

FOR THE RULE
OF LAW

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

CONTENTS

ASPECTS OF THE RULE OF LAW

Human Rights in Armed Conflict	1	Peru	27
Freedom of the Press	6	Tibet	42
Eastern Europe: Amnesties	15	USSR	49

No. 21

DECEMBER 1964

The International Commission of Jurists is a non-governmental organization which has Consultative Status, Category " B ", with the United Nations Economic and Social Council. The Commission seeks to foster understanding of and respect for the Rule of Law. The Members of the Commission are:

JOSEPH T. THORSON (Honorary President)	Former President of the Exchequer Court of Canada
VIVIAN BOSE (President)	Former Judge of the Supreme Court of India
A. J. M. VAN DAL (Vice-President)	Attorney-at-Law at the Supreme Court of the Netherlands
JOSÉ T. NABUCO (Vice-President)	Member of the Bar of Rio de Janeiro, Brazil
SIR ADETOKUNBO A. ADEMOLA	Chief Justice of Nigeria
ARTURO A. ALAFRIZ	Solicitor-General of the Philippines; former President of the Federation of Bar Associations of the Philippines
GIUSEPPE BETTIOL	Member of the Italian Parliament; Professor of Law at the University of Padua
DUDLEY B. BONSAI	United States District Judge of the Southern District of New York; past President of the Association of the Bar of the City of New York
PHILIPPE N. BOULOS	Deputy Prime Minister, Government of Lebanon; former Governor of Beirut; former Minister of Justice
U CHAN HTOON	Former Judge of the Supreme Court of the Union of Burma
ELI WHITNEY DEBEVOISE	Attorney-at-Law, New York; former General Counsel, Office of the USA High Commissioner for Germany
SIR OWEN DIXON	Former Chief Justice of Australia
MANUEL T. ESCOBEDO	Professor of Law, University of Mexico; Attorney-at-Law; former President of the Barra Mexicana
PER T. FEDERSPIEL	Attorney-at-Law, Copenhagen; Member of the Danish Parliament; former President of the Consultative Assembly of the Council of Europe
THUSEW S. FERNANDO	Judge of the Supreme Court of Ceylon; former Attorney-General and former Solicitor-General of Ceylon
ISAAC FORSTER	Judge of the International Court of Justice, The Hague; former Chief Justice of the Supreme Court of the Republic of Senegal
FERNANDO FOURNIER	Attorney-at-Law; former President of the Bar Association of Costa Rica; Professor of Law; former Ambassador to the United States and to the Organization of American States
OSVALDO ILLANES BENÍTEZ	Judge of the Supreme Court of Chile
HANS-HEINRICH JESCHECK	Professor of Law; Director of the Institute of Comparative and International Penal Law of the University of Freiburg/B.
JEAN KRÉHER	Advocate at the Court of Appeal, Paris, France; Vice-President of the World Federation of United Nations Associations
SIR LESLIE MUNRO	Former 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
PAUL-MAURICE ORBAN	Professor of Law at the University of Ghent, Belgium; former Minister; former Senator
STEFAN OSUSKY	Former Minister of Czechoslovakia to Great Britain and France; former Member of the Czechoslovak Government
MOHAMED AHMED ABU RANNAT	Chief Justice of the Sudan
LORD SHAWCROSS	Former Attorney-General of England
SEBASTIÁN SOLER	Attorney-at-Law; Professor of Law; former Attorney-General of Argentina
KENZO TAKAYANAGI	Chairman, Cabinet Commission on the Constitution; Professor Emeritus, Tokyo University; Member, Legislative Council of Japan
PURSHOTTAM TRIKAMDAS	Senior Advocate of the Supreme Court of India; sometime Secretary to Mahatma Gandhi
H. B. TYABJI	Barrister-at-Law, Karachi, Pakistan; former Judge of the Chief Court of the Sind
TERJE WOLD	Chief Justice of the Supreme Court of Norway

Secretary-General: SEÁN MACBRIDE
Former Minister of Foreign Affairs of Ireland
Executive Secretary: VLADIMIR M. KABES
LL.D., M.C.L.

HUMAN RIGHTS IN ARMED CONFLICT

In many areas of the world to-day, armed conflicts are occurring not on an international scale, but amongst factions or regimes within States themselves. Such conflicts include fighting by dissident groups against established regimes, struggles for independence and civil wars between factions after independence. Illustrations may be seen in the conflicts in Vietnam, Yemen, the Congo, the Sudan and between the Kurdish people and established authorities.

In many of such conflicts the fundamental human rights of persons detained or captured by opposing forces are not being recognized and in some instances the killing and other inhuman treatment of such persons, including the taking and killing of hostages, has taken place. Such acts are contrary to all humanitarian concepts and would appear to contravene customary international law.

They also highlight the fact that the principles of human conduct in wartime, which are reflected in specific rules laid down by the Geneva Conventions of 1949, are not being observed by all participants in those conflicts. The Geneva Conventions of 1949 (which now directly bind one hundred and three nations) contain, inter alia, extensive provisions for the humane treatment of Prisoners of War and Civilian Persons in time of War.

This is an era in which many people are fighting for independence and new nations are emerging. It is regrettable fact, confirmed by current situations, that the conditions in many States are such that the prospect of armed conflict within them is very prevalent. Not all countries are parties to the Geneva Conventions, nor the Hague Conventions which preceded them, and many were not in existence when the Conventions were signed. Even in countries which are bound by the Conventions, it is apparent that some factions or disputants do not consider themselves so bound or are not aware of the Conventions.

The compelling and urgent question arising from these facts and with which the International Commission of Jurists is concerned is whether all such countries and in particular all warring factions, participants and military personnel within them, are free of any obligation to observe the rules laid down in the Con-

ventions or to observe, at least, minimum standards of humanitarian conduct, which are reflected in the Conventions, in their treatment of all persons detained by them.

The Commission believes that the principle of humanitarianism, which is one of the major forces in the development both of the customary laws of war amongst nations and of the Hague and Geneva Conventions, and which is examined briefly in this article, must, of necessity and through its constant recognition in the world community, transcend the usual limits of Conventional obligations and bind all nations and all men, in armed conflict, to observe, in relation to all persons coming under their control, those principles and standards of human conduct which endeavour to maintain the sanctity of human life and security of person and to reduce to a minimum the effects of war.

The Geneva Conventions of 1949 contain inter alia extensive provisions requiring that persons in captivity shall be treated humanely and shall not be subjected to any conditions or treatment likely to cause death or injury. There is also provision that no person shall be punished for an offence he or she has not committed and that the taking of hostages, and taking reprisals against persons is prohibited. The Hague Convention of 1907 contained articles calling for respect for individual life and precluding punishment for the acts of another.

It seems clear that those provisions were not novel concepts but were in fact declaratory of the customary laws of nations in time of war. The Preamble to the Hague Convention contained the following declaration:

“ Until a more complete code of the laws of war can be drawn up, the High Contracting Parties deem it expedient to declare that, in cases not covered by the rules adopted by them, the inhabitants and the belligerents remain under the protection and governance of the principles of the law of nations, derived from the usages established among civilized peoples, from the laws of humanity, and from the dictates of public conscience. ”

Various war crimes tribunals after the Second World War repeatedly affirmed that most of the provisions of the Hague Convention were declaratory of existing customary international law¹. The same has been said in respect of the Geneva Conventions of 1949².

¹ See L. Oppenheim, *International Law*, Vol. 2, 7th edn. by H. Lauterpacht (1952) at page 229.

² See M. A. Kaplan & N. Katzenbach, *The Political Foundations of International Law*, (1961) at page 225.

Further illustration of the principle of humanitarianism in the laws of nations is provided by the Charter of the International Military Tribunal established at the conclusion of World War II, which included a number of crimes in the category of "Crimes against Humanity". It has been said of this provision that:

"...it affirmed the existence of fundamental human rights superior to the law of the State and protected by international criminal sanction even if violated in pursuance of the law of the State."¹

The taking and killing of hostages is an example of arbitrary and unnecessary acts, contrary to all humanitarian concepts. In stating that no custom or usage exists justifying the killing of innocent hostages, Lord Wright said:

"...a court could not uphold the validity of a custom so repugnant to the dictates of humanity."

He also declared on principle and on authority that such a practice is contrary to the law of war and not permissible in any circumstances and is murder². In denouncing that practice, which was occurring in the Second World War, the President of the United States (in 1941) declared:

"Civilized peoples long ago adopted the basic principle that no man should be punished for the deeds of another."

Whilst these principles of the Laws of Nations have traditionally applied to wars between separate nations, the Commission believes that they must, of their own force, follow current social development and extend to all kinds of internal conflicts. The Geneva Convention of 1949, relative to the protection of civilian persons in time of war, arose out of deficiencies in civilian protection, which regrettably became apparent during the Second World War, and accordingly it reflects the adaptability of those principles to new circumstances. The Committee of the International Red Cross in promoting the Geneva Conventions of 1949, stressed the importance of applying humanitarian principles to persons prosecuted or detained for political reasons, and has said that it was "the desire of the 1949 Conference, representing all nations, to submit all aspects of captivity to humane regulation by International Law."

¹ See L. Oppenheim, *International Law, supra* at page 579 (n), and H. Lauterpacht, *International Law and Human Rights* (1949) at pages 35-37.

² See Lord Wright, *British Year Book of International Law*, Vol. XXV, (1948), page 310.

A major feature of the Conventions of 1949 was the inclusion of Article 3 requiring that in the case of armed conflict *not of an international character* occurring in the territory of one of the High Contracting Parties, each Party to the Conflict shall be bound to apply, as a minimum, provisions which require inter alia the humane treatment of persons taking no active part in the hostilities including members of the armed forces who have laid down their arms, and also of wounded, sick and detained persons. Also prohibited is "violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture and the taking of hostages."

Whilst these Conventions, including Article 3, contain provisions limiting their operation to conflicts within the territory of the Party or Parties concerned, and also defining the particular types of persons to be protected by them, it is considered, in the light of the humanitarian principles discussed above, that in so far as the Conventions forbid crimes which are of such magnitude as could not, on the most elementary notions of humanity and justice, be condoned on the grounds of "military necessity", the Conventions must provide a binding code of human conduct in all circumstances.

"The Hague Convention has consistently and on all sides during the Second World War, and substantially during the First World War, been held binding as an expression of the recognized principles of the law of war. Accordingly, it has a scope beyond that of a mere treaty or agreement between the actual parties, subject to denunciation at any time by any one of them. For this reason it is not necessary to consider whether the belligerent nation, whose conduct is impugned as being a breach of the Convention, is or is not entitled to dispute its authority on the ground that it never was a party to the Convention or, if it was, to denounce it. It is binding as a customary or established rule of law on every member of the community of nations."¹

It is considered that these remarks are also applicable to the Conventions of 1949.

Article 3 imposes obligations not only upon the Contracting Parties but upon "...each Party to the conflict. To that extent the Convention, in keeping with other developments in modern International Law, treats persons and entities other than States as subjects of international rights and duties... This is so although it disclaims the intention of affecting the legal status of the parties to the conflict. The observance of fundamental human

¹ See Lord Wright, *supra*, at page 303.

rights is not dependent upon the recognition of a specific status. Neither is it affected by the circumstance that the insurgents have risen in rebellion against the legitimate authority. ”¹

It is further concluded that no argument could be upheld which endeavours to justify inhuman treatment, such as discussed above, on grounds either that a particular country is not a party to a Convention, or that the particular belligerent, regime, participant or individual persons responsible for such treatment did not have the status of a nation or were not bound by the treaty obligations of the States of which they are nationals.

Has the time not come, when it would be desirable, that whenever an internal conflict or disturbance arises in any part of the world the Secretary-General of the U.N., or some other U.N. authority, should specifically and unequivocally bring to the notice of the belligerents the provisions of the “law of nations” as elaborated by the Geneva Conventions as well as the provisions of the Universal Declaration of Human Rights. In cases where the belligerents are receiving active support from outside States, these States should also be requested to use their best endeavour to ensure the proper application of these minimal humanitarian rules. They should be reminded that by Article 1 of the Geneva Conventions they have bound themselves not only to respect the Conventions themselves but to ensure their respect in all circumstances. If a procedure of this nature were adopted it would minimise some of the brutality which is so prevalent in internal conflicts; it would be essential that this machinery should operate automatically wherever an internal conflict is anticipated.

Finally it may be said that the spirit and terms of the Declaration of Human Rights of 1948, which appears to be gaining authoritative recognition as a code binding on all nations under international law, would clearly support the principles discussed above. It is only by constant recognition and promotion of these principles by the world community that human rights in this field can achieve utmost realisation. Thus mankind would be spared the horror and sufferings such as those which have recently been inflicted on innocent Congolese and foreign victims of the internal strife in the Congo.

¹ See L. Oppenheim, *International Law, supra*, at page 211 and Siordet in *Revue Internationale de la Croix-Rouge*, 3 (1950) No. 8, pages 132-145.

RECENT CHALLENGES TO PRESS FREEDOM

The International Commission of Jurists views with growing concern the recent tendency on the part of many governments to curtail the freedom of the Press. It is the purpose of this article to draw attention to some recent challenges to press freedom in Africa and Asia. In each instance the nature of the restrictions proposed and the extent to which public opinion has been successful in modifying them or having them withdrawn will be discussed.

