



ANNUAL REPORT
on
THE ACTIVITIES
OF THE
INTERNATIONAL COMMISSION OF JURISTS
July 1974 — June 1975

by

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Secretary-General

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The International Commission of Jurists has continued its activities on behalf of the Rule of Law and the protection of human rights in all parts of the world.

Five new Members have been elected to the Commission. Under its Statute the Commission is composed of not more than 40 Members, and seeks to maintain a balance between the different regions and legal systems of the world. The new Members are William J. Butler, Esq., attorney-at-law, New York, U.S.A., Chairman of International Human Rights Committee of the Association of the Bar of New York City; Dr. T. A. Elias, the Chief Justice of Nigeria; Dr. Alfredo Etcheberry, an advocate and professor of law in Chile; Dr. M. Lleras Pizarro, an advocate and professor of law in Colombia; and Sir Guy Powles, the Ombudsman of New Zealand.

Summary of Activities

Publications have included two issues of the ICJ REVIEW in English with a distribution of 10,000 copies to lawyers, legal associations and law libraries, half of them in developing countries. In addition, 3,000 copies were distributed of a double number of the REVIEW in Spanish. This was printed free of charge on the national printing press of Costa Rica, as a contribution by the government of Costa Rica to the work of the ICJ. Apart from general legal articles, these issues of the REVIEW contained articles on human rights situations and legislation in twenty countries (Argentina, Bolivia, Brazil, Chile, Ecuador, Paraguay, Peru, Uruguay, Bulgaria, Czechoslovakia, USSR, Cyprus, Equatorial Guinea, Morocco, Namibia, South Africa, India, Indonesia, Sri Lanka and South Korea).

The Japanese Section of the ICJ published two more issues of their Journal, "Law and Human Rights", containing translations of many articles from the ICJ REVIEW.

Special reports published by the ICJ on Uganda, Chile and Argentina are dealt with in more detail below. A supplementary report on the situation in Uruguay was published early in 1975.

A translation of the ICJ Report on the Rule of Law in Turkey was published in Turkey and sold over 2,000 copies in addition to 500 copies distributed free. It is significant that the publishers decided to omit those passages relating to the repression of the Kurdish minority for fear that they might lead to a prosecution under Article 142 of the penal code for "separatist propaganda". This is of interest in view of the Turkish allegations of discrimination against the Turkish minority in Cyprus, a minority who had unparalleled constitutional guarantees.

Two articles by the Secretary-General were published in the Journal of the Brazilian Bar Association, one on "The Revision and Implementation of the Geneva Conventions", and one on "The Credibility Gap in Human Rights".

Representations made by the ICJ to the Prime Minister of Malta concerning the suspension of the Constitutional Court were published as an appendix to a report produced by the Chamber of Advocates of Malta.

Numerous interviews on human rights situations in different countries were given by the Secretary-General and members of the legal staff on radio and television and to journalists. These were broadcast in home or overseas programmes or published in the press in Canada, France, Germany, Norway, Sweden, Switzerland and the United Kingdom.

Press releases were issued dealing, *inter alia*, with human rights situations in 19 countries (Spain, Yugoslavia, USSR, Cyprus, Israel, Syria, Turkey, Algeria, Ethiopia, Namibia, South Africa, India, Pakistan, South Korea, South Vietnam, United States, Argentina, Chile and Uruguay).

Lawyers were sent as international observers on 12 occasions to significant trials in countries as far apart as Crete, Spain, Indonesia, Ecuador, Chile, South Africa and Madagascar, the observers coming from the United States, Switzerland, Australia, Colombia, Portugal, Belgium and the United Kingdom. Applications were also made to send American and Norwegian observers to trials in South Korea and the USSR respectively, but permission was not granted.

As well as these public activities, sixty-one different private interventions were made with the governments of 31 countries, dealing with particular situations affecting human rights or with individual cases. In addition to the countries already mentioned in connection with public activities, the countries to which private interventions were made include Portugal, Bangladesh, Iran, Malaysia, North Korea, Dahomey, Mali, Nigeria, Southern Rhodesia, Peru, Rumania, Zaire and the United Kingdom.

