generation, this principle would seem to have been extracted from the Code of Hammurabi, who lived, as you know, 2,300 years before Christ.

"Before 1914, men, goods and valuables enjoyed freedom of movement; those were the days of the gold standard and other mythological creatures. Now, all is changed in this continuing era of fable. The State intervenes in everything and regulates everything, from the circulation of the man in the street to those weird artifacts that invade the realms of space and the tourists that orbit the world in a matter of hours. The expansion of the powers of the State, and above all of the Executive, is a fact of modern life, so much so that speaking of that formidable country, the United States of America, the citadel of free enterprise, should Theodore Roosevelt or Woodrow Wilson return to earth, they would scarcely recognize in the powers of President Kennedy, those with which they had ruled and governed. The fact is that all has changed and all is changing; law, too, has changed and its difficult mission, as Roscoe Pound puts it, is to ensure stability in a world that does not stop changing.

"Law has changed—but what has not changed is the *Rule of Law*—binding on both the State and the individual for the guarantee of the rights of each.

"Those are the words with which, on behalf of Brazil, I express my gratitude to those who have decided to meet here in this Congress and those who are attending it—and in the name of the President of the Republic, Congress Members, I greet you".

The Chairman, Sir LESLIE MUNRO, said that it gave him great pleasure to call upon the Hon. VIVIAN BOSE, the President of the International Commission of Jurists, to speak. He was happy to state that Mr. BOSE, who had succeeded Mr. Justice THORSON, was unanimously re-elected President yesterday.

Mr. VIVIAN BOSE then addressed the assembly as follows:

"What are we working for? Why are we working for it? How do we intend to get there? We must keep these questions in the forefront of our minds all through our deliberations, or else we will flounder and we will wonder why we are wasting our time in idle talk.

Law

"What are we working for? For that which is inherent in all human hearts—freedom, justice, liberty, the right to live our lives in our own ways without fear, the right to walk with self-respect in all lands with our heads held high as free men—for the thirst in each human breast for recognition of his worth and dignity as an individual and as a man—dignity that requires, as said at Delhi and Lagos, not only the recognition of civil and political rights, but also the establishment of social, economic, educational and cultural conditions that are essential to the full development of his personality. We call that the Rule of Law.

"The Rule of Law is neither of the East nor the West. The Rule of Law has reached its most spectacular growth in the West, but it is not of the West alone, it is to be found everywhere, it is common to all men. In some places it is in a form so crude and elementary that it can hardly be recognized as the same plant. But a closer analysis of the elements of its structure shows that however crude and elementary its form in a particular manifestation, it is an embryo of the same body—heart, head, legs, hands, face, voice and soul, all waiting and crying for space, air nourishment and food to rise to its fullest height. Lawyers of the Far-East the Near-East, the Middle East, of Africa and of Arabia joined hands with the West in proclaiming this fundamental truth in Delhi. And the lawyers in Africa re-affirmed it in solemn terms at Lagos.

"The Rule of Law, is the heritage of all mankind. Why are we working for it? Because it is right. Because we believe in human worth and dignity. Because we believe in spiritual values. Also on a more material plane, because, on analysis, it is the only sane way to live at peace and amity with our neighbours in this puzzling, confused and complex world. Because it is the only sane way to live in an ordered society.

"How do we intend to get there? By stirring the conscience of the world through its lawyers. By getting the lawyers of the world to affirm that their true vocation does not end with fearless advocacy on behalf of their clients in the courts, but goes deeper and requires equally fearless advocacy and unrelenting toil on behalf of those who are not their clients, on behalf of their country, on behalf of their nation: ceaseless vigilance, unrelenting toil, even harder when the cause is unpopular but righteous. That is what we call patriotism. But patriotism is not enough. There are wider dedications.

"The world is in danger. Old values are crumbling and are being forgotten, hallowed traditions are toppling down. Petty colloquialism and narrow regionalism are raising their ugly heads internally within nations and externally between nation and nation. Freedoms are being trampled on, dictators are rising again, human worth and human dignity are being destroyed. These evil things must be fought and conquered, not with bullets and machine-guns but with the forces of the spirit, with the armour of righteousness, for ideas will penetrate into the hearts and minds of men, they will go where bullets never can, they will bring life where bullets only bring death and destruction.

"Lawyers of the world, our cry goes out to you. Forge a bond among yourselves that nothing can break. Resist the pressures put upon you to sell your souls; join hands with one another round the globe and determine that these things shall come to pass in each of your several lands, insist that they be not only for you and your people, but also and equally for the stranger within your gates. Insist that the Rule of Law be established in all lands, and I predict that peace will descend upon the earth."

Dr. PRADO KELLY, former Minister of Justice of Brazil and former President of the Brazilian Bar, moved the following Vote of Thanks to the International Commission of Jurists and the lawyers from different countries who had agreed to attend this Congress and participate in its deliberations:

"It is a most pleasant duty for Brazilian lawyers to greet the eminent jurists gathered together here at this Congress to join in an act of faith in the imperishable values of Justice and Freedom.

"I welcome you on behalf of the Brazilian members of the profession, who wish you a pleasant stay and hope to assist you in coping with the magnitude of your labours arising from your great responsibility.

"Now is the time to express our thanks to so many legal luminaries for their inestimable contribution to juridical progress. Among those present many bear brilliant names, familiar to us in our reading. The Conclusions you will arrive at are eagerly awaited in other centers of study, for they will be regarded as the fruits of criticism, original experience and mature deliberation.

"I wish to express our thanks in particular to the International Commission of Jurists for having strengthened within the circle of judges and lawyers in every continent the conviction in the interlocked destiny of political communities. Loyalty to our profession, consciousness of our duty and devotion to our labours in the generous workshop where the indispensable implements for the defence of the individual and the promotion of harmonious relations between groups are forged, will certainly contribute to the advancement of mankind. In a world diversified by the most conflicting tendencies, this is a unifying and consolidating thought.

**International
Commission of
Jurists**

"The Commission has been serving the cause of truth with a keen perception of the difficulties that beset a changing civilization. An "awareness of history" enables it to unravel the shifting strands involved and on the basis of this knowledge to build up an achievement liable to last far longer than the circumstances that created it. It possesses, as Maravall would say, a sense of the true measure between two time dimensions, as untrammelled in its judgment of the past as it is clear-sighted in its vision of the future. The elementary truths enunciated by the Commission do not merely reflect desirable concepts in the field of social science, but also powerful instigators in the formation and development of public opinion. The Act of Athens, the Declaration of Delhi and the Law of Lagos are three faces of an irreprehensible logical construction. Insisting that the State should necessarily submit to Law, the jurists have enshrined the irreplaceable requirements for individual rights to flourish within the framework of government. And, proclaiming that the Rule of Law is a dynamic principle, they have been quick to point out the compatibility of civil and political rights in a free society with the economic, social and cultural conditions that enable each living creature to achieve his legitimate aspirations and preserve his dignity.

"Since 1948, we have been celebrating the "Classical" and "Economic" guarantees as they have been defined by the United Nations Assembly. The International Commission of Jurists is now endeavouring to give them force and effect. This Congress will discuss Executive Action and the Rule of Law. The more governing bodies are imbued with a knowledge of the principles of the Rule of Law and allow themselves to be guided by these principles, the greater will be the security and welfare which they can provide for the individuals they govern.

"Seven years ago, you reminded lawyers of the importance of an independent Bar. We have always held the view that honesty, wisdom and independence are the three essential conditions of our office.

"You also pronounced that judges should be guided by the Rule of Law, protecting it and applying it without making distinctions, and opposing any

interference with their independence by governments or political parties. One of our greatest legislators has observed as follows: 'What would be the use of the best of laws, if in practice it was possible to cancel their effect by a failure to enforce them on the part of the Judiciary?'

"For the work you have begun today we foresee success, thanks to your wisdom, your renown and your clear-sightedness. We are glad that this Congress is meeting in this City, and the atmosphere of esteem and respect surrounding your activities which prevails here offers a favourable climate for your work in the cause of peace.

"By defining more closely the relationship between the citizen and the government you will be encouraging the former not to withdraw from the position he has attained nor to relinquish his vigilance, for, as Alain has warned us, "the abuse of power is the natural outcome of power" and "a people lulled to sleep by reliance on liberty awaken to slavery".

After the above Vote of Thanks, the CHAIRMAN declared the Opening Plenary Session closed.

FIRST PLENARY SESSION

Tuesday, December 11, 1962

11.00—12.00

SIR LESLIE MUNRO, the Chairman, first expressed his thanks to Dean Newman of the University of California, and Professor Street, Professor Gilli and Professor Ehmke, for their extensive assistance in the preparation of the Working Paper. He then called upon Dean Newman to introduce the Working Paper to the Congress.

DEAN FRANK C. NEWMAN expressed his gratitude for the work carried out by Sir Leslie Munro, Mr. E. S. Kozera, and the members of the legal staff of the International Commission in Geneva, in the preparation of the Working Paper. He then referred to the Working Paper and said: "I think its main defect as a Working Paper, is that it does make you work" . . . "I wish to say that this Congress is to have conclusions. They will come from the Committees and not from prepared statements in the document. We have not told you how to vote, we have asked questions and given very few answers."

He then referred to the Questionnaire and said: "The replies to the Questionnaire were immensely important to us and in many cases inspiring documents. They tell us of an incredible variety of problems throughout six continents. They report experiences and make provocative observations that were immensely valuable in the preparation of the Paper".

He referred to the fact that the topics for consideration by each of the four Committees differed markedly from the topics discussed at prior Conferences of the International Commission. The reason for this, which he said deserved special emphasis, is that in the earlier Conferences, basic conclusions were proclaimed and that it was now appropriate not merely to re-examine and perfect the old conclusions but to consider instead new kinds of problems which were perhaps more subtle, more complex and more difficult. He said that he did not mean by this that the old problems have been solved or that the new problems were necessarily more critical or more important.

He said, however, that the ideas expressed in the conclusions of earlier Conferences were absolutely fundamental, for example, independence of the Judiciary, honesty of the elections, the decency of criminal trials, basic due process, free speech, free press and free religion. He said that many of these earlier concepts were intertwined with the concepts before the present Congress. He referred to a quotation in the introduction to the Working Paper which reads as follows:

"The Rule of Law, as defined in this paper, may therefore be characterized as: 'The principles, institutions and procedures, not always identical, but

Working Paper

**Topics of
Committees**

**Themes of earlier
Congresses**

broadly similar, which the experience and traditions of lawyers in different countries of the world, often having themselves varying political structures and economic backgrounds, have shown to be important to protect the individual from arbitrary government and to enable him to enjoy the dignity of man '."

He said that this statement was also an extract from the Working Paper of the New Delhi Congress and he also referred to another statement from that Working Paper which stressed that the Rule of Law is a dynamic concept which must be used to establish social, economic, educational and cultural conditions under which the individual's legitimate aspirations and dignity may be realized.

It was clear that to achieve such an impressive goal, Executive action would be required in most countries of the world and it was for this reason that the theme of the Congress was chosen.

He continued: "In the replies to the Questionnaire, many traditions from many countries were explained. Many experiments were suggested. But none of them, with respect to any significant problem ever said 'I have the answer' or 'My country has the answer'. It appears to us that every country has problems that to thoughtful jurists seem almost overwhelming. By way of illustration, I would like to mention a few problems from my own experience. All of you know of the troublesome problem concerning race that has been so embarrassing to the United States Government. You may not know that those problems exist not only in the State of Mississippi and in the deep South of the United States, not only in the slums of New York City, or Chicago, but even in San Francisco, my home, a city which we believe is urbane and liberal, a city with a beauty only surpassed by Rio, I am ashamed to tell you that in San Francisco at this moment, litigation is pending in the courts to force the school board of education to revise its policies regarding the relevance of race in education. In my own community, Berkeley, California, across the bay from San Francisco, I am told that the rate of increase in the negro population of our city is the highest in the whole nation. As a result of that statistic the problem in Berkeley of ensuring adequate education for negro children has become the most important local legal topic. Even in my own university, the University of California, notwithstanding its great wealth and influence, I have to tell you that we have not been able to prevent the exploitation of large groups of students because of racial restrictions that relate to housing. These are small problems, but I suggest that even though they differ in magnitude and degree from the problems many of you know, they are most disquieting and difficult nonetheless. Are there answers to this kind of problem, to your problems, to other kinds of problems? Are there answers particularly as to the role of lawyers? This is what we must decide this week". And in conclusion he quoted another statement from the Working Paper which he said deserved special emphasis: "Today all societies face the need for adjustment to the

requirements of technological change and of social and economic development. In various areas of activity the executive branches are compelled to deal with problems for the solution of which no adequate machinery may exist and which constantly require governmental and legislative intervention for the good of society and the individuals within it. The major dilemma confronting the citizens alike is how to strike a balance between the freedom of the Executive to act effectively and its trend to enlarge its powers, on the one side, and the protection of the community and the individual in the enjoyment of his rights on the other. The object of this Congress is to examine the role of judges, lawyers, whether in private practice or government, and teachers of law, in striking that balance and thus preserving and advancing the Rule of Law side by side with social and economic development ”.

THE CHAIRMAN thanked the Dean and his colleagues on behalf of the Congress and went on to say “ I am convinced that in the few days at our disposal we have to attempt to answer some of the momentous questions of our times because without the orderly development of law the state will not progress. And I, therefore, ask you gentlemen to devote yourselves in the committees to a work which will be enduring and valuable not only to lawyers but to nations. It is not perhaps a matter so much of resolutions, although they are important, but it is a matter for the expression of your minds, because you are all men of experience and prominence in a profession without which the state cannot flourish. I thank you. ”

THE CHAIRMAN then adjourned the meeting.



COMMITTEE I

PROCEDURES UTILIZED BY ADMINISTRATIVE AGENCIES AND EXECUTIVE OFFICIALS

Chairman: FRANCIS R. SCOTT (*Canada*)
Vice-Chairmen: JORGE FIDEL DURÓN (*Honduras*)
GABRIEL RAJAONSON (*Malagasy Republic*)
Rapporteur: JEAN-PAUL GILLI (*France*)
Secretary: ETIENNE TSHISEKEDI (*Congo-Leopoldville*)
Adviser: PHILIPPE COMTE (*Legal Officer, International Commission of Jurists*)

The list of the members of the Committee is given at the end of this report (page 103). The conclusions adopted by the Committee and approved by the Congress in plenary session are given at pp. 24-26 above.

Tuesday, December 11, 1962

15.00—18.00

The CHAIRMAN, having welcomed the members of the Committee, asked the RAPPORTEUR to outline the subject assigned to the First Committee for study.

Professor GILLI, the RAPPORTEUR, reviewed the two complementary aspects of the concept of the Rule of Law: the static aspect, which simply aimed to protect individual rights, and the dynamic aspect, which sought to establish economic, social and cultural conditions consonant with the dignity of the human person. From this latter point of view the public authority might be led to impose certain restraints on the individual. The consolidation of the Executive power was at present a phenomenon common both to long-established States and to newly-developing States; it was a factor directly related to the imposing extension of the services which the administration had taken in hand. In the new countries especially, it was evident that liberal capitalism was wholly unable to ensure the requisite mobilization of resources. This general extension of the powers of the State had to be reconciled with guarantees of the rights of the individual: it was with a view to working out a fair balance between these conflicting claims that certain *procedures* had been set up to channel the action of the administration. These procedures constituted guarantees for the persons governed, but they were also a sort of guarantee for the administration itself, as they protected it against errors and fumbling. They were, moreover, not uniform, and a fundamental distinction had to be made between two categories of administrative decisions: (1) decisions of a judicial nature occurring within the framework of quasi-judicial procedure; examples, in French

Dynamic and
Static Aspects of
Rule of Law

Procedures of
Administration

law, were decisions with respect to expropriation of property by a government authority, disciplinary action taken against officials or against members of professions, and refusals to grant a deferment for entry into military service; and (2) *ordinary* administrative decisions, for which the only procedures afforded were consultative procedures with a view to defending the general interest. Stemming from the principal question assigned to the First Committee, as just defined, various connected questions arose, such as that of legality in times of crisis, under so-called "exceptional" circumstances, and that of court supervision, which in theory fell within the scope of the Second Committee, and which the First Committee could wholly ignore.

The CHAIRMAN thereupon proposed that the discussion be opened by taking up the first section of the Working Paper, under Committee I, entitled "Formal Adjudication".

Dr. HÉCTOR LUIS BRENTA of Argentina pointed out that the Working Paper under the first section listed five principles which were deemed essential to any procedure of a court nature¹; he did not consider this an exhaustive listing and he thought that at least two guarantees should be added to it: security of tenure for the official called upon to render the decision, and the right of the affected party to lodge an appeal from that decision. Judge MARIANO RAMÍREZ BAGES of Puerto Rico felt it important to specify in addition that the authority of the administration making the decision should derive from a law voted by a representative elective assembly. Dr. IVAN BAKMAS of Argentina thought it would be well to ascertain first why certain administrative agencies were called upon to make decisions of a judicial sort. The CHAIRMAN considered that this last question went beyond the scope of the Committee's study.

Mr. AMAR BENTOUMI of Algeria stressed the fact that the matter took on a different appearance depending on whether the countries possessed a solid administrative tradition, or had only recently achieved independence. In the latter type, the State was impelled by the force of circumstances to intervene in very many fields, and it had available only a hastily formed body of officials. Court procedures of a juridical sort should take these special factors into account.

Mr. ARTURO ALAFRIZ of the Philippines referred to the guarantees that ought to be associated with decisions of a judicial nature, as they were listed in the working document: (1) adequate notice to the interested parties; (2) access to relevant data; (3) the right to be heard; (4) the right to be represented by counsel; (5) notice of the decision. He believed that an additional guarantee should be provided: the right of the aggrieved party to file an appeal from the decision before a higher authority.

Mr. GUSTAF PETREN of Sweden felt that it was more or less arbitrary to establish a clean-cut separation between formal adjudication

¹ See *infra* this page.

and action which was not quasi-judicial, as this distinction did not really exist in many countries. He pointed out that in Sweden a draft law on administrative procedure, covering every possible form of activity of the public authorities, had been in process of preparation for the past fourteen years.

Dr. FERNANDO FOURNIER of Costa Rica felt, as had many of the previous speakers, that it would be desirable to complete the minimum guarantees listed in the Working Paper, and in particular to add thereto: (1) the security of tenure of officials called upon to render decisions of a judicial nature; (2) the right of the interested party to appeal to a higher administrative authority. He furthermore believed it would be desirable to have public services of an industrial or commercial nature set up as autonomous institutions: this decentralization of administrative authority would seem to afford a guarantee against encroachment by the public power in the field of private law.

The RAPPORTEUR pointed out that the question of control by the courts over administrative decisions did not fall within the purview of the First Committee, but did belong to the Second; discussion should therefore be kept from veering off in that direction. The First Committee should deal solely with the way in which the decision was reached, and with the procedure leading up to that decision. When it came to channels of appeal, it was important to distinguish between recourse through administrative channels (*recours gracieux* or *recours hiérarchique*) and "contentious" appeals: only the first was of interest to this Committee. Also, in reply to the point made by Mr. AMAR BENTOUMI, the RAPPORTEUR considered that the chief task of the Committee was to define the minimum guarantees which should be held inviolate in all circumstances of administrative action; these minimum guarantees ought to be no less valid in the newly developing countries than in the others. The only distinction that could be allowed was that between normal periods and periods of emergency; during the latter, a certain relaxation of the guarantees of individual rights might be envisaged; on the other hand, the situation of the newly developing countries might perfectly well be taken into account by treating the period during which they were striving for their equilibrium as if it were an emergency period.

Mr. I. N. SHROFF of India wished to have the concept of a quasi-judicial decision more clearly defined. As one criterion, he proposed considering as quasi-judicial any decision of the administration likely to affect the rights of a citizen. The CHAIRMAN felt that it would not be helpful to attempt to define quasi-judicial at this stage.

Dr. HECTOR LUIS BRENTA of Argentina reverted to the suggestion he had put forward earlier. He insisted on the necessity of affording security of tenure to officials called upon to make decisions of a judicial nature, so that they would not be at the mercy of governmental reactions. He also stressed the necessity of opening up modes of appeal, which need not be of a judicial nature but might be appeals through official channels, of an administrative nature, in line with the

distinction made by the **RAPPORTEUR**. **Dr. IVAN BAKMAS** of Argentina endorsed these proposals, but added that if it was proper to give guarantees on the security of tenure to officials empowered to render decisions of a judicial nature, it would also be proper to require that they offer substantial guarantees of competence and honesty.

Mr. ELI WHITNEY DEBEVOISE of the United States pointed out that in dealing with formal adjudication, it seemed to be necessary to have a real record of the testimony; the phrase "adequate record" would allow of some variation. **Dr. IVAN BAKMAS** of Argentina stressed the necessity of seeing to it that administrative officials called upon to render decisions of a judicial nature should meet very strict requirements of competence and morality. **Dr. FERNANDO FOURNIER** of Costa Rica fully approved this point of view; it was only if these officials were capable of handling their responsibilities that it would be possible to consider granting them security of tenure. Hence the great importance of a judiciously balanced statute covering public office.

Mr. LOUIS PETTITI of France noted that the members of the Committee appeared to accept the five guarantees enumerated in the Working Paper as being rules of general application intended to limit the freedom of action of the administration in the field in question. Recalling the previous remarks of **Mr. Amar Bentoumi** and the observations of the **RAPPORTEUR**, he considered it necessary to make two reservations, and to provide for a relaxation of these safeguards, without invalidating the Rule of Law, on the one hand, in the case of exceptional circumstances, and on the other in the case of newly developing countries.

The **CHAIRMAN** expressed the wish that, before considering how the more or less ideal rules that were being propounded might be modified in emergency situations, the Committee should discuss the question raised by certain members concerning the moral uprightness of officials who in administrative agencies had these great powers of decision. **Sir LESLIE MUNRO** of New Zealand felt that there ought to be a division of these officials into several categories. First to be considered were lawyers in government departments, and in whom confidence would initially seem to be well placed. Next would come civil servants who had no legal qualifications but who had had a long career, during which they had obtained a series of promotions establishing their reliability. And lastly, there would be persons from outside government departments, often officials in retirement who were called upon to preside over such and such a tribunal; generally they were persons of considerable experience. But it was difficult to see how this category of person could be given the same degree of irremovability as a judge of the Supreme Court.

Reverting to the remarks of **Mr. Pettiti**, **Dr. HECTOR LUIS BRENTA** of Argentina stated that the Committee should direct its attention only to normal conditions in time of peace, and should leave on one side conditions in times of war, the gravity of which would justify the

gravest sort of derogation of the general principles of law. In Latin American countries, it was precisely in times of peace that individual freedoms were dealt the hardest blows. The Committee should therefore develop principles valid in times of peace.

Mr. HECTOR RIVIEREZ of the Central African Republic brought out the fact that during the discussion a certain confusion had arisen between two quite distinct questions: One concerned fundamental guarantees of pro-procedure which should be observed before an administrative official exercising judicial power, and the other concerned the guarantees which should be accorded to the tribunal or official himself. He expressed the hope that the discussion would limit itself to the first question, the only one envisaged in the Working Paper. Dr. IVAN BAKMAS of Argentina objected that the second question was at least as important as the first. He felt that the personal integrity of the judge, his capacity and security of tenure were most important guarantees in any proceedings. In new fields of law, such as taxation, judges had come to be denied jurisdiction, which had instead been entrusted to administrative bodies. It would therefore be proper to require the same guarantees for those bodies as the courts had. Mr. WILLIAM SANTIAGO of Puerto Rico added that these guarantees would benefit not only the persons governed, but also the administration itself: the official who reached the decision must feel protected against the risk of arbitrary action. Dr. LUIS PASOS ARGÜELLO of Nicaragua also felt that the Committee should examine the problem raised in the Working Paper from every angle: it would therefore be impossible to side-step the question of the fitness which should be required of officials invested with judicial power.

The CHAIRMAN felt that the discussion as a whole had shown a very considerable consensus of agreement on the first part of the agenda. He proposed passing on to the examination of the second question raised in the first section of the Working Paper: the question of relaxation of the guarantees in cases such as an *état de siège* or emergency situation. To what degree might these circumstances affect the procedures of administrative tribunals?

State of
Emergency —
relaxation of
guarantees

Mr. CLAUDIO TEEHANKKEE of the Philippines considered that the necessary adaptations should be left to the discretion of the officials whose duty it was to make the decisions. It was virtually impossible to lay down hard and fast rules. Mr. GUSTAF PETREN of Sweden drew a distinction between political emergency cases and those arising from natural calamities. In Sweden, the draft Administrative Procedure Act only envisaged the second case, the first being without any practical application in that country. With this as the hypothesis, and subject to certain guarantees, the administration could reach a decision without prior hearing of the affected party.

Mr. JEAN KRÉHER of France observed that no one had yet tried to define the cases in which the administration had occasion to render quasi-judicial decisions. Actually, a general definition was practically impossible, and it was the legislator who, in specific cases, set the

procedure by which decisions would be reached. The speaker also observed that decisions reached by way of quasi-judicial procedure did not truly represent decisions by the courts. Consequently, it would be going too far to talk of the irremovability of the official called upon to make quasi-judicial decisions.

Professor THEMISTOCLES CAVALCANTI of Brazil went back to the distinction that had already been made between certain cases of "exceptional circumstances". He proposed distinguishing between the case in which the existence of the State of Emergency was left to the courts to decide, and the case in which it was the Government that declared the State of Emergency. In any event, whether it was a question of political upheavals or of a natural calamity, certain minimum guarantees should be respected. Thus, in Brazilian legislation, the guarantee of *habeas corpus* was never suspended, even during the State of Emergency.

Wednesday, December 12, 1962

09.00—12.00

The CHAIRMAN proposed continuing the discussion of the effects on procedural guarantees brought about by the State of Emergency.

Professor THEMISTOCLES CAVALCANTI of Brazil resumed the argument he had begun at the end of the previous session. He felt that in both the cases he had earlier distinguished, that of political troubles and that of natural calamity, the steps available to the executive power should be subjected to a double check: that of the legislative power and that of the courts. The policy to be followed should tend to reinforce these checks and to limit as far as possible the area within which the administration retained discretionary powers. The CHAIRMAN objected that the question of legislative and judicial controls fell within the purview of the Second Committee. Mr. I. N. SHROFF of India added that the Working Paper, in that part concerning the First Committee, only hinted at emergency situations. He did not see any reasons why the minimum norms that were being suggested should be curtailed by emergencies. Chief OLUMIDE OMOLULU of Nigeria also felt that procedures of administrative agencies need not be unduly affected by the State of Emergency. He cited an example from the recent history of his country. A few months ago, a State of Emergency was declared in Western Nigeria. The Administrator of the Region had the power to restrict persons in certain circumstances. The persons who had been so restricted were able to have their cases reviewed by an advisory tribunal, and in many cases persons had consequently been released. By now almost all those restricted had been released.

Mr. AMAR BENTOUMI of Algeria restated the purport of the question raised in the Working Paper: it was to set some standards for general application controlling the procedure followed by an administration in areas where its task was to reach decisions having a judicial form or nature. These preliminary procedural steps were conceived to suit

a normal period. In a period of emergency, on the contrary, they might well paralyze the action of the administration. It should therefore be acknowledged that in the case of exceptional circumstances procedural rights could be suspended. The interested party would, moreover, retain as inviolate his right to an *a posteriori* appeal before an administrative tribunal or an ordinary court.

Mr. ARTURO ALAFRIZ of the Philippines also believed that procedural guarantees should be relaxed in certain well-defined circumstances. He proposed that this reservation should be written into the final conclusions of the Committee.

Mr. LOUIS PETTITI of France agreed in principle with the two previous speakers. He did, however, suggest a distinction between the various procedural guarantees. Some of these guarantees, such as prior notification of the decision to be made, and subsequent notification of the decision reached, could be maintained without any danger, under no matter what circumstances. On the other hand, the other three points mentioned [in the first section of the Working Paper] might well be incompatible with the State of Emergency.¹ But all these matters should be very carefully worked out in advance in the State of Emergency legislation.

Dr. FERNANDO FOURNIER of Costa Rica agreed with Mr. Alafriz' proposal. He merely wanted to have the reservation in connection with the State of Emergency specify that the State of Emergency must be "regularly declared by the legislative body or by the parliament". So grave an action as would lead to the suspension of constitutional guarantees ought not to be left to the discretion of the Executive. Mr. KURT WALTERS of Germany mentioned that the German Government was currently preparing some kind of emergency legislation; it was agreed that this emergency legislation must in Parliament have a specified majority vote so calculated that it would require both the votes of the party in power and those of the opposition. Mr. HECTOR BRENTA of Argentina asked, for his part, that the reservation proposed by Mr. Alafriz should specify that in all circumstances fundamental human rights must be respected. Mr. AMAR BENTOUMI of Algeria felt, as did Mr. Fournier and Mr. Walters, that the declaration of the State of Emergency should be a matter for Parliament. Mr. I. N. SHROFF of India pointed out that the Indian Constitution granted that particular power to the President of the Union and not to Parliament. Professor THEMISTOCLES CAVALCANTI of Brazil also felt that, when the exceptional circumstances were not of a political nature, as when natural calamities were involved, there was nothing wrong in granting the Executive the power to declare a State of Emergency. The CHAIRMAN indicated that in Canada a recent statute authorized the federal Executive to proclaim an emergency in a limited number of cases, but that Parliament if not in session, had to be summoned immediately.

¹ See supra p. 76

Sir LESLIE MUNRO of New Zealand wished, as Secretary-General of the International Commission of Jurists, to express his uneasiness at seeing the use made of the State of Emergency by certain governments. Too often the declaration of a State of Emergency was simply a method for muzzling the opposition, and it was imposed at times when there was no serious menace to public order. The speaker wanted to call the Committee's attention to the cases in which a political party used this artifice to maintain itself in power. He hoped that the conclusions adopted by the Committee would not leave any room for doubt, and could not be interpreted as approving that practice.

Mr. ETIENNE TSHISEKEDI of Congo (Leopoldville), believed that the responsibilities should be shared by the Parliament, which had the task of enacting the legislative provisions concerning the State of Emergency, and the government, which, within the framework of that legislation, and subject to the control of Parliament, would decide whether such and such circumstances did or did not constitute an emergency situation.

Dr. MANUEL ESCOBEDO of Mexico cited the following case. About a year ago, certain disorders took place in Mexico. The police arrested roughly a thousand demonstrators. One of the essential guarantees of individual liberty written into the Constitution of Mexico was that no person could be held in detention for more than 72 hours, without being brought before a magistrate, who then holds a first hearing and prepares a charge. In practice, it was impossible to do this with a thousand persons arrested. Therefore, at the end of 72 hours, most of the demonstrators were released. Only 30 were kept under arrest and prosecuted. These incidents were not of a sort to justify the State of Emergency. They were merely mass demonstrations such as took place from time to time in many countries. But the Government had to deal with these incidents by applying laws that had been developed to cope with individual offences. He would like the Committee to bear in mind, when preparing the conclusions, those situations which only resembled in some respects emergency situations.

Sir LESLIE MUNRO of New Zealand expressed the hope that the conclusions which the Committee would adopt on this point would be in harmony with those approved by the Lagos Conference. The CHAIRMAN suggested that a draft resolution on this matter should be prepared and submitted to the Committee. Mr. ELI WHITNEY DEBEVOISE of United States supported that suggestion. On the CHAIRMAN's proposal, the Committee formed a sub-committee composed of Messrs. Alafritz, Brenta, Debevoise and Kréher, to work on the wording of the draft.

The CHAIRMAN suggested that the Committee move on to the discussion of the second section of the Working Paper on the general topic control of executive action which was not formally judicial or quasi-judicial.

Dr. LUIS PASOS ARGÜELLO of Nicaragua made it clear that the question was to find out how abuses could be avoided and how

ve
is not of a
or
dicial

individual rights could be preserved in this field, which was that of ordinary administrative activity. Clearly, it was not enough to have good laws. What was further needed was that they should be applied and be respected. The speaker mentioned the case of his own country. Nicaragua had voted for the Universal Declaration of Human Rights sponsored by the United Nations. It had also voted for the American Declaration on the Rights and Duties of Man. Going even further, by the terms of an amendment to the Constitution passed in 1950, the American Declaration had acquired the status of a constitutional principle. Despite this handsome showing of good intentions, there was no serious and efficacious guarantee of individual rights in that country. The speaker paid tribute to the work accomplished by the International Commission of Jurists up to now, but he hoped that it would forge still further ahead in the future. He announced his intention to table a motion in writing, asking that the International Commission of Jurists be given the competence to negotiate with governments in defence of Human Rights and the Rule of Law.