Pakistan

The recent press curbs in Pakistan have already been dealt with in an article which appeared in *Bulletin* No. 17 of the International Commission of Jurists, published in December 1963. While this article emphasized that no justification could be found for these press curbs, it also commended the boldness and vigour of the opposition to the restrictions by politicians, trade unionists, lawyers, students and other influential sections of the community. It was indeed gratifying to note that although this opposition was not successful in having the measures complained of withdrawn, it was successful in persuading the government to modify their nature and effect. The article in question has set out and discussed the many provisions of the Press and Publications (Amendment) Ordinances of September and October 1963 and it is therefore not proposed to set them out or examine them once again here. Readers are referred to that article for details.

While there certainly can be no restoration of the Rule of Law in the field of freedom of expression unless and until all objectionable restrictions and governmental controls are completely removed, the events of 1963 in Pakistan serve to emphasize:

1. that there has been no complete departure from the Rule of Law in Pakistan;
2. that, except in countries where there has been a complete departure from the Rule of Law, vigorous opposition through democratic means to measures denying or curtailing fundamental freedoms can often be of great persuasive value.

Recent attempts to curtail the freedom of the Press in many countries has made it necessary for the Commission to stress that in these countries a duty rests upon the legal profession in particular, and the public in general, to be ever vigilant and to take all steps possible within the law either to prevent proposals to restrict press freedom from passing into legislation or to agitate for the repeal of restrictive legislation already passed.

Rhodesia¹

On September 5, 1964, the Commission issued a press statement on the arbitrary suppression in Southern Rhodesia of the "Daily News", a newspaper which represented the views of the African majority in that country. In this statement the Commission made, *inter alia*, the following observation:

As far as the Commission is aware, this paper sought to oppose violence and to exercise a moderating influence; in any event, even if it were contended that this paper transgressed the very stringent laws which are in operation in Southern Rhodesia, it should have been given an opportunity to defend itself in accordance with the requirements of the Rule of Law. Thus we have a situation in which a government which only represents one-fourteenth of the population suppresses an organ which advocates the rights of the overwhelming majority.

The Minister of Law and Order explained to the Rhodesian Parliament that "the Government cannot permit the use of press freedom for supporting subversion". The petition to the Governor by the Rhodesian Guild of Journalists contained what is surely the classic answer to attempts at controlling newspapers on the ground that they support subversion.

If the Government considers that the newspaper has transgressed the laws of the country there are many processes within those laws to which the Government has recourse before punitive action of this nature.

The following passage from the Commission's press statement clearly brings out its views on the suppression of organs of expression:

Freedom of expression and freedom of association form part of the essential requirements of democracy and of the Rule of Law. A free and responsible press is, in the modern age, an essential means of informing and educating public opinion. Indeed, without the play of public discussion and criticism, it is hard to envisage how the democratic process could

¹ After Northern Rhodesia became the independent Republic of Zambia, Southern Rhodesia is known as Rhodesia.

operate. This is the reason why those who wish to destroy democracy, or to prevent it from taking root, always begin by suppressing newspapers and by assuming control of the principal organs of expression. This is a well recognised technique employed by authoritarian regimes be they of the right or the left, be they colonialist or nationalist.

Nigeria

Nigeria's controversial Newspapers (Amendment) Bill has now passed into law. In introducing the Bill in its original form the Federal Government of Nigeria was at pains to explain that it was not the intention of the Government to curtail the freedom of the Press and that the Bill was introduced because of "the recklessness and irresponsibility of certain sections of the press". Vigorous protests from the Nigerian Union of Journalists, the Guild of Editors and other organizations resulted in the Bill being modified so as to remove some of its more objectionable features.

The new Newspapers (Amendment) Act, 1964, requires newspapers to have offices in Federal territory and requires that the Ministry of Information be notified of the name and address of editors. The sting of the new law is in Section 4, the relevant portion of which runs as follows:

- (1) Any person who authorizes for publication, publishes, reproduces or circulates for sale in a newspaper any statement, rumour or report knowing or having reason to believe that such statement, rumour or report is false shall be guilty of an offence and liable on conviction to a fine of £200 or to imprisonment for a term of one year.
- (2) It shall be no defence to a charge under this section that he did not know or did not have reason to believe that the statement, rumour or report was false, unless he proves that prior to publication he took reasonable measures to verify the accuracy of such statement, rumour or report.

This provision is undoubtedly less draconian than the clause it replaced which had run thus:

4. (1) Where any statement, rumour or report is published or reproduced in a newspaper by a person to whom this section applies and the statement, rumour or report is one which such person knows is, or suspects to be, false or such person publishes or reproduces it without regard being had as to its truth or falsity, and the statement, rumour or report:—
 - (a) discloses or affects adversely any right, reputation or freedom of a person which is entitled to protection, or
 - (b) discloses confidential information, or
 - (c) attacks or is likely to jeopardise the authority and independence of the courts, or
 - (d) is or is likely to be prejudicial to the defence of Nigeria, or to the public safety, public order, public morality or public health thereof,

any such publication or reproduction shall be an offence punishable on conviction in the case of:—

- (i) a corporation, by a fine of not less than five hundred pounds, or
- (ii) any other person, by imprisonment for a term of not less than twelve months or more than three years.

Notwithstanding the substantial modification which a comparison of these two clauses will show, it must be pointed out that there is always danger when the criminal law is invoked to deal with what may be no more than sloppy reporting. Whilst no one would defend deliberate distortion of facts by the press or regard such abuses as falling within the protection due to the Press, the question of punishing the reporter who is unable to prove due diligence is not the same. It must also be borne in mind that proving due diligence in the verification of facts may place a reporter in the dilemma of having to choose between revealing his sources and accepting his punishment; it is often difficult to prove that reasonable measures were taken without disclosing sources. No journalist will voluntarily disclose confidential sources, and it is to be feared that the new law will inevitably limit the freedom of the Press to ferret out information on matters of genuine public interest. This is surely a vital role of the Press and herein lies the real strength of a free Press—freedom to find out for itself and to publish its findings.

India

In September 1964 the Rajya Sabha (Indian Upper House) discussed the proposed Press Council Bill for five days after which the Bill was referred on a motion of the opposition to a joint committee of both Houses of Parliament for consideration. The Bill aims at setting up a Press Council intended to safeguard the freedom of the Press as well as to improve standards of journalism in the country.

The idea of such a Bill was first mooted by the Indian Press Commission in 1954. The Press Council Bill itself has had a chequered career. A first Bill was introduced and passed in the Rajya Sabha in 1956, but this Bill was made to lapse by the dissolution of Parliament. It was 8 years later that the present Bill, which is a modified version of the Bill of 1956, was introduced.

The Bill proposes to establish a Press Council of 26 members drawn from professional journalists, newspaper owners, university representatives and Members of Parliament. A past or present

member of the Judiciary nominated by the Chief Justice will be its Chairman. The Council will be a statutory body with judicial status. Its decisions will be final and will not be subject to review by a Court of law.

Whatever the avowed objectives of the Bill may be, it is feared that the Press Council, far from protecting the freedom of the Press, will have the result of restricting it. A study of its provisions indicates that the Bill will have the following adverse effects on press freedom:

1. The Press will lose the democratic right of appeal to the Courts against decisions of the Council.
2. Although the Bill provides for numerical representation of press interests in the Council, the fact that the Council is nominated by the Government may not serve to ensure that it will be truly representative of journalistic interests.
3. Although the Council can entertain complaints against the Press, there will be no provision for the Press to complain against infringements of its rights by the Government.
4. The traditional right of journalists to protect their sources is likely to be impaired.

On November 9, 1964, the International Press Institute, in a cable to Prime Minister Lal Bahadur Shastri relating to the proposed Press Council Bill, stated, *inter alia*:

This bill has caused special concern in the free press throughout the world in view of the great prestige India is enjoying in all democratic countries.

The Institute recognizes that the present Government of India has no intention of employing malevolently the powers it will derive from the proposed Press Council Bill. The International Press Institute considers, however, that the bill in its present form provides a formidable weapon which, with statutory authority, could be used to destroy the very freedoms which it now avowedly seeks to protect.

The *bona fides* of the Indian Government in seeking to establish a Press Council is not challenged. Mr. C. R. Pattabhiraman, Deputy Minister, moving the Bill on behalf of Mrs. Indira Gandhi, Minister for Information and Broadcasting, expressed the view that it was a body representative of the Press that could alone and should, in a free and democratic state, be responsible for maintaining high journalistic standards in the country. It must be understood in this connection that the objection is not to a Press Council *per se*, but to the restrictions on the freedom of the Press which the provisions of the proposed Indian Press Council Bill are likely to give rise to.

It will be well for the joint committee of both houses and others who will be called upon to examine the provisions of the Bill before its passage into law to consider the views which the late Pandit Jawaharlal Nehru himself held in regard to the freedom of the Press. Speaking at the All India Newspaper Editors' Conference, he said:

Persons in authority should be subject to criticism, ceaseless criticism—I hope friendly criticism, but criticism as strong as you like. To my mind the Freedom of the Press is not just a slogan . . . It is an essential attribute of the democratic process. I have no doubt that even if the Government dislikes the liberties of the Press and considers them dangerous, it is wrong to interfere with the freedom of the Press.

By imposing restrictions you do not change anything. You merely suppress thoughts from spreading further.

Therefore, I would rather have a completely free Press with all the dangers involved in the wrong use of that freedom, than a suppressed or regulated Press.

South Korea

Following upon the passing of the Press Ethics Commission Law in August, 1964, five press groups in South Korea, namely the Hankook (South Korea) Newspaper Publishers' Association, the Hankook Wire Services Association, the National Committee of the International Press Institute, the Hankook Press Ethics Commission and the Hankook Newspaper Editors' Association, held a joint meeting on August 2, 1964, and formed a committee with a view to waging a campaign for the repeal of the Law.

The Press Ethics Commission Law provided for the creation of a nine-man Press Examination Board empowered to order the publication of corrections and apologies by newspapers, magazines and radio stations for alleged erroneous reporting. It forbade the printing of information considered harmful to national security and the misreporting or criticism of the Chief of State. It further stipulated that it was obligatory on the management of every newspaper to become a member of the Press Ethics Commission, the members of which were to be under the surveillance of the Press Examination Board. The Board was authorized to deprive any management of its membership if it were suspected of violating the Anti-Communist Law or the Public Peace Law. The Board could also punish those suspected of violating these laws with 6 months imprisonment or with a fine extending to 500,000 won (about US\$1,800).

Vigorous opposition to the new press law from many important sections of the community and particularly from journalists followed. The Government retaliated by deciding on September 1, to deny "all forms of Government preferences and cooperation" to the four major opposition newspapers namely, the *Conga Ilbo*, the *Chosum Ilbo*, the *Kyung Hyang Shinmun* and the *Maeil Shinmun*. All these newspapers are dailies, the first three published in Seoul and the fourth in Taegu. The preferences denied included the grant of Government-arranged bank loans, preferential allotment of newsprint and rail-freight discounts. "Cooperation" was withdrawn by directing all Government agencies and state-run enterprises to drop subscriptions and advertisements to these newspapers.

Strong protests against these retaliatory measures followed from journalists as well as the general public. These protests resulted in President Park Chung Hi issuing a statement on September 4, promising to withdraw the retaliatory measures against the dailies in question. While admitting that the measures adopted by the Government against these dailies were excessive, the President also said that the attitude of some newspapers was hot-headed. He called for the loyal cooperation of the Press in the implementation of the new law, which, he said, was passed by Parliament and was therefore not illegal. In the same statement the President emphasised that it was not the Government's intention to suppress the freedom of the Press.

The International Press Institute in a cable to the President described the government attitude as particularly disconcerting in view of the offer of the Korean Press to strengthen its voluntary restraint in order to ensure responsible and accurate reporting. The announcement by the Government shortly afterwards that the new law would be shelved and that the journalists' proposals of voluntary self-restraint had been accepted, marked the successful termination of the agitation against press control.

Ceylon

Recent events in Ceylon indicated that the Government was determined to introduce a press law aimed at taking over one of the three largest newspaper groups in the country¹ notwithstanding the very strong public protests against this move. The

¹ The Associated Newspapers of Ceylon Ltd., also known as the Lake House Group. This group publishes newspapers in English, Sinhalese and Tamil.

Government declared that it had no intention of taking over any other newspapers or newspaper groups and professed that its sole intention was to break up the "press monopoly" in the country.

There has hitherto been no bar in Ceylon to the publication of newspapers by anybody and, if it was the Government's complaint that the existing newspapers were biased against it, one would imagine that it was the simplest thing for the Government, with the resources at its command, to publish its own news bulletins. The take-over of a section of the free press is hardly the answer to the problem. That the Government of a country which is wedded to democracy and the parliamentary form of government should seriously have considered such a course was indeed most disturbing and gave rise to concern over the future of fundamental freedoms in the country. It is relevant in this connection to refer to an observation made by the Hon. M. C. Sansoni, Chief Justice of Ceylon, in regard to the freedom of the Press:¹

There should be no standardisation of thought and citizens should be free to speak and the Press free to praise or criticize the acts of the Government.