The ICJ in Geneva serves as a clearing house for the collection, preservation and dissemination of information and material pertinent to international law and human rights. It handles a very substantial number of requests made in person and by mail, and its outgoing letters average between 2,500 and 3,000 per year.

It is impossible to deal fully in this report with all the situations on which action was taken. Some of the more important may be mentioned.

Uganda

The reaction by General Amin to the ICJ report on Uganda led his brother-in-law, the former foreign minister of Uganda, Mr. Wanume Kibedi, to publish an open letter to Amin affirming the accuracy of the ICJ report and adding some important personal testimony of his own. This included an account of a conversation he had with General Amin on the day of the arrest of Chief Justice Kiwanuka. The conversation opened with General Amin saying "The boys have got Kiwanuka", showing clearly that he was arrested on the General's authority. Amin has usually stated in public that enquiries have failed to reveal who was responsible for the disappearance of the Chief Justice, though on occasions he has blamed ex-President Obote, or officials or army officers of his own forces who have fallen from favour.

With Mr. Kibedi's agreement, a copy of this open letter together with a later addendum by Mr. Kibedi was sent to the Secretary-General of the United Nations in July 1974. As there was not sufficient time under the rules for this to be officially distributed to the members of the U.N. Sub-Commission on the Protection of Minorities and Prevention of Discrimination, copies were distributed to them by the New York representative of the ICJ to the U.N. Mr. Kibedi's statement is of considerable importance, as it is the first detailed public statement by a prominent Ugandan exile giving evidence of the reign of terror in Uganda. Another Ugandan, Mr. James Byakika, a former civil servant, has since then made a signed statement which has also been sent to

the Secretary-General in support of the ICJ report. He witnessed the murder by the security forces of a foreign office official in a forest outside Kampala. He was himself shot and left for dead, but recovered and was able to escape.

Chile

Following the preliminary report of July 1974 of the ICJ mission to Chile, the full report was published at the beginning of September 1974. The mission comprised the Secretary-General of the ICJ, Professor Covey Oliver of the University of Pennsylvania, and Dr. Kurt Madlener of the Max-Planck Institute of International and Comparative Penal Law in Freiburg-im-Breisgau, West Germany. Its report received very wide publicity. It described in some detail the so-called "military justice in time of war", a system of summary justice by military tribunals with no right of appeal. Many examples were given of illegal decisions by the military tribunals, including convictions and sentences under the decrees applied retroactively and even the execution of defendants under illegal death sentences. As there was no right of appeal there was and is no means of remedying these illegalities. Details were given of torture methods employed by military interrogators and attention was drawn to the prolonged period of incommunicado detention and to the absence of judicial control which made possible and even encouraged these excesses. The report made a number of recommendations, based on the assumption that the military dictatorship was to continue. These recommendations were closely paralleled by the remarkable report of the Committee of the Human Rights Commission of the Organisation of American States which visited Chile shortly after the ICJ mission. This report is of particular importance, coming as it does from an inter-governmental organisation and, as such, it provides a basis for governmental intervention urging that its recommendations be implemented.

It was hoped that the first anniversary of the military coup, September 11, 1974, would provide the occasion for an improvement in the judicial system, but such changes as were made proved to be mere window-dressing. The "state of war" was replaced by a newly defined category of "state of siege" under which the system of military justice in time of war, with all its defects, continued in force.

At the end of October the ICJ published a press release entitled "Chile — the Show and the Reality", dealing with developments since the time of its mission to Chile, including further arrests of political prisoners, round-ups in the *poblaciones*, and the appointment of military officers to supervise instruction in all schools. The latter allegation was

denounced as a "lie" and a "grotesque invention" by the Chilean authorities, *inter alia* in half-page advertisements in the *Washington Post* (Sunday, November 8) and *The New York Times*' "Week in Review" (Sunday, November 17). These denials ceased, however, after the publication of a further press release in December on the military control of education in Chile. This contained extracts from a circular issued in August by the Commander of Military Institutes, Santiago, entitled "Circular to Regulate the Functioning of the Educational Establishments of Greater Santiago". It showed that military officers had in fact been assigned to each school to supervise the curriculum and to see that no instruction was given bearing on politics, and that a confidential system of denunciations to these officers had been instituted, covering teachers and other staff, the students and their parents.