**International
Commission of
Jurists and
Human Rights**

The CHAIRMAN felt that such a motion would best be submitted to the Commission itself, and not to the Committee. He asked Mr. Pasos Argüello to be so kind as to hand the text to him, so that he might turn it over to the bureau of the Congress.

Mr. GUSTAF PETREN of Sweden referred to the draft law he had already mentioned, which was currently under study by the Swedish Parliament. It had been found possible in this draft law to put forward some general principles applicable to all kinds of administrative actions, some of principles affording a certain number of quite widely applicable procedural guarantees. Turning back to the Working Paper, the speaker felt that certain guarantees enumerated under "Formal Adjudication"¹ could equally apply to the more general administrative action now being considered. Such would be the case with respect to adequate notice of the decision contemplated, adequate notice of the decision reached, and the reasons validating it, and the right of the interested party to consult the files of the administration bearing on his case.

**Procedural
Guarantees in
ordinary
Executive
decisions**

Mr. JEAN KRÉHER of France wished to call to the Committee's attention an important point which had unfortunately been omitted in the Working Paper. An effort was being made to find the most effective guarantees to protect individual rights against encroachments of the public power. These guarantees were based on permanent and universal principles standing above political contingencies. It would be a matter of primary importance if these principles could be included in an international convention, such as the European Convention for the Protection of Human Rights and Fundamental Freedoms. In conformity with that same model, some international court would see to it that the signatory States respected this Convention, and would be empowered to hear complaints from individuals.

¹ See supra p. 76.

The CHAIRMAN very much wanted to keep the discussion from getting off the subject, which dealt with "ordinary administrative decisions", i.e. those that were not quasi-judicial. The point was: to find out whether it was proper to give this category of decisions a procedural setting which would carry with it a small number of minimum guarantees for the persons being administered.

Mr. I. N. SHROFF of India stated that in India the government had set up a Law Commission, which had recommended that even where the action was not quasi-judicial two fundamental rules must be observed by the administration: (1) the administrative decision must be accompanied with reasons; (2) the administration must observe the rules of natural justice and act with openness, fairness and impartiality.

Sir LESLIE MUNRO of New Zealand said that he hoped that the Committee might find a specific criterion enabling a distinction to be made between quasi-judicial decisions and ordinary administrative decisions. Mr. ELI WHITNEY DEBEVOISE of the United States defined a quasi-judicial decision as one relating to the adjudication or determination of individual rights. When only the public interest was involved, it would not be a quasi-judicial decision. Professor THEMISTOCLES CAVALCANTI of Brazil then made a few comments concerning the administration's discretionary powers: in fields in which the administration could wield powers of that sort, the only way to keep it from becoming arbitrary was to oblige the body exercising the authority to give the reasons for its decisions.

Coming back to the matter of a criterion for the quasi-judicial decision the CHAIRMAN felt that it should be ascertained whether the person affected by the decision did or did not rely on an individual right that had been established. When he was simply protecting an interest, it would be an ordinary decision that would have to be made. Chief OLUMIDE OMOLULU of Nigeria cited the case of the traditional chiefs in Nigeria who had always been recognized as having the power to arbitrate disputes. When a chief stepped in, as an agent of the government administration to settle a dispute, his decision was not quasi-judicial but did give redress. Likewise, when a professional body ruled on a question of discipline within the given profession. The CHAIRMAN pointed out that decisions reached on matters of professional discipline were doubtless of a quasi-judicial nature. Each member of the profession did, in fact, have an established right to exercise that profession so long as he observed its rules.

Mr. JEAN KRÉHER of France recognized how difficult it was to give a satisfactory definition of the quasi-judicial decision. Under this heading a great variety of actions and measures could be found. For example, in French law, mention might be made of: (1) decisions in matters of expropriation, which were reached by the expropriations tribunal at the conclusion of a procedure that was quite truly judicial; (2) decisions reached with respect to disputed social security claims; (3) compromise decisions in customs matters; (4) decisions concerning the issue of war veterans' certificates; (5) decisions made by factory

inspectors; (6) decisions involving withdrawal of drivers' licences, closing shops and deportation of foreigners. In each of these fields, special procedures were established more or less resembling judicial procedures. It was thus extremely hard to give a definition that would cover the matter generally.

Mr. ETIENNE TSHISEKEDI of Congo-Léopoldville thought that it should be up to each State to establish within its own legal system the division between quasi-judicial and "ordinary" decisions. Judge MARIANO RAMÍREZ BAGES of Puerto Rico agreed with this view. The task of the Committee was to provide for guarantees that would prevent the administration, when it made decisions included in any of these categories, from acting in an arbitrary fashion. As for the distinction between the two main categories themselves, that was not the Committee's problem. Dr. JORGE DURÓN of Honduras also felt that it was up to each State to set forth the guarantees to be afforded in both categories to the persons subject thereto. What was unfortunate was that these guarantees were often ineffectual. In Honduras, for example, the law did indeed require that the administration should make its decisions public, but publication was done in such a way that, more often than not, it did not reach the affected parties. Mr. ARTURO ALAFRIZ of the Philippines referred to the Conclusions of the Second Committee at the New Delhi Congress, Clause VII and VIII. He suggested that these Conclusions might be reconsidered, and that a number of modifications and clarifications might be made therein, with a view to extending the coverage of the guarantees provided. In particular, it would be essential to provide that some channel of review would always be available, whatever the nature of the decision. Mr. I. N. SHROFF of India stated that in India, in acquisition of land matters, for example, the administration had the undisputed power to decide whether or not it should acquire a particular piece of property. The sum to be fixed as compensation was thereafter argued, at which point the party affected could be heard.

Dr. IVAN BAKMAS of Argentina cited a similar case involving expropriation which had engaged the courts in his own country. The administration had just widened an avenue, and it announced its intention of expropriating the buildings that lined one side of the avenue, stating that the work that had been undertaken had considerably increased the value of these buildings, and that there was no reason why their owners should be left to enjoy the benefit of this increased value. The matter was brought before the Supreme Court, which decided that expropriation should be based on reasons of public interest and that public interest had nothing to do with the recovery of the additional value acquired by the contiguous buildings. Thus, in expropriation matters, there could well be other issues to discuss, apart from that of the money to be paid in compensation. If all the parties who might be interested in the execution of some public work were to be consulted, that could lead far: should they go to the point of consulting the taxpayers who would have to finance the

work? The consultative system ought not to be abused. This system might, incidentally, lend itself to abuse, if the representatives of certain private interests succeeded in making themselves heard and in causing measures to be adopted, which would be favourable to them but burdensome to the population as a whole. The speaker felt that if effective guarantees were to be afforded to persons subject to a given administration, stress should be laid on two points: (1) the setting-up of commissions which would receive the complaints of those affected and would see to it that the officials did their work correctly; (2) the setting-up of a procedure for appeal to the courts against arbitrary measures taken by the administration; no doubt a tribunal, as a general rule, could not hold forth with respect to the wisdom of the policy followed by the administration, but it could decide whether the closing of an establishment, or the withdrawal of a licence was or was not arbitrary.

Wednesday, December 12, 1962

15.00—18.00

The CHAIRMAN proposed that discussion be resumed on the procedure in connection with executive decisions falling outside the category of quasi-judicial.

Before getting down to the discussion, Mr. JEAN KRÉHER of France thought that it might be worth while to recall the fundamental distinction which the RAPPOREUR had made the previous day, between administrative decisions having a general coverage, and decisions dealing with individuals. Up until now, the Committee had only examined individual decisions, and the guarantees it had discussed were conceived to fit that pattern. But was it not also necessary to provide certain guarantees in the enormous field of regulatory decisions? And here, once again, questions concerning the State of Emergency were encountered: among the guarantees afforded in the procedure for working out regulatory decisions, certain ones ought to be continued even during States of Emergency. Lastly, the speaker pointed out how valuable it would be: (1) to stipulate in a law the conditions that would be prerequisites to the declaration of the State of Emergency and the resulting consequences; (2) to arrange, through inter-State conventions, for some sort of appeal in the last instance to a supra-national court.

The CHAIRMAN felt that, among the guarantees which could be set up in the field of regulatory decisions, at least the notification of these decisions could be provided. The RAPPOREUR pointed out that it was precisely at this point that the value of the distinction between individual and regulatory decisions emerged. In respect to the latter, it would be practically impossible to envisage the giving of individual notice to each and every interested party. Mr. ELI WHITNEY DEBEVOISE of the United States said that in the United States such notification by

certain administrative agencies was made in an official publication or was circulated; but he agreed that it was impossible for an agency to give notice to each individual.

The CHAIRMAN noted that when it had begun to discuss this question of the publication of administrative decisions, the Committee had implicitly moved on to the examination of the third section of the Working Paper, entitled "Publication and Publicity". He proposed that the discussion should continue along this line.

**Publication of
Administrative
Decisions**

Judge MARIANO RAMÍREZ BAGES of Puerto Rico noted that the Working Paper mentioned three exceptions to the principle of publicity: these were the cases involving secrets concerned with national security, or international relations, or whenever disclosure would reveal the identity of police informers. Chief OLUMIDE OMOLULU of Nigeria also thought that the government should be authorized to preserve the secrecy of certain documents. But with that reservation, it would be desirable to maintain the principle that adequate publicity should be afforded prior to such decisions and measures contemplated by the administration as might be expected to affect individual rights. Professor THEMISTOCLES CAVALCANTI of Brazil felt that the protection of the rights of individuals should find some compromise with the right of the State to protect the general interests of the country.

The CHAIRMAN raised the question of the language in which publication should be made. If there was more than one official language, it could be assumed that publication should be given in the official languages; but he asked what the position would be where the language of large minorities had not reached the status of an official language. Mr. I. N. SHROFF of India mentioned that in India, in each of the States, one or more languages were recognized as official. At the national level only English and Hindi were so classed, and government notices were usually published in these two languages. Within each state, notices were published in the official languages recognized.

With respect to what constituted publication, the CHAIRMAN said that in Canada the Executive transmitted to Members of Parliament all executive decisions. In addition publication was made in the Official Gazette, which, however, reached very few people. Judge MARIANO RAMÍREZ BAGES of Puerto Rico stated that in his country laws had to be published not only in the Official Gazette, but also in the principal newspapers. He did not think that the principle of publicity ought to be applied to agreements and negotiations of an industrial or commercial character between autonomous administrative agencies and private enterprises.

The CHAIRMAN summarized this part of the discussion and concluded therefrom that the Committee favoured the principle of publication and publicity because the basic precepts of justice in administrative or quasi-judicial matters should not be impaired. He proposed moving on to item 4 on the agenda which was headed "The Need for Norms" (section 4 of the Working Paper). The question could be posed as follows: Was it desirable to put these norms into a Con-

**Need for Norms
and Codes of
Administrative
Procedures**

stitution, or to formulate for them a Code of Administrative Procedure, or was it sufficient to spell them out in every instance? The CHAIRMAN recalled that in certain countries, such as the United States, there was a Code of Administrative Procedure; other countries also had codes. In Canada the idea of codification had been received with mixed feelings.

Dr. JORGE DURÓN of Honduras mentioned that in his country there was a code of administrative procedure. That code was about twenty-five years old, and many recent reforms would have to be incorporated to bring it up to date. Nevertheless, it still covered most of the situations that arose in practice, and had proven satisfactory. It afforded a whole set of specifically administrative guarantees to the persons affected, and they were given, in addition, a constitutional appeal to the courts.

Mr. ETIENNE TSHISEKEDI of Congo (Leopoldville) admitted the practical value of a code of administrative procedure. But developing a law of that sort was only possible in countries blessed with very long-standing administrative tradition. The minimum to be required, even in the new States, was that special laws should regulate the procedure applicable to the most important administrative operations, such as expropriation on grounds of public interest, or when the administration made a contract with a company.

The RAPPOREUR feared that confusion would always be possible between the procedure which the administration in action had to follow, two excellent examples of which had just been given by Mr. Tshisekedi, and the procedure which should be followed before the administrative tribunals, which fell within the purview of the Second Committee. He would like Dr. Durón to give a few concrete examples of operations to which the provisions of the administrative code of Honduras would apply. Mr. ARTURO ALAFRIZ of the Philippines stressed that the Committee's task was to formulate very broad principles, without going into details. Dr. JORGE DURÓN of Honduras replied to the request of the RAPPOREUR. In principle, when regulations were made in a certain field of law, they laid down not only the basic rules, but also the rules of procedure to be followed in that same field. For example, in Honduras, a Labour Code had just come into operation. That Code established the rules of procedure applicable with respect to labour. But despite the comprehensive nature of that Code it was still necessary to apply certain procedural rules from the Code of Administrative Procedure. Such rules for example, included the formal requirements of written petitions and how and when evidence should be presented.

Dr. LUIS PASOS ARGÜELLO of Nicaragua recalled an observation he had made earlier: it was useless to have good laws if they were not respected, and laws alone were not enough to maintain the Rule of Law. In Nicaragua, for example, the legislation was perfect; it contained, in particular, an administrative code in which all imaginable guarantees were set forth. The Constitution made the declaration of

a State of Emergency dependent on a vote of Congress. Nevertheless, during the past twenty-five years, the country had existed about half the time under a State of Emergency regime. As for the state of "Economic Emergency", which Congress could proclaim for one year only, but which it could periodically renew, it had lasted continuously for all those twenty-five years.

Mr. I. N. SHROFF of India recalled that under section 4 of the Working Paper it was contemplated that there were three ways in which norms might be laid down for the benefit of the people: first "as rules of natural justice and due process", the latter part corresponding to the American concept of *due process*; secondly "as specific requirements in a written constitution"; thirdly "as model rules that every administrative agency should promulgate". He felt that this third way was the easiest of the three courses and should be recommended.

Dr. MANUEL ESCOBEDO of Mexico stated that there was no code of administrative procedure in Mexico. The procedure to be followed by the administration could be developed by practice, when, for example, a routine matter such as obtaining a permit for a business undertaking was involved. It could be established by a special law, as in the case of certain highly important operations such as granting mining concessions or issuing patents or trademarks. But when unusual circumstances were involved, it might well be that no procedure was provided. In these situations the Supreme Court had laid down the principle that any citizen or foreigner had "the right of petition" (*derecho de petición*), which was a constitutionally guaranteed right, and the Court must give a written decision on this petition, and that this decision must be reasonable and well-founded. In this way judicial precedent had succeeded in filling the gap that might have resulted from the absence of general rules covering administrative procedure.

Professor THEMISTOCLES CAVALCANTI of Brazil stated that in his country also there was not as yet any administrative code. Each branch of the administration had its own rules of procedure. There were, however, a few quite general rules which, without always being written down, were admitted in practice without question: such were the rules concerning prior notification, the publication of decisions reached, and access to channels of appeal. These rules appeared to be sufficient to safeguard the legitimate rights of the affected parties.

Mr. ULRICH BIEL of Germany recognized the danger alluded to by Mr. Pasos Argüello in what he had just said about the State having good laws but which were not applied in connection with "the need for norms". The speaker felt the only guarantee would lie in a right of appeal to an international body, and would be glad to have the views of Mr. Pasos Argüello on this question. Dr. LUIS PASOS ARGÜELLO of Nicaragua felt that the International Commission of Jurists, in setting as its task the promotion of the Rule of Law, should be induced to make two quite distinct approaches. The protection of

Appeals to
International
bodies to protect
Human Rights

Human Rights could be ensured within the national framework peculiar to each State, and it could be organized on the supra-national level. In countries such as Nicaragua, it would be wholly vain to seek protection through the national institutions alone, for the balance of powers was simply a facade, and the only power that counted was the Executive. Many Latin American countries had found themselves, in the fairly recent past, in the same situation, or might even be still in it: that was true for at least four of them. Moreover, there was, within the set-up of the Organization of American States, a Commission on Human Rights, composed of seven persons named by the OAS for a four-year term, and absolutely independent of their respective governments. It should be made quite clear that the seven members of the Commission on Human Rights did not represent any particular government, but that they jointly represented the group of American States as a whole. This independence gave the Commission on Human Rights a great deal of moral prestige. Recently, the Commission on Human Rights had had complaints placed before it with respect to violations of Human Rights in four Latin American countries: Cuba, Haiti, Paraguay and Nicaragua. It asked the four governments in question for authorization to go and conduct its investigations on the spot. Cuba replied that if the Commission on Human Rights came, it would be received with cannon shots. Haiti refused to let it enter. Paraguay made no reply whatsoever. Nicaragua replied that the Commission on Human Rights would be welcome on condition that it was willing to wait until a date had been set for its trip, and that date has never been set. The speaker felt that the International Commission of Jurists should have some part to play in situations of that sort. He requested that a motion should be made at the plenary closing session, tending to authorize the International Commission of Jurists to defend Human Rights and the Rule of Law in any country whatsoever. The Congress should give the Secretary-General an official mandate empowering him to take all the steps he might deem necessary to that end.

The VICE-CHAIRMAN Dr. J. DURON took the chair and discussion on the proposal made by Mr. Pasos Argüello was continued.

Dr. FERNANDO FOURNIER of Costa Rica had already spoken privately to Sir Leslie Munro about this proposal, and they had agreed that it merited being submitted to the attention of the Commission. He therefore suggested that the Committee should hand over the motion made by Mr. Pasos Argüello to the International Commission of Jurists, with a favourable recommendation. Mr. LOUIS PETTITI of France preferred to have a sub-committee assigned to put this motion into proper shape so that all shades of opinion might be heard. He thought there were two approaches. One, in line with Dr. Pasos Argüello's proposal, would consist in extending the powers of the International Commission of Jurists and of its Secretary-General. This solution would appear to be quite an illusory one, since States that were jealous of their sovereignty would never allow a private organization to exercise any sort of censure over their own

institutions. The second approach would be to seek guarantees on the supra-national level, by the conclusion of regional pacts similar to the European Convention for the Protection of Human Rights.

The CHAIRMAN recognized that there was a divergence between the points of view of Dr. Fournier and Mr. Pettiti, and he invited the Committee to choose between them.

Judge MARIANO RAMÍREZ BAGES of Puerto Rico favoured the solution proposed by Dr. Fournier, which would simply have the Committee pass the motion over to the International Commission of Jurists. Mr. ELI WHITNEY DEBEVOISE of the United States shared this view. Professor THEMISTOCLES CAVALCANTI of Brazil, speaking as a citizen of a Latin American country, was well aware of the practical difficulties that would impede the execution of a too clearly defined programme in that part of the world. He would therefore prefer simply to submit the question to the International Commission of Jurists, which would give it thorough study and could present its recommendations to a later Congress. Mr. AMAR BENTOUMI of Algeria also felt that it would be premature to make a recommendation to the Commission without having given it serious study. Mr. I. N. SHROFF of India wanted the Committee to acquaint itself with the Statute of the International Commission of Jurists, so as to make certain that the mission they intended for it did not exceed the limits of its powers.

Dr. LUIS PASOS ARGÜELLO of Nicaragua feared that his proposal had been misunderstood. He had merely wished to ask the International Commission of Jurists to continue along the line of action it had pursued in the past, using the same means, such as inquiries and publications. There had never been any question of attributing official powers to do it, or of equipping it to treat on equal terms with governments. The speaker simply expressed the wish to see a more complete tie-up between the Commission and the National Sections, so that the latter would keep the Secretariat constantly informed of abuses which might come to their attention. The Secretary-General would decide on the propriety of the steps to be taken.

Dr. FERNANDO FOURNIER of Costa Rica insisted that the proposal made by Dr. Pasos Argüello should be transmitted to the Commission. The RAPPORTEUR felt that if this proposal, as its author had explained, merely sought to call upon the Commission to do what it had done up to now, and was only a simple encouragement and did not invite the Commission to make any change in its orientation or tactics, then there was really nothing wrong with transmitting it.

Dr. LUIS PASOS ARGÜELLO of Nicaragua phrased his proposal as follows: "That the International Commission of Jurists should have the powers and facilities needed for the defence of Human Rights and the Rule of Law in all countries".

The CHAIRMAN resumed the chair. He felt the motion, when so worded, went far beyond a simple encouragement. He did not think it would be appropriate to send forward the resolution, as worded, as

it was nothing other than an interpretation of the powers of the International Commission of Jurists. Moreover, the Chairman recognized that this question was well outside the subject which the Committee had begun to discuss, namely section four of the Working Paper ("The Need for Norms"). He proposed dropping this subject and postponing until the following session all further discussion on the motion of Dr. Pasos Argüello.

Mr. GUSTAF PETREN of Sweden felt that on the need for norms the Committee could do no more than put forward recommendations containing minimum standards. The ideal solution would be to have an administrative procedure Act laying down these standards. Such an Act existed in the United States, in Austria and in Yugoslavia. There would probably be Acts in Norway and Sweden within five years. Dr. JORGE DURÓN of Honduras proposed simply putting forward the terms of the Working Paper, and presenting on an equal basis the three solutions envisaged.¹ The RAPPORTEUR supported this suggestion. Mr. GUSTAF PETREN of Sweden asked that it be specified that the rules of administrative procedure must be part of the written law. The CHAIRMAN agreed that it would not be sufficient merely to recommend that principles of unwritten law, such as rules of natural justice and due process, be followed.

Thursday, December 13, 1962

09.00—12.00

The CHAIRMAN gave the floor to Mr. ELI WHITNEY DEBEVOISE of the United States, who presented the draft resolution on the State of Emergency drawn up by the sub-committee.² This latter had felt it necessary to reaffirm certain of the principles contained in the conclusions of the Lagos Conference, and to specify that certain fundamental rules should allow of no relaxation, no matter under what circumstances.

Dr. LUIS PASOS ARGÜELLO of Nicaragua raised, in this connection, the question of special courts. He mentioned the case of Nicaragua, where military tribunals had very extensive powers in periods of emergency. He wished to have it clearly specified that fundamental rights should be protected by affording a channel of appeal to the ordinary courts. The CHAIRMAN took note of this suggestion.

In answer to a wish for clarification by Mr. GUSTAF PETREN, Mr. ELI WHITNEY DEBEVOISE of the United States specified that, as the sub-committee saw it, the draft covered all the forms of administrative action, whether it concerned formal adjudication, discretionary decisions or rule-making action.

¹ See supra p. 89.

² The content of this draft, subjected to a few modifications, is reproduced in paragraph VII of the conclusions of Committee One. (see supra p. 26).

The CHAIRMAN proposed that the Committee move on to discuss the fifth item on the agenda which was the heading of section V in the Working Paper, entitled "Some Provocative Comments".¹

He asked the Committee to give very special attention to the first paragraph beginning "What should be pursued...".

Mr. ARTURO ALAFRIZ of the Philippines felt that the Declaration of Delhi, by referring to the "dynamic" aspect of the Rule of Law, had given the answer to the question, and that there was now no need to go back over that ground. Mr. ELI WHITNEY DEBEVOISE of the United States did, however, express the hope that the Committee would take a position on a small number of specific points, for example by deploring the lack of independence of administrative and executive officials and their lack of recognition of basic Human Rights in certain countries.

Dr. LUIS PASOS ARGÜELLO of Nicaragua was induced by what Mr. Debevoise had said to take up again the motion he had presented the day before. He had modified the wording of it, in the light of certain observations put forward during the discussion. In this new wording, the draft recommended to the International Commission of Jurists that it continue to give the utmost attention to the protection of Human Rights and the maintenance of the Rule of Law, chiefly in those countries where no effective safeguards existed against abuses of the Executive power.

Mr. I. N. SHROFF of India raised the objection that this motion was not very relevant to the part of the Working Paper currently under discussion. The CHAIRMAN admitted that it ought not to take its place among the conclusions of the Committee, but should be a matter for separate recommendation to the International Commission of Jurists. Judge MARIANO RAMÍREZ BAGES of Puerto Rico urged that the motion made by Dr. Pasos Argüello be transmitted in its existing form to the International Commission of Jurists, so that it might be incorporated in the final resolutions. For his part, Mr. ULRICH BIEL of Germany proposed that it be submitted to the Steering Committee of the Congress, for it might also be of interest to the other Committees, and the possibility existed that identical proposals might have been put forward in these Committees. Mr. ELI WHITNEY DEBEVOISE of the United States pointed out that it was true that the Second Committee had a similar motion before it. He agreed with what Mr. Biel had suggested. It was agreed that the CHAIRMAN would consult with the Steering Committee and report back in due course.

Mr. LOUIS PETTITI of France urged that the sub-committee, given the task of wording the draft proposals for the conclusions of the First Committee should indicate how valuable it would be for the guarantee of fundamental rights to make some provision for appeals at the supra-national level. This was an absolutely essential aspect of the matter; it was too easy for tyrannical governments to give the institu-

**International
Commission of
Jurists and
Defence of
Human Rights**

**Appeals to
Supra-national
Bodies and
International
Guarantees**

¹ See infra p. 102

tions the superficial appearance of being democratic, and to use this hypocritical state of affairs in support of their pretence to respect the Rule of Law. Only a supra-national authority would be in a position to set up a just distinction between those States which respected law and those which pretended to do so. The speaker felt that for this reason the Committee ought to recommend that international conventions be concluded for the protection of Human Rights, at least at the regional level. Dr. FERNANDO FOURNIER of Costa Rica fully approved Mr. Pettiti's suggestion. It was far too often the case that the legal institutions within a country afforded only illusory guarantees to their citizens. Hence, it was at some higher level than that of the individual States that safeguards needed to be developed. Mr. GUSTAF PETREN of Sweden alluded to the broad outlines of the system set up by the European Convention for the Protection of Human Rights. Experience had shown that this system could only be effective if the signatory States had honestly resolved to co-operate in applying it. Actually, a significant number of European countries had hitherto refused to recognize the individual right of petition, and did not accept the jurisdiction of the European Court, which deprived the Convention of a great deal of its practical effectiveness. If an analogous system were to be set up in other parts of the world, authoritarian governments would never recognize or ratify conventions of this sort. Mr. JEAN KRÉHER of France felt that the European pattern should not be too rigidly imitated; adaptations would be needed if it were to be introduced into other regions of the world. However, an international system of guarantees might be conceived otherwise than in a regional framework; it appeared possible to formulate a certain number of values having a truly universal appeal, that being precisely the task that the International Commission of Jurists had set itself. Hence the protection of these values might be imagined as being organized on an extremely wide geographical basis. For the time being, all that was asked of the Committee was that it give its views on the principle of appeal to a supra-national court.

The RAPPORTEUR, although recognizing the interest of the question just raised by the last two speakers, felt that it was within the domain of the Second Committee rather than of the First. This question actually had to do with appeals to courts against administrative decisions, much more than with the procedures to be followed by the agencies and officials of the administration. The CHAIRMAN agreed that the objection was pertinent; he did, however, feel that the matter was of such importance for the inspiring of the final resolutions of the Congress, that nothing was lost by discussing it. Dr. LUIS PASOS ARGÜELLO of Nicaragua said that the problem of international guarantees was currently being raised on both of the American continents. Within the framework of the Organization of American States an Inter-American Commission on Human Rights had been set up in 1959. This Commission was composed of seven members appointed for four-year terms and enjoying complete independence. Its head-

quarters were in Washington, and it could meet on the territory of any of the Member States. It presented recommendations, which did not, incidentally, bind the governments to which they were addressed. A draft project had just been framed which would make these recommendations obligatory upon the governments. The speaker felt that it was along these lines that a solution could be found to the difficulties encountered in countries presently under dictatorial regimes, and that the International Commission of Jurists could do a great deal to make that solution succeed.

Mr. AMAR BENTOUMI of Algeria did not underestimate the value of setting up international courts. But he hoped that the Committee would not completely forget the subject it had taken up, namely the fifth item on the agenda. Under the heading of section V of the Working Paper he singled out paragraphs 2 and 3 as meriting special attention, the ones concerning economic development and agrarian reform respectively.¹ These two questions were of vital importance for newly independent countries such as Algeria. As for economic development, it was one of the chief preoccupations of the governments of these countries. It raised hitherto unrecognized problems and it called for solutions likewise of a wholly novel sort. In Algeria, for example, the government had had to face a situation created by the departure of many leaders in business; the agricultural, industrial and commercial enterprises involved formed an important part of the economic potential of the country and the government could not leave them lying idle. A law was therefore passed that, after a one-month period, the positions in these enterprises would be declared vacant, and would be taken over by management committees appointed by the administration. With respect to agrarian reform, in many countries it constituted the key to all economic development, and it could well necessitate some stretching of the general rules of administrative procedure. But the publicity of the decisions taken and the right of the expropriated owners to a just compensation should never be questioned.

**Economic
Development and
Agrarian Reform**

Professor THEMISTOCLES CAVALCANTI of Brazil fully approved the views expressed by Mr. Bentoumi, which also fitted in with the observations he himself had made during a previous session. There were situations which, although not quite comparable to those brought about by a war or a revolution, nevertheless were sufficiently grave to call for exceptional measures. This was especially true in the developing countries, where the government might have to take certain quick and energetic decisions that went well beyond the customary pattern of administrative routine. He cited an example when, on account of difficulties arising in the supply of foodstuffs, the Brazilian Government was recently obliged to take into its own hands the supplying of the three million inhabitants constituting the population of Rio de Janeiro. To do so, it had to requisition stocks of provisions and

¹ See *infra* p. 102.

centres of production. He said he hoped that the Committee would examine questions of this sort, as given in the heading of section V of the Working Paper.

Mr. JEAN KRÉHER of France wished first to reply to the objections raised by the RAPPOREUR. He did not think that the question of appeal to a supra-national court was entirely beyond the scope of the First Committee. The idea was to imbue governments with the conviction that there existed certain universal principles of law, that these principles forbade them from committing certain abuses, and that any arbitrary acts they might be tempted to commit would be likely one day to be censured by a higher authority. The speaker next replied to the point raised by Mr. Bentoumi. It was most timely for the latter to have stressed the importance of economic and social questions, especially for the developing countries, and the International Commission of Jurists could not continue indefinitely to ignore them. Mr. LOUIS PETTITI of France fully agreed with this latter point of view. The requirements of economic development might lead governments to make decisions that were hardly consistent with the leisurely red-tape of normal administrative procedure. This was an aspect which the Committee should take into account in preparing its final conclusions.

Before closing the session, the CHAIRMAN informed the Committee that a small sub-committee would meet during the afternoon to draw up the draft proposals for the conclusions to be presented to the session on the following morning.

Friday, December 14, 1962

09.00—12.00

Conclusions
Committee I

The CHAIRMAN gave the floor to the RAPPOREUR who presented the draft proposals for the conclusions which had been drawn up on Thursday afternoon by a small sub-committee.¹ He specified that the editors had tried to take into account all the suggestions made during discussions at previous sessions. The CHAIRMAN proposed taking up the draft clause by clause.

re and
I

Clauses I, II and III elicited some observations from Messrs. Alafritz, Biel, Brenta, Debevoise, Petren, Ramirez Bages, Tshisekedi and the RAPPOREUR. A few modifications were made in the original wording. On sub-paragraph (6) of clause III (recourse against decisions in the nature of adjudication), several speakers made it clear that the "recourse" available to the affected party was not, properly speaking, an "appeal", in the sense that, more often than not, the decision could not be reviewed before the next higher level of authority; it could merely be attacked before an administrative or quasi-judicial authority as being in violation of the law, or as having exceeded its powers.

¹ The content of the draft proposal is given, article by article, in the conclusions, subject to a few modifications in the form.

In clause IV, following comments by Messrs. Alafritz, Petren and the RAPPOREUR, the Committee upheld the principle that officials called upon to render decisions of a judicial nature should only be removable after court procedure.

The Committee moved on to the examination of clause V, concerning ordinary administrative decisions. It was divided into two paragraphs, concerning decisions of a regulatory sort and individual decisions.