Local bodies, Buddhist monks, lawyers and politicians of different shades of opinion have been in the forefront of the protests against the Government's move to take-over one group of newspapers and control the others. The country has recently been the scene of mammoth protest meetings and processions. Newspapers outside the Lake House Group have also been outspoken in their condemnation of the proposed measures.

The Ceylon Section of the International Commission of Jurists organized a seminar on "The Press Bill and the Rule of Law" which was held on October 10, 1964. Mr. H. H. Basnayake, Q.C., the late Chief Justice of Ceylon, who presided, referring to the protests of the public against the Bill, said:

We should hope that the people would stand firm in their resolve and never retreat. Henceforth, every step taken should be a firm step against the attacks made on the Rule of Law.

Mr. C. Thiagalingam, Q.C., who led the discussion, made the following observation in the course of his speech:

¹ This observation was made by the Chief Justice in the course of a discussion on "Judicial Control of Legislative Power", held at the Lincoln Auditorium, Colombo, on August 27, 1964. The Minister of Justice was the chief guest.

For the fulfilment of the rights of the people there were certain fundamental requirements, the first among which was the freedom of speech which led to the freedom of the Press. Once a free Press was lost it would be the end of human freedom and the dignity of man.

On November 5 the second reading of the Press Bill was passed in the House of Representatives. The Opposition alleged that, due to certain flaws in the introduction and presentation of the Bill in Parliament, the Bill was invalid and announced its intention to challenge the validity of the Bill in Court. The Cabinet thereupon examined the various grounds on which it was sought to have the Bill invalidated. Being apparently satisfied that there was substance in some of these grounds and being intent on passing a Press Bill to which no legal objections could be successfully taken, the Cabinet decided to allow the Press Bill to lapse by the prorogation of Parliament and to introduce a flawless Bill when Parliament was re-summoned after the prorogation.

Accordingly, Parliament was prorogued on November 12 and it was announced that Parliament would be reconvened on November 20.

On November 20 His Excellency the Governor-General delivered "the Speech from the Throne" setting out the Government's policy and programme for the forthcoming period. Amendments to the Throne Speech were proposed by the different opposition groups and the first of these Amendments was taken up for debate. The debate centered principally around the Government's intention to control the Press and thereby open the way to totalitarianism. Other reasons for losing confidence in the Government were also brought out by the opposition in the course of the debate, the chief among these being the Government's failure to stem the ever-rising cost of living. Opposition members also pointed out that the Government was abusing the procedure of prorogation and re-summoning Parliament for the purpose of curing flaws in the Press Bill.

In the course of the debate the Hon. C. P. de Silva, Minister of Land, Irrigation and Power and Leader of the House of Representatives, along with fifteen other Government M.P.'s, indicated their intention to vote against the Throne Speech and crossed the floor. One of the Government Members, Mr. Edmund Wijesuriya, in the speech he made before he crossed the floor said:

I am voting against the Throne Speech because whatever be its contents it breeds the spirit of the Press Bill. The Throne Speech is the Press Bill in disguise.

In the voting the Government was defeated by one vote, 73 members voting for the Speech and 74 for the Amendment. The salutary result of the Government's defeat is that there will be no Press Bill and the Press in Ceylon will continue to be free.

The Ceylon Parliament will be dissolved on December 17 and the new General Election will be held on March 24, 1965. The new Parliament is expected to meet on April 7. This turn of events in Ceylon is important because the nation-wide agitation against the attempt at controlling the Press of a country which has had a long history of press freedom was ultimately successful.

AMNESTIES IN EASTERN EUROPE: RUMANIA, POLAND, BULGARIA, EAST GERMANY

On the occasion of the twentieth anniversary of the crushing of fascist regimes in their countries by or with the aid of the Soviet Army at the end of World War II, four countries of Eastern Europe announced amnesty during 1964: Rumania, Poland, Bulgaria and the German Democratic Republic.

In Hungary a general amnesty was granted on March 21, 1963 for all political prisoners (Cf. *Bulletin* No. 15, April 1963). Large numbers of prisoners had been pardoned already in 1953; victims of Stalinist processes were rehabilitated in 1956 and 1962.

Czechoslovakia proceeded to a partial revision of political show trials against members of the Communist leadership in 1963 (Cf. *Bulletin* No. 17, December 1963).

This list shows that many of the ruling Communist parties in Eastern Europe found it timely to review the results of their previous penal policy and to reduce to a minimum the number of their political prisoners. Amnesty is a usual means of achieving such an end.

In criminal law amnesty is defined, both in the law of Western countries and in socialist countries ruled by Communists, as a prerogative of the supreme organ of the state to grant to a category of offenders the remission of their sentences. The notion of amnesty is divided usually into general amnesty or amnesty proper and special amnesty or pardon. The main difference between the two categories is that *general amnesty* relates to a generically defined

group of offenders (all persons who have committed certain crimes during a certain period of time), i.e. the personal identity of those who benefit from the amnesty will be defined by *objective criteria* given in the decree of amnesty. On the other hand, *pardon* relates to one or more individuals chosen by the Legislature, or somebody else on its behalf, on the basis of personal, subjective reasons. These characteristics of amnesty are common in the criminal law of all countries. In Anglo-American law it is also emphasised that while amnesty is the abolition of the offence, pardon is forgiveness.

The following survey of four amnesty decrees in Eastern Europe will outline the measures taken and will assess how far these measures can be qualified either as general amnesty or as pardon. Differences in the provisions, as indicated by press comments—or the lack of such comments—and differences in the application of the amnesty measures may illustrate the attitudes in the countries concerned towards administration of justice in general and criminal policy and political prisoners in particular.

1. RUMANIA

The June 17 1964 issue of *Scanteia*, the newspaper of the Rumanian Communist Party, announced a decree of the State Council of the Rumanian People's Republic by which "persons guilty of infringements against State security have been reprieved for the remainder of their sentences". The article mentioned other decrees providing for amnesty and issued in recent years, since 1962. This was, however, the first time that news on releases was published. The article indicated the number of prisoners released or to be released as amounting to more than 10,000 and added: "by the 20th anniversary of "Liberation Day", August 23, there will be practically no more prisoners sentenced for political charges."

The text of the Decree is not available. It seems that it was not published in the Official Gazette, nor were there further announcements on the carrying out of the Decree. At the end of September (25-9-1964) the American newspaper, *Christian Science Monitor*, reported from Bucharest that according to widespread belief all political detainees had been released; that, as in the first stages of the amnesty, there had been no public announcement, nor were there further figures published on the total number of released detainees. The final figures were reported to be in the vicinity of 12,000. It was said that some of the released persons had confirmed

that they belonged to the last group who left the place of detention. Released prisoners seemed to include all groups of people detained in the twenty years of Communist rule for security reasons: old generals and politicians, writers, journalists, members of the Hungarian minority who are believed to have been arrested after the Hungarian uprising in 1956, former Iron Guardists, the members of the Rumanian fascist organisation, and others.

This and other newspaper reports confirm the official announcement on the release of practically all political prisoners in Rumania. On the legal provisions of the amnesty, material is very scarce. Besides the *Scanteia* announcement cited above, there is but one official comment available by the President of the Supreme Court, published also in *Scanteia*, on June 20, 1964, three days after the official announcement of the amnesty. This comment did not go into an analysis of the State Council Decree; it made only a short allusion to the fact that the Decree "pardoned a considerable number of people sentenced for offences against the security of the State for the rest of their prison terms" and that "measures for freeing those pardoned were currently being implemented". These texts do not indicate clearly whether reprieve of the sentences means the definite remission of the remaining part of prison terms or merely the suspension of their execution and thereby a release on parole. The spirit of the official announcements, as it will be seen below, would rather indicate the latter.

The legal provisions of the amnesty, its scope, and its execution are not dealt with at all. They are either left to the discretion of the administrative bodies handling political prisoners (the Ministry of the Interior and its subordinate police organs) or are settled by internal orders. The comments of the President of the Supreme Court, cited above, as well as an interview granted by the Vice-Chairman of the State Council, Birlandeanu, to *Associated Press* (15-6-1964) stressed the *political importance* of the event.

The Vice-Chairman of the State Council declared that a *general amnesty* had been decided because the Government thought that the achievements of the People's Republic in the field of economics and elsewhere were so important, and consolidation of the regime so far advanced, that "released prisoners should also get a chance to work and live normally".

The same aspect is stressed in the comments of the President of the Supreme Court, who adds that the same development opened the way to a new penal policy. Growing observance of and respect for laws, and the reduction of criminality contributed to the shap-

ing of a new penal policy. This new policy provides a larger scope for educational measures and for conditional release on parole by amending former penal laws. The release of political prisoners was said to belong to the same trend.

The article also refers to measures to facilitate the re-integration of released political prisoners into social life. Indeed, Decree No. 1.051 of the Government, which was however not quoted, ordered lower State organs to reemploy released prisoners as far as possible in their original profession and to assure housing for them. However, released prisoners of pensionable age did not get old age pensions (there is a general provision for old-age pension in Rumania) and depend therefore entirely on the charity of their families.

The problem of re-integrating into social life people, who by spending ten to twenty years in prison have grown old there and whose health was badly shaken or broken, is a most difficult one even if there is plenty of goodwill and those people are no longer stigmatized as "enemies of the people".

In this article the President of the Supreme Court advanced the following arguments: "The persons benefiting from the amnesty committed grave offences in the past against the laws of the country, for which they were given appropriate sentences. Now the people's democratic state gives them the possibility to redeem their debt to the people by honest work."

It should be mentioned in this context that in Rumania a repudiation of former "violations of Socialist legality", i.e. of political trials and arrests without trial practised in the Stalinist period, did not take place, unlike most of the other Communist ruled countries of Eastern Europe. All political prisoners were allegedly lawfully arrested, sentenced and treated, and now it was an act of grace on the part of the State which granted even to the enemies of the people a chance to work. For this grace, it seems, gratitude is expected from those, of whom many might qualify under the provisions issued by fraternal Communist parties in other countries as "victims of dreadful abuses of Socialist legality". Indeed, one wonders why the President of the Supreme Court thought it necessary to mention in his article that "numerous persons freed from places of detention expressed their gratitude for the amnesty and pledged their best".

Even in the light of these shortcomings and of the lack of proper legal provisions, the release of 12,000 political prisoners is a welcome gesture. It is, however, a political decision, which does not yet warrant conclusions on a new penal policy.

2. POLAND

On the occasion of the 20th anniversary of People's Poland an amnesty, granted by the State Council, was announced on July 21, 1964. The decree was published in the Official Gazette (Dziennik Ustaw, Nr. 27/174), and commented on by the Minister of Justice (Polytika, July 21) and by the Procurator-General (Trybuna Ludu, August 1). The Polish press carried reports on the various stages of the implementation of the amnesty.

The amnesty should be seen in its historical context: In the past twenty years, four amnesties were granted in Poland, in 1945, 1947, 1952 and 1956. Each of the amnesty laws, including the present one, declared that the occasion for the amnesty was the internal stabilization and progressive normalization of the political situation in the country. On the occasion of the 1956 amnesty, which might be considered as the most important for political prisoners, it was declared during the debates on the bill, that the amnesty became necessary because in general the courts had imposed too harsh sentences, penal laws were far too numerous and prisons were overcrowded with people who deserved a milder treatment.

In 1964, the Procurator-General stated that there were in practice no more political offences in the country and that therefore the amnesty did not have to emphasize that kind of criminal activity. Indeed, the amnesty envisaged a large category of minor common offences: it applied to about 50 per cent of all people serving jail sentences and to more than 70 per cent of all people who had been convicted or charged with violation of criminal law. Its direct effect was the release of about 15 per cent of all prisoners.

The amnesty does not apply to perpetrators of major offences, especially those who committed economic crimes, such as pilferers of public property, swindlers, members of gangs causing great wrongs to the national economy, bribe takers, etc. As examples of crimes not covered by the amnesty, the Minister of Justice singled out such major economic crimes as arson, sabotage and intentional destruction of social property causing damage of over 3,000 zlotys, as well as foreign currency offences committed under particularly aggravating circumstances as defined by the decree of April 13, 1960.

Recidivists are also excluded. Relapse was defined as a subsequent offence of the same kind or committed for the same motives during a five year period after having served the sentence for the former offence or at least one-third of it, but not less than three months.

The basic provision of the amnesty is to grant a complete pardon for sentences of up to one year and for fines up to 5,000 zlotys. Sentences up to two years are reduced by half.

For humanitarian reasons the amnesty gives special treatment to some groups of people:

1. Women bringing up children under 14 years of age.
2. Older people: men above 60 and women above 55 years of age.
3. Teenagers who were under 18 when committing the offence.

For persons listed under 1-3, full pardon is also granted in the case of a sentence up to two years, whereas punishments between two and three years are reduced by half.

Another group of amnestied delinquents are those who "did not realise all the effects of their offences", as specified:

1. Employment offences, resulting from failure to carry out duties or exceeding authority, if not committed for gain (Articles 286 and 111 of the Criminal Code) and if the penalty does not exceed 10,000 zlotys.
2. Violations of traffic regulations except when committed in a state of intoxication or resulting in death or serious injuries.
3. Offences committed unintentionally.