In November 1974 the Secretary-General testified on Chile before the Sub-Committee on International Organisations and Movements and the Sub-Committee on Latin America of the House Foreign Affairs Committee in Washington. The testimony dealt in particular with the open letter of Dr. Eugenio Velasco, former Dean of the Law Faculty, University of Chile, Santiago, to the President of the Chilean Bar Association, complaining that it had not shown the same courage in standing up for human rights in Chile under the present regime as it had done under President Allende. Proceedings were subsequently started against Dr. Eugenio Velasco arising out of this letter, but the charge was dismissed. The Secretary-General's testimony also referred to a report received by the ICJ that the government was considering a scheme to send children of Allende supporters to rehabilitation camps, an allegation which provoked vigorous denials from the Chilean authorities.

A supplement to the report of the ICJ mission to Chile was prepared for the meeting of the U.N. Human Rights Commission in Geneva in February 1975. This covered the so-called "termination" of the state of war, the arrests and releases of detainees, including the expulsions of released prisoners, Dr. Eugenio Velasco's letter, and the military control of education. Both the report of the ICJ mission and this supplement were distributed as official documents to the Human Rights Commission and were commented upon favourably by a number of delegates. A further document was circulated to the delegates containing copies of affidavits by victims and relatives alleging recent illegal arrests and torture and ill-treatment of prisoners.

The wide publicity given to the illegal arrests, prolonged detention incommunicado, and torture and ill-treatment of prisoners, led the Junta

to issue yet another decree in March 1975 governing arrests and authorising detention incommunicado for only a few days. There were, in fact, earlier decrees covering these matters, and there is already evidence that the new decree is being observed in the breach as much as were its predecessors.

Information on these and other matters was made available to the U.N. Human Rights Division for investigation by the Working Group of the Human Rights Commission which was to have visited Chile in July 1975. Permission for this group to visit Chile was, however, withdrawn at the last moment.

South Korea

In July 1974, Mr. William Butler, ICJ representative at the U.N. in New York, testified on his visit to South Korea before the Subcommittee on International Organisations and Movements of the House Foreign Affairs Committee in Washington.

In August 1974, a letter was addressed to President Park, protesting in the strongest terms against the provisions of the Emergency Measures, the secret military tribunals set up under them, and the death sentences they have passed, as being an abuse in the name of the law, and urging a return to those legal standards internationally accepted among civilized nations. On August 23, 1974, President Park revoked Emergency Measures 1 and 4, but Emergency Measure 2, setting up the secret military tribunals, remained in force.

In September 1974, a cable was sent to President Park protesting against the 10 year sentence imposed by a military tribunal against a defence lawyer, Kang Shin Ok, for what at worst was a matter of professional misconduct, and urging immediate review of the sentence. This was followed up by a reasoned letter when further details of the conviction were available. In spite of the fact that the emergency law under which he was convicted has subsequently been repealed, Kang Shin Ok remained in custody.

Namibia

The past year has seen an intensification of activity directed towards the liberation of Namibia (South West Africa), and an increasing public interest in this question. In July 1974, the ICJ supported the submission made to the U.S. Secretary of State by the Lawyers' Com-

mittee for Civil Rights, Washington, that the proposed mission to Namibia by officials of the U.S. National Marine Fisheries Service to observe and report on the harvest of seals would be in violation of U.S. obligations under international law. These obligations were defined in the Advisory Opinion of the International Court of Justice of June 21, 1971, which had been accepted by the U.S. government. A reply was received from the Acting Legal Adviser to the Secretary of State, accepting the validity of the arguments under international law but stating that the Department concerned had nevertheless sent the mission, stating that they were authorized to do so under the Marine Mammal Protection Act.

In August 1974, the Secretary-General testified before the Ad Hoc Working Group of Experts of the U.N. Human Rights Commission on the floggings imposed by tribal chiefs in Namibia, with supporting affidavits by victims and doctors. A letter was sent to the Minister of Justice, South Africa, protesting against the refusal of a temporary interdict to suspend the floggings pending the determination of their legality by the Supreme Court and urging that some way be found to prevent the enforcement of irreparable and possibly illegal punishment. The Minister replied suggesting he was being asked to interfere improperly in the sphere of the Judiciary. A further letter was sent pointing out the kinds of administrative action which could properly be taken to suspend the floggings. Eventually the Supreme Court ruled that the floggings were illegal, and an ordinance published in South West Africa established the right of appeal from the tribal courts.