With regard to the regulatory decisions, the discussion turned chiefly about the procedure for preliminary consultation. Mr. GUSTAF PETREN of Sweden stressed the importance of consulting "experts qualified by their technical knowledge", whether they did or did not belong to the permanent staff of the administration. Mr. ELI WHITNEY DEBEVOISE of the United States recognized the practical value of this procedure, but he doubted that it could be put forward as an element of the Rule of Law. He also felt it necessary, when the contemplated measures would affect individual interests, to get the views not only of organizations but also of the individuals directly affected. Mr. ARTURO ALAFRIZ of the Philippines for his part wished to leave out completely the paragraph on regulatory decisions, since the rules mentioned therein could not be considered as being minimum standards from the point of view of the Rule of Law. Mr. JEAN KRÉHER of France, on the contrary, insisted that this paragraph be retained in its original wording: the prior consultation of qualified authorities was a rule of good administration, and this was sufficient reason for mentioning it in the conclusions. The RAPPOREUR, in reply to the objections of Mr. Debevoise and Mr. Alafritz, stressed that in the proposed wording this consultation was shown as "desirable", which left no room for doubt. In addition, he felt it necessary to think not only of the protection of individual interests, but also of the protection of the general interest, as any good administration was supposed to do. The CHAIRMAN put to a vote the question of dropping or retaining the paragraph on regulatory measures. The majority of the Committee expressed itself in favour of its retention. Mr. JEAN KRÉHER of France returned to the point brought up by Mr. Debevoise on the prior consultation of individuals likely to be affected by a regulatory measure; he failed to see how this consultation could be organized on the individual level, and he felt that the administration should agree to discuss only with the organizations representing collective interests. Mr. ELI WHITNEY DEBEVOISE of the United States mentioned that in the United States, when the administration contemplated taking a regulatory step, relief was given to individuals by publishing a notice in an official journal inviting interested persons to present their views. The CHAIRMAN assured the members of the Committee that reference would be made to the possibility of consultation with interested parties, when the final wording of the paragraph was worked out.

General Regulatory Decisions of Executive and Consultation of Experts

Regarding the individual decisions touched on in the second paragraph of clause V, Mr. LOUIS PETTITI of France pointed out that the discussion on quasi-judicial decisions had finished, and that here it was a matter of ordinary decisions. Such being the case, was it not excessive to compel the administration to follow a procedure virtually identical with the one that had been previously provided for quasi-judicial decisions? Was there not, moreover, a certain confusion between these two classes of decisions? The RAPPOREUR who was a member of the drafting sub-committee, explained why, under the heading of ordinary decisions dealing with individuals, he had felt it worthwhile to include decisions "liable to affect detrimentally" the "vital interests" of an individual. He had had in mind chiefly decisions concerning the exercise of a profession where a person needing a licence to practise had had it withdrawn or refused. These were, without any doubt, ordinary decisions; it did, however, seem only equitable to hold the administration bound by at least some of the formalities provided for quasi-judicial matters. The Committee moved on to examine the guarantees listed under the heads (a) to (d). Messrs. Debevoise, Petren and Brenta each made a few comments on the wording here, concerning the opportunity open to the interested party to obtain the relevant data.

The Committee approved without comment or change the proposed wording for clause VI concerning the publication of decisions of a legislative character.

The Committee passed on to the examination of clause VII concerning the State of Emergency and the exercise of exceptional powers.

Judge MARIANO RAMÍREZ BAGES of Puerto Rico asked for some clarification as to the conditions under which the emergency could be declared. The RAPPOREUR pointed out that one part of the text proposed to the Committee had been taken from a draft presented earlier by Mr. Pettiti. The idea was that the law should specify the conditions justifying the State of Emergency, the authority empowered to declare it, the forms of that declaration, the maximum time limit for the duration of the State of Emergency, and the means of control. Professor THEMISTOCLES CAVALCANTI of Brazil remarked that in limiting the duration of the State of Emergency, it could perfectly well be provided that the period could be extended, if the renewal was subject to a serious check on the reasons given justifying such renewal.

Replying to a question of Mr. Pettiti, the RAPPOREUR pointed out that the second paragraph of clause VII covered both the "national emergency duly declared", and the case of "exceptional circumstances". Judge MARIANO RAMÍREZ BAGES of Puerto Rico and Dr. IVAN BAKMAS of Argentina made a few comments with respect to translation problems in this clause.

There had been some changes from the original draft of clause VII. Mr. ELI WHITNEY DEBEVOISE of the United States felt that problems of public calamity and also external threat should be covered. The wording should not be too broad with particular reference to emerging

nations at the present time. If it was, it could justify what had been done by certain dictatorial governments, against the actions of which the Commission had been protesting.

Sir LESLIE MUNRO of New Zealand fully shared this feeling. He noted that in many younger States the simple fact that an opposition existed was considered by the government as being evidence enough for the need of a State of Emergency and this was used as a way of eliminating the opposition. There was no reason why the achievement of independence should be a justification for a "State of Emergency". Dr. IVAN BAKMAS of Argentina felt that the State of Emergency was only justifiable as a lesser evil, and only to the extent that it enabled a greater evil to be averted. But abuses were always to be feared. In Argentina, it required only the disappearance of two or three muskets in 1951 to make the government declare the State of Emergency, and that State had lasted five years! One of the first guarantees to be required was the setting of a maximum duration for the emergency. Furthermore, the protection of fundamental rights should never be totally eliminated.

In response to the wishes expressed by the previous speakers, the CHAIRMAN proposed eliminating, under the heading of "exceptional circumstances", all reference to political conditions, and mentioning only cases of public calamities or disasters.

Mr. AMAR BENTOUMI of Algeria felt it necessary to examine more closely the case of recently independent countries. In alluding to abuses committed by certain governments, the previous speakers had in mind governments struggling with difficulties of a political nature. But thought should also be given to the difficulties of an economic and social nature that the new States must cope with, in order to ensure that their citizens might have even the minimum conditions for existence. Requisitioning unused agricultural equipment or vacant premises might be the prerequisite for making the land productive or for housing the population.

Messrs. HÉCTOR LUIS BRENTA of Argentina and THEMISTOCLES CAVALCANTI of Brazil proposed a wording which took into account circumstances of "public necessity or calamity". Sir LESLIE MUNRO of New Zealand feared that this term might be too vague. Mr. ELI WHITNEY DEBEVOISE of the United States proposed mentioning "exceptional conditions requiring action to protect the life and security of the people". Mr. ULRICH BIEL of Germany pointed out that certain circumstances might be exceptional in one country and not in another; he therefore felt it necessary to stick to a very general formulation and to refrain from giving any specific examples. Mr. LOUIS PETTITI of France insisted on retaining the idea of "exceptional circumstances", referring, if need be, to the principles of international law. Dr. IVAN BAKMAS of Argentina for his part, insisted on having the notion of a "state of necessity" included, which was the equivalent of seeking a lesser evil, this being a quest which in itself presupposed a value judgment on the part of the government in

question. All that the Committee could do was to ask that, in formulating these value judgments, the governments would stand on the general principles of law. From that point of view, the dignity of the human being was the highest value conceivable, and should therefore never be attacked under any pretext.

On the CHAIRMAN's proposal, the Committee decided to take a ten-minute recess, so as to allow the sub-committee to revise the wording of clause VII, bearing in mind the views which had been aired during the discussion.

The session was resumed, and the CHAIRMAN gave the floor to Mr. ELI WHITNEY DEBEVOISE of the United States to read aloud the new wording proposed for the second paragraph of clause VII. In that wording, no impairment of the principles previously set forth was admitted, except that:

"During a period of national emergency duly declared by the State, or when and to the extent required in exceptional circumstances and for a limited period to cope with or deal with public calamity or necessity directly affecting the lives or livelihood of the people."

The final sentence of the same paragraph further specified that in no case should fundamental Human Rights be disregarded.

Dr. IVAN BAKMAS of Argentina wished to give this last sentence a stronger wording, by stating that the human rights defined in the Universal Declaration of the United Nations occupied the topmost level in the scale of values. The question was not wholly a theoretical one. Human rights could find themselves in conflict with demands of an economic nature. It was known that in certain countries, such as Cuba, the issue was invariably settled in favour of these latter; that is just what, at all costs, must be avoided, by clearly specifying that the dignity of the human being was the supreme value, and that no economic or social reason could justify interfering therewith. The CHAIRMAN assured Dr. Bakmas that mention would be made in the final wording of the necessary respect of the human individual.

The Committee moved on to examine the final paragraph of clause VII, according to which, in cases of exceptional circumstances, a recourse to the courts should always be available.

Mr. THEMISTOCLES CAVALCANTI of Brazil questioned the usefulness of that provision. The RAPPOREUR, on the contrary, felt that it was necessary to specify that the judicial authority should be empowered to scrutinize the exceptional character of the circumstance invoked by the administration. Actually, the principle had just been admitted that "exceptional circumstances" justified a relaxation of individual guarantees. On the other side of the picture, it was indispensable that the individual whose interests were impaired should be able to apply to a court, and that the court should be able to judge whether the circumstances were really of such a nature as to necessitate and justify impairment of the normal forms of procedure. This judicial check was the only possible protection against arbitrariness. It should not

be forgotten that very often it was not the central government, but some local authority, which would declare the exceptional circumstances within a region, province or city. The local authorities could reach hasty decisions, and the courts should therefore enjoy the power to censure measures found unjustifiable. Mr. I. N. SHROFF of India fully approved what the RAPPOREUR had just said: the idea of "exceptional circumstances" was sufficiently vague to leave a wide margin for arbitrariness by the administration; a judicial check was therefore indispensable.

The Committee approved without change the terms of clause VIII, according to which the fundamental principles previously set forth "should be clearly formulated and adopted in all countries in the most appropriate manner". It moved on to the examination of clause IX, concerning the inter-State conventions and the availability of appeal to an international tribunal for the protection of the guarantees obtained.

**Fundamental
Principles to be
codified**

Judge MARIANO RAMÍREZ BAGES of Puerto Rico pointed out that this question had been discussed by the Second Committee, and that it would be the subject-matter of a special clause in the conclusions which that Committee was presently discussing. The CHAIRMAN also mentioned that the question had similarly been raised in the motion by Dr. Pasos Argüello which the Committee had transmitted to the Chairman of the Congress, and that it would doubtless be taken up in the final resolution of the Congress. It was therefore perhaps not imperative that it also be dealt with in the conclusions of the First Committee.

**International
Conventions**

Mr. LOUIS PETITTI of France, on the contrary, insisted that clause IX be retained. This reference to an international tribunal actually took on a special meaning in the conclusions of the First Committee, which dealt with quasi-judicial administrative decisions and ordinary administrative decisions. The CHAIRMAN noted the agreement of the majority of the Committee to have Clause IX retained in the conclusions as finally framed.

Dr. FERNANDO FOURNIER of Costa Rica obtained clarification as to what had happened to the motion made by Dr. Pasos Argüello.¹ The CHAIRMAN indicated that he had turned the written text over to Sir Leslie Munro, with the Committee's recommendation that the substance thereof be recapitulated in the final resolution of the Congress. Dr. IVAN BAKMAS of Argentina asked to have a close examination made of the Spanish translation of the conclusions as a whole, because at this stage it revealed some significant departures from the English text. With respect to clause VIII, which specified that the principles adopted should "be clearly formulated and adopted in all countries in the most appropriate manner", the speaker expressed the hope that a qualifying phrase might be added to the effect that the application of these same principles should be entrusted to officials

¹ See supra p. 93.

possessing "all the professional and moral qualifications that could be desired". The Chairman took note of that suggestion.

Before closure of the session which would terminate the work of the First Committee, Professor THEMISTOCLES CAVALCANTI, as the only Brazilian member of the Committee, took the floor to thank the Chairman for his great courtesy in handling the discussion, and also to thank all those who had participated in the discussion and in the elaboration of the conclusions. He wished to convey to all the members of the Committee the affectionate gratitude of his Brazilian compatriots for the contribution they were making to the prestige of the Rule of Law in this country, which was so deeply imbued with respect for it.

The CHAIRMAN thanked Mr. Cavalcanti for his kind expressions, and thanked the members of the Committee for their collaboration, assuring them that the tenor of the discussion had been most highly gratifying to him.

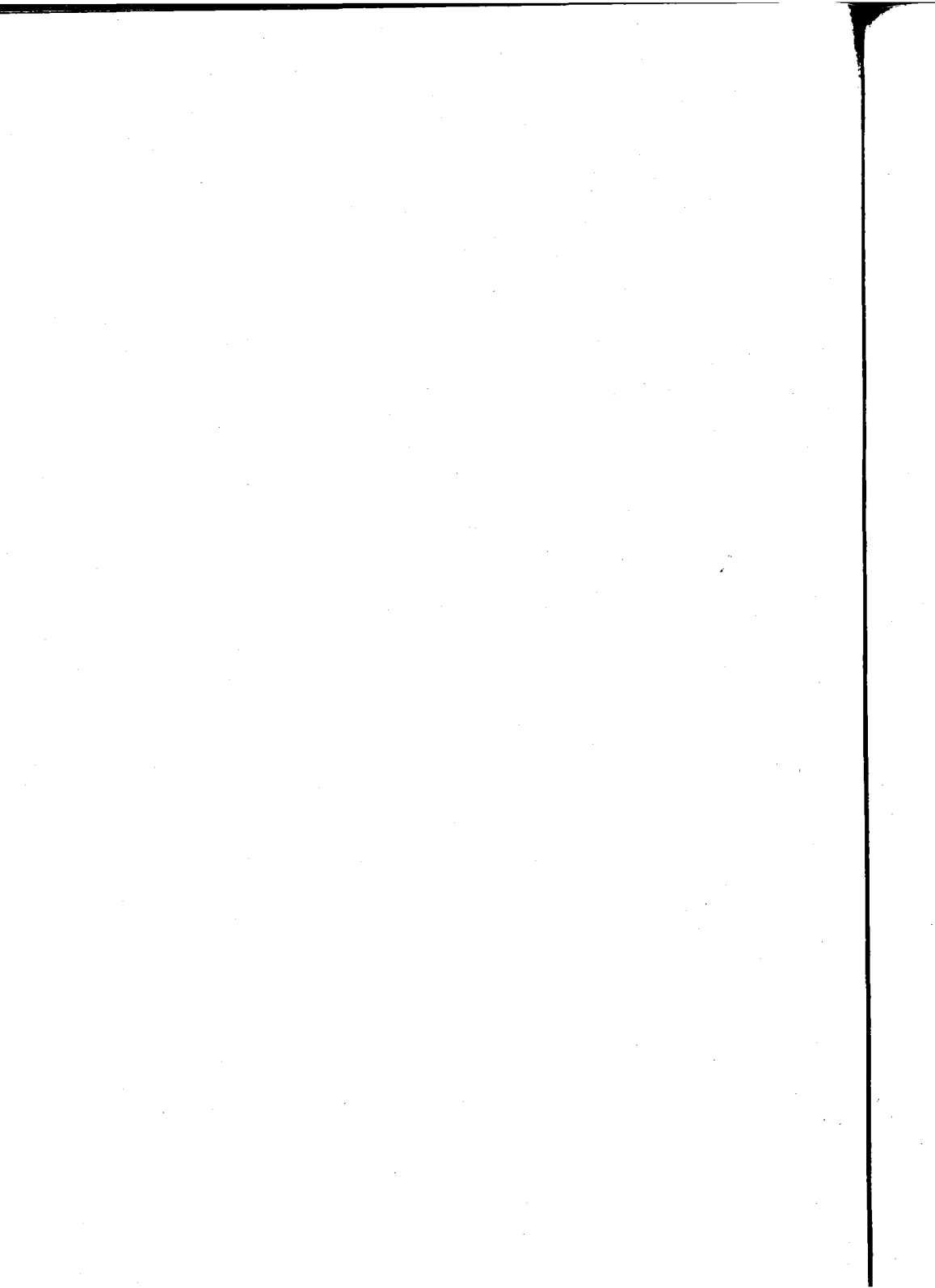
For his part, Dr. HECTOR BRENTA of Argentina speaking on behalf of all the members of the Committee, conveyed to Professor Cavalcanti the very real sentiments of gratitude felt by those who had taken part in the Congress for the generous hospitality that had been shown them by the Brazilian authorities.

The following are extracts from the Working Paper under the heading "Some Provocative Comments" in Committee I, and are excerpts from replies to the Questionnaire:—

- (1) What should be pursued, in my view, is an improvement of the economic and social conditions of a large part of the population, in order that these safeguards of the Rule of Law can be made to work. In other words, what good are the procedures applied in administrative practice, based on the principles that have been mentioned, to an illiterate person who because of his precarious living conditions never pays taxes, and will never have an opportunity of utilising such procedures?
- (2) In a newly independent country, probably the most urgent need is a sound and expanding economic system. Also, effective control of public health and land. Husbandry is essential. To achieve those aims some interference with the freedom of the subject may be justified for a time; . . . e.g., compulsory acquisition of land where the occupier has persistently failed to develop it. This is a feature of land tenure under the Irish Land Commission.
- (3) Far reaching agrarian reforms might call for certain modifications of the safeguards of the Rule of Law mentioned, especially those in the questionnaire under "access to necessary information, including the relevant files of the agency or official" and "opportunity to present facts and arguments before the appropriate agency or official".

MEMBERS OF COMMITTEE I

ARTURO A. ALAFRIZ (*Philippines*)
ALBRECHT ASCHOFF (*Germany*)
IVAN BAKMAS (*Argentina*)
AMAR BENTOUMI (*Algeria*)
ULRICH E. BIEL (*Germany*)
HÉCTOR L. BRENTA (*Argentina*)
GIUSEPPE CASSANO (*Italy*)
THEMISTOCLES CAVALCANTI (*Brazil*)
ELI WHITNEY DEBEVOISE (*U.S.A.*)
KOUNTOU DIARRA (*Mali*)
MANUEL ESCOBEDO (*Mexico*)
FERNANDO FOURNIER (*Costa Rica*)
JEAN H. KRÉHER (*France*)
OLUMIDE O. OMOLOLU (*Nigeria*)
LUIS PASOS ARGÜELLO (*Nicaragua*)
B. E. GUSTAF PETREN (*Sweden*)
LOUIS E. PETTITI (*France*)
MARIANO H. RAMÍREZ BAGES (*Puerto Rico*)
HECTOR J. RIVIEREZ (*Central African Republic*)
WILLIAM F. SANTIAGO (*Puerto Rico*)
I. N. SHROFF (*India*)
ENRIQUE B. UCLÉS RODRÍGUEZ (*Honduras*)
CLAUDIO TEEHANKEE (*Philippines*)
KURT H. WALTERS (*Germany*)



COMMITTEE II

CONTROL BY THE LEGISLATURE AND THE COURTS OVER EXECUTIVE ACTION

Chairman: KÉBA M'BAYE (*Senegal*)
Vice-Chairmen: EDVARD HAMBRO (*Norway*)
A. LEAL MORALES (*Colombia*)
Rapporteur: HORST PAUL A. EHMKE (*Germany*)
Secretary: WALTER J. KAMBA (*Southern Rhodesia*)
Adviser: A. A. DE C. HUNTER (*Legal Officer, International
Commission of Jurists*)

The list of the members of the Committee is given at the end of this report (pages 125-126). The conclusions adopted by the Committee and approved by the Congress in plenary session are given at pp. 27-28 above.

Tuesday, December 11, 1962

15.00—18.00

The CHAIRMAN welcomed members of the Committee and called upon the RAPPEUR to introduce the subject to be discussed by the Committee.

The RAPPEUR suggested that the discussions should be divided into two main parts: the first to deal with control of executive action by the courts (judicial review), and the second, control of executive action by the Legislature. The problem of governmental liability as another form of control of the Executive might also be considered, and a look might be taken at the Lagos *Conclusions* on the questions of emergency powers. To discuss judicial and legislative control over the Executive made sense only on the basis of the separation of powers. Restricting his remarks to judicial review, he said he hoped that reliance would be placed on the work already done at Delhi and Lagos. This would not preclude discussing such previous *Conclusions* (as might seem to need reconsideration). Some emphasis might have to be put on what special answers were required to the problems of review in the spheres of economic and social policy, particularly in regard to developing countries.

Judicial review could be broken down into two parts: review of delegated legislation and review of executive decisions, including discretionary acts. In regard to the former, the Committee might have to reconsider the Delhi *Conclusions* on the permissible scope of delegation i.e. that "the delegation of legislative powers should be within the narrowest possible limits". At Lagos this had been modified by

**Judicial Review
of Executive
Action**

**Review of
Delegated
Legislation**

w of
rtive
ions

stating that legislation should be delegated only in respect of economic or social matters. In the context of this Lagos *Conclusion* the Committee might have to consider whether judicial review of delegated legislation should extend to all matters in which fundamental human rights were involved. On judicial review of executive decisions the Committee could discuss whether this should be limited to those acts of the Executive which affected a person, his property or his rights. Sometimes review might be appropriate where only individual interests were involved. This could lead to the question whether an individual should not have standing in the courts to attack an executive act detrimental to the public interest. Another point was to what extent, in the absence of statutory provisions, courts could base review on principles of natural justice. The whole question whether the Executive should have to give reasons for its administrative acts might have to be examined. Whether the courts could review the exercise of discretion by officials (in such fields as deportation and passport cases) merited investigation. The RAPPORTEUR emphasized that administrative procedure would have to be left to Committee I.

A discussion followed on the procedure to be adopted by speakers. The CHAIRMAN's suggestion that intending speakers should write down their names on a list met with approval.

tion in
us Countries

Mr. A. WADE of Senegal said that in the developing countries of today citizens whose rights had been violated often did not avail themselves of their remedies. Because developing countries usually had governments under the single-party or dominant-party system, with wide powers to change Constitutions, it might be worth considering making provision for citizens to appeal against unconstitutional laws.

Dr. A. LUNA ARROYO of Mexico advised the Committee to study the system of "internal control" in the Mexican Constitution whereby all Presidential decrees had to be signed by Secretaries of Executive Departments. Objections could be raised by private individuals to decisions of the Executive validated by Secretaries of State.

Dr. J. YEPES DEL POZO of Ecuador said that the Committee should confine itself to procedural law. He questioned whether the Conclusions which the Congress would reach would be applicable to all countries, especially newly emergent ones. In Ecuador there existed a perfect system of control over the Executive, the exercise of its legislative powers being restricted to the economic field. All countries had to evolve procedures suitable to their needs and must not slavishly imitate other systems.

Dr. F. E. GUANDIQUE of Nicaragua said that, as parts of the Working Paper showed, in some Latin American countries the Executive was in complete control. He felt that a basic problem was how to form a Judiciary completely independent of the Executive. Formal legislation on this subject was quite inadequate. He agreed with Dr. J. YEPES DEL POZO that procedure was the essential factor.

Chief Justice ABU RANAT of Sudan wished to distinguish between executive action by bodies and executive action by individual officials.

In the former case the courts' control should extend only to examining what action was *ultra vires*. In the latter the courts should examine the law and the facts to determine if an individual had been deprived of a right concerning his liberty or property.

Dr. R. E. CRUZ UCLÉS of Honduras said that for more than a century a fully liberal system had been absent in the countries of Latin America and cases of dictatorships lasting years could be quoted where non-observance of human rights had been the general rule. To protect human rights against encroachment by the Executive, administrative courts would have to be established in Honduras and other Latin American countries lacking such bodies. In Honduras, the Executive was both judge and party in the administrative field. The courts often postponed giving decisions. He recommended setting up on a regional pattern international courts for the protection of Human Rights, like the European Court, with a World Court to hear appeals from the regional courts.

Dr. E. CÁCERES-LEHNHOFF of Guatemala, in outlining the machinery for control of the Executive in his country, said that many attempted abuses on the part of the Executive had been frustrated by the Legislature through the Act for the Protection of Constitutional Rights. In Guatemala the Legislature was completely independent of the Executive, whilst the Supreme Court judges and judges of the Court of Appeal were appointed or elected by Congress.

Dr. C. HAYEM of El Salvador thought that it would probably not be necessary to reopen or review the New Delhi and Lagos *Conclusions*. What was needed to check Executive power were *a priori* controls. There was agreement that ways existed of frustrating appeals to the courts. The idea of setting up an international court was interesting but he doubted if individuals would be able to afford the costly procedure that would be involved.

Mr. A. RAZAQ of Nigeria, commenting on judicial control over discretionary powers of the Executive, said that experience in Nigeria showed that the courts did not consider control of these powers to be within their ambit. The danger was that the exercise of discretionary powers too often went unchallenged. The Legislature should avoid, whenever possible, the delegation of discretionary powers to the Executive. Disputes between the citizen and the State should be heard before the ordinary courts of the land and not before administrative or special courts. Lawyers, especially those in a position to influence the drafting of legislation, had a role in protecting the rights of individuals. Disagreeing with the views of some previous speakers he felt that there were certain international principles of law which should, regardless of their source, be recognized by all States, including emergent ones. The independence of the Judiciary was a cardinal point, and he commended to all a study of the Nigerian Judicial Service Commission, an entirely independent body appointing the judges.

The CHAIRMAN thanked Mr. A. Razaq for his speech and observed that a *Conclusion* of Lagos had already laid down that review of

**Judicial Control
over Discretionary
powers of
Executive**

administrative action should be entrusted to the ordinary or the administrative courts.

Mr. Justice S. M. MURSHED of Pakistan referred to the paragraph in the Working Paper inviting discussion on whether judicial and legislative controls were designed to help governments achieve reasonable standards of economic security, social welfare and education for the people. He thought that if the Judiciary concerned itself with such questions it would be the end of the Judiciary. The function of the Judiciary was primarily concerned with protecting rights of individuals and whether the exercise of power was lawful. Therefore judicial and legislative controls should be kept quite separate.

Dr. C. MOLINA MAYORQUÍN of Nicaragua said that the problem in his country was to find men who would stand firm against abuses of executive power. Conventions embracing international courts raised questions of national sovereignty. Courts to be effective would need powers to deal with those persons guilty of violating human rights.

It appeared to Dr. R. P. FERREIRA SOBRAL of Argentina that what had been said so far referred to abnormal conditions. He desired a clearer distinction between discretionary and non-discretionary powers. In Argentina administrative courts had not given satisfactory results. Whilst reasonable controls over the Executive should be maintained, the Executive should not be fettered with too many controls or it would lose its freedom of action.

Professor A.-J. MAST of Belgium, referring to the question raised in the Working Paper as to when judicial controls unreasonably impaired the powers of the Executive to discharge its functions, said that the courts should not replace executive power. Judicial precedents in Belgium, as well as in France and the Netherlands distinguished between questions of law and of expediency. The former were for the courts, the latter for the Administration. Turning again to the Working Paper, he thought that the answer to the question whether judicial protection should be extended to general interests was that shifting boundaries between the two made it almost impossible to distinguish between public and private interest. We could go no further than hope that judicial precedents would be progressive in character.

Dr. CELSO MARTINS COSTA of Brazil thought that existing procedural safeguards would be more effective if there was complete separation between Judiciary and Executive, so as to ensure a fully independent Judiciary. He also called for despatch in the administration of justice.

Professor E. HAMBRO of Norway agreed with Mr. A. Razaq, but thought that it was possible for the courts to watch over discretionary decisions of the Executive. In Norway the courts could set aside such decisions (1) when they apparently were *ultra vires* the discretion given, (2) when administrative organs had violated procedural rules safeguarding the individual, (3) when there had been an abuse of power and (4) sometimes, when the exercise of the discretion was unreasonable. He also agreed with Mr. A. Razaq that we must not

be so parochial as to refuse to use well-recognized principles of law simply because of their foreign origin.

Chief C. C. OGUBANJO of Nigeria commended to delegates the Conclusions of the Lagos Conference, but thought that a State's Constitution would benefit by the inclusion of a "due process" clause.

Wednesday, December 12, 1962

09.00—12.00

**Separation of
Powers and
Control of
Executive—
Role of Judiciary**

The CHAIRMAN drew the attention of the Committee to the substantial measure of agreement on certain points emanating from the speeches yesterday; for instance the principle of control of executive action by the courts. A more delicate proposal was the one concerning an international court. There had been insistence that discretionary powers in the hands of the Executive did not exclude strict enforcement of the law. Respect for the principle of the separation of powers had also been stressed.

Mr. N. S. MARSH of the United Kingdom emphasized both the duty of the Legislature in defining the purposes for which discretionary powers were given, and the duty of the courts carefully to examine these purposes and the actual purpose for which it was exercised. It was important to strengthen the power of the court—limited in some countries, including to some extent the United Kingdom—to examine documents and the administrative background in which the discretion had been exercised.

Dr. A. LEAL MORALES of Colombia thought that the original definition of the separation of powers had undergone a change and pointed as an example to the Constitution of the Fifth Republic of France. The extension of executive power could lead to decisions of the Executive being given the force of law. He was against general control by the courts over discretionary powers. Special administrative courts were the most suitable way of controlling, where applicable, the powers of the Executive.

Mr. P. TRIKAMDAS of India said that the Constitution of India did not permit the granting by statute of "naked" discretion in matters relating to fundamental rights guaranteed by the Constitution. In other matters general discretion could be granted. The courts always had the power to examine the discretionary act and strike it down if it was *ultra vires* or an abuse of power, or if activated by *mala fides*. In the field of quasi-judicial determinations of the Executive he thought that the Committee might examine the question whether the courts should be empowered to look into the actual facts and evidence prompting the Executive's decision. He warned that, whilst an international court might be suitable for certain areas of the world, real safeguards should be built up inside a country. He agreed with

Mr. A. Razaq that in establishing a society respecting the Rule of Law the origin of a particular institution or principle was irrelevant.

Judge F. PEÑA TREJO of El Salvador was doubtful of the value of an international court in Latin America, but did not believe that the Commission should reject out of hand a principle which might carry moral weight. He went on to outline procedures available in his country to control executive action.

Mr. A. WADE of Senegal had received the impression that a problem in Latin America was the dependence of the Judiciary on the Executive. One problem in Africa, in contrast, was the overlapping between the Legislature and the Executive. In Africa fundamental principles were sometimes violated by the Executive who simply changed the Constitution or passed new organic laws. The setting up of special courts to hear cases of a political nature was an example. One purpose of the Committee's work was to try and reconcile the needs of economic development, as manifested in planning, with the law and the guaranteeing of rights of foreign investment.

The RAPPOREUR agreed with a view expressed by Latin American members of the Committee that there was no sense in talking about judicial review unless judges were independent, but said that for this Committee's discussions it must be assumed that there was independence of the Judiciary.

Dr. L. CARNEIRO of Brazil pointed out that a court dealing with individual grievances against governments did once exist for a short time in Central America. He thought the separation of powers question should not be viewed in absolute terms and that the concept of judicial control over the Executive could be unduly restrictive. The element of public opinion was important generally. In Brazil the courts were free from government interference and had wide powers to declare laws unconstitutional. He did not favour administrative tribunals.

Mr. F. H. W. RAMSAHOYE of British Guiana said the essence of judicial control was to see that the Executive acted in accordance with the law. There was no reasonable case for general control by the Judiciary of the discretionary power of the Executive; governments could not function properly where judicial review was the rule rather than the exception. Judicial control was most effective when operating as a deterrent against improper executive action. He did not believe that in Common Law countries the principles involved in the *ultra vires* doctrine were inadequate and thought it would be unwise if the Committee tried to limit the power to delegate legislative authority.

With regard to delegated legislation in general, Chief Justice H. O. B. WOODING of Trinidad agreed that the courts should have power to decide whether legislation was *intra vires* or not. But where discretionary powers were concerned he thought the inquiry should be wider. Whilst agreeing with the previous speaker that the Executive should not be unduly restricted he thought that in the circumstances mentioned by Professor E. Hambro the previous day the courts

should have the right to interfere, but promptly. It depended on the country whether recourse was to the ordinary courts or to administrative courts.

Professor S. J. DE E. MELLO of Brazil told the Committee that in Brazil the powers possessed by the Judiciary to intervene where rights of persons were violated were very considerable. But he begged the indulgence of the Rapporteur on the question of the independence of the Judiciary. The principle of the separation of powers did not completely exist in Brazil since the Judiciary in some states were subject to political influences. Judicial independence required that the Judiciary determine its own organization, appoint its own secretarial staff, and draw up its own budget. Further, judges should have adequate emoluments.

Need for Judicial Independence

Mr. PER T. FEDERSPIEL of Denmark agreed with Chief Justice Wooding's remarks on control of discretionary powers. On the delegation of legislation to the Executive he urged the revision of the Lagos *Conclusion* that legislation should only be delegated in matters of a social and economic character. In social matters close to human rights, they should not be delegated. In economic matters they had to be. But there were many other areas, such as traffic regulations, where they had to be delegated, too. The approach to delegated legislation should be a pragmatic one and such legislation should take the normal form of legislation that is, it should be clear, not retroactive and so on, and be subject to the same judicial control. Finally he could see no conflict between parliamentary and judicial control.

Delegation of Legislation on Economic and Social Matters

Mr. A. NEDER of Brazil agreed that administrative action should be controlled by the Judiciary or by administrative tribunals, and suggested that such control could be achieved by means of the *actio popularis* of Roman law, whereby any citizen was entitled to bring an action in defence of a public interest or a private right.

