

FOR THE RULE
OF LAW

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

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ASPECTS OF THE RULE OF LAW

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Dr. J. B. DANQUAH, Q.C.

It was with deep regret that the International Commission of Jurists learnt of the death in detention, after thirteen months of imprisonment, of Dr. J. B. Danquah at the age of 70. Dr. Danquah was President of the Ghana National Section of the Commission, and at the time of his death was undergoing his second period of detention without trial since Ghana became independent.

Dr. Danquah was one of the foremost leaders of the African independence movement, and the Commission feels it can do no better than to quote from the tribute of a great African leader, Dr. Nnamdi Azikiwe, President of Nigeria, to the memory of Dr. Danquah. Dr. Azikiwe said:

"I am sorry that Dr. Danquah died in a detention camp. I am of the considered opinion that if independence means the substitution of indigenous tyranny for alien rule, then those who struggled for the independence of former colonial territories have not only desecrated the cause of human freedom but have betrayed their people. I wish Dr. Danquah had been tried publicly, told what offence he was alleged to have committed, given a fair opportunity to defend himself, and then either discharged or punished, depending upon the fact whether or not his innocence had been established or his guilt proved beyond any reasonable shadow of doubt."

With his death, Africa has lost a staunch supporter of the principles of the Rule of Law and human freedom.

THE CONFERENCE OF BANGKOK OPENS UP NEW HORIZONS

The nature and quality of its work, the boldness and candour of its deliberations, and the importance of the conclusions to which it has led, made the Conference of Bangkok an event both memorable and full of promise for the future.

While reaffirming unequivocally the dedication of the lawyers of South-East Asia and of the Pacific to the rules and principles of their profession, the Conference at the same time opened up new horizons. It reaffirmed the dynamic aspect of the Rule of Law. It defined the nature and content of this dynamic aspect and showed how it could and should be utilized in the fields of social and economic development. It enlarged the traditional role of the legal profession and stated that the lawyer must look beyond the narrow confines of the law if he is to fulfil his vocation in the modern world. Finally, by affirming in clearer terms than had been done before the vital need for social justice as a factor indispensable to the Commission's concept of the Rule of Law, it gave to its ideals both wider objectives and new fields of action.

The work of the Conference was distributed among three Committees and an Advisory Group, each entrusted with studying particular aspects of the dynamic concept of the Rule of Law in the context of the actual conditions prevailing in the countries of South-East Asia. Their Conclusions were finally considered by the Conference in Plenary Session and summed up in the "Declaration of Bangkok". As the Report of the Commission giving the full proceedings of the Conference is expected to be published and distributed shortly, it is not proposed to go into details here but only to give a brief résumé of its more important features.

Of the final Conclusions adopted by the Conference attention must first be drawn to the assertions that the Rule of Law can only reach its highest expression and fullest realization under representative government and that the protection of the individual from arbitrary government and the dignity of man are best

assured by a representative government under the Rule of Law. Having stated these propositions, Committee I, which was entrusted with examining and defining the basic requirements of representative government under the Rule of Law, emphasized, *inter alia*, the need for free periodic elections without any form of discrimination against candidates or voters, and the obligation of governments to recognize the possibility within the law for the formation of an opposition party or parties able and free to pronounce on the policies of the government through the press and other media of communication. It stressed the duty of the State to provide compulsory free education for all children and illiterate adults with a view to ensuring the ultimate creation of a responsible and well-informed electorate, one of the factors essential to the smooth working of representative government. The Committee then dealt at length with the requirements necessary to guarantee the freedom and the dignity of the individual. It felt that a State which recognized the Rule of Law should possess the machinery necessary for the protection of fundamental rights and freedoms, whether or not they were guaranteed by a written constitution. But it considered that in countries where the safeguards afforded by well established constitutional conventions and traditions were inadequate, it was distinctly desirable that the rights guaranteed and the judicial procedures to enforce them be incorporated in a written constitution. Finally, in view of the fact that some governments in the South-East Asian region and elsewhere often had recourse to preventive detention, the Committee found it necessary to re-affirm and extend the Conclusions of Lagos relating to preventive detention. In doing so it reiterated that preventive detention without trial was contrary to the Rule of Law save during a period of public emergency threatening the life of the nation.