In these cases prison terms up to one year are remitted, and those between two and five years are reduced by half.

There are detailed provisions aimed at a differentiation between delinquents according to the degree of the social danger of their offences, taking into consideration at the same time the personality of the delinquents.

Article 8 of the amnesty decree is perhaps the most characteristic among its provisions. On the basis of this Article, somebody guilty of an offence committed before July 22, 1964, could present himself to the militia or the Public Procurator up until October 22nd, 1964 and reveal the circumstances of his offence and the identity of persons participating in it. In the case of such a co-operation with the prosecuting organs, the sentence could be reduced by half, or in some justified cases, the Procurator can ask for a complete pardon for the accused.

The Minister of Justice explained in his interview that this provision would be an aid to the authorities in the case of offences which were still undiscovered but whose authors were willing to

reveal their offences and to redress the wrongs. This opened the way for people who had entered the path of crime, and were taking part in some undiscovered affairs or the activities of gangs, but who wanted to break off such activities.

The Procurator-General stressed in his article that the amnesty was an exceptional measure and that future perpetrators of minor offences should not rely on another that would pardon them. The present one cannot be considered as an indulgence towards perpetrators of minor offences. He implied that this was the last chance for those involved in illegal activities.

At the end of his article he emphasized the duty of the authorities, officials and the whole community to help the released prisoners to break with their criminal past. They should be given work without any discrimination.

The Polish press reported from time to time on the implementation of the amnesty. *Trybuna Ludu* of August 3, 1964, made a survey of these measures in the various Polish administrative units, the Voivodships. It was reported that there were plenty of jobs for released prisoners, but many of the released people did not avail themselves of these opportunities, postponed their decision on taking jobs or refused to accept low-paid posts. For manual workers there were plenty of vacant places; for white collar workers, however, possibilities were limited. They were advised to take up training courses for other jobs.

Sztandar Ludu of September 22, 1964, reported on results achieved in the implementation of Article 8 of the Amnesty Decree. Up to September 15, 231 persons applied to the Public Procurators or the Citizen's Militia, revealing their offences and the circumstances under which they were committed. Along with a series of petty offences, a murder case and a theft of 35 tons of meat worth 1 million zlotys were also reported.

This amnesty seems to indicate that the big problem for Polish authorities is the prevention and repression of minor offences in all walks of life, and especially in the economic field. In this respect, however, the existing organisation of the Polish national economy should be taken into consideration. This aspect was stressed in an article of *Trybuna Ludu* of October 20, 1964. It was pointed out that the increase in economic crimes is due partly to deficiencies in economic organisation, or to over-organisation. "We must bear in mind—the newspaper wrote—that there are many circumstances in our daily life that make basically honest people commit bigger or smaller crimes (quoting for instance the

example of craftsmen and artisans and their insufficient supply of material). To change these circumstances is an important task of the struggle against crime. The point is that we should improve the economic organisational conditions so as to make it unnecessary for honest people to run foul of the law. ”

Amnesty provisions were applied in the case of the Polish author Melchior Wankowicz, who was sentenced on November 9, 1964 to three years imprisonment by a Warsaw tribunal. Invoking the amnesty decree, the court diminished the term of his sentence by one half. Mr. Wankowicz, one of Poland's most popular authors and a naturalised United States citizen, was among the 34 prominent Polish authors who asked the Polish Government in March 1964 for more liberty for writers and relaxation of cultural restrictions. Their Manifesto has been reprinted abroad.

On October 7, 1964 the Polish Procurator-General's office announced an investigation against Mr. Wankowicz for transmitting abroad material that was deemed “slandrous” to Poland. It was reported later that he was charged under a 1946 decree, the invoked section of which provides for imprisonment of at least 3 years for anybody “who disseminates. . . draws up. . . or conveys written materials. . . which contain false information that could cause material harm to the interest of the Polish State. . . ”

International writers' organisations, and cultural organisations protested vigourously against Wankowicz' trial, arguing that his prosecution was intended mainly to intimidate Polish writers and intellectuals into accepting strict government control.

The judgement delivered on November 9, was not made public except for the part pronouncing the sentence of imprisonment and the application of the partial amnesty. Pending revision of his case by the Supreme Court, Mr. Wankowicz was released from custody.

3. BULGARIA

The Presidium of the National Assembly issued a Decree of amnesty on September 4, 1964. The Eighth Session of the National Assembly voted an Amnesty Act on September 7, 1964 on the occasion of the 20th anniversary of the “Liberation Day” of Bulgaria. (Published in the Official Gazette, D'rzhaven Vestnik, September 8, 1964, Pos. 71/535).

This amnesty is the third in the history of the Bulgarian People's Republic. The first was granted in 1947, the second on December 30, 1962 (Cf. *Bulletin* No. 15, April 1963). The 1962 amnesty

included a certain number of political prisoners and aimed at correcting abuses of the Stalinist period. It was said that 4,000 people were released, out of which 500 were political prisoners. Another 2,000 prisoners obtained a partial remission of their prison terms.

The Bulgarian amnesty of 1964 consists of two separate parts: the Amnesty Decree of the Presidium of the National Assembly and the Amnesty Act of the National Assembly.

The Amnesty Decree is an accumulation of personal acts of grace. Each individual case has been considered on its merits: the nature of the crime committed, its social danger, length of the prison term and the portion served, the prisoner's family and marital status, his past record, his conduct in prison and his attitude to work and the People's Government. People sentenced for "serious or shameful crimes", recidivists and "prisoners who have not yet become clearly conscious of their criminal past" were not pardoned. The number of those who were granted pardon was stated as 4094 (Radio Sofia, September 5, 1964).

The Amnesty Act covers a series of political, military and economic crimes committed between September 9, 1944 and August 1, 1964. The list of the crimes involved contains:

- crimes committed by the opposition against the people's democratic State after September 9, 1944;
- crimes under the terms of a now repealed Decree on Defending the People's Rule, and the respective crimes referred to in the Criminal Code, with the exception of crimes for which solitary confinement for life or the death penalty are imposed;
- crimes in connection with the collectivisation of agriculture;
- violations of the supply and prices regulation act, the civil mobilisation act and some other acts linked with economic measures, except for crimes for which the highest penalty was given;
- preparations for and attempts to escape abroad, as well as actual escape and failure to return, provided that the offender returns to Bulgaria within a year after the publication of the law; servicemen who fled with the intention of committing treason are amnestied if the crime was committed before January 1, 1962;

- some crimes in connection with performing military service, with the exception of those committed with venal purposes, and those of the most serious nature, such as treason, etc.;
- crimes committed against the regime before December 6, 1947, or during the war, except those punishable by the death penalty or life imprisonment; persons who during the war endangered the security of the State by having concluded international treaties with countries at war or who participated in taking decisions for declaring war or who were involved in other top level policy decisions detrimental to Bulgaria or its armed forces, are not amnestied.

Certain major crimes such as treason, espionage, sabotage, murder, robbery, hooliganism, etc., are generally not covered by the amnesty. Crimes punishable with imprisonment up to five years, committed before August 1, 1964, are however, amnestied. In cases of pending trials, prosecution is ended. The amnesty has the effect of extinguishing all consequences linked with the sentence.

There were no figures published concerning those to whom the Amnesty Act would apply.

Legislation was passed for remitting debts to the State existing before the date line of December 31, 1956. Included in this provision are various taxes, fines, debts to nationalised enterprises that arose before nationalisation, etc. It was announced that this law would affect about 90,000 citizens and a total sum of over 9,000,000 leva.

4. EAST GERMANY

Since August 1964, Western newspapers have reported from time to time the release of political prisoners in East Germany. An estimated number of 1,000 of these prisoners were transferred successively to West Berlin or to the Federal Republic of Germany. Among them were many political prisoners who were sentenced to long prison terms, leaders of the student opposition of 1956/57, or persons charged with helping others to escape from East Germany. The newspapers assumed the existence of an unpublished agreement assuring economic advantages to East Germany in exchange for the released prisoners. An announcement of the West German Federal Ministry of All-German Affairs,

published in the newspaper *Der Tagesspiegel* (9-10-1964) put, however, an end to all speculations by stating that "the Federal Government, in return for the release of 800 political prisoners in the Soviet Zone of occupation of Germany, has given economic consideration in the value of several millions of DM". The first, unpublicised part of the 1964 amnesty received thereby its explanation which does not need further legal analysis.

The second part started with the announcement made by Walter Ulbricht, Chairman of the State Council, on the occasion of the celebrations of the German Democratic Republic, established 15 years ago under Communist rule, in the Soviet zone of occupation of Germany. In his celebration speech of October 7, Walter Ulbricht said that "the German Democratic Republic is so strong that the release of about 10,000 prisoners cannot seriously endanger its security and order and the peaceful life of its citizens." The release of prisoners will be accomplished, he added, by December 20, 1964.

The announced Decree of Amnesty, dated October 3, 1964, was published in the *Official Gazette* on October 10, (Gbl. I, Nr. 13/1964, pp. 135 ff).

According to the decree's provisions prison sentences meted out before September 30, 1964, whether suspended or not, "may be pardoned" if the "over-all behaviour of the condemned" gives sufficient guarantee that in the future he will respect Socialist Legality.

The prison terms of those political prisoners who committed grave crimes against the State before August 13, 1961 (date of the construction of the Wall in Berlin) under the influence of methods used by "imperialist intelligence services and agents' organisations" to affect their free will, could be reduced taking into consideration "the conditions and the gravity of their crimes and their present behaviour".

The decision will be taken in each particular case by the State Council on the basis of lists prepared by the Procurator-General and the Minister of the Interior, who are responsible for the execution of sentences. The State Council will issue the necessary instructions for their release. Such persons are to be helped to find appropriate jobs and to adjust themselves to "life within society". The additional measure of forced residence pronounced by the Decree of August 24, 1961, is not lifted by the amnesty. Those who were subject to forced residence may not move freely in the country even when benefiting from the amnesty.

The following categories of prisoners cannot benefit from the amnesty: persons sentenced for murder or attempted murder, or sexual offences; persons who committed crimes against peace and humanity during the Hitler regime; persons who committed "particularly grave crimes" against the State in the service of imperialist intelligence services or agents' organisations, with the exception of the cases specified above. The category of prisoners accused of Nazi crimes and war crimes is very restricted today. The number is estimated to count less than 50 in East German prisons. Thus this clause seems to have rather a doctrinal or propaganda value. The second political category of exemptions, relating to the persons who were connected with Western "agents' organisations" is so flexible that it can be invoked at will.

Analysing the amnesty decree, it should first be pointed out that it does not contain any mandatory provision for pardon. In this respect, it differs unfavourably from the former amnesty of October 1, 1960, which granted pardon without exception to all those sentenced to less than one year of imprisonment and a reduction by half of sentences of up to two years imprisonment. Accordingly, the present Decree cannot qualify as an amnesty *stricto sensu*, but as a legal framework for a series of acts of grace granted case by case. Secondly, in the case of political prisoners, who can be included within the limits of the conditions outlined above, there are no objective measures indicating whether a given case constitutes a grave, or even a particularly grave crime, nor what it means by saying that they acted "under the influence of methods which are apt to affect their free will". The qualification of political prisoners for release or reduction of their sentences lies therefore entirely within the discretionary power of the authorities compiling the lists for clemency, i.e. the Procurator-General's Office and the Ministry of the Interior.

The above criticism does not intend to diminish the political importance of the release of 10,000 prisoners, nor satisfaction from the fact that many people who lost their freedom under rather distorted criminal procedures for being suspected as being opposed to the regime, might regain their liberty. It purports, however, to draw attention to the limited extent to which legislative provisions and concepts of criminology were applied in carrying out the amnesty, thus leaving unchallenged the virtually unlimited discretionary power of administrative authorities.

THE AGRARIAN REFORM IN PERU

Introduction

The International Congress of Jurists, held at New Delhi in January 1959 under the auspices of the International Commission of Jurists, set forth its conclusions in a document known as the *Declaration of Delhi*. The Congress here 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 social, economic, educational and cultural conditions under which his legitimate aspirations and dignity may be realized ”.

Pursuant to the Declaration of Delhi and as a development of this fundamental proposition, the International Commission of Jurists is now making preparations to sponsor a regional conference for South-East Asia and the Pacific which, under the title of “ The Dynamic Aspects of the Rule of Law in the Modern Age ”, will deal especially with problems of social and economic development within the framework of the Rule of Law and the role of the jurist in developing countries.

It is therefore most appropriate at this time to focus our attention, in the light of these ideas, on a subject which has given rise to particular concern in all strata and latitudes—namely agrarian reform. Unfortunately, in many countries an urgent solution to the agrarian problem must still be found in order to lay the proper bases of economic and social development. Thus it appears appropriate to survey the agrarian reform introduced in Peru, where the problem has at times assumed dramatic dimensions.

Background

A backward agrarian country burdened by concentration of land ownership, extreme disparities in the distribution of income and wasted resources, Peru has long been obsessed by the idea of agrarian reform. Poverty, in every respect, has been the abiding condition of the Peruvian peasant—a condition which, by being perpetuated from generation to generation, has given rise to grave tensions.