Controls by Administrative Tribunals

Mr. S. MACBRIDE of Ireland thought that two objects should be kept in view. The first was to keep the Executive within the limits of the powers conferred on it by law. The second was to prevent encroachments by the Executive. These encroachments could arise for reasons of expediency, or from a desire for greater power on the part of the bureaucracy or from corruption of some kind. The Committee should proceed on the basis of the unreasonable Executive. He therefore proposed that judicial control should extend to confining the Executive to the powers conferred by law, confirming that powers given by delegated legislation were not exceeded, ensuring powers granted were not used for a collateral or improper purpose and seeing that the rights of the individual were not infringed. The courts in considering human rights cases should take into account the standards laid down in the Universal Declaration of Human Rights. The impact of the European Court had been very considerable and the Committee should propose regional conventions on human rights adapted to the conditions of the area.

Executive to Keep within Legal Limits

Dr. C. V. DO COUTO E SILVA of Brazil said that fundamental guarantees must become an organic part of the social framework. He drew the attention of the Committee to the features of Brazilian law which checked both the power of the Executive and the Legislature, including the "Mandate of Security" which could be invoked against any abuse of power by the administration.

Professor B. N. ESEN of Turkey thought that judges should be appointed by the Judiciary. He believed that protection could best be given to the individual on two levels. On one, control by the municipal courts with power to review all forms of executive action involving the particular interests of the individual; and on the other, control by supra-national courts working in conjunction with the municipal courts.

Mr. C. A. CASSELL of Liberia referred all delegates to the final paragraph of the Act of Athens of 1955. He thought the discussion had so far been centred on refinements of the Rule of Law. But he was concerned with the greater problem of bringing the Rule of Law to those persons for whom it did not exist, people behind the iron curtain, in China, in Africa and other places where civil liberties did not exist. For this reason he strongly supported the creation of an international court under which all States would be made to observe the Rule of Law.

Dr. E. B. UCLÉS RODÍGUES of Honduras proposed that all Supreme Court judges be elected by popular, secret and direct vote, that the International Commission of Jurists appoint representatives in countries it deemed desirable and that these representatives frequently call jurists and students of law together for seminars with a view to informing the public about the Rule of Law. In this way, the Commission would be giving effect to the second request set out in the Declaration of Delhi.

Dr. R. P. FERREIRA SOBRAL of Argentina referred to an excerpt from an answer to the questionnaire quoted in the Working Paper suggesting that the jurisdiction of the courts to control executive excesses had been enlarged by the Constitution. He could not agree with this proposition, as it would constitute an encroachment by one power on another. Conclusion 4 of Committee II of the Lagos Conference, also quoted in the Working Paper, deserved careful reflection. He thought that administrative action should only be suspended by the courts in exceptional circumstances.

Mr. Justice S. M. MURSHED of Pakistan thought administrative authorities should state reasons for their decisions and that an aggrieved person should have access to departmental files when these were produced in court. The principles of natural justice should always be applicable whether the exercise of the power was administrative or quasi-judicial. He recommended the establishment for Common Law countries of an Administrative Division of the High Court. The practice of sub-delegation of legislation should be restricted as far as possible.

In the view of Mr. Justice J. B. MARCUS-JONES of Sierra Leone the courts should not interfere where Parliament had specifically excluded judicial review. Therefore the Legislature should define very clearly the extent and purpose for which discretionary powers had been granted.

The RAPPORTEUR proposed that a sub-committee be set up to prepare the work of the drafting committee on the first part of the discussions and proposed the names of Mr. MacBride (Chairman), Dr. Razaq and Mr. Trikamdas, with Mr. Marsh as adviser.

Wednesday, December 12, 1962

15.00—18.00

Dr. G. RETANA SANDI of Costa Rica agreed that acts of the Executive should be controlled by the courts and stated that in Costa Rica no distinction was made between discretionary and non-discretionary acts. All acts of the Executive were said to fall into the latter category and as such were subject to judicial review. Where the administration was empowered by law to decide what constituted the public interest the courts had to accept the decisions of the Executive, but control by the courts in respect of defects of formal procedure and wrongful exercise of powers was allowed.

Dr. A. LEAL MORALES of Colombia read out the following declaration signed by participants from Argentina, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras and Nicaragua:

**Constitutional
Controls in Latin
America**

The undersigned, delegates of Latin American countries to Committee II, hereby declare:

1. That in all Latin American republics political Constitutions long in force exist which ensure the separation of the traditional organs of power: the Executive, the Legislature and the Judiciary;

2. That these Constitutions provide adequate safeguards for the fundamental rights of citizens;

3. That these Constitutions provide for adequate control of executive action by the Judiciary and the Legislature;

4. That judicial control is exercised through the right, on the part of citizens, to appeal to ordinary courts or to special administrative tribunals, without this excluding the existence, in some nations, of agencies established by the constitution specifically entrusted with the legal control of executive action;

5. That legislative control, whenever the constitution is violated by the Executive, can be exercised by means of accusatory procedure before the National Congress;

6. That the fact that at certain times in their political life certain Latin American countries may disregard these legal principles affects in no way whatever the existence of a Constitutional form of government, in many instances dating back more than a century, or of generalized legal consciousness in the Americas.

Signatures

ts on Control
xecutive
in

Dr. J. YEPEZ DEL POZO of Ecuador had been led to wonder by some speeches, whether countries in Latin America were not passing through a serious crisis arising from the abuse of power by the Executive in virtue of its encroachment on the functions of the Legislature and the Judiciary. If substantive laws and procedures were lacking they would have to be provided. Was there a lack of men in the Legislatures and the Judiciary of sufficient rectitude and integrity to check the Executive? He was doubtful if an international court would be effective. Hence he proposed that legislation should be drafted on a national level for the protection of individual rights.

Dr. G. GALLARDO VÁSQUEZ of Mexico agreed entirely with what Dr. A. Luna Arroyo had said. He did not think that it should be the aim of the Congress to control executive action to an unlimited extent. He favoured providing the Executive with ways of controlling its own actions—"internal control". This would also help the Judiciary to decide when to intervene where rights had been infringed or power abused.

Mr. J. W. R. KAZZORA of Uganda supported what had been said by Mr. MacBride and Mr. Federspiel. He was worried about finding the right sort of protection to prevent the citizen from being crushed by the power of the Administration. After the resolutions had been passed by the Congress he recommended that a committee be set up to conduct research into the exercise of discretionary powers in various countries.

Mr. R. DEGOUY of France invited delegates to consider what the well-established *Conseil d'Etat* system had achieved in demarcating the limits of encroachment by the Executive. The effect of the *Conseil d'Etat* had consistently been to enforce strict observation of the rules governing the Administration. It was generally agreed that the body of judicial precedent emanating from its decisions had had no prejudicial effect on the exercise of power by the Executive. He visualized an international court, not as working in combination with the municipal courts, but as an appeal or supreme court. For such a court he did not favour elected judges.

The CHAIRMAN had received the following motion from Judge J. L. LUMBARD of the United States:

That Committee II requests the International Commission of Jurists to make inquiry into the facts regarding judicial independence in the various countries of the world and then to publish a report of its findings. The Commission should request all delegates to this Congress to submit such information as they have which is relevant to this inquiry.

It was agreed that the motion could be appropriately passed to Committee III.

At this stage the RAPPORTEUR was asked by the CHAIRMAN to introduce the second part of the Committee's discussions on control of executive action by the Legislature. This subject, the RAPPORTEUR said, had received little consideration in the previous work of the

ontrol of
cutive Power
egislature

International Commission of Jurists. It had been said in answer to the questionnaire that judicial control of the Executive had to be strengthened as legislative control was breaking down more and more. But, for the Rule of Law, reliance had also to be placed on legislative controls. Referring to legislative control of delegated legislation and what had been decided at Delhi (Clause II of the Report of Committee II) and Lagos (Clause I, paragraph 2 of the Report of Committee I), he thought the Committee could discuss where exactly the control should lie and whether approval by the Legislature was better than supervision. On general control over the Executive the political aspect should not be discussed, but the Committee should consider financial control over expenditure of public money. Investigatory committees of the Legislature were another important way of controlling and surveying the work of the Executive. A very careful look would have to be taken at the Ombudsman institution, which might provide a central theme for the debates of the Committee. One other instrument of control was the legislative power of impeachment. Finally the Committee might enter on the complex field of control of nationalized industries.

**Legislative
Control of
Delegated
Legislation**

Chief Justice T. WOLD of Norway outlined the Ombudsman system as introduced in the Scandinavian countries. Modern society depended increasingly on decisions by the Administration and it was to try to help the individual citizen in his relationship with the Administration that the Ombudsman system had been created. Under the system the small man had an opportunity to have his interests looked after in a way that was simple, effective, speedy and without cost. Sweden had had its Ombudsman for 150 years, Denmark since 1955 and Norway had just introduced the institution (Finland also had an Ombudsman). In Norwegian law it had been laid down that the Ombudsman's task was to ensure that injustice was not done to the individual citizen by the decisions of the Administration or officials acting in error or in neglect of duty. Every citizen, even those in prison or under arrest, had the right to complain to the Ombudsman. Complaints could be put forward informally and at no cost. The Ombudsman had the right of access to all the documents of the administration, but no power to decide a case. His only power was to state his opinion, but because he was an independent person elected by Parliament and not a politician, his opinion would carry great weight. In carrying out his duties the Ombudsman could investigate matters of both law and fact and could express an opinion on how administrative discretion had been exercised. It was also thought that the Ombudsman would be of great help to the Administration itself. The work of the Ombudsman in no way ousted the jurisdiction of the courts; a man who had made a complaint to the Ombudsman was always free to go to the courts as well. The decisions taken by the courts were outside the competence of the Ombudsman.

**Ombudsman and
other Systems of
Administrative
Control**

Mr. H. R. C. WILD of New Zealand said that his country had followed the Scandinavian lead and recently appointed an Ombudsman.

There were two reasons why the Committee should study this institution. Firstly, it provided a protection for the rights of the individual against the action of bureaucrats, and, secondly, in comparison to the ordinary courts it gave flexibility and informality. The Ombudsman's jurisdiction should be wide and perhaps subject only to the needs of national defence and security; it was debatable whether the decisions of Ministers should be the subject of scrutiny and there might be Constitutional difficulties here in parliamentary government. Procedure should be informal and the investigation conducted privately. The normal judicial rules on access to official papers and files should not apply. The Ombudsman's power to report his opinion should be enough to ensure prompt remedial action where applicable.

Mr. PER T. FEDERSPIEL of Denmark said that whilst it was true that many of the complaints brought before the Ombudsman were groundless, the value of the institution lay in its salutary effect on the Administration. In Denmark complaints could be initiated by individuals, Parliament or by the Ombudsman himself. Turning to delegated legislation and the Delhi *Conclusions* he thought it made no sense for the Legislature to control such legislation *before* it came into effect. The important thing was that Parliament had the power to review or reverse regulations issued by the Executive if found to be contrary to the intentions of Parliament. This was basically political and not legal control. Thus, the subsequent approval by Parliament was unnecessary. The Ombudsman could not perform any useful function on behalf of Parliament in this regard, for excesses by the Executive would either be taken up in the courts or would involve a political question for Parliament, unless, where there had been a general abuse of powers, Parliament had asked the Ombudsman to investigate. He could see little difference between the general control of the Administration by Parliament and the particular control of delegated legislation.

Judge H. H. COHN of Israel did not agree with the Delhi and Lagos *Conclusions* concerning restrictions on delegating legislation. He could see no wrong in delegating legislation, a process which was a necessity today. Parliamentary vigilance was required in respect of emergency regulations and he proposed that such regulations interfering with the property rights of an individual should not remain in force except for a limited period of time. Where fiscal matters had been delegated they, too, should be subject to subsequent parliamentary approval, even if only silent approval. The laying on the table procedure of the British Parliament was an adequate method. In Israel there was an institution known as the State Controller whose creation owed much to the Scandinavian system. The Controller's function was to report annually to Parliament on every part of the Administration. It was imperative that such an official had to be independent of the government and that due publicity be given to his reports. The atmosphere of vigilance and control which these kinds of institutions promoted would be appropriate in developing as well as developed countries.

On the Question of the Ombudsman Dr. C. HAYEM of El Salvador wondered whether this institution was not similar to the *Ministerio Fiscal* in Latin America, who was partly an Attorney-General and partly an Attorney for the Destitute; one function of this office was to carry out an investigation to decide whether or not cases should go to the courts. As the Ombudsman could only give an opinion he did not see that the institution could be effective in controlling the Executive. He thought that the Ombudsman system would not fit into the presidential type of government.

Dr. A. LUNA ARROYO of Mexico was not altogether in agreement with Dr. C. Hayem. In Mexico there were various "Ombudsmen" but they all came under the jurisdiction of the Executive. He thought that Dr. Hayem was confusing the function of the Attorney-General, one of which was to handle free of charge cases on behalf of poor people. He thought the Scandinavian solution of appointing an Ombudsman by the Legislature intelligent and one which should be put into practice in Mexico.

Dr. R. E. CRUZ UCLÉS of Honduras referred briefly to the first part of the discussions. The Central American Court of Justice was organized as a result of the Washington Pact of 1907; both State and individuals had access to the Court in cases where human rights were violated. The question of control by the Legislature of delegated legislation did not arise in Honduras as legislation could not be delegated to another branch of government. As regards general control over the Executive this was exercised by the National Congress once a year when it approved or censured executive action in all branches of administration. He thought the Ombudsman institution was an experience which could easily be assimilated by Latin American countries.

Delegated
Legislation and
Parliamentary
Control

Professor A.-J. MAST of Belgium said that if Belgium were to be taken as an example, delegated legislation was inevitable. He was not convinced by Mr. Federspiel's view that Parliamentary control was essentially political. One method of legal control was to ensure that delegated legislation did not touch on certain reserved questions, such as the great constitutional freedoms. Another control could be exercised by parliamentary committees, which had in Belgium considerable powers in advising on proposed measures. Regarding *a posteriori* ratification by Parliament he did not think this effective, as it often took place months or years later.

Mr. A. WADE of Senegal did not think the Lagos *Conclusions* were sufficiently explicit on the rights of individuals in public emergencies. He felt there was need for judicial control in these circumstances. He suggested that the Parliamentary Committee on delegated powers in Senegal might be a useful check on the activities of the Executive. He proposed that the phrase "parliamentary control" be adopted so that political control such as committees of inquiry and parliamentary questions could be considered. The CHAIRMAN agreed with the last point made by Mr. Wade.

Chief Justice H. O. B. WOODING of Trinidad thought delegation of legislative power quite inevitable today. He re-emphasized that the delegation should be in precise terms; this would help judicial control. He felt there should be a special legislative committee, preferably under the chairmanship of a member of the opposition, with the duty of scrutinizing all subordinate legislation. He thought the services that an Ombudsman could render the little man very important.

Chief Justice T. WOLD of Norway thought Parliament should limit the power of delegating legislation to the Executive as much as possible. He agreed with Professor A.-J. Mast that control was not only political.

Dr. A. LEAL MORALES of Colombia divided parliamentary control, a term he, too, preferred, into two categories: *A priori* and *a posteriori* control. In the former, control could pertain to fixing the duration of time in which the Executive was permitted to legislate and to delimiting the kind of matters on which it should legislate. In the latter instance the ordinary, simple exercise of legislative power by Parliament would be sufficient. The power of Parliament to check the Executive in times of emergency was quite a different matter and the form of control by the Legislature was mainly *a posteriori*.

The CHAIRMAN suggested that the remaining speakers on this topic should be heard on the next day. As a sub-committee for the preparation of the work of the drafting committee on the second part of the discussions the RAPPORTEUR put forward the names of Federspiel (Chairman), Cohn, Rengifo, Wade and Wooding.

Thursday, December 13, 1962

09.00—12.00

The CHAIRMAN said that some measure of agreement seemed to have emerged from earlier discussions insofar as it was felt that the delegation of powers might be an evil but a necessary one. The extent and purposes of these powers should be limited and subject to some form of control. The Legislature also provided control as the budgetary authority. Control by the Legislature through the Ombudsman device had been fully discussed and committees of inquiry had been canvassed.

Mr. F. H. W. RAMSAHOYE of British Guiana thought that in parliamentary systems there was little to be said for a system of controls by the Legislature. In other systems such control might be helpful. While the Committee might agree on the circumstances when controls would be effective, the forms of control should best be left to the various countries concerned.

A discussion, initiated by Professor B. N. ESEN of Turkey, then took place on whether the phrase "parliamentary control" was more

apt than "legislative control". Mr. R. DEGOUY of France favoured the phrase "*Le contrôle de l'exécutif par le parlement*" or "*contrôle parlementaire*". Chief Justices WOLD of Norway and RANAT of Sudan did not favour the term "parliamentary", while Mr. PER T. FEDERSPIEL of Denmark agreed with the use of the term. The CHAIRMAN, supported by Mr. A. WADE of Senegal, said that the ambiguity lay in the French meaning of the terms which had been used. The RAPPORTEUR suggested that, as this was only a matter of terminology, the drafting committee take care of it when drawing up the final English and French versions of the *Conclusions*.

Dr. E. BORGO BUSTAMANTE of El Salvador said that the discussions had been confined to delegated legislation and that there had been no further discussions of controls on the Executive in the quasi-judicial field. This, he felt, had been a mistake. He mentioned the *postestad reglementaria* which was a power of the Executive in certain countries to supplement the laws of the Legislature. On the question of legislative controls he agreed with Mr. Ramsahoye that means of control be left to individual countries.

The CHAIRMAN said that speakers had indicated that judicial control included control over administrative regulations.

Mr. Justice J. B. MARCUS-JONES of Sierra Leone believed the procedure of laying instruments before Parliament had constitutional value. He recommended a scrutinizing committee, as practised in the British Parliament, with power to examine all instruments to see whether they were open to objection. He outlined the position of the independent Director of Audit in Sierra Leone. He supported the institution of the Ombudsman and its introduction in newly emergent countries.

Dr. A. LEAL MORALES of Colombia then read the following text put forward as a proposal by Dr. R. COROMINAS SEGURA of Argentina:

**Proposal on
Delegated
Legislation**

1. The delegation of legislative powers to the Executive for the purpose of making rules having the force of law is a very delicate, serious and dangerous matter. This is something which cannot be done with respect to precepts relating to fundamental rights which affect the dignity and free determination of men; furthermore, if power is delegated so as to enable the Executive to adopt measures in the field of economic and financial interests, the endeavour must be made to confine the powers delegated to narrow and well-defined limits, since measures of this nature have obvious political and social consequences;

2. The power to regulate laws corresponds to the Executive and in the exercise thereof the spirit and the letter of the law must be observed;

3. The delegation of legislative power can give rise to a virtual economic or financial dictatorship which works to the detriment and harm of the normal conditions of life for individuals and society.

Mr. Justice S. M. MURSHED of Pakistan said that the idea of an Ombudsman had been at the back of peoples' minds in India, Pakistan and countries of this region. He felt the system was very useful and should be included in the Committee's recommendations.

Dr. N. DE SOUZA SAMPAIO of Brazil agreed that delegated legislation was a necessary evil. He suggested that the less developed countries might be advised to adopt the system obtaining under the Italian Constitution of "internal" delegation whereby a committee of the Legislature was empowered to legislate without the need for approval in full assembly. He recommended that the setting up of parliamentary committees of inquiry should be a right of the minority, where a request by a third or quarter of the Members of Parliament was sufficient for the establishment of a committee.

The RAPPORTEUR said that sub-committee A would be ready with its draft proposals shortly. Sub-committee B would be meeting immediately after the adjournment and it was hoped that they would have their draft proposals ready by the afternoon so that the final drafting committee would be able to try to combine the proposals from the two sub-committees and put up draft conclusions to the full Committee on Friday morning.

Friday, December 14, 1962

09.00—12.00

ft
clusions

The CHAIRMAN opened the session by thanking the two sub-committees which had been nominated to undertake the preliminary work for the drafting committee, which was composed of the officers of Committee II. The draft conclusions had now been circulated and were submitted to delegates for approval or amendment.

Mr. S. MACBRIDE of Ireland, the Chairman of sub-committee A, then stated that the draft conclusions bore no resemblance to the text of the proposals submitted by the sub-committee to the drafting committee, and asked for the original text of the sub-committee to be circulated to all delegates.

A long discussion ensued in which there was a measure of difference among delegates as to the right procedure to be followed.

It was pointed out by the CHAIRMAN that the drafting committee was responsible for submitting to the full Committee the draft conclusions. In carrying out their task they had had valuable assistance from both sub-committees whose proposals they had used in preparing the draft conclusions. Mr. R. RAMANI of Malaya voiced a widespread feeling among members of Committee II that the texts of the sub-committees' work should have been circulated.

The principle was eventually agreed that the Committee should work from the draft conclusions of the drafting committee but that due consideration would be given to any of the recommendations proposed by the sub-committees not included in the draft conclusions.

The texts of the proposals of the two sub-committees were later circulated to members of the Committee.

The Committee proceeded to examine the draft *Conclusions* clause by clause. Dr. J. YEPES DEL POZO of Ecuador would have preferred the title of the Committee's draft *Conclusions* to read "Control by the Legislature and the Courts of Justice over the Executive", but the CHAIRMAN ruled that the title had already been finally adopted and that discussion thereon could not be reopened. In regard to the preamble, on a suggestion made by Mr. PER T. FEDERSPIEL of Denmark, it was agreed that the wording should be altered to "effective safeguards against possible abuse of power..." to avoid the narrower phrase "rights of the individual".

Chief Justice T. WOLD of Norway did not like the last two sentences of clause 1 and proposed that the last sentence should be deleted. Judge H. H. COHN of Israel agreed and proposed that this clause should merely read "Judicial control must be effective, speedy, simple and inexpensive". The motion was put to the vote and carried.

It was agreed that a proposal from Judge J. E. LUMBARD of the United States that the International Commission of Jurists should make an inquiry into the facts regarding judicial independence in various countries of the world and publish a report on its findings, should be sent separately as a resolution of the Committee to the Chairman of the Congress.

In clause 2, Mr. R. DEGOUY of France proposed that the sentence should read "The exercise of judicial control demands full independence of the Judiciary and complete professional freedom for lawyers". Dr. F. E. GUANDIQUE of Nicaragua strongly supported this motion, which was unanimously carried.

A lengthy discussion now took place on clause 3, which differed substantially from the original text of Sub-committee A.

Messrs. COHN and RAQAZ wished to delete the first sentence in clause 3, while Messrs. MACBRIDE and TRIKAMDAS did not favour the wording in the draft conclusions at clause 3 (a) and (b). M. R. DEGOUY of France would have liked to see clause 3 (c) of the draft conclusions deleted, while Dr. J. DEL YEPES POZO of Ecuador wished for the whole of clause 3 to be deleted. A motion rephrasing clause 3 brought by Dr. A. LEAL MORALES of Columbia, and supported by Dr. E. CÁCERES-LEHNHOFF of Guatemala, was not adopted.

It was agreed that a motion by Chief Justice L. NEGRÓN FERNÁNDEZ of Puerto Rico on the safeguarding of the fundamental rights of the people to a free press should be submitted to the Chairman of the Congress.

Friday, December 14, 1962

15.00—19.00

The RAPPORTEUR said that during the adjournment he had sat down with Messrs. MACBRIDE and COHN and that they had worked

out a new draft for clause 3. The revised draft, which included two new clauses, read as follows:

(a) The Executive acts within the powers conferred upon it by the Constitution and such laws that are not unconstitutional.

(b) Whenever the rights, interests or status of any person are infringed or threatened by executive action, such person shall have an inviolable right of access to the courts and unless the court be satisfied that such action was legal, free from bias and not unreasonable, he shall be entitled to appropriate protection.

(c) Where executive action is taken under discretionary power the Court shall be entitled to examine the basis on which this discretion has been exercised and whether it had been exercised in a proper and reasonable way.

(d) The powers validly granted to the Executive are not to be used for collateral or improper purposes.

4. In establishing the purpose for which a power has been used it should be for the court to decide on evidence whether any claim not to disclose State documents is reasonable and justified.

5. When the infringement complained of is one affecting human rights, the courts should be entitled to take into consideration, at least as an element of interpretation and as a standard of conduct in civilised communities, the provisions of the Universal Declaration of Human Rights adopted by the United Nations.

In a discussion on this revised text a proposal by Chief Justice WOODING of Trinidad was adopted; this was that the words "and in accordance with the principles of natural justice" be added to clause 3.

M. R. DEGOUY of France was in general agreement with the revised clauses but had some misgivings as to how the new clauses 4 and 5 would work in practice. Mr. P. TRIKAMDAS of India would have preferred a reference in clause 3 (b) to the need for a fair hearing in accordance with the rules laid down in the *Conclusions* of the New Delhi Congress. Professor A.-J. MAST of Belgium suggested deleting the words "laws that are not constitutional" from clause 3 (a), but the RAPPOREUR explained that these words had been included at the insistence of Dr. L. CARNEIRO of Brazil to cover the case of South American countries in which Presidential decrees had the same status as laws. The revised text of Clauses 3, 4, and 5, was adopted by the Committee. With regard to the last two clauses of the Draft *Conclusions*, now renumbered 6 and 7, a proposal by Judge H. H. COHN of Israel was adopted, that the first phrase of Clause 6 on the nexus between the Judiciary and the Executive should be dropped as seeming to sanction such a nexus. Also in Clause 6, Mr. C. A. CASSEL of Liberia spoke strongly in favour of substituting the word "necessary" for "desirable", and for ending the clause with the words "such an international tribunal be a World Court of Human Rights whose writ would be effective in every jurisdiction". Professor B. N. ESEN of Turkey supported this proposal, which was adopted.

The Committee adjourned for a short time whilst the RAPPOREUR discussed with Judge H. H. COHN of Israel and Professor A.-J. MAST

of Belgium the draft *Conclusions* alongside the proposals of sub-committee B. A revised text was worked out and put before the reassembled Committee. This text reads as follows:

1. The complexity of modern society may necessitate the delegation of legislative power by the Legislature to the Executive, particularly where requirements of fair practice demand frequent changes or where the Legislature cannot be reasonably expected to deal with technical details.
2. Any act by which such legislative powers are delegated should carefully define the extent, purpose and, where necessary, the reach of delegated legislation and should provide for the procedure by which it can be brought into effect.
3. Delegated legislation should always be fair and reasonable and should be drafted in general terms. In no circumstances should it deviate from general principles of legislation or from the directives laid down by the Legislature.
4. To ensure that the Executive should loyally discharge its legislative mandate, the Legislature should entrust appropriate organs, such as standing committees with the task of scrutinizing all delegated legislation and reporting to it at fixed intervals the results of their scrutiny.
5. A high official, such as the Ombudsman in the Scandinavian countries and New Zealand, should be appointed by the Legislature either for a fixed period or for the duration of the Assembly. He should be entirely independent of the Executive, be responsible only to the Legislature and be remunerated directly by it. He should be entitled, and under obligation, to act either on his own initiative or at the request of the Legislature or on complaints from an individual. He should have full access to all government documents and files. He should have the power of summoning and examining witnesses as in a court of law. His report should be made at least once a year and should be given due publicity.
6. Attention is called to the power of the Legislature to exercise control through its right to appropriate public money. Such control can be strengthened by a High Official, like the State Controller in Israel, who exercises control over expenditure of public money and over the legality of Executive's actions in general.

Mr. A. WADE of Senegal wished to propose a preamble to part B to the effect that there should be no collusion between the Legislature and the Executive for the passage of legislation designed to cover Executive excesses and that citizens should be enabled to demand the annulment of such laws. This motion was not adopted.

Mr. D. HOYTE of British Guiana wished to amplify clause 2 with the object of including four broad principles viz, the principles of publicity, of ratification, of responsibility for delegated legislation and of review. The *RAPPORTEUR* said that the principle of publicity was implied in the "general principles of legislation" in clause 3. Review by the scrutinizing committee was provided for in clause 4. He thought from the earlier debates that members of the Committee were not especially in favour of *a posteriori* control.

Dr. J. T. NABUCO of Brazil expressed concern over the delegation by Parliament of powers to legislate.

In clause 5, Chief Justice T. WOLD of Norway was supported by Mr. MACBRIDE of Ireland in his proposal that the words "on the requests of the Legislature" be deleted. Mr. N. S. MARSH of the United

Kingdom pointed out that members of Parliament could always bring complaints in their individual capacity. The proposal was adopted.

Mr. Justice J. B. MARCUS-JONES of Sierra Leone proposed that the Ombudsman be appointed for life. Judge H. H. COHN of Israel agreed that it should be for a fixed period. Both Professor E. HAMBRO of Norway and Judge J. E. LUMBARD of the United States, however, cautioned against having too absolute a rule on this point, and the motion was not adopted.

On clause*6 it was decided to drop the specific reference to the State Controller in Israel who, Judge H. H. COHN of Israel said, was a kind of Auditor-General and Ombudsman combined. The clause in its final form related only to control of public money and not to control of executive action in general.

The numerical order of the clauses in Part B were slightly changed before agreement was reached on these final Conclusions.

The proceedings were brought to a close by Mr. Justice J. T. THORSON of Canada, the Honorary President of the International Commission of Jurists, who thanked, on behalf of Committee II, the Chairman and Rapporteur and officers of the Committee for the work they had done.

MEMBERS OF COMMITTEE II

MOHAMMED AHMED ABU RANNAT (*Sudan*)
ROBERIO ALBUQUERQUE LIMA (*Brazil*)
ANDRES A. ARAMBURO (*Peru*)
ABDUL HAMID N. BAKOUSH (*Libya*)
JOSÉ BARBOSA DE ALMEIDA (*Brazil*)
JONAS BARRIOS ESCALONA (*Venezuela*)
HIKMET BELBEZ (*Turkey*)
CESAR BENGZON (*Philippines*)
ERNEST BOKA (*Ivory Coast*)
DUDLEY B. BONSALE (*U.S.A.*)
ENRIQUE BORGO BUSTAMANTE (*El Salvador*)
BETTY B. BORGES FORTES (*Brazil*)
EDUARDO CACERES-LEHNHOFF (*Guatemala*)
ALOYSIO DA COSTA CHAVES (*Brazil*)
HAIM H. COHN (*Israel*)
WILLIAM BELMONT COMMON (*Canada*)
RODOLFO COROMINAS SEGURA (*Argentina*)
RAMÓN ERNESTO CRUZ UCLES (*Honduras*)
ANTONIO DE ALMEIDA MARTINS COSTA NETO (*Brazil*)
RENÉ DEGOUY (*France*)
BULENT NURI ESEN (*Turkey*)
PER FEDERSPIEL (*Denmark*)
THUSEW SAMUEL FERNANDO (*Ceylon*)
RODOLFO P. FERREIRA SOBRAL (*Argentina*)
JOSÉ PEDRO GALVAO DE SOUSA (*Brazil*)
OTTO GIL (*Brazil*)
LOUIS FREDERICK EDWARD GOLDIE (*U.S.A.*)
FELIX E. GUANDIQUE (*Nicaragua*)
CARLOS HAYEM (*El Salvador*)
AHMED HOUMAN (*Iran*)
HUGH DESMOND HOYTE (*British Guiana*)
OLLI KUSTAA IKKALA (*Finland*)
PARVIZ KAZEMI (*Iran*)
JOHN W. R. KAZZORA (*Uganda*)
ARQUIMEDES LACONICH (*Paraguay*)
ALFREDO CECILIO LOPES (*Brazil*)
J. EDWARD LUMBARD (*U.S.A.*)
ANTONIO LUNA ARROYO (*Mexico*)
SEAN MACBRIDE (*Ireland*)
J. BANKOLE MARCUS-JONES (*Sierra Leone*)
NORMAN S. MARSH (*United Kingdom*)
ANDRÉ JOSEPH MAST (*Belgium*)
JUMA R. S. MAWALLA (*Tanganyika*)
GERARDO MELGUIZO (*Colombia*)
CARLOS MOLINA MAYORQUIN (*Nicaragua*)

SYED M. MURSHED (*Pakistan*)
 JOSÉ NABUCO (*Brazil*)
 LUIZ NEGRON FERNANDEZ (*Puerto Rico*)
 PAULO NEVES DE CORVACHO (*Brazil*)
 MARCEL NGUINI (*Cameroon*)
 AROUNA NJOYA (*Cameroon*)
 CHRISTOPHER O. OGUNBANJO (*Nigeria*)
 IVANIO PACHECO (*Brazil*)
 PRAVAT PATTABONGSE (*Thailand*)
 FRANCISCO PENA TREJO (*El Salvador*)
 JOSÉ EDUARDO PRADO KELLY (*Brazil*)
 RENÉ HENRI A. RAKOTOBÉ (*Malagasy Republic*)
 RADHAKRISHNA RAMANI (*Malaya*)
 ABDUL RAZAQ (*Nigeria*)
 F. H. W. RAMSAHOYE (*British Guiana*)
 CHARLES G. RAPHAEL (*U.S.A.*)
 OSVALDO RENGIFO VILDOSOLA (*Chile*)
 GONZALO RETANA SANDI (*Costa Rica*)
 RAFAEL RIBEIRO DA LUZ (*Brazil*)
 MIGUEL SEABRA FACUNDES (*Brazil*)
 SAUL L. SHERMAN (*U.S.A.*)
 JOSEPH T. THORSON (*Canada*)
 PURSHOTTAM TRIKAMDAS (*India*)
 HATIM BUDRUDIN TYABJI (*Pakistan*)
 RAFAEL EDUARDO VALERA BENITEZ (*Dominican Republic*)
 CLOVIS VERISSIMO DO COUTO E SILVA (*Brazil*)
 ABDOULAYE WADE (*Senegal*)
 REX SIMPSON WELSH (*South Africa*)
 HERBERT R. C. WILD (*New Zealand*)
 TERJE WOLD (*Norway*)
 HUGH O. B. WOODING (*Trinidad*)
 JUAN YEPES DEL POZO (*Ecuador*)

COMMITTEE III

THE ROLE OF LAWYERS IN A CHANGING WORLD

Chairman: MÁXIMO CISNEROS SANCHEZ (*Peru*)
Vice-Chairmen: ABDULHAMID N. BAKOUSH (*Libya*)
YONG-PUNG HOW (*Malaya*)
Rapporteur: FRANK C. NEWMAN (*United States*)
Secretary: MANUEL MORALES DÁVILA (*Bolivia*)
Adviser: LUCIAN G. WEERAMANTRY (*Legal Officer, International Commission of Jurists*)

The list of the members of the Committee is given at the end of this report (pages 152-153). The conclusions adopted by the Committee and approved by the Congress in plenary session are given at pp. 28-31 above.