In March 1975, a press release was published giving detailed information about the methods of intimidation employed in the January elections in Ovamboland in Northern Namibia in order to frustrate the SWAPO boycott and compel people to go to the polls. An attempt was subsequently made to collect affidavits in order to bring proceedings in the courts to have the election declared void, but the threats and activities of the security authorities made it impossible for the lawyers to collect the necessary evidence.

Argentina

Another situation which has been studied in detail is that of defence lawyers in Argentina. One of the outstanding lawyers in Brazil, Professor Heleno Claudio Fragoso, who is himself a member of the International Commission of Jurists, went to Argentina for this purpose in March, with the knowledge and consent of the Argentine government who assisted in arranging interviews for him. His report was sent to the Argentine

government early in April, in order that their comments might be included when the report was released to the press. Three months later no comments had yet been received, and the report was published at the beginning of June. It discloses a highly disturbing situation in which lawyers are unable to undertake the defence in political cases owing to failure of the authorities to give them sufficient protection. Professor Fragoso gives details of 32 defence lawyers arrested under the state of siege since November 1974 and still held in detention without trial; six defence lawyers who have been murdered since November 1973, 26 threatened with murder and eight others driven from the country by such threats. Examples are also given of threats and attacks made upon judges thought to have acted too leniently in political cases. The report also deals with cases of torture of political prisoners, a practice which has become "common" and with restrictions on the freedom of the press.

As Dr. Fragoso's report makes clear, the difficulties confronting defence lawyers have arisen in a situation where violent left wing revolutionary groups have, since 1970, been committing frequent political murders, kidnappings and other forms of subversive action, and where right wing para-police groups, in particular the AAA (Argentine Anti-Communist Alliance) have been carrying out systematic illegal action against left wing militants. It appears to be the latter organisations which have been responsible for the violence directed against defence lawyers. Dr. Fragoso lists a number of incidents which, while not amounting to proof, point to a connection between these groups and the police or government.

The Minister of Justice defended the arrest of defence lawyers under the state of siege to Dr. Fragoso on the grounds that they were militant activists in politics. In many cases this is true but, as Dr. Fragoso points out, it does not appear that any of them had engaged in illegal political activities. The Minister also alleged that the lawyers were being paid fabulous sums by the guerrilla organisations. He stated that the government had no knowledge of activities of para-police groups, and did not know who was responsible for the deaths, attacks and threats against defence lawyers.

Unfortunately the situation described in this report continues. On July 2, 1975, Dr. Rafael Fagalde, a lawyer who had acted as defence counsel for political prisoners was found murdered near Tucumen in the north of the country. He was the 284th murder victim this year of right and left wing extremists.

ABA Resolution

The ICJ has publicly welcomed the resolution passed in February 1975 by the House of Delegates of the American Bar Association, describing it as an "encouraging development for those who believe that the Rule of Law and human rights are inseparable, and that the legal professions should concern themselves about their implementation both in their own countries and abroad". In this resolution the American Bar Association affirms its support for the Rule of Law in the international community and its recognition of the need for an independent judiciary and for the independence of lawyers. It notes with concern the reported arrest, detention and sentencing of lawyers in an increasing number of countries because of their representation of individual clients, and authorises its President, whenever he thinks it right to do so, to urge the United States government to bring to the attention of foreign governments the concern of the American Bar Association.

It may be that the information contained in Professor Frago's report could provide the basis for an initiative under this resolution. Unfortunately there are many countries in which defence lawyers have been subjected to arbitrary arrest and intimidation by reason of their professional activities, but there is none where the situation appears as desperate as that in Argentina.