In recent years the social climate had undergone a radical change. Headlines such as " 500 Indians invade a Cuzco estate ", " Masses of landless peasants march on haciendas ", " Clash between armed forces and indigenous peasants " had become so common that they were relegated to the back page. The central and southern highland regions were the focal points of peasant agitation.

Serious political problems had to a large extent impeded the various governments from adopting appropriate measures to solve the series of problems existing with respect to the peasant population. Not that numerous laws and bills, both debated and debatable, were not passed. Much of this secondary legislations was enacted by the military Junta which governed the country before the present, constitutionally elected government came into office.

A return to normal constitutional life in Peru came in 1963. Fernando Belaúnde Terry, on being elected President of the Republic, at once launched his programme of economic development, tackling simultaneously the incredibly complex agricultural problem and promoting agrarian reform. The government had hardly taken office when the Executive submitted an Agrarian Reform Bill to Parliament. This was studied by the respective legislative committees and compared with the bills subsequently submitted by various opposition groups. Such a complex and vital question gave rise to exhaustive debates, culminating in the enactment of the Agrarian Reform Act on May 21, 1964.

A document of singular importance, this law aims at nothing less than the transformation of rural Peru—something which must be brought about if violence is to be prevented and social injustice curbed.

Data and statistics on the agrarian problem in Peru

The country's population is growing at the rate of 2.7% a year.

Roughly 60% of the active population is engaged in farming and stock-breeding, accounting for 24% of the total national income.

The total area under cultivation amounts to only 1,950,000 hectares. Total pastureland is estimated at 12,000,000 hectares.

Owing to crop rotation and the lack of fertilizers over 500,000 hectares lie fallow each year.

The man-land ratio is one of the lowest in the world: Approximately 62.8 per cent of the land consisting of *latifundia* of over 250 hectares, is in the hands of 1.4 per cent of the peasants; 11.8 per

cent, varying in size from 26 to 250 hectares, is in the hands of 4.1 per cent of the peasants, and only 25.4 per cent of the land, split up in lots of up to 25 hectares, is in the hands of 94.5 per cent of the peasants.

In the structure of rural property there is excessive concentration of ownership on the one hand and excessive fragmentation on the other.

Direct tenure is widespread only in the case of small holdings. In the case of large and even medium-sized holdings indirect tenure prevails, in the form of leasing or share-farming and especially *yanaconaje** and other types of land settlement.

Neither social legislation nor, except in special instances, health and educational legislation has been extended to rural areas.

Agricultural credit is granted preferentially and mainly to largescale farms, especially for export crops.

Mechanized farming methods have been introduced in only 18% of the area under cultivation and in about 40% of the area where such methods could be introduced.

The great majority of the peasant population remains outside the country's cash economy.

The indigenous *comunidad* continues to use primitive farming methods and, for the most part, its holdings are parcelled out internally in individual plots which barely permit a subsistence economy.

Irrigation water is utilized as private property and is distributed in an anachronistic and unfair manner.

Agricultural contracts, when not inadequately regulated, are governed by traditional rules falling outside the rules of equity.

Land grants in the highlands, rather than to constitute a means of farming, stock-breeding and forestry, have been converted into a form of monopoly and speculation.

The total amount of arable land does not increase at the desirable rate, nor is the yield-capacity of the land developed as it should be.

* A system *sui generis* of indirect use of the land, according to which its owner cedes a small area for the consideration of free personal services to be rendered by the "yanacona" (the man who works the land under such terms) and if need be also by his family, and of a rent which generally must be paid in goods. This system is in its practical application extremely unfavourable to the "yanacona".

No effective outlets or real incentives exist for marketing agricultural products.

In short, prior to the Agrarian Reform Act there was no national agrarian policy.

General remarks

That the Agrarian Reform Act sets high targets is clear merely from the definition it gives of agrarian reform:

The Agrarian Reform is a comprehensive, peaceful and democratic process designed to transform the country's agrarian structure and to facilitate the nation's economic and social development by replacing the system of *latifundia* and *minifundia*—of big estates and economically small or "dwarf" farms—by an equitable system of land ownership, tenure and cultivation that will lead to higher levels of production and productivity, supplemented by sufficient and timely credit, technical assistance and the efficient marketing and distribution of agricultural products, with a view to ensuring that the land shall constitute the basis of economic security and progressive well-being and a guarantee of dignity and freedom for the man who works it.

This new law, moreover, is far-reaching. Some points of course have been overlooked; but it is a serious attempt to transform the forms of land tenure, as well as the rural economy, society and technology. Indeed so many aspects are covered at once that one is inclined to wonder, in view of the naturally limited means of carrying them out, what objectives can be achieved and what can not. The profound changes envisaged by the law may give rise to conflicts and confusion, since extremely modern ideas are imposed from above on an old and conservative society.

The law provides not only for the distribution of land to landless peasants, the protection of efficiently farmed land, the doing away of *minifundia*, the introduction of techniques and the consolidation of indigenous communities, but also for the development of co-operatives, the protection of the sugar industry, rationalized irrigation, the abolition of feudal systems, the punishment of peasant leaders for squatting, the promotion of family farming units, the prohibition of private property in indigenous communities and the financing of industry by means of the agrarian debt. All this is covered by a single law.

Target of criticism and impassioned debates, the Agrarian Reform Act is nevertheless considered by national and foreign experts to be one of the most feasible and thorough laws of its kind in Latin America.

Various aspects of the Act

The Agrarian Reform Act of Peru has been called a *balanced* law, i.e., a simultaneous effort to provide land to landless persons and to protect extensive and highly industrialized coastal sugar plantations from expropriation. Such land is deemed to be a vital factor in the national economy because the sugar industry brings in a considerable amount of foreign currency.

This of course has given rise to severe attacks by certain sectors of the opposition, which have charged that the law is one more instrument of the country's oligarchy. This criticism has been levelled at Chapter IV of the Act, to which reference will be made later. However, a careful examination of other articles in this same chapter—Article 41, for instance—leads one to think that in providing for exceptional cases the drafters of the law were guided by political expediency rather than by any express desire to benefit certain class interests. In effect, this article states that “the above-mentioned agricultural undertakings may be converted into co-operatives in accordance with the laws on this subject. The State *shall foster* such transformation. Workers and employees of the undertakings affected shall be entitled to participate in these co-operatives.” Jurists and economists versed in the subject of co-operatives will readily grasp what broad possibilities are opened up by such a provision.

One of the key articles is Article 29 which establishes the maximum size of holdings on the coast. Permanently irrigated farmland of less than 150 hectares is exempt from expropriation, as well as farmland of up to 300 hectares with occasional irrigation, non-irrigated farmland of up to 450 hectares and natural pasture of up to 1,500 hectares.

Following this a graduated scale of arable land subject to expropriation (with compensation) is laid down. Permanently irrigated farmland of over 150 hectares but under 500 hectares will be subject to expropriation of 30% of the land in excess of the 150 hectares exempted by the law. Holdings of over 500 hectares will be subject to expropriation of 50% of the land from 500 to 1,000 hectares, 70% of the land from 1,000 to 1,500 hectares, 90% of the land from 1,500 to 2,000 hectares, and 100% of any land in excess of 2,000 hectares.

The use of rural property is considered to conflict with the public interest and such property therefore to be subject to expropriation when:

- the land is abandoned or inefficiently farmed or renewable natural resources are inefficiently handled or conserved;
- antisocial or feudal forms of cultivation continue to exist;
- labour relations are subject to unfair or illegal conditions;
- ownership is so concentrated as to prevent the land from being divided up into small and medium-sized holdings and to cause the occupants to be dependent on the owner to an excessive or unfair extent; and
- holdings are broken up into such small units or *minifundia* as to cause poor utilization or destruction of the natural resources and a low yield of the factors of production.

The maximum holdings allowed in the highlands or sierra are not laid down by the law itself but are to be established by presidential decrees. These limits will be determined by provinces for farmland and natural pastureland, account necessarily being taken of the different ecological zones.

No hard and fast rule has been laid down for determining the various limits, with respect either to holdings on the coast, to those in the highlands or to those in the eastern tropical rain forest. On the contrary, the law has, with what it dubs the degree of operating (economic) efficiency (Articles 31, 34 and 35), introduced a certain element of flexibility for setting these limits and for guaranteeing minimum holdings.

Article 23 establishes that the quantitative indices referred to in Articles 31 and 34 are to be calculated on the basis of:

- A. The degree of operating efficiency, taking into account:
 - (1) output per unit;
 - (2) capitalization.
- B. Distribution of income, taking into account:
 - (3) direct participation (wages, salaries, bonuses) and indirect participation (additional benefits such as housing, schools and workers' community services);
 - (4) taxes paid;
 - (5) the farm's influence in the area due to its direct and indirect action in developing agricultural activities.

For each valley on the coast the average quantitative indices will be calculated by economic land categories while for each province in the highlands they will be calculated by ecological zones

and economic land categories. The average will be established in relation to the indices by hectares.

As regards holdings in the forest regions, Article 35 specifies that "for farms located at the timberline or in the forest the minimum amount of land exempt from expropriation shall be that area which is under direct and efficient cultivation, plus an area of twice that size for forest preserve, extension of cultivated area or crop rotation. In no case shall the area be less than the family farming unit".

Exceptions. As mentioned earlier, Article 38 is designed to exempt coastal sugar plantations from expropriation for economic reasons. To this end it states that "undertakings located in areas included in the agrarian reform and devoted to the industrial processing of agricultural products . . . may apply for exemption of the area under industrialized cultivation, to the extent essential for the efficient operation of its industrial processing plants. Such exemption shall be granted by *presidential decree*, subject to a favourable report of the Agrarian Reform and Development Institute specifying the capacity of the industrial plants and the area required for their economic operation".

This privilege is clearly meant to be restricted to sugar plantations since later on it is specified that farms furnishing supplies in cotton gins, grain mills, dryers of forest products, rudimentary sugarcane alcohol distilleries, raw sugar processing plants or other plants for primary treatment or simple finishing of products are not included among the exceptions provided for in Article 58.

Land devoted to the Agrarian Reform. The lands coming under the agrarian reform include:

- (1) lands belonging or reverting to the State;
- (2) land expropriated under this law;
- (3) private land, subject to due authorization;
- (4) lands fitted out for agricultural purposes directly by the State or by publicly financed works; and
- (5) lands made over to the agrarian reform through donations, legacies and other similar grants.

It has already been pointed out that the agrarian reform undertaken is very broad in scope, being intended to cover the entire range of complex agricultural problems in Peru. The aspects to which attention must be devoted to ensure a thoroughgoing reform are specified in Article 20:

The agrarian reform legislation must:

- (1) guarantee and regulate the right of private property with a view to ensuring that the land is put to uses consistent with the public interest, and indicate the limits and rules to which rural holdings are subject according to the Constitution;
- (2) increase and consolidate small and medium-sized holdings directly farmed by their owners;
- (3) guarantee the full property rights of the indigenous communities to their land and grant those communities any extensions they may require to meet the needs of their members;
- (4) promote co-operatives and standardize community farming methods;
- (5) ensure the proper conservation, use and recovery of natural resources, in particular irrigation water;
- (6) regulate agricultural contracts with a view to gradually eliminating indirect methods of exploitation and thus ensuring that the land belongs to the persons who farm it;
- (7) gradually standardize the rural labour and social security system, taking into consideration the peculiar characteristics of agricultural work and abolishing any relations in fact and in law in which the use of the land is exchanged for the performance of personal services;
- (8) promote the development of farming and stock-breeding, with the two-fold aim to raise production and to ensure a more equitable distribution of the income from the agricultural sector; and
- (9) organize agricultural credit in such a way as to make it available to the peasantry.

Under this law the State also undertakes, in collaboration with private enterprise, to supplement its work by:

- (1) increasing the amount of cultivable land through irrigation and better irrigation systems and by gradually incorporating in the country's economic development those areas which are insufficiently developed or inaccessible to rational and technical development owing to lack of means of communication, sanitary or other similar works;
- (2) setting up and increasing the necessary and adequate public services to transform the rural environment and to facilitate

the discharge of obligations contracted by agricultural producers under the law;

- (3) creating the necessary bases and conditions to expand the home market, industrialize and market farm produce and develop trade with foreign markets; and
- (4) link the agrarian reform to the country's industrial development.

Expropriation procedure. Articles 62 to 74 lay down in full the legal procedure and formalities for effecting transfer of ownership, beginning with a survey and a provisional plan for the expropriation of each piece of property. The details are irrelevant to this analysis. The only important point that should be stressed is the care that has been taken, by establishing various levels of decision making, to safeguard landowners against hasty decisions. So many levels may, on the other hand, have the disadvantage that expropriation will be encumbered by excessive red tape and the swift action and early decisions to be desired will be checked.

The value of the land to be expropriated is to be assessed by averaging various factors, namely: an appraisal corresponding to the average value declared in the five years preceding expropriation for the purpose of land tax assessment; an appraisal made according to the estimated potential yield of the land as calculated by the Agrarian Reform and Development Institute; and a direct assessment according to the last scale established by the technical body of assessors of Peru.