Tuesday, December 11, 1962

15.00—18.00

The CHAIRMAN opened the deliberations of the Committee by drawing attention to the second paragraph of the Declaration of Delhi which recognized the Rule of Law as a dynamic concept for the expansion and fulfilment of which jurists are primarily responsible. He said that it was the duty of lawyers, being endowed by virtue of their profession with a special understanding of what is right, to crusade for the advancement of positive law to a point where the civil and political rights of the individual will be guaranteed and his legitimate aspirations will be realized. He then invited the RAPPORTEUR to make a short statement under the headings "How Many Lawyers?" and "Representation of the Indigent" before the Committee embarked on a discussion of these subjects.

The RAPPORTEUR then made some brief preliminary remarks. He referred particularly to the Introduction to the Third Committee in the Working Paper, which, he observed, was self-explanatory.¹ He said that the delegates at New Delhi and at Lagos sought to establish certain minimum Rule of Law standards. In this respect there was a departure in the present Working Paper in that the Conclusions suggested reflected not only minimum standards but also desirable goals for the attainment of which lawyers should work. In regard to "How Many Lawyers?", he wondered whether in view of the diversity of the answers to the Questionnaire received on this question and the varying conditions in different countries it was possible for the Third Committee to arrive at any general decision. In regard to "Representation of the Indigent" he observed that the Third Committee was fortunate to have available the Special Report of the International Legal Aid Association.

**Role of Lawyers
in Expansion of
Rule of Law**

¹ This referred to the Role of the Lawyer in Government and see Delhi Conclusions, Committee IV and Lagos Conclusions Committee III, *supra* pp. 12 and 20 respectively.

Dr. SERGIO DOMINGUEZ of Mexico said that it was important to emphasize not only the number of lawyers but also the quality of lawyers and their distribution. He had in mind the position in Mexico where there was a concentration of lawyers in thickly populated centres while there was a serious shortage of them in the provinces. Where there was a concentration of lawyers quite a different type of problem existed, namely the undermining of professional standards arising from severe competition.

Dr. JOSÉ BARBOSA DE ALMEIDA of Brazil said that his country too was faced with the problem of an excessive number of lawyers. This was attributable to the great number of ill-equipped law schools, each issuing many diplomas every year. With a view to remedying the situation a new set of rules governing the Brazilian Bar was expected to be adopted very soon. After their adoption a law school diploma would no longer suffice and prospective lawyers will have to undergo a training of at least two years in a law office before handling cases independently. It was hoped that this measure would not only raise the professional standards and income level of lawyers but would serve to discourage many having only an incidental interest in the law from seeking admission to the profession. He felt that there were distinct disadvantages arising from an excessive number of lawyers and such a situation had to be remedied.

Mr. FOUAD ATALLA of Jordan said that in contrast to Brazil his country suffered from a shortage of lawyers. It should not be so much the concern of this Committee to discuss the number of lawyers as their quality and standards. He suggested that this Committee recommend that a high standard of education be required before a student was admitted into a law school.

Mr. ADENEKAN ADEMOLA of Nigeria, dealing with the newly independent countries of Africa, pointed out that these countries suffered from an inadequate number of lawyers, particularly as, with independence, there was a definite need for legally trained personnel in many fields. Even in his own country where there were more indigenous lawyers than in all the other countries of Africa combined there was no problem of excess. There was, however, the problem of distribution already mentioned by Dr. Domínguez. In regard to the admission of more lawyers of a suitable standard to meet the problem of the countries which had emerged from former colonial Africa, he felt that this could be better discussed under "Ethics; Admission; Discipline". He added that this Committee should also consider the difficulties arising in countries where there were insufficient lawyers in relation to the exercise of the right of an arrested person to consult a legal adviser of his own choice.

Dr. JEAN-FLAVIEN LALIVE of Switzerland emphasized that this Committee should resist the temptation of recommending a kind of lawyer malthusianism and should be careful not to create the impression that the legal profession was an exclusive club. He opposed restrictive practices, but agreed with Mr. Attala that the remedy lay

in the improvement of recruitment levels. He also supported the view of Dr. De Almeida that an adequate period of practical training was important.

Mr. ROBERT G. STOREY of the United States agreed with Dr. De Almeida that there was a problem of overcrowding of the Bar in many countries. He did not however believe in any arbitrary limitation of numbers. He felt that if the problem of how to produce lawyers of better quality imbued with the ideals of the profession and attuned to the changing conditions of society was solved, problems of number and distribution would take care of themselves. He also outlined the steps taken by the American Bar Association to ensure satisfactory standards of admission.

Dr. MANUEL ABREU CASTILLO of Puerto Rico detailed the methods by which adequate standards of admission to the profession were established and maintained in his country. He referred to the inherent power of the Supreme Court of Puerto Rico to regulate the practice of the legal profession. He said that as membership of the Bar Association was obligatory, the Association was in a position to ensure that high professional and moral standards were maintained. In answer to a question from the RAPPORTEUR he said that law schools in Puerto Rico were accredited not by the government but by the Supreme Court and that no person could sit for a bar examination unless he was a graduate of a university recognized by the Supreme Court.

The CHAIRMAN observed that judging from the trend of the discussion it seemed to him that the basic question was not "How many lawyers?" but rather "What sort of lawyers?". He felt it might be desirable to include in the Conclusions of the Committee some kind of appeal to the jurists of the world to be guided in their professional activities by a humane, altruistic and idealistic spirit regardless of whether there was a shortage or surplus of lawyers.

Mr. GEORGE N. LINDSAY of the United States observed that as society grew more complex a larger number of legally trained personnel was required to cope with the increasing problems in the law, in administration, in industry and in business, while Dr. LUIS QUINE ARISTA of Peru remarked that the problem of the number of lawyers would depend on the peculiarities of and the conditions prevailing in each individual country. They were both basically in agreement with the CHAIRMAN that the real problem was not "How many lawyers?" but rather "What sort of lawyers?".

Mr. ENOCH DOMBUTSCHENA of Southern Rhodesia pointed out the peculiar problems of his own country where the Bar was composed of white lawyers and there was only one African barrister. These problems, he said, would be heightened when Southern Rhodesia gained independence. A means would have to be found to produce the greatest number of lawyers in the shortest possible time.

Mr. G. E. GARRETT of the United Kingdom thought that the number of lawyers should be self-regulated by the demand, subject

Qualities of
Lawyers

of course to two prerequisites, the maintenance of the requested standard of qualification and of a fair standard of remuneration.

Dr. AMELITO MUTUC of the Philippines felt that it was necessary first of all to determine "the Role of the Lawyer in a Changing Society", which was the real subject of inquiry for this Committee before finding out whether there were too many or too few lawyers. For it was the responsibilities of lawyers in a changing society that should determine the number of lawyers required. Dr. ALBERTO HERRARTE GONZÁLEZ of Guatemala, Dr. OSVALDO ILLANEZ BENITEZ of Chile and Mr. P. A. CUMMINGS of British Guiana spoke in support of this view.

representation of
Indigent

Dealing with this point of view, the CHAIRMAN agreed that the main question for this Committee to determine was undoubtedly the functions and duties of a lawyer in a changing society. However, since some sort of order must be followed, it was decided to proceed on the basis of the Working Paper which contained sound suggestions and sought to evaluate principles of sufficiently general application and acceptability. He drew attention to the specific proposition put forward at the end of Section II of the Working Paper, namely "Representation of the Indigent". It read:

"The Rule of Law requires professionally competent lawyers who are available to, and do in fact, represent the whole community regardless of race, religion, political persuasion or other difference..."

This suggested proposition, he said, made it clear that those who drafted the Working Paper had no intention of establishing a right rule as to the number of lawyers in any country. The stress was on competence and quality rather than on numbers.

After Professor CONSTANTIN SIMANTIRAS of Greece had made some observations on the same lines as the Chairman but with special reference to his country, the CHAIRMAN said that the Committee could pass on to Section II entitled "Representation of the Indigent" which was in fact being considered concurrently with Section I.

Mr. LUCIAN G. WEERAMANTRY of Ceylon said that from the observations made it appeared clear that the general sense of the Committee was that if there were to be any restrictions whatsoever placed on admission to the legal profession, it should be on the basis of quality and not quantity. He agreed with Dr. Lalive that it might be dangerous to arrive at any conclusion which would give the legal profession the appearance of an exclusive club. If his assessment of the general view was correct, namely that restrictions should be imposed only through the raising of standards, it might be advisable to follow the suggestion of Mr. Adenekan Ademola that Section I, namely "How many lawyers?" was considered more specifically under "Ethics; Admission; Discipline".

Dr. SERGIO DOMINGUEZ of Mexico said that as no definite answer could be given to the question "How Many Lawyers?", he would

suggest the following answer as suitable: "As many lawyers as may be required to ensure strict compliance with the principle that the whole community should be represented, provided that each lawyer satisfies the personal requirements necessary for him to be regarded as suitable and capable of coping with the type of problems he is likely to encounter". He felt that in this way the answer, without mentioning numbers, would refer to the qualifications necessary, including ethics and personal ability.

Mr. ADENEKAN ADEMOLA of Nigeria, speaking on "Representation of the Indigent" in developing countries, said that in his view it was the Bar in such countries rather than the State that should, as a humanitarian effort, take upon itself the responsibility of preparing and working out a scheme whereby assistance could be rendered to the indigent. He could not recommend that the State in most countries in Africa be burdened with vast legal aid schemes when there were many more urgent needs that called for priority. He deprecated the tendency of senior members of the profession to avoid accepting briefs on behalf of the indigent.

The CHAIRMAN observed that it was clear from an examination of the suggested conclusion at the end of Section II that the International Commission of Jurists had gone into the core of the matter of responsibility for legal aid. It stated that the primary obligation for providing this service rested on lawyers as individuals, as was emphasized by Mr. Adenekan Ademola. Secondly, Bar Associations, through which the individual efforts of lawyers are channelled, are mentioned, and lastly, governments, whenever, of course, their financial resources permit. He felt that the Judiciary might well have been added to this recommendation so that it could read "Individuals, Bar associations, the Judiciary and governments".

Dr. MANUEL ABREU CASTILLO of Puerto Rico felt that a reference to the cooperation of the public should be added and the CHAIRMAN agreed that the suggestion was sound.

Dr. LUIS QUINE ARISTA of Peru and Dr. MANUEL ABREU CASTILLO of Puerto Rico then explained the system of legal aid obtaining in their respective countries.

The RAPPORTEUR said that there were many instances where lawyers could render legal assistance to sections of the community more effectively by influencing legislation than by appearing in Court and he gave illustrations from the history of his country.

Mr. BAHRI GUIGA of Tunisia, dealing with the situation in Morocco, Algeria and Tunisia, commended the manner in which lawyers in those countries rendered legal aid notwithstanding the fact that poverty was very widespread in this area. He also emphasized the importance of studying the general problem of the indigent and his representation rather than examining the peculiar problems of each country. He said that if the general problem was studied, and general decisions were arrived at, solutions could always be found for the particular problems of each country.

Dr. MARÍA EUGENIA VARGAS SOLERA of Costa Rica suggested that a phrase be added to the proposition put forward in the Working Paper as a summary to Committee III Section II so that the first sentence would read: "The Rule of Law requires...other difference, so that the lawyer is inspired to act as an apostle of the Rule of Law and is not deterred by the prospect of a practice in the capital, in the country, in town, or in an inhospitable area from giving an impetus to and promoting the Rule of Law".

Wednesday, December 12, 1962

09.00—12.00

Mr. ROLF CHRISTOPHERSON of Norway, Secretary-General of the International Legal Aid Association, said that as the memorandum of his Association setting out the basic principles of legal aid and the characteristics of existing legal aid plans had already been circularized, he wished to make only a few observations. The conditions that must exist before a legal aid plan could work satisfactorily seemed to be the existence of (1) legally enforceable rights, (2) a sufficiently large number of lawyers, (3) a legal profession accepting that it had a duty to supply legal aid to indigent persons and (4) an adequate national economy capable of financing a legal aid plan. He pointed out that many countries which had now developed legal aid systems started in a relatively modest way thanks to the efforts of a few dedicated individuals. It was therefore wrong to be sceptical about legal aid on the ground that it was impossible at present to set up a system which completely satisfied existing requirements. He suggested that the establishment of legal aid centres was perhaps one of the most economical and practical ways of starting a legal aid scheme and he explained the different ways in which a legal centre could function.

Mr. C. H. BRIGHT of Australia supported the suggestions of Mr. Christopherson but also agreed with Mr. Adenekan Ademola that the obligation to render free legal aid was only co-extensive with the means available to discharge it. He urged that the whole scheme of legal aid should be administered by the Bar with such monetary contribution from the government as may be proper and available.

Mr. YONG-PUNG HOW of Malaya emphasized the financial difficulties which the legal profession in many countries would have to face if it undertook the entire responsibility for legal aid and stressed that it was important for the lawyers of such countries to arrive at suitable arrangements for financial assistance with their respective governments.

Dr. OSVALDO ILLANEZ-BENÍTEZ of Chile expressed the view that so far as the underdeveloped countries of Latin America were concerned, the best method would be for the State to finance the legal aid system, since the Bar Associations alone could not bear the cost involved. He explained how the legal aid system worked in Chile and said that a

portion of court fines was set apart for financing legal aid. He was followed by Professor EURICO DE FIGUEREIDO of Brazil and Dr. HILTON MASSA of Brazil, who explained how the Brazilian systems worked.

Mr. BENJAMIN D'ALMEIDA of Dahomey described the problems relating to legal aid in his country which arose from the great shortage of lawyers. All the lawyers were concentrated in Cotonou, and at present there were only six of them. He drew attention to the fact that legal aid was necessary not only for the indigent but also in the increasing number of political cases that were coming up for trial in newly independent countries.

The CHAIRMAN, referring to the suggestion of Mr. D'Almeida of Dahomey that legal aid should be provided in political cases as well, drew the attention of the Committee to the words "political persuasion" in the proposition put forward in the last paragraph of Section II in the Working Paper. He then referred to the observation of Mr. AMELITO MUTUC of the Philippines that the outstanding matter for consideration by this Committee was the role of the lawyer in a changing society and expressed the view that this matter could be examined in sufficient detail under Section V entitled "The Organized Bar and Law Reform". For this reason he would close the debate on Sections I and II with a request that delegates submit in writing their suggestions on drafting so that these may be taken into account in the final draft that would be submitted to the Committee for approval.

Dr. SERGIO DOMINGUEZ of Mexico opening the discussion on "Ethics; Admission; Discipline", suggested that the Committee consider the possibility of drafting a universally applicable text setting forth not only the obligations of the future lawyer in the country in which he would practise, but a series of general principles to serve as a professional guide to all lawyers of the world.

Mr. A. N. BAKOUSH of Libya, Vice-Chairman of the Committee, took the Chair.

Dr. CARLOS TOVAR GUTZLAFF of Bolivia said that the Bolivians were most anxious to know what conclusions would be reached and what recommendation would be made on this subject as their country was undergoing certain changes since 1962 as a result of which the legal profession had been seriously affected. He agreed with Dr. Domínguez that the promises given or oaths taken on becoming a lawyer should be universal. The lawyer should, *inter alia*, undertake to defend the Constitution of the State.

Mr. EDWARD ST. JOHN of Australia agreed with Mr. Mutuc and expressed the view that the conclusions of this Committee should start with some definition of the lawyer's role. Thereafter the particular steps by which the role might best be fulfilled could be set out. He said that he had prepared a rather lengthy preamble to the Conclusions which he read out and invited the Committee to consider it. The draft preamble stated, *inter alia*, that the role of the lawyer was to preserve by his knowledge of the law and skill in its application a stable and peaceful social order and to provide for the administration

Ethics, Admission
Discipline, of
Lawyers

of justice. But in a rapidly changing world the lawyer must be liberal and progressive as well as conservative.

Mr. LUCIAN G. WEERAMANTRY of Ceylon felt that the preamble was well considered and carefully drafted and suggested that it might be adopted subject to such amendments as the Committee would wish to make. He however thought that if it was decided to have a preamble, there should be included in it some references to the Conclusions of the Fourth Committee at Delhi and of the Third Committee at Lagos which reaffirmed the Delhi Conclusions.

Dr. ALBERTO HERRARTE GONZÁLEZ of Guatemala observed that although the Working Paper stated in the first paragraph of the section on "Ethics; Admission; Discipline" that the replies to the Questionnaire recognized that, to protect the reputation of the profession, morality must be observed in both the lawyer's professional and his public life, there was no reference to morality in the acceptable goals set out in the last paragraph of the section. He also added that the Conclusions reached by the New Delhi Congress on this subject should be included among the generally acceptable goals.

Mr. ADENEKAN ADEMOLA of Nigeria advocated the removal of restrictions on the admission of non-nationals and reciprocity in the matter of admission among countries having similar legal systems. He also urged the Committee to include in its conclusions a general statement that there should be no restriction of admission to the legal profession on racial, religious or political grounds. In the matter of discipline, he stressed the importance of a lawyer being judged by his own peers, that is by a Bar association independent of the Executive. He felt that it should be obligatory for individual lawyers to become members of their respective Bar associations.

On a request by Mr. CHARLES NJONJO of Kenya for a clarification of the expression "civil punishments" at the end of Committee III Section III on page 26 of the Working Paper,¹ the RAPPORTEUR explained that what was contemplated was punishment for civil contempt as distinguished from criminal contempt. He said that the emphasis in the sentence in question was on procedure and not on punishment.

Mr. GERALD GARDINER of the United Kingdom said that he entirely disagreed with the clause "in the absence thereof the State should act instead" at the end of Committee III Section III of the Working Paper.¹ As former Chairman of the Bar Council of England, he felt strongly that the discipline of the profession ought to be in the hands of the profession itself. But if there were countries where the Bar was not strong enough to discipline itself, then, he suggested, discipline ought to be in the hands of judges and not in the hands of government. Indeed, this clause directly contradicted the Conclusions reached at Lagos (See Conclusion 6 of Committee III). He agreed very much with what Mr. ADENEKAN ADEMOLA had said, but Mr. Ademola knew very well that there was a country not far from his own

¹ See infra p. 151.

where the law had recently been changed to allow representatives of the Executive to be on the body which controlled the legal profession. He proposed substitution of "the Judiciary" for "the State".

The CHAIRMAN re-occupied the chair. He said he was in complete agreement with the views which Mr. GERALD GARDINER had expressed in his absence and felt that no member of the Committee was in disagreement.

Mr. STEFAN OSUSKY of the United States said he intended to speak on the terms of reference of this Committee, namely, "the Role of Lawyers in a Changing Society". We were now in a nuclear age and, as President Kennedy had said this year, we had entered the age of interdependence, having outgrown the age of dependence of nations. He expressed the view that the reference should be enlarged to "*The Role of Lawyers in a Changing World*". The lawyer was probably best fitted, by reason of his training and experience in human affairs, to guide the nations of this new, interdependent world. He strongly advocated the alteration of "Changing Society" to "Changing World". No matter what individual jurists felt, this Congress could not overlook the situation in those countries which were living in a world entirely different from ours. What was happening to the questions of admission and discipline in those countries? In Europe there were 12 such countries. As the Bar in those countries was organized on the Soviet pattern, he explained the manner in which admission to the profession itself was organized in the Soviet Union. He agreed with Mr. GERALD GARDINER that the government should have no power in matters of ethics, admission or discipline. Such governmental power, he said, could lead a country to the situation which exists in those 12 countries.

**Changing
Societies and
Role of Lawyers**

Dwelling on Mr. ADENEKAN ADEMOLA's suggestions regarding the removal of restrictions on non-nationals and reciprocity, the RAPPORTEUR inquired whether the Spanish-speaking countries of Latin America viewed these suggestions with favour. The CHAIRMAN, Dr. MANUEL ABREU CASTILLO of Puerto Rico, Dr. A. HERRARTE, GONZÁLEZ of Guatemala, Dr. OSVALDO ILLANEZ-BENÍTEZ of Chile, Dr. MANUEL MORALES DÁVILA of Bolivia, Dr. SERGIO DOMÍNGUEZ of Mexico and Dr. MARÍA EUGENIA VARGAS SOLERA of Costa Rica then outlined the position in their respective countries. The position as regards these two questions was by no means similar. Whilst some countries such as Peru had reciprocity, subject to certain restrictions, others, such as Puerto Rico, had no reciprocity with other Latin-American countries. Many speakers referred to the particular problems of their own countries on the question of reciprocity, but it was generally agreed that the question should be studied closely with a view to recognizing the principle of reciprocity as far as is practicable. In the course of his speech Dr. MANUEL MORALES DÁVILA of Bolivia referred to special cases where it was in the interests of justice that a foreigner be defended by a lawyer from his own country and felt that in such cases this arrangement should be made possible.

**Reciprocity on
Admission**

Mr. FOUAD ATALLA of Jordan said that in his part of the Middle East there had been four conferences of Arab lawyers recently, at all of which resolutions were adopted accepting the principle of permitting a lawyer from one Arab country to plead or practise in another. This principle had, however, not yet been adopted by the governments of the Arab countries. The Conference also formulated a unified system of rules to govern the legal profession in the Arab countries, but all efforts to have legislation passed in those countries incorporating these rules had so far been unsuccessful.

Dr. BAHRI GUIGA of Tunisia referred to Mr. Osusky's observation that the world had now proceeded from the stage of independence of countries to the stage of interdependence; he thought that this unfortunately did not apply to the Arab countries of North Africa which, in his view, were still at the stage of independence. Mr ADENEKAN ADEMOLA's suggestion of reciprocity in the matter of admission to the Bar would never find acceptance in these countries because the admission of such a principle could affect the sovereignty of the State. The legal profession was looked upon as an essential part of the machinery for national development, and to permit non-nationals to become part of that machinery might be dangerous to the State. However, he felt strongly that there should be no restrictions placed on the admission of nationals in their respective countries. He also supported the principle of permitting lawyers of one country to appear in individual cases in another country (although not members of the Bar of the latter country), particularly in political cases. He agreed with Mr. Gerald Gardiner that the internal affairs of the profession should be controlled by the profession itself and not by the government. He also agreed with Mr. Osusky that the Soviet-type system was the major danger that should be avoided. He finally expressed deep gratitude for the action taken by the International Commission of Jurists in the matter of Bizerta. This action, he said, made the Tunisian people feel that there was after all something more than physical might; that there were in the world people aware of the meaning of humanity, generosity and justice.

Mr. A. J. M. VAN DAL of the Netherlands said that in his country the exercise of the legal profession was restricted in principle to citizens. What was perhaps more interesting was that membership of the organized national Bar association was compulsory for every practising lawyer.

Wednesday, December 12, 1962

15.00—18.00

presentation of
telligent

Mr. B. D'ALMEIDA of Dahomey said that a clear distinction should be drawn between the case where a client is told by the lawyer "My fee will be x per cent of what you are awarded" and the case where

the lawyer waits till the client has won damages before the fee is fixed. He said that in poor countries like his, most clients are unable to pay fees in advance and if lawyers were to insist on advance payments most clients would be unrepresented. The latter arrangement whereby the lawyer fixes his fee after the case is won should in any event be permissible.

Mr. NAVROZ B. VAKIL of India condemned all forms of restriction on admission to the Bar as illiberal. He conceded that there may be practical limitations when it came to pleading in the language of the court or when the lawyer had had his training under a completely different system of law. But apart from the restrictions which such circumstances would necessitate, he urged that the Committee should strongly oppose any form of restriction, be it racial, religious or political or be it on the basis of citizenship. In regard to reciprocity, he said that in India there were effective reciprocal arrangements among the Bars of the different States. He also stressed the importance of an independent legal profession, and expressed the view that the profession should in all circumstances be independent not only of the Executive but even of the Judiciary.

**Admission and
Reciprocity**

The CHAIRMAN observed that there was general agreement on the deletion of the words "but in the absence thereof the State should act instead". He then closed the discussion on "Ethics; Admission; Discipline".

Dr. MANUEL ABREU CASTILLO of Puerto Rico said that the general views expressed seemed to him to indicate that the text should be amended as follows: "The Bar association must be open to all qualified lawyers without discrimination based on race, religion, political persuasion or nationality".

Before opening the discussion on Section IV "The Lawyer and his Client", the CHAIRMAN requested all those delegates who had any drafting suggestions to make to submit them in writing to the officers of the Committee so that they could be taken into account when the final text of the recommendations was drawn up.

**Relationship of
Lawyer and Client**

The CHAIRMAN then referred to Clause VIII and IX of the Fourth Committee at New Delhi reproduced in the Working Paper at the beginning of Committee III Section IV. He said that the replies to the questionnaire highlighted the importance of another matter which was not discussed at New Delhi, namely the confidential relation between the client and his counsel which seemed to be respected in all countries subject to certain well-defined exceptions. Speaking for himself the CHAIRMAN said that his conscience as a lawyer prevented him from accepting any exceptions to the professional duty to maintain absolute secrecy about the clients' confidences, however few and clear they may be.

Dr. MANUEL ABREU CASTILLO of Puerto Rico outlined the official position of the Puerto Rican Bar association in regard to the defence of persons associated with unpopular causes. The Puerto Rican Bar Association recognized that it was the duty of the profession as an

**Defence of
Unpopular Causes**

institution to provide the most effective defence of such persons. He cited the instance, among others, of an important political trial in 1935 where the accused were charged with attempting the overthrow of the government. The persons appointed to defend the accused included a former governor of Puerto Rico, the then President of the Puerto Rican Bar Association and five or six of the most competent criminal lawyers in the country. He said that he cited this and other instances to show how much more effectively persons associated with unpopular causes could be assisted in their defence through an organized Bar association than through individual lawyers who may run certain personal risks in undertaking unpopular defences.

professional
recy

Mr. ADENEKAN ADEMOLA of Nigeria said that whilst he agreed with the manner in which the topic "The Lawyer and his Client" was developed in the Working Paper, he felt that there were two matters in respect of which modification or expansion was necessary. The first was the extent of the lawyer's obligation to his State in regard to professional disclosures and the second was in respect of the right of the client himself against his lawyer. He suggested that the lawyer's obligation to his State in regard to professional disclosures was a difficult ethical question. To what extent was there an obligation upon him to give information to the State on tax evasion, breach of exchange control regulations and other matters affecting the interests of the State? In political matters, was there a greater obligation to give information in countries where the lawyer had taken an oath to uphold the Constitution? These were some of the problems which the Committee would have to address its mind to, bearing in mind, of course, all the time, the lawyer's duty to his client. As regards the second matter, he said that it would be desirable for an International Congress like the present one to consider the question of the lawyer's liability towards his client in respect of negligent acts and his obligations in respect of clients' funds or property entrusted to him.

Mr. H. J. RIVIEREZ of the Central African Republic expressed his personal satisfaction over the manner in which Section IV had been dealt with in the Working Paper. He felt that this section of the conclusions would have a great impact on his country where there was no separation of the Judiciary from the Executive and where there were practically no lawyers until 1946. The first lawyers to set themselves up in practice experienced great difficulty in finding clients, who had yet to learn to repose implicit confidence in their lawyers. Particularly where his country was concerned, he attached great importance to the development of the principles concerning the lawyer-client relationship.

Mr. A. N. BAKOUSH of Libya said that he was unable to agree with a view that had been earlier advanced by Mr. Adenekan Ademola that a lawyer should not defend an accused who confessed to him that he had committed the crime. The lawyer must nevertheless give his client all legal assistance that he can properly give and should not act as a judge himself.

Mr. GEORGE N. LINDSAY of the United States observed that in an adversary system where the lawyer regarded it as his prime duty to present in every proper way the case of his client, an exception should be made in the case of a public prosecutor who was under a different standard of conduct. He had to perform a dual function, for, in addition to providing the adversary element, he had a fiduciary obligation to the state and to the accused not to use every method of obtaining a conviction but to make the achievement of justice his main aim. He thought it would be helpful to include a definite statement on the relationship of the public prosecutor to his client, namely the State.

**Duties of Public
Prosecutor**

Dr. JOSÉ BARBOSA DE ALMEIDA of Brazil agreed with the CHAIRMAN that the rule of professional secrecy could admit of no exception. Any exception would be incompatible with the Rule of Law, he said. Dr. EURICO DE FIGUEIREDO of Brazil expressed his complete agreement with Dr. DE ALMEIDA and pointed out that in Brazil it would be not only reprehensible but criminal for a lawyer to reveal professional secrets, for the Brazilian Penal Code made it an offence for an attorney to reveal such secrets under any circumstances.

**Professional
Secrecy**

Mr. DUDLEY J. THOMPSON of Jamaica agreed with the previous speakers and said that in his view it was entirely wrong for a lawyer, at any stage, whether before, during or after the trial, to disclose secrets confided to him by his client. Nothing could be more disastrous to the confidence that the public must repose in a lawyer than that it should be possible for the lawyer to be forced, or to be led, to disclose those sacred secrets. He supported Mr. Lindsay's suggestion that something positive should be incorporated in the recommendations in regard to the public prosecutor and he felt that it was part of the public prosecutor's duty to make available to the defence statements made by witnesses to the police which were in sharp contrast to their evidence in court. He also referred to the facts of the Peter Evans Case.

Mr. B. D'ALMEIDA of Dahomey agreed with those speakers who considered that professional secrecy should be complete. This, he said, would be the only way in which the client could be expected to have complete confidence in his lawyer. Where, of course, a lawyer has been informed of plans to commit a crime he should inform the authorities just as any citizen was expected to do. He did not regard this as an exception to the rule of disclosures because in such cases the lawyer-client relationship had not yet arisen and there could be no bonds between a future criminal and a lawyer. As regards the question whether a lawyer was obliged to assist a client who had confessed to a crime, he thought the answer was no. The lawyer alone was responsible and had the power to decide whether to accept a brief or not, although once he had accepted he could not relinquish it without valid reason. A distinction had therefore to be drawn between a lawyer's duty when a confession was made before the acceptance of a brief and his duty when it was made after acceptance. A lawyer

had the right to decide not to accept an indefensible brief. But if after acceptance of a brief he withdrew from the case at a critical stage, such conduct could be tantamount to an admission of his client's guilt.

Mr. NAVROZ B. VAKIL of India expressed complete concurrence with the CHAIRMAN's initial remarks regarding professional secrecy. The requirements of professional secrecy, he said, admitted of no exception and he could not support the Norwegian exception referred to under Committee III Section IV (at page 26 of the Working Paper).¹ Admitting exceptions would lead to chaos. He drew the analogy of a priest, who was not bound to disclose any information he obtained at the confessional. A man under emotional stress might make a confession, but yet there might be no evidence to connect him with the crime. He added that in India professional secrets enjoyed complete protection under both the Evidence Act and the Penal Code.