Prevention of Torture

Another subject which has received attention during the year is the formulation of procedures to protect prisoners and detainees from torture and other forms of ill-treatment. Following an initiative in which the ICJ joined with Amnesty International and a number of other non-governmental organisations, the General Assembly passed a resolution (3218 (XXIX)) stating that "because of the increase in the number of alarming reports on torture, further and sustained efforts are necessary to protect under all circumstances the basic human right to be free from torture and other cruel, inhuman or degrading treatment or punishment". The resolution requested the U.N. Congress on the Prevention of Crime and Treatment of Offenders (to be held in Toronto in September 1975) "to include, in the elaboration of the Standard Minimum Rules for the Treatment of Prisoners, rules for the protection of all persons subject to any form of detention or imprisonment against torture and other cruel, inhuman or degrading treatment or punishment, and to report thereon to the General Assembly at its 30th session".

It may be doubted whether it is right to approach the subject of torture from the point of view of "Treatment of Offenders" rather than from the point of view of "Prevention of Crime". In every country of the world the torture of prisoners is a crime, but it is one for which the criminals are seldom brought to book. Moreover, torture usually occurs in special interrogation centres rather than in the prisons to which the Standard Minimum Rules at present apply, and occurs before the detainee has been brought to court and before he is subject to judicial supervision and before he begins to serve a sentence. However, in response to the General Assembly resolution the ICJ has prepared a memorandum which is being distributed by the Secretariat to all participants. The memorandum puts forward specific proposals for the amendment of the Standard Minimum Rules with a view to giving protection against torture. They propose the extension of the Rules to all forms of detention and provide for rights to protect a prisoner not yet charged or awaiting trial; these include the right to make representations against his arrest and detention, to challenge its legality by habeas corpus or similar procedures, to communicate with his family and friends, to communicate confidentially with the counsel of his choice, to be brought before a court within 48 hours and thereafter to be removed from the custody of the arresting or interrogating authorities. Many detailed procedures are proposed to protect persons under interrogation. Nearly all the proposals in this document are ones which have already been formulated by U.N. bodies in the Draft Principles on Freedom from Arbitrary Arrest and Detention and the Principles of Equality in the Administration of Justice.

Governments of countries where torture has become a regular administrative practice, and unfortunately there are many of them, always claim that it is strictly forbidden. Sometimes they claim it does not exist; at others, that they are powerless to prevent it. The ICJ has put forward specific proposals which, if accepted internationally, would provide a test of the *bona fides* of these governments.

In addition to the document prepared for the Toronto Congress, a memorandum was submitted in June 1975 to the U.N. Sub-Commission on the Prevention of Discrimination and Protection of Minorities concerning the Human Rights of Persons in Detention or Imprisonment, in response to the invitation contained in the Sub-Commission's Resolution 7 (XXVII). The memorandum gave examples of reports of torture and ill-treatment in many parts of the world with the aim of helping the Sub-Commission to determine the patterns of violations which have occurred, and the conditions which permit such violations, with a view to recommending measures which would prevent their occurrence.

Improving the Effective Enjoyment of Human Rights

Also in June 1975, in response to the invitation contained in General Assembly Resolution 3221 (XXIX), a letter was sent to the Director of the Human Rights Division putting forward for consideration eleven suggestions for "Alternative approaches and ways and means within the United Nations system for improving the effective enjoyment of human rights and fundamental freedoms". The recommendations were directed largely towards improved procedures for fact-finding by independent experts.

Diplomatic Conference on Humanitarian Law

The Secretary-General and a legal officer, Mr. Samuel Suckow, attended as observers meetings of the resumed Diplomatic Conference on Humanitarian Law held in Geneva in February and March 1975. A memorandum commenting upon the decisions at the first session was distributed to all participants. A number of leading delegates were invited to address privately meetings of the NGO Working Group on Humanitarian Law.

An article by Dr. Suckow on the second session of the Conference was published in ICJ REVIEW No. 14.

Conclusion

In many of the countries where there is flagrant disregard of the Rule of Law, lawyers who strive to protect their clients from abuse of human rights do so at great personal risk. Most of these lawyers work with the feeling of considerable isolation.

Anything which lawyers and lawyers organisations from more favoured countries can do to make contact with them and give them support will be a source of great encouragement and strength to them. One of the aims of the International Commission of Jurists is to strengthen the bonds between lawyers in all parts of the world who are striving for the achievement of a common goal, peace and freedom under the Rule of Law.

Additional copies of this report are available upon request
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