Committee II was charged with examining questions of social and economic development within the framework of the Rule of Law. First of all this Committee demanded the same recognition and respect for economic, social and cultural rights of the individual as was afforded to his civil and political rights. It felt that the social and economic conditions necessary for the full enjoyment of human dignity should be secured by appropriate legislation and protected both at the national and at the international level by adequate legal institutions and procedures. Social justice was thus recognized as a basic element in the general concept of justice. The Committee considered that the lasting

and most effective way of reaching those social and economic goals necessary for the smooth operation of the Rule of Law was by methods and procedures that conform to its principles and that both means and ends in planning social and economic reform should derive from and reflect the ideas, the needs and the aspirations of the people themselves. Attention was given both to the goals to be reached and to the ways and means of reaching them. Among matters specifically dealt with by the Committee the following deserve mention: elimination of all forms of discrimination and intolerance which are impediments to the unified effort required for progress; control of public accounts by an independent body; review of administrative decisions infringing individual rights; and regulation of the conditions of the public services by a body independent of the Executive. Last but not least, the Committee listed a series of guiding principles to be followed in the implementation of programmes of agrarian reform, of nationalization, of price control, and of commercial controls. In short, it covered all those sectors in the social and economic field in which the need for modernization and social progress could conflict with vested rights and interests. Thus in the Conclusions of this Committee are to be found safeguards provided by the Rule of Law which give to the concept of public welfare its true meaning and ensure the possibility of its realization without recourse to arbitrary action or misuse of power.

If Committee II extended considerably the areas in which the Rule of Law must make itself felt today, Committee III, which was called upon to examine the role of the lawyer in a developing country, likewise mapped out for him a much wider field of action. The lawyer can no longer limit himself to the role of a watchful defender, in the daily practice of his profession, of fundamental freedoms and individual rights. The lawyer must look beyond the frontiers of the law; he must at the same time be the promoter of social peace and progress; he must understand the society in which he lives so as to be able to play a part in its advancement, and he must take resolute action to further those social, economic and cultural conditions which will enable man to achieve his full dignity. Among the practical steps proposed for the lawyer to take are the repeal or amendment of laws which have become inappropriate or unjust or out of harmony with the needs and aspirations of the people, the review of proposed legislation to ensure that it is in accord with the Rule of Law, and, of course, the promotion of legislation estab-

lishing the legal framework which will enable a developing society to advance and flourish. In addition, the Committee favoured the creation in the Region of a South-East Asian Law Institute which would act as a centre for research, comparative studies, information as to common problems and experiences, and possibly for professional training. It felt that the prospects of realizing this project were certainly worth serious exploration; a centre of this nature could not fail to provide valuable services, not only in raising the standard of legal education but also in bringing about a useful confrontation between differing legal concepts.

The Advisory Group which was set up to consider the possibility of a regional convention on human rights for South-East Asia and the Pacific was of the opinion that there should be only one Convention for States in the Region which could be acceded to by such States as wished to do so. The Group felt that almost all the States in the region were likely to consider such a Convention favourably, if limited to political and civil rights and if providing an acceptable method of enforcement. Having regard to the great disparities existing in the countries of the Region, a convention for the protection of economic, social and cultural rights at this stage would give rise to difficulties. The idea of such a convention was certainly not abandoned, but was put off until such time as conditions favourable to its realization existed. A convention on political and civil rights would, however, necessarily assist in the solution of many urgent problems and would at the same time be conducive to the maintenance of good relations among the signatory States. Besides, it would give concrete expression to the adherence of the peoples of the Region to the Rule of Law.