Parts V and III concern a problem of the greatest importance for Peruvian agriculture, namely that of water. This is a problem which the law has had to approach from two angles. The first aspect dealt with—that of the water system—is outlined in Article 109, which establishes that all water is State property, the State permitting its utilization for irrigation in accordance with this law and in harmony with the public interest. This Article stresses the imprescriptible and inalienable nature of State property. The second aspect—that of irrigation—is dealt with in Article 78, which declares the financing and execution of irrigation works on the coast and in the sierra and the creation of new farmland in the forest to be of national utility and necessity. A National Irrigation Scheme is introduced for this purpose.

Land grants. Part IV refers specifically to the persons who are to benefit from the agrarian reform and, among other rules, establishes that "grants shall be made by the Institute in the form of

property to peasants possessing no or insufficient land. The same priority shall be enjoyed by the indigenous communities and, where appropriate, by co-operatives ”.

*Feudatarios** and small tenants shall be given absolute priority with respect to allocation of the land that they are working at the time of expropriation.

When agricultural units are excessively divided up (*minifundia*) and the Institute decides to reparcel the land, *feudatarios* and small tenants left without land shall maintain absolute priority rights to grants made in the same area or in the nearest land settlement projects.

It is interesting to note that a systematic effort to do away with *minifundia* and to set up family farms pervades the law. The consequence of this two-fold attempt, however, may be that a large part of the peasantry in certain areas will be considered “surplus” population. To prevent this from happening, the only alternative—since the highlands are already overpopulated—would be migration to the forest, something which as yet is not properly part of the agrarian reform. The present population movement, moreover, is not towards the forest but towards the coast where land and employment are already scarce. This is a difficult problem to solve in practice.

The family farming unit is defined in Article 96 as the amount of land which is directly worked by the farmer and the members of his family with reasonable efficiency and which:

- (a) absorbs the family's entire work force and requires no outside labour except in certain seasons of the agricultural year and not exceeding a quarter of the family's labour capacity; and
- (b) provides the farmer with a net income sufficient to support his family in adequate living conditions, to effect the payments of his parcel, and to set aside a certain amount of savings.

To be considered for a grant, the applicant must (a) be a Peruvian national; (b) be not less than 18 and not more than 60 years of age, unless he has a son over 17 to work with him; (c) not be incapacitated for agricultural work; (d) be a farmer or a farm-

* *Feudatario*: Term used in this law and covering mainly “sharecroppers”, “yanacunas” and “colonos”, varieties of indirect land tenure in Peru. Tenants of medium and small-sized plots are expressly excluded from this term.

labourer; and (c) own no land or less land than the family farming unit. Likewise, graduates of agricultural schools or institutes will have a preferential right to the new lands.

Land grants are to be made under contract, ultimate ownership being subject to payment of a sum which depends on the economic capacity of the farming unit. This sum is to be paid in 20 annual instalments. Provision is made for moratoria in certain cases.

Under the contracts grantees of family farms undertake, *inter alia*, to work the land directly and personally; to live with their families on or near the parcel granted; not to sell, encumber or transfer ownership of the land on any grounds prior to effecting full payment or, even then, before ten years have elapsed from the date of the grant.

The highland peasant who purchases land under the agrarian reform remains tied to his plot for many years, unable to sell, mortgage or otherwise dispose of it. This provision seeks to settle peasants in a given area so as not to endanger redistribution programmes by instability which might otherwise result.

Indigenous communities. For the purpose of this Law the Agrarian Reform and Development Institute shall, by every means at its disposal, promote co-operative organization in indigenous communities and foster their technical, economic, social and cultural development.

Allocation of land to communities shall be made with the express condition that in no case may direct ownership be transferred to the *comuneros** or third parties. *Comuneros* may individually enjoy the use of land only within the framework of systems compatible with community or co-operative organization. The community and all its members shall have the common use of pastureland, water and forests (Articles 128 and 129).

The law, it is seen, takes it for granted that among the indigenous population the agrarian communal system is the natural order of things. This is a notion that might perhaps be refuted by a thorough analysis of the social behaviour of certain communities where, beneath the appearance of agrarian communism, deeply rooted individualistic tendencies are to be found.

Concentration of parcelled lands. This part of the law contains the Government's plan for eliminating *minifundia*, a problem to which we have already referred. To this end the Agrarian Reform

* Members of the community entitled to joint use of the land.

and Development Institute is empowered to bunch small parcels into larger units with a view to remedying the excessive subdivision of rural property and excessive dispersion of plots. Such action is to be carried out on the initiative of the Institute or at the petition of the groups of peasants concerned.

Grantees under the agrarian reform whose plots are located in areas where the Institute carries out such action are bound to accept the respective plan of land concentration.

It should be emphasised that problems of a practical nature are what cause such provisions to clash with a factual situation in which the number of surplus peasants is such as to make land grants impossible at times without resorting to land settlement, a solution which in turn presents innumerable problems of its own.

Technical, economic and social assistance. Provision of technical, economic and social assistance to farmers with small and medium-sized holdings, indigenous communities and co-operatives is an essential aspect of the agrarian reform. Preference here will be given to the indigenous communities and to co-operatives. The Institute will participate, along with the competent State agencies, in organizing such assistance in the areas included in the agrarian reform. These aspects are of course covered by the law.

Agricultural co-operatives. The State seeks to develop, using all the means at its disposal, the organization and operation of agricultural co-operatives. These are to be set up for purposes of credit, mechanization, marketing, services and other similar objectives related to farming and animal husbandry.

To this end the State is to promote the organization of courses in agricultural co-operation and to organize training programmes and pilot projects of agricultural co-operation.

Administrative organization. The Agrarian Reform and Development Institute and the Technical Board of Agrarian Reform and Development are entrusted with carrying out the reform.

The Institute comes under the Executive and forms part of the Ministry of Agriculture on which it depends from the administrative standpoint. The National Office of Agrarian Reform and the Department of Agricultural Research and Development are agencies of the Institute.

The Institute is to be governed by the National Agrarian Board. This Board will be composed of the Minister of Agriculture, acting as chairman; two delegates of the Ministry of Agriculture, one of whom will act as vice-chairman; and a delegate each of the Ministry

of Labour and Indian Affairs, the Agricultural Development Bank, the Agrarian Reform Finance Corporation and the National Office of Co-operative Development. Delegates of Farmer's Associations, Stockbreeders' Associations, the Workers' Federation of Peru (CTP) and the National Federation of Peasants also form part of the Board. Non-voting members include delegates of the Senate and the Chamber of Deputies, the director of the Department of Agricultural Research and Development and the director of the National Office of Agrarian Reform, who will act as secretary.

The National Agrarian Board is entrusted, *inter alia*, with laying down the lines of agrarian reform policy, observing and causing to observe the relevant laws, drawing up and submitting to the Executive the rules of application of the Agrarian Reform Act, making recommendations to the Executive as to the areas to be declared agrarian reform areas and the respective expropriation plans to be approved, expressing its views on land settlement projects carried out by the State or private undertakings, granting property deeds and laying down provisions to prevent miners or mining companies from polluting rivers, etc.

Fortunately, the administration of the agrarian reform will be somewhat decentralized by the setting up of regional offices and boards of the National Office of Agrarian Reform.

The Technical Board of Agrarian Reform is the second main executive agency of the agrarian reform, set up as an advisory body of the Executive and the Institute. It is composed of representatives of numerous institutions, such as universities of agriculture, various university faculties and institutes of agriculture, medicine, economics, etc., various corporate federations, institutes, administrative bodies and professional associations, including the Federation of Bar Associations.

Financing of the agrarian reform. This part of the law contains the bylaws of the Agrarian Reform Finance Corporation, sets up a Special Fund for Industrial Investment and authorizes the creation of an agrarian debt.

The Agrarian Reform Finance Corporation is a body with legal status of its own and economic and administrative autonomy. Its property and income are made up of public lands and rural property allocated to it by the State, holdings expropriated under this law, yearly proceeds arising out of the contracts of sale concluded between the Corporation and the beneficiaries of the agrarian reform; interest accrued from its current account deposits in State and commercial banks; donations, legacies and funds from foundations

received from national or foreign natural persons or corporate bodies; a minimum allocation of 3% of the total national income for a period of 20 years and the proceeds of fines levied under this law. The Corporation will be managed and administered by a central board and the board of directors. The Minister of Finance and Trade will act as its president.

The purpose of the Special Fund for Industrial Investment is to finance and promote the projects submitted to it by holders of agrarian debt bonds as well as those that it may draw up itself, provided that such projects meet the technical and economic requirements of the Industrial Bank and are included among top priority projects as established by the National Planning Institute.

The Fund's capital will be derived from the allocation of up to 2% of the total national income for a 20-year period, internal and external credits contracted by the Industrial Bank, interest accrued from contracts of loan between the Fund and holders of agrarian debt bonds, donations, legacies and funds from foundations.

To enable it to carry out the agrarian reform, the Executive is empowered to issue agrarian obligations and bonds up to a value of six thousand million gold soles. These bonds will be used to compensate the owners of expropriated land, will be registered and negotiable, and will be fully guaranteed by the State. These bonds may be used by grantees of land to effect payment of the annual instalments towards the purchase of their plots. They may also be used to pay fiscal taxes.

Abolition of antisocial labour and land cultivation systems. After having dealt with virtually all the aspects of the agrarian reform from the legal, technical, social, economic and even political standpoints, the law ends with a part intended to undermine the foundations of the feudal system.

On the promulgation of this law, all contracts under which the use of land is exchanged for the performance of services, even though such services be remunerated in cash, are abolished. The contracting of any personal services will automatically be subject to existing labour legislation.

Regardless of their cause, name or terms and conditions, any present or future obligations relating to the performance of personal services as partial or total compensation for the use of land will be void. When lands worked by *feudatarios* are expropriated by the Institute, a percentage of the indemnity will be paid to the *feudatarios* who have taken part in farming the land, according to their

years of service and the conditions under which it was performed. This percentage, which may not exceed 30% of the indemnity paid to the owner, will be paid to the *feudatario* in cash if he leaves the land or will be applied as an advance payment of the price of the land if it is granted to him.

The Ministry of Labour and Indian Affairs is responsible for enforcing these provisions.

Lastly, a final provision is designed to put an end to squatting by denying entitlement to land grants under the agrarian reform to any person who instigates or encourages squatting.

Observations

All comprehensive agrarian reform programmes must aim at effectively altering the structures and unjust systems of land tenure and cultivation, with a view to replacing a system of *latifundia* and *minifundia* by a fair system of land ownership. Supplemented by timely and sufficient credit, technical assistance and efficient marketing and distribution of produce, this system will lead to higher levels of productivity and ensure that the land shall constitute the basis of economic stability and progressive well-being as well as a guarantee of dignity and freedom for the man who works it.

Any agrarian reform, and especially one in Latin America, must attempt to achieve three major objectives: first, to effect a sweeping structural change by peaceful means; secondly, to see to it that this change brings about a deep transformation of the economy manifested primarily by better living standards for the rural population as a whole; thirdly, to ensure that the structural transformation brings about a beneficial social change by increasing the number of rural landowners and family farming units and thus contributing to a more dynamic economy and society. Through such a transformation it will be possible to stabilize and strengthen the democratic institutions of community life.

This is not an easy task. Leaders loyal to this ideal and endowed with imagination and a deep sense of responsibility are required to carry it out. The drafters of the Act of May 21, 1964 have, in the series of provisions contained in this law, set under way a remarkably comprehensive programme of agricultural reform. It is to be hoped that the enterprise here undertaken will meet with success and constitute a positive contribution to social justice, economic progress and the strengthening of democracy.

It appears that the provisions of the law are sufficiently radical to transform the structures of the country and sufficiently balanced not to have an adverse effect on the national economy.

Projects of this kind which demand the assistance and knowledge of jurists and which constitute a basic objective of every government and every nation aware of the pressing needs of a developing world, are an urgent reminder to those who would close their eyes to the force of progress of the two-fold responsibility of jurists: to remain constantly alert as guardians of human rights and freedoms and to be bold in advancing and carrying out the necessary reforms. As the *Resolution of Rio*¹ states in one of its conclusions:

The role and responsibility of lawyers in a changing world is to concern themselves with the prevalence of poverty, ignorance and inequality... and to inspire and promote economic development and social justice.

CONTINUED VIOLATIONS OF HUMAN RIGHTS IN TIBET

The International Commission of Jurists has recently received further evidence in the form of Statements from Tibetan refugees arriving in India to the effect that the domination and persecution of the Tibetan people at the hands of the Chinese People's Republic and its army of occupation in Tibet is continuing unabated.

It will be recalled that in March, 1959, world attention was focused on Tibet by the flight of the Dalai Lama, Supreme spiritual head of the Tibetan people and Supreme temporal head of the Tibetan State, and his obtaining political asylum in India.

It became apparent at the time that serious breaches of the fundamental human and civil rights of the Tibetans were occurring at the hands of Chinese who had occupied Tibet in 1950. As a result the Commission arranged an investigation into the situation and in 1959, a preliminary Report "The Question of Tibet and the Rule of Law" was published. The evidence which came to light during this investigation was considered by the Commission to be of sufficient significance to warrant the appointment of a "Legal

¹ *The Resolution of Rio* was issued by the International Congress of Jurists held in December 1962 at Rio de Janeiro (Petropolis), Brazil, under the aegis of the International Commission of Jurists.