On a point of clarification Mr. ADENEKAN ADEMOLA of Nigeria explained that he did not intend to convey that it was the duty of a lawyer to disclose a confession to the State. The principal point he stressed was that the lawyer had the right to refuse a brief after a confession had been made to him.

The CHAIRMAN observed that on the basis of the opinions expressed, complete professional secrecy had been accepted as a general principle. If exceptions did exist in certain countries, as in the specific case referred to in the Working Paper, it could be postulated as a desirable principle. He then closed the debate on Section IV.

Proceeding to Section V, "The Organized Bar and Law Reforms", the CHAIRMAN expressed the view that it had been formulated in the Working Paper in a rather restrictive way. He felt that Section V was the one that embraced almost the entirety of the general theme assigned to the Third Committee, namely, the responsibility of lawyers in a changing world. Although this responsibility was referred under Committee III Section V as belonging to Bar associations, he understood the responsibility in reality to be that of individual lawyers and not only of Bar associations.

Mr. CHARLES NJONJO of Kenya suggested that, in the proposition as formulated at the end of Committee III Section V of the Working Paper, the word "substantially" be deleted from the sentence "A self-governing bar association must be substantially free of executive interference".¹ He said that he made this suggestion having regard to his own views on the subject and to the views already expressed regarding the need for independent Bar associations. He added that in his country the Law Society actively interested itself in legislation, and all draft legislation was forwarded to the legal profession for suggestions and proposed amendments. The Law Society thus played an important role in guiding legislation.

The RAPPORTEUR invited the views of the delegates on Mr. Njonjo's suggestion and inquired whether it was felt that Bar associations

¹ See *infra* p. 151.

should in all circumstances be free from executive control or that some exceptions were possible, for example, in the case of a Bar association which itself was discriminatory on grounds of race, religion or other difference.

Dr. JEAN-FLAVIEN LALIVE of Switzerland agreed with Mr. Njonjo's suggestion. Even in the instance cited by the RAPPORTEUR it was not for the Executive to intervene, although intervention by the Judiciary might be allowed on the basis of enforcing clauses of the Constitution guaranteeing fundamental rights. As regards the word "substantially", he pointed out that in the French text the word used was "effectivement" which had quite a different meaning. While the former implied the existence of certain exceptions, the latter excluded the possibility of any exception. He thought that the French text appeared to be nearer to what the Committee wanted than the English.

Dr. JOSÉ BARBOSA DE ALMEIDA of Brazil said that so far as he was aware, there was no country where the legal profession was under the direct control of the Executive. In Brazil the basic principles relating to the organization of the Bar were regulated by law, which, however, dealt with organization only. The administration and execution of regulations relating to the profession were exclusively in the hands of the lawyers themselves. The regulations were concerned with admission, organization and discipline and prohibited activity in other fields such as politics and religion. There were, however, independent lawyers' associations known throughout Brazil as Lawyers' Institutes which were organized by the members. They provided effective collaboration, assistance and expert knowledge in the field of drafting legislation.

Mr. DUDLEY J. THOMPSON of Jamaica agreed with Mr. Njonjo. He pointed out a difficulty that existed in some ex-colonies, namely that the Bar associations were composed of practising lawyers as well as government lawyers such as the Attorney-General, Director of Public Prosecutions and crown counsel. The government lawyers had close ties with the Executive. He felt that if a Bar association were to make an effective contribution in the field of legislative reform, government lawyers should be excluded.

A discussion initiated by Mr. ADENEKAN ADEMOLA of Nigeria followed as to whether it would be preferable to substitute "executive control" for "executive interference".

Mr. B. D'ALMEIDA of Dahomey felt that saying that a Bar association should be self-governing did not mean that the authorities must be forbidden to have any say as regards the profession. Forbidding every form of intervention by the Legislature or the Executive would result in a distinction made between lawyers and other citizens. In his opinion, what the autonomy of the Bar meant was that matters of admission, matters concerning the exercise of the profession and disciplinary matters were questions for the Bar itself. He appreciated the fear expressed by the RAPPORTEUR that a Bar association might

itself be discriminatory. There was a real danger of this happening in countries where the indigenous lawyers did not constitute the majority of the members of the Bar association. This danger could be offset by control by the Judiciary as in France, where a person possessing the requisite qualifications who was refused admission by the Bar association could appeal to the Courts against the refusal.

Thursday, December 13, 1962

09.00—12.00

The CHAIRMAN opened the day's proceedings by thanking all those delegates who submitted drafting suggestions in writing for their co-operation. He thanked in particular Mr EDWARD ST. JOHN of Australia for the excellent draft he had submitted covering the four subjects that had already been discussed. The officers of the Committee had considered all suggestions, both oral and written, and it was hoped to submit a new draft based on these suggestions as soon as possible for final consideration tomorrow.

onsibility of
er in Society

As regards the suggested conclusion under Section V, he personally felt that the text in the Working Paper was weak and inadequate. He felt that this aspect of the lawyer's mission should not be restricted to Bar associations, for more important even than the duty of the Bar associations was the duty of each and every lawyer in the world by virtue of his profession. This Congress being held at the present time was of real importance to the world and participants and their colleagues in their respective countries were depending on the results of this Congress. If on returning home delegates were asked "What did you decide about the role of the lawyer in this changing society or world?" and the reply was merely "We decided that Bar associations should propose or help to introduce legislation", it seemed to him that the delegates would be returning rather empty-handed.

Continuing, the CHAIRMAN drew attention to the third paragraph of the Declaration of Delhi which recognized

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 the social, economic, educational and cultural conditions under which his legitimate aspirations and dignity may be realized.

He felt strongly that this concept in the Declaration of Delhi should be related to the role of the lawyer in a changing world. The role of the lawyer at this stage in the history of mankind, he said, was not only to watch over the application of laws in force but also to do everything in his power to create the favourable conditions referred to in the Declaration of Delhi.

Mr. EDWARD ST. JOHN of Australia welcomed the CHAIRMAN's remarks. He then read out the text of the Preamble suggested to him

and commented on the clauses in his draft. He agreed with the suggestion of Mr. Osusky that the theme should be "The Role of Lawyers in a Changing World". He said that he felt some disappointment with the Working Paper so far as Committee III was concerned in that the draft conclusions put forward there contained no reference in general terms to the role of the lawyer and instead was found a discussion on some miscellaneous matters under five headings. These matters were not unimportant topics, but he failed to see in them any direct and concrete reference to the role of the lawyer in a changing society. He recommended therefore the adoption of the draft Preamble prepared by him subject to such amendments as were considered necessary, and moved that a drafting committee of 3 persons be appointed from among the members of the Committee.

Mrs SUREYYA AGAOGLU of Turkey agreed with Mr. St. John's comments on the Working Paper and expressed the hope that the responsibility of the lawyer not only towards his clients but towards his society and towards the whole world would be adequately discussed.

On the suggestion of Mr. ROBERT G. STOREY of the United States the Committee decided to adopt the sense of the preamble prepared by Mr. St. John and to recommend that the drafting committee consider it carefully, make appropriate changes and report to the next session.

Dr. OSVALDO ILLANES-BENÍTEZ of Chile felt that Mr. St. John's suggestions were admirable since they described clearly the role of the lawyer both in relation to his client and to his professional obligations. He, however, suggested the addition of two further duties. He considered it the duty of a lawyer to defend the legal system when it was a system based on liberty and equality ensuring solidarity and security, and also the duty to defend the independence of the Judiciary.

Dr. MANUEL ABREU CASTILLO of Puerto Rico agreed with the views expressed by the CHAIRMAN and Mr. St. John. He commended a text which he intended submitting, the commencement of which ran thus: "Since liberty and justice are the lifeblood of any system of law and order, and respect for the inherent dignity of the individual of any society, it is the basic role of the lawyer to defend and support the rule of liberty and justice with ardour, selflessness and sacrifice; discharging loyally the duties of his profession, rising above human failings and steadfast in the fulfilment of his lofty moral responsibilities". Why should not lawyers, he asked, be partners in progress instead of forming the rearguard? In conclusion he stressed that it was important to ensure that the lawyer was not used to support any system of government which did not reflect the free will of the people. He said that the day when there were no lawyers in the world capable of being used as tools to legalize arbitrary measures taken by the State would be marked forever as the real dawn of the Rule of Law.

Mr. P. A. CUMMINGS of British Guiana said he was gratified to hear the views of Dr. Abreu Castillo. Yet theoretical pronouncements were not enough. He meant no criticism, but even in the country playing host to the Congress skyscrapers and shacks could be seen

**Progressive Role
of Lawyer**

side by side. The question was what practical part a lawyer should play in the formulation of programmes to raise living standards. The guidance of the Congress on such steps was required. In respect of urgent questions on housing, land reform, and trade union legislation, for instance, what contribution could the lawyer make? He felt it was the duty of this Committee to present to the Plenary Session certain practical measures which the lawyer could take to better the social and economic conditions of the average man in under-developed countries.

The RAPPORTEUR explained that the Working Paper did not represent his own personal ideas or passionately-held views, but was rather a reflection of the answers to the Questionnaire; the answers received, he was sorry to say, were disappointing in regard to the role of lawyers. His observations applied more particularly to the part of the Working Paper on Committee Three as the first draft of this part was not prepared by him.

When the Committee resumed after an adjournment the CHAIRMAN proposed that a drafting sub-committee consisting of the officers of the Third Committee and 5 others be appointed. There were no objections to this proposal and the following were selected as the drafting sub-committee: The Officers of the Committee and Mr. Gardiner, Mr. Lindsay, Mr. St. John, Mr. Vakil and Mr. Van Dal.

Mr. FOUAD ATALLA of Jordan expressed his appreciation of the draft that Mr. St. John had submitted earlier but made certain suggestions for the consideration of the drafting sub-committee. He thought the draft too long and capable of condensation. He did not like the inconsistency in the sentence "The lawyer must be liberal and progressive as well as conservative". He observed that Mr. St. John had chosen as his title "The Role of Lawyers in a Changing *World*" which indicated that he had accepted Mr. Osusky's idea of interdependence.

Mr. KAI BECHGAARD of Kenya observed that the Committee as a whole did not appear to accept the formulation of the third sentence in the suggested conclusion at the end of Committee III Section V of the Working Paper.¹ He suggested the following alternative, its brevity being, he said, its only recommendation: "It is the duty of every individual lawyer and of his professional associations to promote and foster a dynamic concept of law and its orderly and constitutional realization".

Mr. RUDOLF MACHACEK of Austria said that in regard to the vocation of a lawyer in a changing society, there was a shift of emphasis from his privileges to his responsibilities. It was the lawyer's duty to promote social progress with a view to building a better world.

Mr. ENOCH DUMBUTSCHENA of Southern Rhodesia said he was not too happy about the clause in Mr. St. John's preamble that it was the duty of the lawyer to conserve law and order. For this could be construed to mean that the lawyer must do so even if the law was a

¹ See infra p. 151.

violation of the Rule of Law. There should be a change in the wording so as to make a lawyer feel free to protest against a particular law if it involved a denial of fundamental human freedoms.

Dr. LUIS QUINE ARISTA of Peru suggested the following amendment: "A self-governing Bar association, free of executive interference, should, to the extent practicable, provide technical assistance to the Legislature and Executive. It has a duty to present to the appropriate authorities programmes of reform, and should be legally authorized to present the relevant bills and be required to review all proposed legislation before its submission to the Legislature".

Dr. MANUEL MORALES DÁVILA of Bolivia suggested that the Committee adopt a draft which found a compromise between the role of the lawyer as a defender of existing law, which might be termed "the conservative element" in the lawyer, and his role in the field of legal reform, which might be termed "the revolutionary element". He supported the view of Dr. Illanes-Benítez that one of the important duties of lawyers was to defend the rights and independence of the Judiciary. As regards safeguarding the rights of lawyers, he referred to the existence in Bolivia of an association of members of all the liberal professions such as lawyers, doctors, engineers and economists, which would not hesitate to declare a general strike of professional men if the rights of any profession and even of the Judiciary were seriously infringed. Such collective action, he said, was more effective than action by the organized body of one profession only.

Lawyer to defend
legal system

Dr. AMELITO R. MUTUC of the Philippines said that it must not be forgotten that it was in the setting of the New Delhi Conclusions that this Committee had to consider the role of the lawyer. It was necessary to go further than Delhi in the interpretation of the dynamic concept of law, but he feared that if Mr. St. John's preamble were adopted in its present form this would not be achieved. Charged with the dynamism of Delhi we should be fired with enthusiasm to implement those Conclusions in a practical way. Emphasis had to be placed on the lawyer's role in upholding the Rule of Law, in protecting civil liberties and in the social and economic development of his country. Organized Bar associations should endeavour to create conditions under which it was possible for the citizen to obtain legal advice on every matter that affected him vitally.

Dr. OSVALDO ILLANES BENÍTEZ of Chile, referring to his earlier comments, formulated his ideas on the lawyer's duties in the following way: "It is the duty of the lawyer, as the upholder of the law, to defend the system of law when it is based on liberty, for without liberty there can be no dynamism: on equality, for without equality there can be no dynamism: and on solidarity, for without solidarity there can be no dynamism either. Nor is dynamism possible without security. It is also the duty of the lawyer to defend the Judiciary against encroachments upon its freedom and independence".

Mr. GEOFFREY GARRETT of the United Kingdom said that in the context of this Congress he wished to offer a concrete suggestion with

a view to focusing the various thoughts of delegates on the role of the lawyer. He suggested the following text: "In order to fulfil his role in a changing world, a lawyer should not regard his skill and knowledge simply as a means of earning his living, but should hold them as a responsibility and trust to society for use, not only for the benefit of his clients, but also for the enlargement and improvement of the law, its administration and above all its contribution to the well being of mankind".

Dr. MARÍA EUGENIA VARGAS SOLERA of Costa Rica agreed that the lawyer had an enormous responsibility to promote the balanced economic and social development of his country. She gave as an illustration a recent development in her country where three lawyers, including herself, promoted the establishment of the Ministry of Social Welfare in Costa Rica. She suggested the following amendment to the draft conclusion at the end of Committee III Section V of the Working Paper: "A self-governing Bar association must be entirely free of executive interference.¹ It should, to the extent practicable, provide technical assistance to the Legislature and the Executive. Bar associations as well as individual lawyers are under a duty to promote the legal reforms necessary to ensure that the social, technological and economic development of each country takes place on a legal basis, and to stimulate this development in accordance with man's legitimate aspirations, scrupulously safeguarding his dignity and liberty".

Mr. B. D'ALMEIDA of Dahomey said that he understood from the excellent statement made by Mr. Mutuc that we should go forward from the Declaration of Delhi. This Declaration, he observed, enabled us to say that the Rule of Law could not be achieved so long as there were in the world people who suffered from hunger and disease and who did not enjoy an adequate cultural level which presupposed at least the eradication of illiteracy. In developing countries the first duty of the lawyer was to ensure that available resources were wisely handled. He felt that in the list of lawyer's duties should be included the duty to prevent the misuse of public property and to combat corruption.

The Committee then adjourned; it was decided that the drafting sub-committee should meet in the afternoon.

Friday, December 14, 1962

09.00—12.00

The CHAIRMAN commenced the day's proceedings by thanking the Officers of the Committee and the other members of the drafting sub-committee for the excellent work they had accomplished. They had worked late into the night and prepared a draft which was now before the Committee for consideration. He also thanked the secre-

¹ See *infra* p. 151.

tarial staff and the translators whose devoted work had made it possible to have the draft ready in time and distributed to the delegates.

The CHAIRMAN then read the text of the document prepared by the Drafting Sub-Committee which ran as follows:

**Draft
Conclusions**

In a changing and interdependent world, lawyers should give guidance and leadership in the creation of new legal concepts, institutions and techniques to enable man to cope with the problems of the times and to realize the aspirations of all people. The lawyer today should not content himself with the conduct of his practice and the administration of justice; he cannot remain a stranger to important developments in economic and social affairs. If he is to remain loyal to his vocation as a lawyer, he should take an active part in the process of change, for which purpose he must inspire and promote economic development and social justice. The conditions to be fulfilled and the steps to be taken in order to enable the lawyer to play this role effectively were dealt with to some extent in the conclusions of the Fourth Committee of the International Congress of Jurists, New Delhi, India, 1959, and of the Third Committee of the African Conference on the Rule of Law, Lagos, Nigeria, 1961. This Congress adopts the following further Conclusions:

1. The skill and knowledge of lawyers are not to be employed solely for the benefit of clients, but should be regarded as held in trust for society.
2. It is the duty of lawyers in every country, both in the conduct of their practice and in public life, to help ensure the existence of a responsible legislature elected by democratic process and an independent Judiciary, for which purpose they must always be vigilant in the protection of human rights. Lawyers should bear in mind the existence of poverty, ignorance and inequality in human society, and should take the initiative in promoting measures which help eradicate those evils, for while they continue to exist, civil and political rights cannot of themselves ensure the full dignity of man.
3. Lawyers have a duty to be active in law reform. Especially in areas where the general cultural level is not high and the knowledge of lawyers is of importance, they should review and propose legislation and present to the appropriate authorities programmes of reform.
4. Lawyers should endeavour to promote knowledge and to inspire respect for the principles of the Rule of Law, and an appreciation by all people of their rights under the law.
5. If lawyers are to discharge their obligations under the Rule of Law, they will need to exercise individual initiative and to act through every available organization, including, in particular, self-governing lawyers' associations. Such associations must be entirely free of interference and control by the Executive.
6. The Rule of Law requires lawyers of competence and integrity who are available to, and do in fact, represent the whole community regardless of racial, religious, political, geographical or other differences. Lawyers should be numerous and diverse enough to serve the needs of the community and to ensure that every person can obtain adequate representation by a lawyer of his own choice. Individual lawyers and their associations have the duty to work with judges, other officials and community organizations to provide indigent persons with adequate legal service.
7. The Rule of Law requires an authority which has the power to, and does in fact, exact proper standards for admission of candidates to the legal profession and enforces discipline in cases of failure to abide by ethical standards. Those functions are best performed by self-governing and democratically organized lawyers' associations, but in the absence of such associations, the Judiciary should act instead. Discipline for violation of ethics must be administered by officials of the governing body

in substantially the same manner as courts administer justice, and judicial review should be provided. The Bar association must be open to all qualified lawyers without discrimination based on race, religion or political persuasion. It should also encourage reciprocal agreements and other procedures to eliminate the requirement of citizenship as a prerequisite to the right to practise law.

8. The Congress specifically endorses the Conclusions of Delhi regarding the relationship between lawyers and clients. In addition it stresses the importance of the following matters:
 - (1) Lawyers' associations must encourage and, if necessary, sponsor the representation of clients whose causes may be unpopular.
 - (2) In order to ensure such representation, it may be essential in some cases to allow lawyers from foreign countries to appear on the defence.
 - (3) It is essential to the Rule of Law that the client be free to discuss all relevant matters relating to his case with his lawyer, without fear of subsequent disclosure by the lawyer, either voluntarily, or by compulsion.
9. In a changing world, it is not enough that the lawyer should merely propose new ideas and legal standards. He must also, in his daily activities, be a living example of the professional ideals of integrity, competence, dignity and courage, serving his fellows with love and devotion.

Dr. JEAN-FLAVIEN LALIVE of Switzerland congratulated the drafting sub-committee for the excellent work it had accomplished. He was sure that in doing so he was expressing the feelings of a large number of his colleagues. He considered the document just read excellent because it was a text of substance which provided a very solid basis for discussion. He had feared that the Third Committee would limit its efforts to a virtual repetition of the texts adopted by certain other large organizations, namely, a sort of code of rules relating to admission, discipline and the like. This, he said, would not have been in keeping with the purpose and the goal of this Committee. We were in the midst of change, and from the very first sentence of the text the interdependence of the countries of the world was emphasized. Yet there was a serious shortcoming in the text in that there was nowhere any specific reference to the important role of jurists in the field of international law, namely, to promote solidarity, peace and friendship among nations, so necessary to promote in turn respect for Human Rights in individual countries. He proposed therefore the addition of a clause in the text emphasizing the value of the study and development of international law and the need to promote the peaceful settlement of international disputes by arbitration or by an international Court and also to promote and strengthen the effectiveness of international organizations such as the United Nations and its specialised agencies. Nowhere in the text was there a reference to the ideals of the United Nations and this omission should be remedied. He would also like included a reference to the role of lawyers in promoting the negotiation of regional or even world-wide conventions for the protection of human rights and freedoms because lofty and pious declarations should be supplemented by a series of effective

conventions having the force of law. In conclusion he wished to emphasize once again that the Rule of Law did not stop at national frontiers.

Mr. GEOFFREY GARRETT of the United Kingdom suggested a few changes in language which, he said, would not affect the sense of the draft. He suggested that "lawyers should take a leading part" be substituted for "lawyers should take the initiative" in Clause 2. In Clause 6 he suggested "any member of the community" for "the whole Community", in Clause 8 sub-clause 1 he suggested "must take all possible steps to ensure" for "must encourage and, if necessary, sponsor". He suggested the omission "for the defence" in Clause 8 sub-clause 2 and "relevant" in sub-clause 3. He also suggested the omission of the first sentence in Clause 9.

Dr. SERGIO DOMINGUEZ of Mexico agreed with Mr. Garrett's suggestion that the words "for the defence" be omitted. He added that it might be desirable to require all lawyers when beginning practice to take a universally applicable oath concerning professional ethics.

A discussion followed on questions of language from the point of view of the Spanish text in the course of which Dr. LUIS QUINE ARISTA of Peru, Dr. SERGIO DOMÍNGUEZ of Mexico and the Chairman spoke.

Mr. YONG-PUNG HOW, a Vice-Chairman, took the Chair.

Dr. OSVALDO ILLANES BENÍTEZ of Chile paid a tribute to the drafting sub-committee and suggested a few amendments. He observed that, although Clause 2 of the present draft provided some reference to the lawyer's duty to defend an independent Judiciary, he thought it necessary to emphasize and be more explicit on this matter. He was supported on this point by Dr. O. A. BANDEIRA DE MELO of Brazil. The VICE-CHAIRMAN said that it would be best if Dr. Illanes Benítez and all other delegates who had constructive suggestions to make handed them over in writing to the drafting sub-committee so that they might be given suitable consideration.

There followed an exchange of views as to the procedure to be adopted in considering the draft submitted by the drafting sub-committee and the suggested amendments, and finally, on the motion of Dr. MANUEL ABREU CASTILLO of Puerto Rico, it was unanimously decided to accept the draft of the drafting sub-committee in principle, subject to such amendments as written suggestions would necessitate.

The proposal of Dr. Lalive that there should be added a clause relating to the role of the lawyer in the field of international law was strongly supported by Mr. FOUAD ATALLA of Jordan and Mr. DUDLEY J. THOMPSON of Jamaica.

Mr. B. D'ALMEIDA of Dahomey, while associating himself with the tributes paid to members of the drafting sub-committee and the translators, made certain comments on the French text. He felt that some of the French words used in the translation did not convey the same idea as the corresponding words in the English text. For this reason he proposed that, if the Committee were to adopt this text, it

should adopt the English version and that the French text should be brought into line with the English.

Mr. MANUEL ABREU CASTILLO of Puerto Rico complimented the drafting sub-committee and suggested a few stylistic changes in the Spanish text. He proposed the following addition to Clause 7: "Individual lawyers and Bar associations shall refuse to collaborate with any political regime or legal system which tends to encourage the physical or intellectual repression of man". He also proposed that there be added after the words "the representation of clients whose causes may be unpopular" in Clause 8 (1) the words "or of causes involving a serious danger to human rights".

yers and
ernational
e of Law

At the request of the CHAIRMAN Dr. JEAN-FLAVIEN LALIVE of Switzerland read the text of his draft clause embodying his suggestions, which ran as follows:

Lawyers should also endeavour to promote peace and understanding between nations in conformity with the principles of the Charter of the United Nations; they should contribute to the largest possible extent to the development and strengthening of international law and of the law governing international organizations, more specifically of the legal procedures of peaceful settlement of international disputes, such as arbitration and judicial settlement; they should support the drafting and conclusion of regional and general conventions on human rights and fundamental freedoms including the organization and improvement of Courts.

Dean ROBERT G. STOREY of the United States said that he subscribed to the view expressed by Mr. Osusky and Dr. Lalive that, just as we emphasized the Rule of Law within nations, we could not overlook the International Rule of Law, for, unless we had an effective International Rule of Law, the Rule of Law within nations would crumble. He suggested the following simple statement: "All lawyers should be deeply concerned with the improvement of the International Rule of Law so that disputes between nations would be settled through the arbitral or judicial process to the end that peace through law would become a reality".

Mr. AMELITO R. MUTUC of the Philippines suggested the re-drafting of Clauses 2 and 3 so that Clause 2 would relate to the Legislature and law reform and Clause 3 exclusively to Human Rights. He also proposed the substitution of "vigilant in the protection of civil liberties" for "vigilant in the protection of human rights". He concluded by voicing the opinion of his delegation that the entire Congress had conducted its deliberations throughout in an atmosphere worthy of emulation.

Dr. MARÍA EUGENIA VARGAS SOLERA of Costa Rica favoured the term "human groups" in Clause 2 because, she said, human societies was a vague term and "human groups" could be pinpointed, some of the most shameful contrasts being found between different groups in one and the same country.

Dr. MANUEL ABREU CASTILLO of Puerto Rico, while associating himself with the remarks of Mr. Mutuc, proposed a vote of thanks

to the Chairman and the other Officers of the Committee for the efficient way in which the proceedings had been conducted. He also paid a tribute to the Chairman's tolerance, politeness and understanding which reflected his conciliatory spirit and innate respect for the dignity of man.

Mr. GERALD GARDINER of the United Kingdom, speaking on behalf of the drafting sub-committee, said how grateful the sub-committee was to the members of the Committee for the many admirable suggestions made. He then thanked the translators for their wonderful work without which the Committee would not have been able to deliberate at all.

The CHAIRMAN on his behalf and on behalf of the Officers of the Committee thanked Dr. Abreu Castillo for his vote of thanks. He said that he and the Officers of the Committee were fortunate in having the co-operation of persons of high calibre and this rendered their task easier. He would personally like to say that it was one of the highest distinctions conferred on him in his professional life to be asked to preside over these vitally important deliberations by such distinguished jurists representative of so many countries. This was for him an unforgettable memory—a treasure which he would always cherish deep in his heart.

Extract from Section III Committee III of the Working paper:

“Are the following generally acceptable goals?

The Rule of Law requires some authority which has the power to, and does in fact, screen applicants for qualifications and competence, as well as impose discipline for failure to abide by the code of ethics. Those functions are best performed by self-governing, democratically organized bar associations; but in the absence thereof the State should act instead. The officials of the governing authority must administer the code of ethics in substantially the same manner as courts administer civil punishments, and judicial review must be available. The bar association must be open to all qualified lawyers without discrimination based on race, religion, or political persuasion. The officials of the association should be representative of the practising bar and the community which it serves.”

Extract from Section IV Committee III, relating to Norwegian Practice:

“The lawyers have in all cases free access to the clients and the right to confer with them under four eyes. This holds in both civil and criminal cases. Special legislation has to some extent restricted the general right of lawyers to refuse disclosure of matters confided to them by their clients, for instance when a lawyer is informed of plans to commit any serious crime, or where disclosure is necessary to avoid condemnation of an innocent person. Further the tax laws and the foreign exchange laws impose on the lawyers the duty in a few specified cases to answer questions by the authorities regarding a client's financial circumstances.”

Extract from Section V Committee III:

“A self-governing bar association must be substantially free of executive interference. It should to the extent practicable provide technical assistance to the Legislature and the Executive. It has a duty to present to the appropriate authorities programmes of reform, particularly in areas where public understanding is slight and the techniques and knowledge of the lawyer are of great importance.”

MEMBERS OF COMMITTEE III

MANUEL ABREU CASTILLO (*Puerto Rico*)
CLAUDIONOR DE SOUZA ADAO (*Brazil*)
ADENEGAN ADEMOLA (*Nigeria*)
SUREYYA AGAOGLU (*Turkey*)
JOSÉ C. APONTE (*Puerto Rico*)
FOUAD B. ATALLA (*Jordan*)
KAI BECHGAARD (*Kenya*)
ANTONIO BENNAZAR VICENS (*Puerto Rico*)
CHARLES HART BRIGHT (*Australia*)
CHRISTIAN ABAYOMI CASSELL (*Liberia*)
ROLF CHRISTOPHERSEN (*Norway*)
GEORGES APÉLÉTÉ CREPPY (*Ivory Coast*)
PERCIVAL AUGUSTAS CUMMINGS (*British Guiana*)
ALBERT J. M. VAN DAL (*Netherlands*)
BENJAMIN D'ALMEIDA (*Dahomey*)
HAYO DE BOER (*Netherlands*)
SERGIO DOMINGUEZ (*Mexico*)
ENOCH DUMBUTSHENA (*Southern Rhodesia*)
GÉRALD FAUTEUX (*Canada*)
CARLOS LUIS FEBRES-CORDERO C. (*Venezuela*)
PALMEIRINDA FIGUEIREDO (*Brazil*)
YANIL GALIB FRANGIE (*Puerto Rico*)
GERALD GARDINER (*United Kingdom*)
GEOFFREY ELMER GARRETT (*United Kingdom*)
ALBERTO HERRARTE GONZALEZ (*Guatemala*)
BAHRI GUIGA (*Tunisia*)
OSVALDO ILLANES BENÍTEZ (*Chile*)
JEAN-FLAVIEN LALIVE (*Switzerland*)
RUDOLF MACHACEK (*Austria*)
MEHDI MALEKI (*Iran*)
HILTON MASSA (*Brazil*)
HELIO DIAS DE MOURA (*Brazil*)
AMELITO R. MUTUC (*Philippines*)
CHARLES NJONJO (*Kenya*)
JORGE ORTIZ TORO (*Puerto Rico*)
STEFAN OSUSKY (*U.S.A.*)
LUIS QUIÑE ARISTA (*Peru*)
ERNESTO RAVELO GARCIA (*Dominican Republic*)
WALTHER PAUL GERHARD ROSENTHAL (*Germany*)
EDWARD ST. JOHN (*Australia*)

ROBERT GERALD STOREY (*U.S.A.*)
ABOLGHASSEM TAFAZOLI (*Iran*)
EDUARDO THEILER (*Brazil*)
CARLOS TOVAR GUTZLAFF (*Bolivia*)
MARIA EUGENIA VARGAS SOLERA (*Costa Rica*)
HONORÉ WILICKOND (*Central African Republic*)

COMMITTEE IV

THE ROLE OF LEGAL EDUCATION IN A CHANGING SOCIETY

Chairman: JUSTINO JIMÉNEZ DE ARECHAGA (*Uruguay*)
Vice-Chairmen: VU-QUOC THUC (*Viet Nam*)
AHMAD HOUMAN (*Iran*)
Rapporteur: HARRY STREET (*United Kingdom*)
Secretary: FROILÁN TAVARES VIDAL (*Dominican Republic*)
Adviser: HORACIO H. GODOY (*Legal Officer, International
Commission of Jurists*)

The list of the members of the Committee is given at the end of this report (page 182). The conclusions adopted by the Committee and approved by the Congress in plenary session are given at pp. 31-34 above.

Tuesday, December 11, 1962

The Chairman opened the Meeting and said that the first talks of the Committee members should be to address all humble people of the world suffering from illiteracy, poverty and tyranny. They were the object of our main concern. Law, as an expression of the free will of the people, was the best instrument to achieve a high level of freedom, justice and culture, and an active alliance of all jurists of the world would make a great contribution towards human dignity. The Chairman then considered the role of legal education in a changing society, drawing the attention of the Committee to the technical and scientific revolution of our time and its impact on the law. This new development in science and technology made it more important for the law to maintain its humanitarian inspiration. It required imagination to contemplate the conditions in which the new generation would live, and this was why it was so difficult to prepare the new generation to defend the law. The best we could do was to give them the conviction that life was not worth living without freedom, justice and peace, and that the law was the best instrument to protect those values.

**Law as an
Instrument of
Social Reform**

The RAPPOREUR, Professor HARRY STREET, explained why the Commission had arranged to have one of the four Committees devoted to the role of legal education in a changing society. "It was thought by the organizers that it was time for the Commission to ask the question how it was going to be possible to transmit these notions of the Rule of Law to future generations of law students throughout

**Role of Lawyer
in Changing
Society**

the world. It was considered that it was not enough that experienced jurists like yourselves know what they understand by the Rule of Law. There was the much more difficult question of how to communicate these ideas to the law students of the future". The question of teaching methods for instilling the notion of the Rule of Law was the most important aspect of the work of the Committee. After considering some of the difficulties concerning this subject, the RAPPOREUR observed that a great number of future lawmakers would be found in the ranks of law students, and the question was whether it was the function of law schools to train them as future makers of policy; if this was the function of law schools, by what methods could the ideals and values of the Rule of Law be instilled into the students. The RAPPOREUR invited the Committee to think about Section 1 of the Working Paper.