Enquiry Committee on Tibet", consisting of a number of well-known jurists from various countries, to conduct an exhaustive enquiry into the situation. The report of this Committee and its findings are contained in the Commission's publication "Tibet and the Chinese People's Republic" 1960.

The Dalai Lama appealed unsuccessfully to the United Nations for assistance in 1950 after the initial attack by the forces of the Chinese People's Republic on Tibetan territory. A further appeal was made in 1959 after the Dalai Lama's flight.

This resulted in the passing of a resolution by the General Assembly whereby the General Assembly affirmed its belief that respect for the principles of the Charter of the United Nations is essential for the evolution of a peaceful world order based on the Rule of Law, and called for respect for the fundamental human rights of the Tibetan people and for their distinctive cultural and religious life. This Resolution did not, however, refer specifically to the People's Republic of China.

In a Resolution adopted in December 1961, the General Assembly renewed its call, made in the 1959 Resolution, for the "cessation of practices which deprive the Tibetan people of their fundamental human rights and freedoms including their right to self-determination". It is apparent from the latest evidence now available that these Resolutions have had no effect on Chinese policies or action in Tibet.

The Dalai Lama has now made a further appeal to the United Nations and this article will furnish an account and appraisal of the latest evidence obtained from reliable eye-witness reports.

Since 1960, great numbers of refugees have escaped from Tibet and arrived in India and the Commission has received from the office of H.H. the Dalai Lama statements of evidence from a number of these refugees. They comprise farmers, nomads, traders and some monks and official personnel, i.e., a cross-section of Tibetan life. Although they have not been examined orally on behalf of the Commission, their statements, if true, indicate that Chinese authority in Tibet, has followed the same pattern of domination and oppression of the Tibetan people as was disclosed by the 1960 report. The treatment of Tibetans discussed hereafter should be viewed in the context of a people forcibly governed by an external authority supported by a large army of occupation which is in effective physical control of the major part of the population.

1. Acts of Religious Persecution

The Legal Enquiry Committee found in 1960 that many acts of religious persecution had occurred. In particular it made the specific finding that the crime of Genocide under international law had been committed against the Tibetans as a religious group by two specific methods, viz., the killing of religious figures and the forcible transfer of children to China. The Committee used the Genocide Convention of 1948, which was adopted by the General Assembly of the United Nations, as a yardstick.

The latest evidence discloses a continuance of ill-treatment of many monks, lamas and other religious figures, resulting in death through excessive torture, beatings, starvation and forced labour and a continuance of the forcible transfer of children to China, against the wishes of their parents with the consequence of having them indoctrinated in Communist beliefs and depriving them of a religious upbringing.

Many other acts are revealed which from their nature clearly appear to be directed to eradicating all forms of religious belief, practice and worship in Tibet. Many monasteries have been destroyed, abandoned or converted into military or Chinese governmental establishments, religious figures have been imprisoned, accused of being reactionaries, tortured, put to forced labour and subjected to brutal treatment in various forms which sometimes has had the effect of causing the persons to commit suicide; monks and nuns have been forced to marry and to commit other acts contrary to religious belief; in order to discredit religion some have been challenged to perform superhuman feats or display supernatural powers, such as surviving indefinitely without food. No worship of any kind is permitted and any sign of worship or prayer is met with severe punishment. Sacred objects and other articles or monuments of religious significance are either desecrated or destroyed by the Chinese or confiscated.

Apart from these measures the intention of the Chinese authorities towards religion is manifested in a number of ways. A persistent campaign of propaganda has been conducted, both verbally and in written publications, claiming that continuance of religious faith and worship indicates maintenance of reactionary ideas and non-acceptance of communist ideology and socialist ideas. Public meetings are held at which abuse has been levied at the Dalai Lama and religion discredited generally.

Notwithstanding this campaign there is evidence that the people still endeavour to cling to their faith by such means as praying,

offering incense and putting up of prayer flags, practices which are forbidden by the Chinese.

2. Further Acts Contravening Human Rights

The findings made by the Legal Enquiry Committee in 1960 to the effect that the acts of religious persecution violated the fundamental rights of the Tibetan people as guaranteed by the Universal Declaration of Human Rights do equally apply to the recent findings reported above.

It is clear that since 1960 there has been no alteration in the pattern of life under Chinese authority. There is a denial of the right to self-government through freely elected representatives responsible to the people. There is a deprivation of most other social, civil, economic and private rights and liberties. The process of change from the pattern of life prior to Chinese occupation to the present way of life has been and is being accompanied by unjust, inhuman and brutal treatment.

(a) Administration and Government

The form of Government in Tibet prior to Chinese occupation was not based on popular representation or on accepted democratic principles but was theocratic and feudal in its nature. The personal authority of the Dalai Lama, who was the temporal as well as spiritual ruler, lay at the basis of the Government and the Tibetan way of life. There is no evidence to indicate that this form of Government was contrary to the will of the majority of the people.

Assurances have been given by the Chinese from time to time that a new system of local government constituted by the people's freely elected representatives would be established. Some steps have been taken to have Tibetans elected to represent the people for governmental purposes but the new evidence confirms that all local authority is in the hands of the Chinese with the aid of some Tibetans who are entirely subordinate to the Chinese and that the government is not representative of the people. In the elections which have so far been held only nominees entirely acceptable to the Chinese have been permitted to stand for election or take office.

(b) Economic and Business Sphere

Prior to 1950, a feudal type system of land tenure, prevailed in Tibet. Whilst the need for reforms was becoming apparent, there was no evidence of widespread discontent or opposition to this

system. The Chinese have now imposed severe restriction on landholding and taken measures towards redistribution of lands and collectivization and redistribution of livestock, crops and produce. Different methods of agriculture have been imposed on the Tibetans. A strict record of produce and livestock of the farmers and nomads is kept. The major proportion of crops after harvest and many of the animals of the nomads are confiscated. Farmers are required to produce minimum harvest yields each year and are required to pay heavy taxes, mostly in the form of crops; nomads are required to pay heavy taxes in the form of livestock, butter or wool, etc. Failure to pay the tax or retention of stock or crops beyond the permitted amount is frequently met with severe punishment and often confiscation of crops, livestock and other property. The extensive grain reserves traditionally kept by Tibetans as security against famine have been seized and used by the Chinese.

Steps have been taken to restrict private trade as much as possible and there has been a substantial reduction in the number of private traders. A strict check is kept on the traders who remain and they require special permits from the Chinese to buy food and goods from the Chinese for resale. Heavy taxes are imposed on them and they do not have liberty to sell or move freely to any place they desire.

The reason for the large scale confiscation of food and livestock appears from the evidence to be to feed the army of occupation and the large volume of civilian Chinese who have settled in Tibet, and also to send to China to meet shortages there. Persons of position and wealth were removed from office, their land and property confiscated and many were subjected to forced labour or imprisonment. These measures were justified by the Chinese on the grounds that such persons represented reactionary elements. Chinese policy in this respect appears to be similar to the steps towards land reform taken by the Chinese People's Government in China after the success of the revolution in 1949.

(c) Private Life

Apart from the class war measures, a number of factors have contributed towards rendering ordinary day to day living conditions extremely hard and in many cases intolerable for all Tibetans. The large scale confiscation of produce and livestock referred to above is accompanied by an extensive system of rationing and restriction on sale of food resulting in a scarcity of food and widespread

starvation. There has been an extensive confiscation of private property leaving only minimum living requirements and a restriction on acquisition of clothing. Severe punishment and forced labour is incurred for the breach or alleged breach of Chinese regulations which extend to most aspects of Tibetan daily life.

A number of important private rights have also suffered under the Chinese regime. There has been submitted evidence of forced marriages between Chinese military and civilian personnel and Tibetan women, a measure apparently designed to promote assimilation. Sterilisation operations on men and women reported in the earlier Commission documentation are again claimed to occur and Tibetans fear that they are part of a Chinese plan to exterminate their race.

A less violent aspect of the Chinese occupation has been the so far unsuccessful attempts to compel the Tibetans to discard their national dress and to adopt Chinese ways of life. This drive also results in the changes of names of districts, towns and roads and the destruction of historical records on Tibetan culture, traditions and customs.

Another aspect of this policy is systematic indoctrination of Communist ideology by means of public meetings with compulsory attendance, radio broadcasts and control of all education.

Finally, the establishment of a great number of military bases in Tibet, the building of new installations and the construction of strategic roads help to increase the Chinese control over the Tibetan population and to subject it to requisitions of forced labour on behalf of the military.

Conclusions

The foregoing is a summary of documented statements from thirty-six refugees. In the absence of contrary evidence they further substantiate the findings of the Legal Enquiry Committee in 1960 and indicate that no improvement of the tragic fate of the Tibetan people has materialised since. It is clear that neither the Resolutions of the General Assembly nor the call of human conscience have had any effect upon Chinese policy.

It is gratifying to note that extensive help is being given to Tibetan refugees, which are believed to number about 60,000 (including about 6,000 children in India alone) by the Governments of India and Nepal and voluntary international organisations. This assistance is directed partly towards enabling Tibetans in those countries to maintain national identity and traditions and

not necessarily to become absorbed into other nationalities. It is understood, however, that the Tibetan refugees see no hope of immediate repatriation to Tibet.

The Chinese authorities attempt to justify their actions in Tibet on the ground that economic and political reforms were necessary in Tibet. Whilst this may have been partly true, Chinese methods of bringing them about cannot possibly be justified, and are quite contrary to the means recognised by the Rule of Law and promoted by the International Commission of Jurists with the objective of improving economic and social conditions. The essential prerequisite of such reforms is the free will of the people concerned.

The Chinese also justified their invasion of Tibet on the theory that, within the boundaries of China, Tibet had always comprised a national minority enjoying mere local autonomy and that it became necessary to eradicate imperialist and reactionary forces which had gained control of the territory. Whilst the Legal Enquiry Committee made no finding on the *de jure* status of Tibet, it considered that at the time of the Chinese invasion it had at least *de facto* independence which was sufficient to make it the legitimate concern of the United Nations even under the most restrictive interpretation of the domestic jurisdiction clause of the United Nations Charter.

It is self-evident that most of the liberties proclaimed by the Universal Declaration of Human Rights, including those fundamental civil, social and economic rights with which the Rule of Law is concerned, do not exist under Chinese rule in Tibet.

It is a question for the future as to whether the Rule of Law in the sense of self-government and other fundamental rights and freedoms will be restored to Tibetans. There are no indications of this at present. It is felt that the obligations of the United Nations Charter and the terms of its own Resolutions call for assistance without further delay to forestall a situation which could result in Tibetans becoming completely absorbed by the Chinese and ceasing to exist as a distinct ethnical entity.

Hitherto, Tibet has been remote from most countries of the world in terms both of geography and of information. It is not remote however, from the whole human family of which Tibetans are an integral part. It is hoped that world support will be given to the United Nations in its forthcoming attempt to find a solution to the Tibetan problem, and to restore at least some vestige of human rights and dignity to the Tibetan people.

SOVIET UNION: THE RIGHT OF PERSONAL OWNERSHIP OF DWELLINGS

On the day following his return to Russia from Switzerland in 1917, Lenin submitted his famous "Theses of April 4" to the Bolshevik Party Conference in Petrograd. One provided for nationalisation of all privately owned land. The right of disposal of such land was to be transferred to the local Soviets ("Councils of Worker's Deputies"). By Decree of October 26, 1917, the Council of People's Commissars abolished private land ownership for ever. Buildings on the land thus nationalised were however not covered by that measure. By Decree of December 12, 1917, owners of dwellings were denied any right of disposal with regard to their property (sale, lease etc.). On August 20, 1918, the Central Executive Committee—under the 1918 Constitution "the supreme legislative, administrative and supervisory organ" of the State—issued a Decree transferring to public ownership all houses of a value in excess of a limit to be fixed by the local Soviet in towns having over 10,000 inhabitants. Subject to authorisation by the Council of People's Commissars, the local Soviets were empowered to apply this Decree similarly in towns having less than 10,000 inhabitants. Considerable use was made of this possibility in the years immediately following the October Revolution. The extensive expropriation of house owners and their mortgagees led to the accumulation of the "State Housing Fund", which became the basis of the Soviet housing operations.

Considerable changes have occurred in Soviet housing policy and legislation from 1918 up to the present day. During the period of the N.E.P., and particularly from 1921 to 1924, many smaller dwellings were returned to their owners, although the land remained public property. An Ordinance dated April 19, 1924, introduced the legal basis for the establishment of housing co-operatives. These constructed large apartments to which their members acquired "social ownership". Thus a Social Housing Fund was created alongside the state fund. But the combined housing facilities available through these two funds were not enough to satisfy the demand for housing space, so ground-rent tenancy (superficies) was introduced quite early—in 1921—in

order to promote private building. A contract regulated the relationship between the citizen wanting to build and the local Soviet, the former acquiring the right to build on a plot of public land in return for payment of rent. The building right was granted for a period of 50-65 years, depending on the building materials used. After that period had elapsed the dwelling would revert to the local authority, which was required to pay its value to the ground-rent tenant.