Dr. SEBASTIÁN SOLER of Argentina thought that the expression "changing society" was ambiguous. It seemed to imply that societies which were not changing have no special concern with the training of lawyers. "The function of the lawyer" said Dr. Soler, "is a permanent one, whatever the society, and especially in those societies identified with the principle of the Rule of Law". He would suggest that Committee IV bear in mind that the function of the lawyer was important not only for changing societies, but also for societies already democratically organized.

Dr. ANTONIO J. BENNAZAR of Puerto Rico said that it would be opportune to say something about the function of the lawyer. The lawyer should not only be prepared for the practice of his legal profession but also to deal with society in evolution. The student should, in fact, be trained in legal matters and in all other disciplines that prepare the lawyer's mind to solve the social and economic problems of society. Regarding the task of preparing accomplished lawyers, leaders of public opinion and better public servants, this was the task not only of the law schools and Bar associations but also of the lawmakers and judges and principally of all jurists of the world.

Mr. ANTHONY MITCHLEY of Northern Rhodesia stated that the problem of legal education was of supreme importance in Africa today. In the whole of the Central African Federation there were for the moment no law schools for the training of lawyers. To determine what the system of legal education in the Continent of Africa would be was a point of extreme importance. If education was given solely on an academic basis, some other method had to be devised to deal with practical training. The International Commission of Jurists could play an immense part in Africa, not only in helping to establish law schools in places where they did not already exist, but also in ensuring that by its advice and influence the principles of the Rule of Law may be emphasized in law schools.

The CHAIRMAN suggested that the Committee vote on a rule of procedure, limiting to five minutes the speaking time for each member during the general debate. This motion was approved.

Mr. ECONOMOU of Greece pointed out that not only were there problems of legal education in countries which had no law schools but also in countries with a long tradition in legal thinking. Especially in the latter countries legal education was frequently quite inadequate to cope with economic and other problems of development. The question should be of studying the law-making process in relation to the improvement of the Rule of Law. He advocated comparative study of legal education and legal problems.

**Lack of Law
Schools**

Mr. BETTIOL of Italy opposed the criteria expressed by Dr. Soler, saying that he was in favour of the Committee studying the role of education in a changing society. Speaking from his experience as a Professor in the University of Mogadiscio, Somalia, he pointed out that there was a risk of many African students considering the right to exist as an independent nation as more important than the Rule of Law. In Africa one of the greatest tasks was to convince students that the law did not relate only to the independence of a nation as such, but that there are laws which related to individuals, and that to protect the rights of individuals the Rule of Law should be established. There were States which were now completely independent but which had not yet reached the level of the Rule of Law. The law should not only be an instrument serving the freedom of the nation but should strive towards the freedom of the individual. This should be considered by the Committee.

**Rule of Law in
Newly
Independent
Countries**

Dr. ARNOLD WALD of Brazil raised the question what the basic aims of a law school should be in a changing society. The ultimate aim of law schools was far wider than what may be considered the regular curriculum for the training of lawyers. Legal education should not be limited to the transmission of technical legal knowledge. Other basic principles should be taught in addition to the historical background of legal institutions and their economic and social environment. A more practical approach should be adopted by law schools in establishing a study of court decisions on a comparative basis. Law professors should be concerned with teaching about the freedom of the individual and the technique to be used to defend civil liberties against unconstitutional or illegal abuses or acts by the State.

**Aims of Law
Schools**

At that point the CHAIRMAN observed that Dr. Soler's remarks about the title of Committee IV had found support. He proposed that the Committee considers the expression "changing society" with the following two meanings: 1. those societies which were engaged in accelerated process of transformation, both economically and politically, and 2. those societies that seemed to have achieved a certain degree of development and maturity. Undoubtedly, in both societies the function of the lawyer was of primary importance. This was surely the idea of the persons who had compiled the Working Paper.

**Definition of
Changing Society**

Mr. BAKOUSH of Libya said that the lawyer was not only concerned with appearing in court, but also he had a part to play on legislation and rule-making committees. This being the case, we might ask how

the function of law and lawyers had to respond to the needs of ever-changing society, and he therefore opposed the Chairman's proposal.

Professor PAOLO JOSÉ DA COSTA of Brazil reviewed the three main questions under discussion. One was Dr. Soler's proposal that the problem of legal education should be considered not only in a changing society but also and mainly in developed societies. With that proposal Professor Bettiol seemed in agreement. Professor da Costa agreed with the CHAIRMAN's concept of a changing society. The second question was the possibility of enlarging the regular curriculum of law schools, and the third question was how law should be taught. Regarding the third question he proposed that they should be less Latin and more pragmatical, and to quote the British, "let's go right to the point! Let us ask everybody here to tell us his personal experiences in legal education".

Dr. ALFREDO PEREZ GUERRERO of Ecuador supported Dr. Soler's proposal and proposed to change the theme of Committee IV to: "The role of legal education in contemporary societies, especially changing societies".

Mlle JACQUELINE ROCHETTE of France said that it was important to consider the possibility of including economics in the regular curriculum of law schools in every changing society because the analysis of all societies was founded on their economic system. Mlle Rochette said that it was obvious today that the economic field was no longer divided from the legal field and that the jurist should influence the evolution of his own society. It seemed even more important in a changing society that the jurists should have the necessary training to lead the people in the path of freedom and respect for the Rule of Law.

Dr. SOLER clarified his previous remarks. There were some societies that could be called developing, but which seemed rather to be deteriorating. Africa was a typical example of what Europe considered a changing society. The importance of Africa's problems could not be denied and should not be ignored, but it was a grave error to identify communities that had just begun now in the middle of the 20th century to have constitutional organization with other nations which had known the political and constitutional forms for 150 years and that in these last 50 years were deteriorating politically. This process of deterioration created very specific problems for lawyers. The International Commission of Jurists should not forget that, whilst in the process of gaining Africa for the Rule of Law, it must, at the same time, pay attention to the deterioration foreseen in Latin America.

Dr. DIEGO URIBE VARGAS of Colombia emphasized the present interdependence of States in international relations and specifically in the field of law. For this reason, we should analyse legal problems, not only in the developing societies, but also in the more advanced countries. Dr. URIBE VARGAS supported Dr. Soler's proposal.

Mr. MITCHLEY said that there was no reason why the proposal of Dr. Soler should not be accepted as long as it is understood that the problems in countries like Africa are very specific and the situation there must be examined carefully to see what institutions and what methods of legal education should be applied. It was by an examination of the institutions which have flourished over the centuries and their application to conditions in Africa that one could analyse in Africa situations as they had existed in older civilisations.

The CHAIRMAN invited members of the Committee to accept the title of Committee IV as it was, bearing in mind the remarks that had been made.

Dr. ALFREDO CECILIO LOPES of Brazil thought that the Committee should not discuss the title because this was not relevant to the real objective, which was to discuss the role of legal education in a changing society. He said that the Committee might change the whole substance of the meeting if the title of the Committee were changed.

Mr. OSMAN RAMZY of Egypt said that he would not advise a change in the title of Committee IV because for him the distinction between an underdeveloped society and a society in evolution was clear. The first referred to what Committee IV called a changing society, and it implied lack of progress or the search for real social and economic progress, whilst the second referred to all societies, even those which maintained their old state of stagnation. He opposed changing the title of Committee IV.

Dr. BRANDAO of Brazil said that the discussion was not only about technology but also about concepts. The concept of a changing society was amongst those made clear by contemporary sociology, and he supposed that this concept had been clearly in the mind of the author when compiling the Working Paper. For that reason he could not see why the Committee spent so much time discussing the title of Committee IV.

Dr. HOUMAN of Iran suggested that the real objective was expressed in the Working Paper in this phrase: "how to establish the equilibrium between, on one hand, the recognized freedom of action of the Executive and the inherent tendency to enlarge those powers, and on the other hand, the protection of the community and the individual". If that was the objective, they should study all societies, and especially those changing societies in which the state sought to limit freedom and the rights of individuals. The Committee should look for a method of disseminating the idea of freedom, respect for law and respect for human dignity.

Mr. VU-QUOC THUC of Viet-Nam considered the discussion had been of value in showing that "changing societies" referred to all societies which were changing quickly, not only countries which one might consider under-developed but also those societies already developed but undergoing great change. It was obvious that all countries were now changing rapidly because of science and technology, and that one of the main problems was the increasing

**Nature of
Changing Society
and Power of
Executive**

power of the Executive, due to economic planning and interdependence in economic, legal and political relations. Therefore this discussion did not relate only to under-developed societies but it referred also to developed societies which faced substantial change as a consequence of modern techniques". As a representative of one of these so-called under-developed countries, he would say that frequently they had not a clear notion of the Rule of Law. They were accustomed to seeing in their social organization, the realization, not of a legal order, but of a moral order. They were accustomed to recognizing the rule of morality rather than the Rule of Law. The first contact with Western societies had meant the interpretation of a new notion, the notion of the Rule of Law as opposed to that of morality. The second difficulty arose from those underdeveloped societies having adopted democratic and legal forms of government that the West had adopted in their developed societies. For instance, electoral methods and the notion of majority rule had been adopted, but in fact the election principle could not be correctly applied when the electors themselves were for the most part ignorant. How could the majority decide when that majority was mainly composed of individuals with neither experience nor culture? A third difficulty was that the evolution of under-developed societies was extremely rapid. Facing this rapid change, what could the law professor do to train lawyers for administrative work and at the same time to instil the notion of the Rule of Law, especially when the latter was subject to question.

Mr. VIVIAN BOSE of India, President of the International Commission of Jurists, said that he would like to explain just what the Commission wanted from this Committee and what Committee IV meant. Every society, all over the free world, was a changing society in the view of the International Commission of Jurists. The more developed societies were, the more thought they were giving to the problem of legal education. On p. 33 of the Working Paper was a quotation from Mr. Justice Benjamin Cardozo to a group of law students in the United States.¹ That would show that the United States was considered a changing society. Therefore no-one need feel sensitive about this word. The Commission was not concerned only with what certain delegates called underdeveloped societies. "We are not here to teach the underdeveloped societies what they should do; we are here to help each other. The developed societies want assistance from those who are under different systems just as much as we hope those who are called, possibly wrongly, underdeveloped societies may want assistance from those in other parts of the world who have more assistance. We are trying to find a common denominator for one thing, we are trying to find methods which will work in different parts of the world and to see how each can help the other.

The Committee approved the first part of the Working Paper.

¹ This related to the study of mankind and precepts of Justice as a means of improving Society.

The CHAIRMAN invited members to consider the introduction to the Working Paper.

**Wednesday,
December 12**

Dr. GROSS BROWN of Paraguay proposed the acceptance of Point A. of the Working Paper¹ as it stood and then to discuss directly the curriculum of law schools.

The CHAIRMAN then exchanged views with Dr. MARIA J. SAAVEDRA of Bolivia, and Judge RAMIRO MENDEZ of Chile about the text of paragraph A. of the Working Paper. Judge Mendez suggested that the reference to the needs of government should be deleted because governments usually provided for their own legal services. The CHAIRMAN thought that the Committee should remember that the Commission should think for the entire world and that the Conference of Jurists included representatives of 85 different countries. Perhaps in many or in some of these countries it would be necessary to strengthen the legal service of governments.

Mr. ECONOMOU of Greece stressed that the government's need for ordinary legal services should be provided for. There were two separate problems: one, the need of governments for the services of lawyers, the other the need of governments for legally trained personnel. The Rule of Law meant the formalization of power. This meant that everyone engaged in governmental functions should have some legal training.

**Government need
for legal Services**

Dean G. F. CURTIS of Canada expressed his gratification that the Commission had included the subject of legal education in the programme for Committee IV because the renewal of our profession was a most critical concern. He hoped that in the Final Report the Commission would emphasize strongly the importance of legal education. Advancement in the field of science was very important in connection with providing an adequate number of legally trained young men and women to serve the needs of modern societies. It was necessary for the Committee to be aware of the competing attractions of a scientific career to a great many young people today, and it was important, therefore, that the Congress did everything possible to ensure that future students of law were sufficient not only in quantity but also in quality, which involved very practical and concrete things. One was that young people would be attracted to a legal education if they were convinced that law schools and the various legal training institutions were of high quality. They must always strive towards their improvement. His impression was that in many countries the provision for legal education, and he was talking of all countries, was not as adequate relatively as it was a few years ago. "Let me address myself to one specific point. I think it is necessary for the legal profession generally in our countries to see to it that there is an adequate system of a scholarship for young people who seek legal education. I think that it is generally true in most countries that the scholarships available for scientific education, for reasons that we can understand in today's

**Renewal of Legal
profession
important**

**Need for legal
Scholarships**

¹ See infra p. 163.

ed for Law
essors

e of Legal
ication in
iety

ortance of
versities

tries lacking
education

work, are much greater than those for law students". The Committee should widen the terms in which the Working Paper was expressed because it was a fact that law schools were necessary for men entering the public services both as legislators and as public administrators. The Committee should not overlook the need to provide an adequate number of law professors. The general picture was that there was a greater explosion in higher education than had ever been true in the world before. That meant that there was a very great shortage of university teachers in most countries and their particular concern was the provision of an adequate number of law professors.

Mr. BETTIOL criticized Point A of the Introduction to the Working Paper¹ because he considered that certain expressions limited the role of legal education. In certain countries, such as his own, law schools had a wider scope, and taught not only law but also political science, economics and public administration. The Committee should choose either the narrow or the wide conception of legal education and he recommended the latter.

Professor LEVASSEUR of France supported Mr. Vu-Quoc Thuc and agreed with Mr. Bettiol's wide concept of legal education. The Committee should remember that the life of a country rests on a solid legal culture. It was necessary that in every society, and especially in every changing society, those engaged in legislation, administration and adjudication should have received a solid legal education, one inspired by the idea of the Rule of Law.

Mr. MANUEL ADOLFO VIEIRA of Uruguay suggested going straight on to the theme of the Working Paper.

Mr. ALFREDO PEREZ GUERRERO said that university graduates in Latin America considered that universities were, especially at the present, of fundamental importance to the future of the world. In the past it was sufficient that universities devoted themselves to purely intellectual matters and after that to the professional training of students, but now the most important concept of the universities was to prepare students for their task of dealing professionally with contemporary society with its substantial change. In the Faculty of Law of the Central University of Quito, students were taught not only professional legal subjects but also jurisprudence, economics, sociology, international law and many other subjects.

Mr. MITCHLEY thought that the Committee should consider the situation in countries where no legal education exists at all and first set up in the Resolution to be adopted a principle applicable to those countries. In many parts of Africa it was accepted that higher

¹ Point A of the Working Paper read as follows :

A. In every country the long-term aim of legal education should be to ensure that the needs of government and of private clients for ordinary legal services are met by a sufficient number of men and women whose standards of competence and ethics are equal to those needs.

education be given in certain countries a lower priority than was given to legal education. The University College of Rhodesia and Nyasaland provided higher education but as yet no legal education at all.

Professor STREET, the RAPPOREUR, said that he thought that all the members of the Committee agreed that the question of how to educate lawyers in countries which have no system of legal education is an important one but that he did not think it fell within the province of Committee IV. If the object of the Commission had been to deal with this subject, it would have formed a Committee of a very different composition. The Committee was concerned with the specific question of the observance of the Rule of Law in legal education, a much narrower and more specific question than the important question that Mr. Mitchley was raising.

Mr. BETTIOL agreed with Mr. Mitchley on the role of legal education in a changing society. The Committee should emphasize that there were developing countries needing many lawyers, judges and law professors but there were nevertheless no law schools. This problem related especially to the developing countries of Africa. There were new Universities with Faculties of social science, political science and other technical faculties, but they wanted a law school, too. The Congress should stress urgently the importance in these changing societies of fostering an awareness of the need for new law schools as a pre-requisite to the establishment of the Rule of Law.

**Need for Law
Schools and legal
training**

The CHAIRMAN asked for the approval of Item A, suggesting that the RAPPOREUR prepare a draft with the following points:

1. Stressing the need to give priority to the establishment of adequate centres for legal education in every country;
2. Fixing the objectives that all Law Faculties should follow in every country according to their needs and resources;
3. Stressing the need for an adequate moral training for those teaching law.

The Committee approved the motion.

A discussion then began on Point B of the Working Paper ¹.

Mlle ROCHETTE proposed that Point B be deleted entirely, objecting to the reference to the influence of environment, family, the community and religious faith, which she considered irrelevant and anti-democratic.

**Qualities of
Lawyers**

Mr. MITCHLEY said that the spirit of this particular Point B related to the integrity of the lawyer and was perhaps the most important side

¹ Point B of the Working Paper read as follows :

B. Those specially concerned with legal education will and should have a significant impact on the quality of the services rendered by lawyers. Nonetheless that quality also will be affected by natural abilities, by extra-legal education, by the environmental influence of family, community, church, etc.

of the life of the lawyer in any community. He opposed Mlle Rochette's proposal.

Mr. VIVIAN BOSE said that the second part of Point B would be easily understood if the Committee bore in mind that there are some countries, like England, for example, where the ethics of the legal profession are high. The reason, if you went deeply into it, was not based only on the legal education received in Universities and at the Bar, but was based on moral character, which is built up by other means, such as the family, the Church, the boy-scouts and other institutions which are not in the schools and not in the Universities but which all go to form the sum total of a man's character.

Mr. ECONOMOU and Dr. WILSON BRANDAO, supported the deletion of the second part of Point B and Dr. PAOLO BONILHA of Brazil opposed. On a vote for the deletion of Clause B there were 13 votes against and 12 in favour. Clause B was therefore sustained.

The CHAIRMAN proposed that in the final draft of the Introduction to the Resolutions of Committee IV the RAPPORTEUR consider the following points: to maintain executive power within the limits of the Rule of Law, the role of the legal profession should be strengthened and society would be better equipped to defend itself against the abuse of power if the legal profession had a stronger influence in society; secondly, the role of the legal profession would be more relevant in changing societies because in that case there were more possibilities of abuses of power; thirdly, the legal profession could fully accomplish this task only if legal education followed certain fundamental principles, viz., that law schools should teach young students that law is the best instrument to obtain a higher standard of justice because only when this standard was reached through law were peace and freedom secure. The second point referred to the function of law as the defender of freedom. In this respect, legal education should emphasize the principles of personal freedom and explain institutions and procedures which the law has devised for the better protection of the liberty of man. The third point emphasized the necessity for an intensive training of the lawyer in the ethics of his profession as well as technical training.

Señora SAAVEDRA of Bolivia said that there were other institutions devoted to legal education, and some such institutions in Bolivia had been trying to extend the benefit of legal education to ordinary people. These institutions had also tried to extend legal education in indigenous languages. Point B should include these other institutions as well as law schools.

Dr. PEREZ GUERRERO said that in Point C, where it was emphasized that law students should be educated in the principles of the Rule of Law, this terminology was very ambiguous in Spanish as the law (ley) was understood as being binding but not necessarily in accordance with a democratic concept of law. In certain dictatorial regimes the law was what the dictator or oligarchical groups wanted. He proposed

to avoid this ambiguity by changing the phrase to say that students should be educated in respect for the law as an expression of the will of the people.

The CHAIRMAN agreed with Mr. Perez Guerrero but he said that the International Commission of Jurists was using the expression "Rule of Law" in its established meaning, as defined in page 1 of the Working Paper,¹ and it was clear that it meant law based on the concept of free humanity and inspired by the aim of defending fundamental rights.

Mr. MITCHLEY supported Señora Saavedra's proposal. Some instruction in legal principles should be introduced at the pre-university level. It has always seemed unfortunate that students in primary and secondary schools were not given a very early introduction to legal principles at a rudimentary level, so that they had as citizens, whether they went as far as University education or not, some idea of legal principles, which would assist them in whatever occupation they chose in later life.

**Legal Education
prior to University**

Mr. VU-QUOC THUC of Vietnam said that a law school curriculum and its teaching methods depended on three factors. The first, which had already been mentioned many times, was the need to inculcate adherence to the Rule of Law. The second was the duration of law studies, which could not be longer than four years. Within this time it was not possible to be very ambitious and select matters which dangerously overloaded the programme of studies. The third factor concerned especially developing countries in great need of lawyers, magistrates, legislators, diplomats, labour union or trade union advisers, administrators, chairmen and directors in commercial enterprises, and so on. Each of these careers demanded special training, which explained the tendency towards specialization.

**Law School
curriculum and
teaching methods**

Around the law schools many institutes have been organized to study administration, political science, diplomacy, commerce, comparative law and so on. These institutes, following the tendency to specialize, might disrupt the unity of subjects in the parent body, and that might affect the main objective of legal education, which was the promotion of the Rule of Law. It was fundamental to maintain unity of teaching in law schools and for that purpose a certain number of subjects should be common to law schools and their different institutes.

The RAPPOREUR called the attention of the delegates to the question of what could be done to ensure that the lawyer of the future played his proper part in the development of the policy of the country to which he belongs. This raised both the question of the kind of training needed for the public service and the part the private practising lawyer ought to play in the policy-making of his country's government. It also raised the question of the part every law school in every country ought to play in drawing together after they had left the

**Lawyer's part in
Government**

¹ See supra p. 71.

Faculty the professional man in legal practice and the lawyer in public service, constantly considering the aim of improvement in their country's legal system.

ims of Law
chool Education

Mr. MITCHLEY said that there was another question arising out of what the speaker from Tanganyika and the RAPPORTEUR had said; was it the role of Universities merely to educate the youth of the country and provide discipline and education on theoretical lines or was it feasible to go further and supply the needs of their country as a whole? This subject had been discussed at an informal gathering in the University College of Rhodesia and Nyasaland, and the view there taken was that it was not the role of the University to provide educational training or to assist in any crash-programme of legal education to provide lawyers for the various departments of government and for practice throughout the country. From the point of view of a practising lawyer, it was of great importance that law schools should be established quickly and that they should meet the needs of their territories. In many cases, it might be necessary, not to increase the curriculum, but to reduce it. Some countries badly needed lawyers with basic training in criminal law to perform the administration of what are called "native courts", courts administering the law and custom of the various groupings. In Uganda, for instance, there was a court almost entirely for criminal law, connected to some extent with administrative law, for the purpose of training, not only young people, but older people of 40 to 50 who had been clerks in government service in the years prior to independence. With regard to Africa, the course should be so fluid as to cover the needs of the territory on a reduced curriculum without being too dogmatic about the degree which the student might obtain. Too much talk about degrees and levels would frustrate to a certain extent the needs of that territory in an emerging country.

Professor SOLER pointed out that there were disadvantages in making it easy for students to obtain a degree in law. Experience showed that it is inadvisable to shorten the time devoted to legal studies. He was against shortening the period of training because it would defeat the ultimate aim of the Committee in trying to advise more law schools.

School
ulum

The CHAIRMAN said that settling the content of legal studies was a very delicate matter. The law school should not teach only law, because legal phenomena cannot be explained without reference to the respective social structures and economic processes. The fact that students of law needed to study sociology and economics should not restrict them to this one subject. The jurist should understand precisely what economic and social reality demanded to lead in social and economic change within the framework of the rule of law. At the same time the jurist should understand when the law should be changed because it no longer met the needs of new social and economic situations. That was why law schools should not be teaching only law. A secondary question was how far law schools were to teach non-

legal subjects. He suggested: general theory of law, constitutional law, civil law, criminal law, criminal procedure, legal ethics, international law, comparative law and legal history. All these matters could be considered as basic to the curriculum. With regard to the problem of method, the CHAIRMAN said that he would prefer theoretical teaching to practical.

Dean CURTIS of Canada expressed his general agreement with the summary of the discussions made by the CHAIRMAN. The length and content of the law course would depend very much on the kind of student that the law school received. It might be that the law school was essentially a post-graduate school. The student might have already received a degree in general liberal arts. He might already, in other ways, have studied a great deal of sociology, economics and so forth, in which event the law school need not teach him those subjects. Secondly, another factor was national growth. How much of manpower needs could be spared from the years of young lives, for qualifying, was the question. In some countries it was not possible to take as many years training people for the legal profession as in others. There was the factor of national need. In some situations it was desirable for law schools to send out students for the practice of law rather earlier than they might under other conditions desire to. Thirdly, it had to be ensured that the resources of law schools are adequate to the function they should perform. This raised directly the necessity for an adequate staff. It meant that society must be prepared to devote a substantial part of its resources in the field of higher education generally to legal education. The teaching of law should be approached in a broad and human way; it should not be a matter merely of technique but should be reinforced by appreciation of the social force which law schools control. The need to encourage post-graduate work in law should not be overlooked, because only at that level would law students find the desirable specialization.

Mr. SAUL SHERMAN of the United States said that the most gratifying and constructive thing to come out of the discussions that afternoon was a very broad agreement on the proposition that the law must be studied in its social context, in the broad sense of the term. There was a very important connection between teaching methods and the content of what was taught. Whatever the particular legal rule or subject under discussion might be, one of the principal questions to receive treatment was why the rule was there and whether it was a good rule. They had been asking of each particular topic, what its history was, what were the social and economic courses that had produced the law as it was today. In order to understand the law as it was today one must study social and economic factors as they have operated in the past and also consider the element of choice that the community has made.

Dr. ANTONIO BENNAZAR of Puerto Rico emphasized that legal education did not end with university education. Legal education was of concern not only to professors and teachers but to all jurists,

**Relationship
between Law and
Society**

**Post Graduate
legal study**

magistrates, legislators and so on. But they should also consider the problem of continuing legal education. For example, the Bar Association of Puerto Rico had undertaken a complete programme of legal education for lawyers.

Mr. MARKOSE of India said that the enrichment of the curriculum with particular reference to the Rule of Law could perhaps be dealt with in two ways. One was to teach the Rule of Law as a part of the curriculum. There could be a separate subject on the Rule of Law only, including all the declarations that are available from New Delhi. The other way was to bring together all the difficulties by having a one-year course on the legal process.

On Point II of the Working Paper,¹ Mr. RAMIRO MENDEZ of Chile said that in his country a great importance had been attached to giving the requisite training to law school applicants. Nevertheless, law professors had always been concerned at the inadequate training of students coming to law schools. The third Latin American Conference of Law Schools would be devoted, among other things, to professional vocation and leanings towards law. In most Latin American countries law students were those who for one reason or another had no chance of being accepted by other Faculties. To Point II should be added a phrase saying that applicants for places in law schools should have a clear vocation, stimulated by their secondary education.

Mlle ROCHETTE of France expressed her concern for the phrasing of the Working Paper on the subject of the qualifications for becoming a law student. She objected to the requirement of an academic test for admission and was in favour of facilitating law studies for all students who showed interest in the law, especially in a changing society.

Professor SHERIDAN of Singapore said that he agreed with the proposition that every student who seemed fitted for the course should be admitted but, in view of the fact that in many countries those who study law are not destined for the active practice of the law, the academic test should not necessarily refer to professional aptitudes.

Mr. BETTIOL said that the Committee should not delay over difficulties of mere form. He supported the idea of having an admission test which might show whether the applicant had or had not a real calling for the law. He referred to positive results in African universities of Italian language where students later go to Italian Universities without formal requirements.

Mr. VU-QUOC THUC of Viet Nam said that perhaps the question to answer is "Who ought to study law?" and this question should be answered with a view to promoting the Rule of Law. If there were few jurists the threat to the Rule of Law might come from minor officials executing the law. Such officials were very important because they were in regular and constant contact with the public—policemen,

¹ entitled "Who Should Study Law?"

customs officers and other subordinate officials. A certificate of legal training should be a requirement for all such officials putting the law into execution.

Professor LEVASSEUR of France said that the law schools should have many doors through which to enter. The main door should be open to students with a secondary education sufficient for starting legal studies, but they should consider another problem, that of making legal education more democratic. For instance, in France, it was possible to admit students without secondary education and its appropriate qualifications. The second door should be open to persons with sufficient intellectual maturity to be accepted into a law school. There was a third case, a problem principally existing in the changing societies, of the immediate and urgent necessity of civil servants with legal training. This could not be during the first years more than an accelerated legal training. Requirements should depend on which of the three openings the student used. Referring to the financial problems which might arise in terms of legal education, Professor LEVASSEUR said that a general recommendation should be made that law studies should not be terminated for financial reasons.

Mr. HOUMAN of Iran said that there were law schools, for instance, in his own country, which in addition to requiring the certificate of secondary studies, required an academic test for admission, because in many cases secondary teaching was not adequate for the standard of University education. Therefore, if they were going to democratize legal education it would create a great problem in some countries at least and the repercussion of these attempts would very soon be felt. That did not mean, that we should oppose this movement for democratization of legal education, but we should be very careful in recommending these ideas for countries which have not yet developed. These countries needed representatives of the legal professions with solid knowledge and experience in their field.

The CHAIRMAN said he would like to know what things debarred an applicant from acceptance into a law school. They should reject absolutely all discrimination based on race, religion, sex, personal convictions, nationality and so on. Secondly lack of financial means should not be a bar. It was obvious that this question had been considered differently in those countries where university education was free and those in which the cost of university studies was very high. In Uruguay education was absolutely free. General education from primary school to the university is supported in Uruguay by the taxpayer. The argument was that the benefit of the Rule of Law is not only for the student of law but for everybody.

Mr. EKONOMOU of Greece remarked on what he considered a slight distinction between freedom to enter a law school and recruitment. In this age of planning there was not only planning of national resources but also planning of human resources, so that tests for admission were quite useful, if not necessary, because they would help young people with strong professional leanings. It was a question

**Barriers to Study
of Law**

**Entrance
Qualifications**

of helping people in the whole planning process of society to find their way ahead. Social scientists in the field of psychology had made such enormous progress that admission tests were very useful and could be applied, not only to the area of academic teaching, but also to the military area as well as the business area. He supported the suggestions for recruitment set out in the Working Paper because they were good and helpful, not in terms of the degree of freedom laid down but in terms of professional orientation and channelising abilities in societies where the problem of development had proved to be not only an economic but also a human problem. The problem of development was a question of human mentality and unless the human factors were evaluated and developed through the recruitment process it was not possible to deal effectively with the problem of development.

Mr. WILSON BRANDAO of Brazil asked the Committee not to consider law schools as if they were independent and separate from the overall educational system. A law school was only one piece in the general pedagogic system of every country. They could not discuss the recruitment of law students without having in mind the whole pedagogic system of the country. He recommended a free system of education straight through to the university level. In the Brazilian system it was not possible to abolish academic tests for entering law school.

Mr. MCAUSLAN from Tanganyika said that in considering entrance qualifications that must be required for students attending law schools in under-developed countries there was another problem, the qualities and qualifications which the Committee should take into consideration. In many courts in Tanganyika, Kenya and Uganda the judges were completely untrained. They might have some knowledge of customary law but it was quite possible that they had not even that. All governments accepted the desirability of producing trained people to man these courts. But all governments were also aware that to produce fully qualified lawyers to man these courts would take between ten and fifteen years. It was necessary, therefore, to have some stop-gap programme, some crash course of legal training to cope with this problem. Therefore, all these countries and other African countries were producing courses of legal education for which little academic preparation was required. The course might last one or at the most two years. It was a mistake to lay down any kind of rules or regulations relating to the entrance qualifications required for law schools which would, by implication, suggest that this sort of inferior education was not really permissible. In these countries, which undoubtedly had a problem over the best use of their national resources, it was most essential that they be encouraged by people such as the International Commission of Jurists to make use of their older people who had some knowledge of the law but not sufficient training by organizing a short diploma course whereby these people could, thereafter, become more proficient judges. Any suggestion as to entrance qualifications which the committee might lay down should

take account of this particular problem, that there were some countries which could not, at any rate for the foreseeable future, afford to have all their lawyers trained at university level.

Professor SOLER remarked on what he considered a wrong distinction between the theoretical and practical ability of law professors. The opposition between theory and practice in the field of law was inaccurate. Theories that had no relation to practice in the field of law were wrong. The law was based on practice and it was dangerous to forget this idea. Practice, meaning law in practice, had a serious defect as a method of training a potential teacher. The reason was that law in practice was the result of many similar cases without systematic comprehension of what the law meant. The unified view of the legal system was the basis of legal scientific knowledge. At the same time this comprehensive view of the legal system was also a guarantee of the Rule of Law, because it clarified what positive law was and eliminated contradictions between one legal rule and another. False contrasts between theory and practice in the field of law were to be avoided and the law teacher required a systematic knowledge of the legal system.

**Relationship
between theory
and practice in
the field of Law**

Mr. SHERMAN of the United States underlined Mr. Soler's remarks and said that he would even suggest that the law was in most respects the most perfect example of the interplay of theory and practice among social scientists. It was the place where social theory and academic knowledge were brought to bear every day in practice by the practising lawyer. Besides the problem of theory and practice there was another vital element; this was that of the facts as lawyers know them in their own experience. In a time of rapid change, the face of society and the problems which needed to be dealt with were altering rapidly. If law schools were to perform their highest functions and to be able to provide the kind of unification and theoretical link between the process of evolution and legal measures, and in particular if there was to be an assurance that the wisdom and experience of the legal profession in past ages would be brought to bear on the process of change, it was especially important to be sure by one means or another that the people who taught and the entire atmosphere of the law school were in very close touch with the developments going on within the community, among the people, in the government, in the courts and in practice. These were the people who were dealing with the problems posed by evolution and change. In those circumstances it was especially important to see that the professors themselves were in touch with the immediate events of the time so that they could apply their learning to them. He considered it also important to make an effort to bring practising lawyers, politicians, legislators and people from the executive branch of the government, as well as the judiciary, into the law schools, perhaps not as formal teachers but, at least, for informal discussions devoted to immediate problems of the country and the means by which the law could be brought to bear and is being brought to bear upon them.

**Importance of
practical
experience in
legal education
and reform**

Señora SAAVEDRA of Bolivia said that the rule forbidding discrimination against students should be applied regarding law professors. Nationality should not be a reason for discrimination against professors. Every professor should be able to teach in other countries if he had professional ability and moral integrity. With regard to the selection of law professors she asked the Committee to lay down very strict requirements. First of all a real vocation for teaching should be demanded. Not every good lawyer was necessarily a good law professor. Maybe he did not know how to get the attention of the students or how to transmit his knowledge to them. It was also important to decide on teaching methods as well as building up to a professional career.

Mlle ROCHETTE of France attempted to define the perfect professor. The perfect professor was made up of three propositions. Firstly, professors should be specialized, secondly they should have the maximum knowledge in their field and thirdly they must be able to pass on their knowledge to the students.

Señor BASILEU GARCIA of Brazil spoke of the system adopted in official schools in Brazil where there was a system of competition. He recommended that the Committee adopt that system at least for the less developed countries. The law professor should be selected carefully, having in mind, not only his personal aptitude, but also his moral integrity and the quality of his experience. Once a good professor had been appointed, he should have fixed tenure.

Mr. RAMZY of Egypt commented on experience in Egypt, where sometimes very able judges are called up on to lecture in the law schools. They were also asked to help during examinations. In Egypt, the law professor should be devoted entirely to the teaching profession. They were not admitted to the bar and could only appear before the *Cour de cassation*. To strengthen the interest of law professors in contemporary legal developments, a constant exchange of law professors from different countries of the world should be promoted.

Mr. HOUMAN of Iran pointed out the problem existing in some countries of law professors who at the same time practised law and also were ready to accept a position as a senator or deputy. The danger was that these distinguished professors might be engaged in political affairs, which would affect the quality of their teaching. For that reason, the Committee should lay down that law professors should not accept positions in the government.

Mr. GODOY, Legal Officer of the International Commission of Jurists, said that the task of the law teacher was becoming more and more difficult as the objective of law schools become more and more complex. In a modern law school the study of new and complicated subjects made it more difficult to determine the appropriate academic qualifications of the law teacher. A law professor should be acquainted, not only with his own specialization, but also with the main legal problems of his country, the technical and scientific resources of both

his own country and other countries of the world and should have a basic knowledge of legal pedagogy. The United Nations Conference on the Application of Science and Technology for the benefit of less developed areas (to be held in Geneva in April 1963) had invited scientists and technicians from all over the world to discuss, among other subjects, the problem of human resources, development planning, city planning and training of technical and scientific personnel. The Conference would be dedicated to the study of adequate techniques to promote human resources by the training of professional men, technicians and university professors. It was a conference of scientific co-operation, the first of its kind anywhere in the world. The legal profession was absent from this conference perhaps because jurists of the world had not yet adapted their professional mind to the requirements of contemporary changing society. A good law professor in a contemporary law school should always be well informed about the most important achievements of science and technology. The application of new techniques combined with social psychology, cultural anthropology, political sciences, sociology and other social sciences could permit law professors to create new ways of improving law teaching, which was one of the weakest points in legal education, especially in Latin America.

Mr. MARKOSE of India said that he would always support a system under which a professor had complete academic freedom. Like any other citizen, a professor should be absolutely free to express whatever opinion he pleased, but only if he maintained his devotion to his profession.

Mr. FRAGOSO of Brazil said that it was obvious that the Rule of Law depended on the quality of legal education because there was no way of accomplishing the jurist's mission in modern society if at the same time society had not provided the necessary conditions for adequate legal education. In that sense it seemed to be indispensable for law professors to have a clear vocation for teaching and that they should have moral strength and proven legal experience shown by their writings.

Mr. VIVIAN BOSE of India, President of the International Commission of Jurists, spoke of the internationality of teachers and about part-time teachers. On the first point, he strongly recommended law schools not to limit teachers to the nationality of the country concerned. Balliol College, Oxford, had one third of the members of the college coming from abroad. On the second point, the part-time teacher should be considered, at least in changing societies, as the only possible solution.

Mr. BETTIOL of Italy said that the Committee should not impose limitations on the extra-curricular activities of law professors. If the country needed the advice of law professors it should not be denied it. A law professor could be a senator or a deputy in order to give his legal opinion when law was under discussion in the Legislature. The law professor should also be a practising lawyer. He should know about the application of the law as well as how it came about. The law

professor who at the same time was not a practising lawyer could not be considered as a real professor because he did not fully understand the facts of actual legal experience. He was absolutely against the idea of full-time professors. The full-time professor should be only a professor of legal philosophy or similar matters. But the legal profession was more complex, is richer and should consider the different times at which the law professor should look at the Rule of Law: the time the law was passed, the time it was interpreted and the time it was applied. For these reasons he would strongly oppose any limitation of the extra-curricular activities of law professors, particularly in developing countries, where political assemblies might require the presence of a jurist to keep them constantly aware of the Rule of Law.

The CHAIRMAN summarized the discussion about who should teach law. This problem should be analyzed in relation to the need to promote the Rule of Law at the student level. The first rule, the Committee stated, concerned the abolition of all discrimination of race, nationality, sex, personal opinion, social or economic condition. This rule should be enforced not only regarding the entry of the professors on a law school career but also during his tenure. The second question referred to the selection of law teachers. The general principle seems to be that the selection of law professors should be free from every influence other than criteria of teaching and scholarship and especially free from political pressures. The next point seemed to be the quality of the law professor; in that sense it had been pointed out that the law professor should be a man of moral integrity both in private and public life. A profound sense of social responsibility should be another of the characteristics of the law professor. His lectures should be a real contribution to the improvement of the Rule of Law. It was also fundamental that the law professor understood the relationship between legal science and the new development of human thought in other fields, especially in those areas that are affected by the process of evolution. Law professors also needed teaching ability. In the less developed countries the law should be taught by those who knew something about law without exaggerating the academic requirements. The selection of professors would depend on the degree of cultural development of each country. Regarding the organization of the professional career of the law professor, it could be rather open, not insisting too strongly on a professor's qualifications. It could also be a rather closed career with the qualifications required making it almost impossible for any law professor to be appointed. This would not be advisable. The question of part-time or full-time professors had also been considered. Bearing in mind the necessity for law schools to study social and economic conditions of a given country and to help towards a higher standard of justice, it seemed to be advisable to choose the part-time system because in that way the law professor maintained direct contact with reality. The Committee also discussed the non-removability of law

professors. Perhaps, instead of going into detail, the Committee should say that the law professor should be adequately protected, so that his intellectual freedom could not be restricted. With regard to the problem of payment for law professors, this should allow sufficient time and proper conditions for the scientific preparation of his work. Exchange of professors had also been advised as a concrete expression of the interdependence which is one of the main characteristics of our time. With regard to political functions of the law professor, this problem could be solved uniformly in every country. Nevertheless, some criteria could be given: firstly, the political activity of law professors must not result in his submission to political interests; secondly, political activities of law professors could be desirable if it would not mean the submission of the law school to the government.

Señora SAAVEDRA proposed that the Committee consider two points: firstly, the Committee should ask jurists of every country not to deny their support to the law schools; sometimes law schools ask distinguished jurists for their co-operation and they refuse it; secondly, law schools should extend legal education to the people. A legal career is ignored by most people, who do not realize the nobility of the legal profession.

A discussion on who should regulate legal education started when the CHAIRMAN introduced the following proposals:

Friday,
December 14

Regulation of
Legal Education

- (a) Law teaching should be controlled by the Faculty of law, free from outside influence other than the interests of science and teaching.
- (b) Members of the Law Faculty should be the main participants in regulating legal education. It is considered desirable that, if possible, law students and representatives of the legal profession also participate.
- (c) The regulation of legal education should be such that the principles of academic freedom, including teaching and scientific research and free access to the Faculty, should not be impeded by excessively onerous requirements. At the same time legal education should be regulated with regard to the needs of communities in process of development.
- (d) Law schools should have administrative, technical and financial autonomy. It is desirable that, in countries which have achieved a certain degree of development, the government exercise certain limited powers of control with regard to promoting the development and strengthening of the Rule of Law.
- (e) Law schools run by the State should be financed, not through private fees, but through taxes paid by the whole community as a contribution to the establishment of the Rule of Law. Private schools should also be financed by the community to the same end.

Mr. ECONOMOU of Greece said that Law Faculties, with this degree of autonomy and independence in controlling legal education, should take into consideration all the recommendations of the appropriate organs of the United Nations on legal education, as well as on technological and scientific matters.

Mr. CURTIS of Canada added his voice to what the Committee had agreed, that there should be the strongest possible expression of the principle of academic freedom. He was concerned over point (d) of the Chairman's proposals, viz., that there should be a limited control by public authority. Mr. Curtis said that there might be misinterpretation in indicating that public authority has much more right to interfere in the autonomy of educational institutions than any of the Committee members would agree to. Mr. Curtis suggested a redrafting of point (d) eliminating any idea of encouragement of interference by the government with the law schools.

Professor LEVASSEUR spoke of the independence of law schools. All members of the Committee would agree that they must be independent but there were different ways of understanding what this meant. There were some countries in which legal education was fundamentally based on private initiative and, in those cases, the independence of law faculties was ensured. Other countries were differently organized and legal education, as well as the entire system of education, was regulated by the State. For instance, in France, law schools are not only governmental institutions but are also organized at a national level concerning recruitment, study programme and finance. Professor Levasseur asked that in the final draft of that proposal his comments should be borne in mind. The principle in point (a) on the right of law faculties to regulate legal education would not be accepted. He proposed that point (a) be redrafted to state only that law faculties should be autonomous and faculty members completely independent.

Mr. MCAUSLAN of Tanganyika said that there was a certain amount of modern thinking on the question of academic freedom in universities and the relationship between universities and governments. Regarding this point several delegates had mentioned that it would not be possible for a law faculty to be autonomous if this meant being separate from the rest of the University. A law faculty, in the same way as a faculty of arts, faculty of social science, faculty of theology, must play its part within the university, and must take its chance along with other faculties in the university of getting a fair allocation from the scarce resources which are devoted to higher education. In many countries it is the government that provides the overwhelming bulk of the money devoted to higher education. In these countries it was necessary for Universities to have a different approach to their relationship with the government. The Committee should try to move away from the terminology of interference by governments with universities or law faculties. Rather, the Committee should see that law faculties, universities and governments must

co-operate together to make the best use of the national resources of any particular country. There were some areas where the university and the law faculties must stand firm on the principle of academic freedom, especially on the content of the course which the law faculty teaches and on teaching methods. There ought to be no interference from governments, from other faculties or from students. It must be for law faculties themselves to decide on the content of the course. But it would be perfectly acceptable for the government providing the money for the law faculty to say that they will provide a Chair in one branch of law but they would not provide money for Chairs in any other branch of the law. This could not be considered, ended Mr. McAuslan, as a derogation from academic freedom. It is beyond human nature to expect governments to resign all control over the way the money they give to universities is spent.

Mr. SEPULVEDA of Mexico said that with regard to the problem of relations between governments and law faculties a very clear principle should be settled. This principle should be that the government should not under any circumstances interfere in university affairs. Regarding point (b) of the CHAIRMAN's proposition, that as far as Dr. Sepulveda's personal experience was concerned he would never recommend the participation of professional legal associations in determining the content of the course in law schools, unless the Committee made it clear that these professional legal associations were to give their advice and support when they were requested to do so.

Professor SHERIDAN of Singapore referred to the problem of academic autonomy and emphasized that he would like to avoid in the final draft of proposal (b) any suggestion that there must be direct student participation in the organization of legal studies in countries where this did not exist at present. There is considerable pressure in some countries, especially in the Continent of Asia, for increased student participation formally and legally in the government of universities. He added that in Singapore they have adequate machinery for consultation when it is considered appropriate. On point (e), he said that whoever had control over finance for universities had ultimately the power to destroy or seriously damage them. But the Committee should proceed on the assumption that those who supported universities would not wish to take an extreme position of this kind. He agreed with the gentleman from Tanganyika that it was the business of law faculties and Universities in general to co-operate with governments and other interested parties in the State to secure the most efficient utilization of the national resources for education. The suggestion that the government might be able to say that they would provide money for teaching in one subject or for the establishment of a Chair in one subject and not in another was unacceptable, in Singapore at any rate.

Mr. MITCHLEY said that he spoke as a practising lawyer. In any democratic society where the government was elected from time to time by the will of the people it was inevitable that governments

should have a say in the regulation of universities in order to give expression to the current opinions of the people in their country with regard to social reform and social economical and political development. Mr. Mitchley said that, for instance, entrance to the University based on the concept of equality of opportunity, could be put on one side by the activities of the academic staff. It might also be possible for a particular university to produce a trend which was contrary to the general social, economic and political viewpoint of the country at the time, which would then lead to some sort of regulation by the government of the day. If the principle of democratic institutions is to apply to the country as a whole, then this, to a certain extent, must be reflected in the relationship between the government and the Universities or law schools.

Professor SHERIDAN, in answer to Mr. Mitchley's remarks, said that those members of the Committee who were extolling the virtues of control by a democratically elected government over the activities of academic staff had precisely the same ultimate objectives in mind as those defending the autonomy of the university. Even the strongest defender of academic freedom would admit that, if the university exercised its autonomy in such a way as to act contrary to basic interests of the State, then the State would intervene, and properly so, to do something about it. But as long as no extraordinary situation had arisen, and one was dealing with the normal functions of the educational system, the way in which academic affairs were managed by academic people was more reliable, more fair and more likely to be consistent with the Rule of Law.

Faculty as
of University

Mr. MCAUSLAN said that the new drafting of the proposal on regulation of the law faculty covered a very wide field and there was no specific reference to the fact that a law faculty which was part of a university, must be, in part, regulated by university authorities. Of course, there were certain matters in the law faculty which ought to be regulated by that faculty alone, but there are other aspects relating to the law faculty as part of the university, factors such as entrance qualifications, standards for degrees, standards to be reached to go on to post-graduate education, and these must be fixed by the University authorities. The Committee might include in the proposal a reference to the need for law faculties to be integrated in the university and to carry out dealings with the university authorities. Student participation in the government of the university was a question which university authorities the world over had debated for many years and were still debating and he wondered, with all possible respect, whether a body such as the International Commission of Jurists should go on record as being in favour of student participation in the government of the university.

The CHAIRMAN informed Mr. McAuslan that the proposal relating to the participation of the students in the government of the university had been dropped.

Mr. HOUMAN of Iran said that university autonomy did not mean that the government could not exercise certain supervision over the universities but the government's supervision should not extend to the programme of studies, finance and the recruitment of faculty members. For instance, in some countries, like Iran, the Minister of Education had wished to appoint the Dean, which was obviously against the autonomy of the university. But if for reasons of public security the government needed some information about, for instance, the students' activities, the Dean should not deny the report requested.

Dr. SEPULVEDA said that it should be emphasized in a very clear way that it is indispensable for law schools to have the most complete autonomy because, especially in Latin America, it was the only institution where freedom still existed. Many governments try to extend their power to control universities and we should promote the Rule of Law by ensuring that law faculties had the widest possible margin of freedom. Governments would see to it that this autonomy was limited through the allocations of funds or other measures when, as they would say, public interests were endangered, or would certainly find some other pretext to accomplish the same end.

Mr. BRANDAO said that there was an expression in the text proposed by the CHAIRMAN which had prompted him to say that the text proposed by the CHAIRMAN referred to law schools controlled by the State and specified that they should be completely free from any political interference. Mr. Brandao asked why the Committee should not add that private law faculties should be free from all interference by the corporation which controlled, managed and supported them. Autonomy could not be extended to the point that many of the members desired unless all faculties came under the control of the State. In Brazil law faculties enjoyed autonomy to an extent that might be said to be nearly absolute. Underlying the organization of curricula freedom of teaching was solidly established to the point that there was no longer any interference on the part of the government. Each faculty was allowed to supervise its own curriculum and teaching methods. However, this autonomy could not be fully achieved as long as there were private law faculties. The modern State, as it was conceived in the West, was a living organism that had its source in society and existed for the benefit of society. There was no longer any reason either to fear it or hand over to it all powers to control our social life. The modern State should no longer grant liberty to private corporations since in the eyes of the State all private powers were in fact its enemies towards whom it could show no leniency. The autonomy of law faculties was feasible only if they became state-controlled.

Mr. MARKOSE of India said that in India all universities were established either by State legislation, or by Union legislation if it is done under the Union budget. There were in India forty-two universities. There were two types of law schools, one, the government law school where the law teachers were government servants, and

there were also many universities where the Dean of the Law Faculty was a teacher and law teachers were employed by the University. In his experience it had always been better for law teaching to be organized at a university faculty rather than that law teachers be as any other civil servants. Where universities have deteriorated into bedlams, political influence was to blame. In certain cases universities were slowly overcoming this. But the Committee could not say that, after establishing a university which by law is an autonomous body, the government should in any way interfere with its activities. He supported Dean CURTIS and Professor SHERIDAN in the sense that it was much better not to put on record either directly or indirectly that the public interest as expressed in government legislation should interfere with the life of the university.

A discussion of the RAPPOREUR's final draft followed. Mr. MITCHLEY, Mlle ROCHETTE, Professor BRANDAO, Mr. SEPULVEDA, Mr. GALVAO DE SOUZA, Professor LEVASSEUR, Dr. PEREZ GUERRERO, Mr. ECONOMOU, Mr. MENDEZ, Mr. MCAUSLAN, Mr. MARKOSE and Dean CURTIS suggested various textual changes.

The CHAIRMAN summarized the ideas upon which the conclusions under heading IV¹ would be based as follows:

- (1) Legal education should be controlled with the participation of the Law Faculties themselves, free from any influence foreign to the interests of scholarship and education.
- (2) Members of the teaching staff should have a major share in such control.
- (3) The power to regulate the teaching of law should be used in such a way that freedom of teaching and research and access to faculties are firmly guaranteed and that the needs of developing societies attempting to establish or consolidate the Rule of Law are adequately met.
- (4) Faculties of Law controlled by the State should enjoy a wide measure of autonomy in administrative and academic matters, and should be entitled to apply their financial resources as they think fit for purposes of education.

By general agreement the second part of this proposal had been deleted.

- (5) With respect to Law Faculties controlled by the State, it would be desirable if their resources were obtained from general taxes paid by the entire community, considered as a contribution to establishing and strengthening the Rule of Law. With this same end in view the community should also feel an obligation to contribute to the support of private law faculties.

¹ entitled "As to Who Should Regulate Legal Education."

- (6) Faculties of Law should pay very close attention to the recommendations of the specialized agencies of the United Nations and associated regional agencies. (An example would be the Organization of American States.)

The final point would be:

- (7) It is recognized that public authorities are entitled to control the conferment of diplomas.

The Committee authorized the **RAPPORTEUR** to make the final draft of point 4 of the Working Paper.

Certain members of the Committee thereupon expressed their gratitude to the Chairman for the manner in which he had conducted the proceedings, and the Chairman, after expressing his thanks, concluded the Committee proceedings.

MEMBERS OF COMMITTEE IV

CELESTINO BASILIO (*Brazil*)
GIUSEPPE BETTIOL (*Italy*)
GEORGE FREDERICK CURTIS (*Canada*)
PAULO JOSÉ DA COSTA (*Brazil*)
WILSON DE ANDRADE BRANDÃO (*Brazil*)
NICHOLAS DELOUKAS (*Greece*)
DEMETRIUS ECONOMOU (*Greece*)
GUILLERMO GALLARDO VÁSQUEZ (*Mexico*)
SEBASTIÁN SOLER (*Argentina*)
GEORGES D. LANDAU (*Brazil*)
GEORGES EUGÈNE J. LEVASSEUR (*France*)
ANITHOTTAM THOMAS MARKOSE (*India*)
RAMIRO MÉNDEZ BRAÑAS (*Chile*)
CARLOS ALBERTO MENEZES DIREITO (*Brazil*)
ANTHONY OWEN RICHARD MITCHLEY (*Northern Rhodesia*)
PAULO SERGIO MORALES SARMENTO PINHEIRO (*Brazil*)
JUAN ANIBAL PADILLA TORRE (*Puerto Rico*)
ALFREDO PÉREZ GUERRERO (*Ecuador*)
JACQUELINE ROCHETTE (*France*)
MARIA JOSEFA SAAVEDRA DAZA (*Bolivia*)
CÉSAR SEPÚLVEDA (*Mexico*)
LIONEL ASTOR SHERIDAN (*Singapore*)
CONSTANTIN SIMANTIRAS (*Greece*)
EDUARDO SPINOLA E CASTRO (*Brazil*)
DIEGO URIBE VARGAS (*Columbia*)
HAROLDO VALLADÃO (*Brazil*)
MANUEL VIEIRA MORALES DE LOS RÍOS (*Uruguay*)
ARNOLD WALD (*Brazil*)
OSMAN RAMZY (*Egypt*)
HELENO G. FRAGOSO (*Brazil*)

CLOSING PLENARY SESSION

Saturday, December 15, 1962

09.00—12.00

The Chair was taken by Sir LESLIE MUNRO, the Chairman of the Congress.

The CHAIRMAN began the proceedings by calling upon Professor JEAN-PAUL GILLI, the Rapporteur of the First Committee, to read the Conclusions adopted by his Committee. After they were read, Judge KEBA M'BAYE of Senegal, the President of the Second Committee, read out the Conclusions adopted by his Committee. They were followed by Mr. YONG-PUNG HOW, the Vice-President of the Third Committee, and Professor HARRY STREET, the Rapporteur of the Fourth Committee, who announced to the Session the Conclusions of their respective Committees. The President of the Fourth Committee, Dr. JUSTINO JIMÉNEZ DE ARÉCHAGA of Uruguay, also spoke a few words on the work of his Committee.

The President of the International Commission of Jurists, Mr. VIVIAN BOSE, then made certain comments on the Conclusions of the different Committees.

Referring to the right of representation by counsel mentioned in the Conclusions of Committees I and II, he said that he realized that the clauses that provided that adequate opportunity should be afforded to counsel to prepare their cases imported the right to have uncensored confidential communication with counsel beyond the hearing of the police or other officials. However, the trouble was that this was not always the interpretation given to it by authorities in some parts of the world, and he suggested that participants emphasize this on their return to their own countries. He said that he spoke from personal experience. In the Turkish trials at Yassiada the interviews between the accused and the counsel were in the presence and hearing of guards. Under the British regime in India before independence over 20,000 persons were arrested in the course of a few days under the Defence of India Act. It was not until the courts took a firm stand and insisted that the interviews be out of the hearing of any official that that was allowed by the Government. Mr. Bose said that if that could happen under so enlightened a rule as that of the British how much greater was the danger under less enlightened regimes with those precedents before them.

He said that he was very pleased to find that Committee II had recommended an institution corresponding to the Ombudsman of the Scandinavian countries. In his view the establishment of this institution would be an important development.

Finally he said he was extremely happy that the Congress has recognized that the true vocation of a lawyer is much wider than the

**Right of
Representation in
Court**

duty to his client. Recognition of the wider obligations of a lawyer was particularly important in those countries struggling for political, social and economic advancement.

tion of
lutions of
mittees

The CHAIRMAN thanked Mr. BOSE for his observations. He then proposed that the Reports and Recommendations by way of Resolutions submitted by the four Committees be adopted by the Congress by acclamation. The Reports and Recommendations were thus adopted.

The CHAIRMAN next expressed his gratitude to the Committees for their work.

Dr. DARIO ALMEIDA MAGALHAES, Advocate and former member of the Committee on Justice of Congress, then addressed the delegates. He conveyed to them the cordial thanks of the Brazilian jurists and of the entire people of Brazil for honouring his country by holding the Congress at Petrópolis. He told them that the work they had accomplished had done full justice to the importance of the subjects discussed and to the traditions of the International Commission of Jurists. It had increased the respect in which the Commission is held and had given the members of the Congress a deeper understanding of the country after their direct contact with its institutions and way of life. He said that the people of Brazil are a social, warm-hearted people who condemn violence and reject all racial, religious and social prejudices.

f Law in

" This capacity for assimilation found in the racial and social fields characterises also the cultural, institutional, political and legal fields. Our minds are always open to understanding, agreement and conciliation. The ideal pursued by our country is a social democracy based on legal humanism... the natural character of our people—tolerant, prudent and gracious—eases the tasks of organization and of the maintenance of order falling on the ruling classes... This permanent trend is reflected in our political and legal institutions... After the troubled period when national independence was being consolidated, we experienced nearly half a century of constitutional monarchy. The stability we enjoyed enabled unity to be achieved in our extensive country. We then developed towards the presidential system on the United States model, the legal techniques of which we quickly assimilated."

He then said that,

" the system had to be recast during the economic crisis which broke across the world in the thirties. There was a revolution which established a republican government with unrestricted power. But before long the legal conscience forced the re-establishment of democratic elections."

He then referred to two recent episodes in the history of Brazil " to illustrate... our confidence in legal institutions and the Rule of Law." In 1945, " by its unanimous stand the army put an end in a few hours to a dictatorship which had by then lasted eight years. This was done without clashes or bloodshed... The government was placed in the hands of the country's presiding judges for the purpose of holding democratic elections. These elections were conducted in a very

ordinary fashion and were completely free. The soldiers gave way to the judges and the victory was complete...The second episode was last year when there was an unexpected and very serious political crisis which threatened the peace of the nation. It was a legal formula reshaping the system of government that succeeded in restoring a favourable political climate. The supremacy of law was guaranteed under the new order."

He continued,

"We do not wish to serve a stagnant or set legal order. The law we serve must be stable but not immutable or retrogressive. We must build a just world for free men."

The CHAIRMAN thanked Dr. MAGALHAES and assured him that the delegates were grateful to the people of Brazil for the hospitality shown to them. He then read out "The Resolution of Rio de Janeiro". It was carried with acclamation.

Adoption of
Resolution of Rio

Dr. OSVALDO ILLANES BENITEZ, Judge of the Supreme Court of Chile and Member of the International Commission of Jurists, then spoke. He said that "Law, as a reflection of human existence, can be achieved only through a process of constant struggle. Law is not a spontaneous growth; it is evolved through discussion, as a result of divergent opinions...Human activity cannot be left completely uncontrolled. It must be regulated in a world which is constantly on the verge of destruction. A start must be made by the inculcation of moral principles through education at all stages of life...legal standards cannot be adequately assimilated unless all segments of the population have been provided with this moral foundation. Law cannot be divorced from ethics...Culture too must be promoted, since without culture no progress can be made by the community which is constantly being supplied with new ideas and new spiritual and material needs which go into the making of law. Any attempt to expand the Rule of Law in a predominantly illiterate community would be all but futile. The Rule of Law in a democracy is based on a well-rounded education...and the educated person is in a better position to understand, respect and defend it in times of crisis." He quoted Professor Norman Marsh who said that "the Rule of Law involves, in its most direct and literal sense, the prevalence of certainty in human relationships. Man must know his rights and duties in society. It is of vital importance that certainty should be ensured in human relations. The certainty of legislation should be based on the dynamic reaction of the law to various factors which appear at times suddenly in the lives of the individual." But "we should also bear in mind above all that the very basis of law has also undergone a change." He said that the "Liberty, Equality and Fraternity" of the French Revolution had been incorporated into social duties and had acquired "a more profound and more human meaning"...We are living at a time when all nations are interdependent, so that

The Nature of
Law

domestic peace tends to reflect external peace, and vice versa. The conception of absolute sovereignty has been replaced by that of autonomy, in relation to matters within the jurisdiction of a State in which the international law cannot intervene if it were competent to do so. There are certain rights, such as human rights, that cannot be infringed by States, since that would mean undermining the solidarity that binds all men, no matter where they may be. They are universal values that are the heritage of mankind as a whole. . . Yet law, acquires life through the Courts, where it is applied and given meaning. . . Now it is necessary to establish an Inter-American Court of Justice, competent to deal with violations of human rights and any other disputes that may arise between American states." He said that the establishment of such a court " would be an example for the entire world. Let us make every effort to set them up . . . The battle can only be won if we succeed in arousing the conscience of people throughout the world. . . Let us therefore embark upon this task undaunted, and go about the creation of the channels through which the law has to flow, freely and surely. Latin America is ready to undertake the task . . . it can, as a continent with an unlimited future succeed in achieving this supreme ideal of peace under the Rule of Law."

The CHAIRMAN expressed his thanks to Dr. ILLANES for his speech and called upon the President, Mr. VIVIAN BOSE, to speak in conclusion.

Mr. VIVIAN BOSE said:

" I should like first of all to thank our hosts in Brazil. I should like to thank the staff of this Congress for their very devoted work, and in particular Eddie Kozera who never seems to tire. I also want to thank the translators, because without them this Congress would hardly have got under way; the Chairmen of the Committees and the Rapporteurs who had the almost impossible task of reconciling different and sometimes conflicting points of view but who, by some process of subtle magic, which can be summed up in the word " personality ", have accomplished the impossible. I must also thank all of you for having come here at considerable sacrifice of time, energy and convenience. Finally I must thank our CHAIRMAN for the work that he has put in. I know he was up till 4 o'clock last night drafting the Resolution of Rio.

" If you will bear with me for a while, I will give you my reactions to this Congress. The visible and material part of your work will be found in the Conclusions and in the Resolution of Rio. I want to speak now of the intangibles that are not discernable except to the inner eye: The invisible bonds of friendship and understanding that have been forged between person and person and through them between nation and nation; the golden threads of friendship that have woven themselves into the hearts of us all; the unbreakable ties of the spirit. These are more powerful than all your Resolutions, all your deliberations and debates and all your words. They will sink into your innermost beings and become part of your lives prompting

your hopes for the future and spurring your actions. I was impressed with the freedom of your discussion outside the Conference rooms even more than around the Conference tables and was impressed with the courteous approach and good-humoured understanding that prevailed in the give-and-take of debate. I was impressed with the manner in which representatives of nations faced and met criticism and often admitted their own mistakes and imperfections. After all, who of us is perfect? But it takes a big mind and a courageous heart to admit an error, especially in public. That is not only a sure sign of maturity but also a big step in the direction of progress. It is indicative of the absence of that inferiority complex which drives one to the defensive at every turn. Many delegates discussed subjects here, both in public and in private, without either giving or taking offence. This shows the spirit that lies at the heart of freedom of speech and discussion. From this there is a lesson to be learnt by the peoples of all nations, namely that when they cease to be edgy and touchy in their relations with one another, then the elements of each nation that go to make up its government will begin to tolerate criticism of the government itself, from which tolerance will spring one of the first fruits of the Rule of Law.

“We have concluded our Congress, but our labours are not at an end. We came here with humble hearts to learn. Having learnt, we are now charged with the duty of passing on an important message to our respective peoples, a message that is now part of our innermost beings. The only true foundation on which the Rule of Law can rest is its willing acceptance by the people of each land until it becomes part of their own way of life, built on the foundations of their own traditions and culture and rooted in their own history; and though fashioned differently in different lands, the Rule of Law in its fullest stature and dignity, should be discernible in them all. This is the goal which it is our duty to strive to reach. Go now to your homes and do each one of you your duty and, God willing, I will strive to do mine.”

The CHAIRMAN thanked Mr. BOSE, and having expressed the hope that the Resolutions and Conclusions of the Congress would have a great influence throughout the world, concluded the Congress.