This new institution has come as a blessing for the middle class. Subsequently, however, it was abused for a purpose strongly reproved in the Soviet Union, namely to provide unearned income, for example through excessive rents. Therefore, the Central Executive Committee and the Council of People's Commissars imposed restrictions in a joint Ordinance of October 17, 1937, concerning the preservation of the Housing Fund and the improvement of housing facilities in urban areas. Many advantages thereby disappeared. Rents were not allowed to exceed the very low rates applying to State-controlled housing by more than 20%, so that the right to build lost its attraction and fell into disuse.

On December 5, 1936, there was passed the present (Stalin) Constitution of the U.S.S.R., section 10 of which states that "the personal property right of citizens. . . in a dwelling and subsidiary domestic holding. . . shall be protected by law." From 1939 onwards certain professional groups of Soviet society were allowed to build their own dwellings. Thus, on July 21, 1945, an Ordinance was issued concerning improvement of the housing conditions of former generals and officers with over 25 years' military service, on the basis of which these categories, and—most notably—members of the state security organisation could be granted plots of land without limit of time and without charge, for the construction of their own houses. On March 10, 1946, the members of the Academy of Sciences were similarly favoured by an Ordinance of the Council of People's Commissars concerning measures for the construction of *dachas* for members of the Academy. Persons were recruited for work in the Urals and the Far East by permitting them to build their own small dwellings.

The "right of citizens to purchase and build individual dwelling houses" was finally introduced by Order of the Presidium of the Supreme Soviet of the U.S.S.R. (ukase) of August 26, 1948, on a broad, non-discriminatory basis. This ukase did away with the defunct ground-rent tenancy and granted every citizen the right "to purchase or to construct a house of one or two storeys and

of up to five rooms in towns or elsewhere as their personal property". Citizens wishing to construct were allotted a plot of public land by the local Soviet for an unlimited period for use as building land. Ownership of the land remained with the State. The area of these building plots to be allotted by towns and local districts was set at 300-600 square metres in towns and 700-1200 square metres in the country. A supplementary ukase of August 18, 1958, limited living space in each dwelling to 60 square metres, excluding kitchen, cellar and other utility space. Further restrictive conditions are laid down in the Civil Codes of the Union republics and in the General Principles of the Civil Law Legislation of the U.S.S.R. and the Union republics of 1961. For example, not more than one house may be owned by a Soviet citizen, his wife and his minor children; in other words, a family unit consisting of parents and children under age may not have more than one house. Similarly, any changes of ownership of a dwelling (sale or purchase) may not be made more than once within a three-year period. Any legal arrangements made without observing these and similar conditions are null and void, and any consideration passed between the contracting parties is subject to confiscation by the State.

In view of the housing shortage it is permitted to let a dwelling (section 25 of the General Principles of the Civil Law Legislation of the U.S.S.R. and the Union Republics). In the view of the Supreme Court of the U.S.S.R. it is even legal for the house owner to let any living space in excess of his personal requirements. On the other hand, letting of property becomes illegal if a speculative rent is demanded because then personal property is used not for satisfaction of personal needs but for purposes of profit.

In order to combat the housing shortage both the State Bank and the All-Union Capital Investment Bank made, from 1948 onwards, comparatively substantial credits available for private housing construction. In 1956, a total of 228,887 dwellings were built with the help of State credits; in 1958 this number reached 364,610. These credits were repayable at 2% interest—or at 3% in the case of default—and within a period of seven years. They were not normally allowed to exceed 50% of building costs. Doctors, teachers and persons working in other short-staffed occupations were granted credits of up to 70% of the building cost, and country teachers even received up to 100%.

As a result of the ukase of August 26, 1948, there was a steady increase in private building activities. Figures for contracts con-

cluded in the R.S.F.S.R. for allocation of building land for construction of private dwellings were as follows:

<i>Year</i>	<i>Contracts</i>
1951	128,059
1953	138,502
1955	146,960
1957	216,039

Both the courts and legal writers were decidedly favourable to personal property between 1948 and about 1959. They reflected the desire of the ruling class and the new middle class to loosen the legal restrictions on personal ownership of dwellings. Thus, many instances occurred where the principle that no family should own more than one dwelling was over-ridden. It was declared legal for a second house to be acquired through marriage or donation or under intestate or testamentary succession. Moreover, as a matter of practice any family was allowed to own a summer house in addition to its normal dwelling, the justification being that the two houses served for the satisfaction of two different needs of workers, namely the need for accommodation and the need for relaxation.

The 1948 legislation governing the construction, purchase and sale of private dwellings also did a great deal to strengthen the desire for personal property that stirs in the hearts of Soviet citizens. This desire grew beyond the bounds imposed by the law. The "right of citizens to construct and purchase individual dwellings" was—according to Soviet criteria—abused. Speculation became rife. The following examples (collated by Rainer Lucas and Laszlo Révész from news items and articles in the Soviet press) illustrate the most frequent legal offences with regard to private housing:

Influential officials acquired several building sites in succession; they had houses built and sold them at a considerable profit. The *Zarya Vostoka* of July 23, 1960, reported that officials had had single-family houses built for 29,000 roubles and had sold them immediately upon completion for 130,000 roubles. Many families had two or three houses. In several places building sites covered from 3,000 to 4,000 square metres. Land belonging to collective farms, state farms and local Soviets was arbitrarily diverted for building purposes. Houses were built without permits or in violation of the legal limitations on space. Thus private buildings were constructed that contained ten or twelve apartments. Houses and sites were used for profit rather than for satisfaction of personal needs, e.g., through letting of apartments or leasing of sites at speculative rates.

However, it was not only such violations that put an end to the policy of favouring private property in the field of housing. What was more important was the fact that "... the home became the centre of family existence and morality, of the Soviet citizen's private life remote from Party and komsomol. This constituted the basis of antagonism between the individual and society, of indifference towards communal life" (Rainer Lucas). A home of one's own promotes a private sphere separated from society to a degree that is incompatible with the concept of Communist society. Since the 22nd Party Congress in 1961 the transition from the Socialist State to Communism, "stateless" society has become the great concern of the C.P.S.U. In addition to the increase of violations of the law and the spread of speculation, it was this new ideological directive that explained the swing away from the policy of favouring private house ownership that had prevailed from 1948 to 1959.

First, credits for private housing construction were steadily reduced from late 1960. By 1963, the Soviet press mentioned only the promotion of State and co-operative building. In 1962 a systematic campaign was initiated against personal ownership of dwellings. In the course of this campaign legislation was passed in the form of Ukases, and instructions were issued by the Supreme Court of the Soviet Union, calling for confiscation of certain categories of dwellings without compensation.

As mentioned above, law and practice had deviated from the rule that a family should not own more than one house by permitting acquisition of additional dwellings through marriage, inheritance or donation. Under a ukase of the Presidium of the Supreme Soviet dated July 26, 1962, the second and any further houses must be sold within one year. If it is impossible to sell the house it has to be auctioned. If the auction produces no result the house is confiscated by the State without compensation.

Stricter action is taken against the owners of houses which

- (a) have been acquired with unearned income;
- (b) exceed the prescribed maximum area of 60 square metres; or
- (c) are used in a manner conflicting with the purpose of personal property.

In the summer of 1962, all of the Union republics passed practically identical ukases providing for confiscation without compensation of dwellings built or purchased from unearned income. The executive committees of the local Soviets were required to investigate through special commissions with what

means private houses were built or acquired. For this purpose there has first to be established how much the house-owner earns and how much the house costs. If the investigating commission decides that the house was financed from unearned income or from misappropriated public funds the case is brought before the competent district or municipal court at the request of the local Soviet executive committee. If the findings of the investigating commission are confirmed by the court, the house is confiscated without compensation and allocated to the State Housing Fund or made over to a collective farm, co-operative or social organisation. The court can require the new owner to leave to the previous owner the amount of space corresponding to his normal living space so as to prevent his becoming homeless.

As long as private housing construction was promoted by the State the authorities bothered little, if at all, about the size of single-family dwellings. Consequently many houses were built that exceeded by far, often by 100 or even 200 per cent, the authorised maximum area of 60 square metres. Such houses are now being confiscated without compensation under the authority of sections 5 and 25 of the General Principles of the Civil Law Legislation of the U.S.S.R. and the Union Republics. The dispossessed owners are offered public housing.

Confiscation without compensation is also ordered in the case of dwellings that have been used either in a manner alien to their purpose or for unearned income (by letting at a higher than official rent). Section 5 of the General Principles of the Civil Law Legislation is quoted in justification of this measure; it permits only such use as corresponds to the specific purpose and to the owner's own needs.

It would, however, appear from the Soviet press that the authorities responsible for implementing the new laws are in many places failing to carry out their instructions with the energy required by the Party and State leaders. For example, a district Soviet in the capital of Kirghizia, Frunze, was rebuked for applying for confiscation of only six houses after the investigating commission had instituted a list of fifty-six. Articles published in the periodical *Kommunist* of July 5, 1963, and in the Government daily *Izvestiya* of July 9, 1963, quoted further examples of indifference and reluctance on the part of the population and of Party, militia, Procuracy and Soviet organs towards the campaign against house owners.

Under the device of building Communist society and for the purpose of socialising private life, there is now being systematically

promoted the construction of large apartment blocks with communal kitchens and other communal facilities according to prescribed models. In the July, 1964, issue of *Novy Mir* the well-known economist S. Strumilin discussed the pattern of life in the Communist society as follows: "Each according to his abilities, to each according to his needs. The family hearth disappears to make place for communal facilities; large housing units will accommodate a social collective bound together by the interests of everyday life. The needs of the individual are to be met from the social fund".

The perspectives opened by Strumilin and other authors constitute in the final analysis a return to ideas expressed by Friedrich Engels. In his *Origins of the Family, Private Property and State*, Engels made the family and thereby also the privately owned house responsible for the emergence of a class society. Its accompanying features must consequently reappear so long as the private house, the family, in short, the individual's private sphere, continue to exist, engendering, as it were, the greatly feared contradiction between the individual and society.

The various legal reforms carried out in the Soviet Union since the 20th Party Congress (1956) have considerably increased the stability of the law and improved the citizen's position with regard to the State's penal and police powers. The protection which this development of the private sphere of Soviet citizens has afforded, is cancelled out by the serious invasion of privacy by the new housing policy.

RECENT PUBLICATIONS
OF THE INTERNATIONAL COMMISSION OF JURISTS

Journal of the International Commission of Jurists

Volume V, No. 2 (Winter 1964): The Principle of Socialist Legality; Report on Pre-trial Release Practices in Sweden, Denmark, England and Italy; Justice and State Security; Legal Aspects of Civil Rights in the United States and the Civil Rights Act of 1964 (Parts I and II); The Rule of Law in the Somali Republic; The Rule of Law - Anglo-Saxon or World-wide? Book Reviews.

Bulletin of the International Commission of Jurists

Number 20 (September 1964): Aspects of the Rule of Law in Brazil, Cameroon, Canada, Chile, Communist China, Eastern Europe, Gambia, Ireland and Tanganyika.

Newsletter of the International Commission of Jurists

Number 15 (February 1964): Appointment of New Secretary-General. Members of the Commission. Missions and Tours. Observers. Press Releases: South Africa, Ghana, Cuba, Haiti, Ceylon, U.S.A., United Nations. Essay Contest. Organizational Notes. Publications. Law Student Seminars.

SPECIAL STUDIES

The African Conference on the Rule of Law (June 1961): Report on the first African Conference on the Rule of Law, held in Lagos, Nigeria, January 1961.

The Berlin Wall: A Defiance of Human Rights (March 1962): The Report consists of four parts: Voting with the Feet; Measures to Prevent Fleeing the Republic; the Constitutional Development of Greater Berlin and the Sealing off of East Berlin. For its material the Report draws heavily on sources from the German Democratic Republic and East Berlin: their Acts, Ordinances, Executive Instruments, published Court decisions and excerpts from the press.

South African Incident: The Ganyile Case (June 1962): This Report records another unhappy episode in the history of the arbitrary methods employed by the Government of South Africa. In publishing this report the Commission seeks to remind its readers of the need for unceasing vigilance in the preservation and assertion of Human Rights.

Cuba and the Rule of Law (November 1962): Full documentation on Constitutional legislation and Criminal Law, as well as background information on important events in Cuban history, the land, the economy, and the people; Part Four includes testimonies by witnesses.

Spain and the Rule of Law (December 1962): Includes chapters on the ideological and historical foundations of the regime, the single-party system, the national syndicalist community, legislative power, powers of the Executive, the Judiciary and the Bar, defence of the regime, penal prosecution of political offences, together with eight appendices.

Report on the Events in Panama, January 9-12, 1964 (May 1964): A report by the Investigating Committee appointed by the International Commission of Jurists.

Published in English, French, German and Spanish
and distributed by

INTERNATIONAL COMMISSION OF JURISTS
2, QUAI DU CHEVAL-BLANC, GENEVA, SWITZERLAND

HENRI STUDER S.A., PRINTERS, GENEVA, SWITZERLAND