The Advisory Group urged all lawyers of the Region to press their governments to support the establishment of the Office of United Nations High Commissioner for Human Rights. The existing machinery of the United Nations Organization does not provide adequate means to ensure such respect as should be paid to the Articles of the Universal Declaration of Human Rights and international agreements which ought to ensure their enforcement have always been unsuccessful in this regard. The High Commissioner for Human Rights, whose status would be analogous to that of the High Commissioner for Refugees, could serve appreciably to remedy these deficiencies.

This short summary endeavours to give a brief picture of the extent of the work accomplished by the Conference of Bangkok. The eminent personalities who participated in it and who truly represented the legal thought of this region of the world have good reason to be proud. It is encouraging and reassuring to think that this large gathering did consider that, given peace and stability, there did not exist in the Region any intrinsic factors which make the ultimate establishment, maintenance and promotion of the Rule of Law incapable of achievement.

One has every reason to expect that the Conference of Bangkok will make a deep impact on the future development of the countries of the Region. An essential pre-requisite of progress, however, is that lawyers accept in full the heavy responsibilities that the Conference urged them to shoulder and that in their respective fields of action and influence they employ their skill and knowledge for the purpose of putting into effect the Conclusions and Resolutions of the Conference. The International Commission of Jurists for its part pledges itself to this purpose.

CEYLON SEMINAR ON THE PRESS BILL AND THE RULE OF LAW

In an article on "Recent Challenges to Press Freedom" which appeared in Bulletin No. 21 mention was made of the Seminar on "The Press Bill and the Rule of Law" held in Colombo on October 9, 1964 under the auspices of the Ceylon Section of the International Commission of Jurists. The object of this Seminar was to discuss the implications of legislation which the Government proposed to introduce with a view to curtailing the freedom of the Press. The threat to the freedom of the Press in Ceylon and the manner in which organized public opinion was successful in averting this threat has already been discussed in the previous article. As it is considered that this Seminar made a valuable contribution towards guiding public opinion on this important issue by pointing to the dangers involved in controlling the freedom of expression, it is proposed to give in this article a summary of the proceedings of this Seminar.

In opening the discussion, Mr. C. Thiagalingam, Q.C., said that the International Commission of Jurists was a non-political organization. It had no vested interests and was not concerned over the ownership of newspapers. It was only concerned with the rights of the individual and the dignity of man.

The Rule of Law sprang from the age-old struggle of mankind for freedom, and its aims included the preservation of the freedoms of association, assembly and speech. For the preservation of the rights of the individual there were certain fundamental requirements, the first among which was freedom of speech, out of which arose the freedom of the Press. Once a free Press was lost, it would be the end of human freedom and the dignity of man. The struggle of the law to preserve that freedom and dignity was an eternal one, for there were no limits to the lust for power. It was, therefore, the duty of everyone who valued freedom to assure the safety of the Press, without regard to those who owned it. It was indeed true that the Press in Ceylon needed reform, but that could not be achieved by gagging it.

Turning to the Press Bill, he commented first that the Bill had not been freely available to the public for some time. He then dealt with the Press Council which the Bill was to set up. It would, he said, be a creature of the Minister. The provisions for appointment to it were such that any four persons could form a journalists' association under the Bill and submit the names of representatives from among whom the Minister would decide those who were to be appointed to the Press Council. A Press Council of that nature would have its own ideas of what it was right and wrong for people to know. It would be liable to consider that all those matters which the public wanted to discuss were not in the public interest.

There were, of course, well-recognized limitations on the freedom of the Press, but the enactment of limitations such as were contained in this Bill was intolerable. The powers granted to the Minister would ultimately mean that the public was prevented from saying what they wanted to say and the Press was prevented from reporting what was said. The Press Bill represented an invasion of the dignity of man and his fundamental freedoms.

The Press in Ceylon certainly needed reform. That could be effected by an internal arrangement whereby those in the

profession, such as journalists and editors, could be elected to a council which would not be a statutory body.

Mr. E.B. Wikramanayake, Q.C., also expressed the view that the real solution to the problem posed by the irresponsibility of the Press would be the creation of a professional council of journalists, which would be jealous of the profession's honour and would not allow its own code of ethics to be transgressed. Such organizations existed among lawyers and doctors as, for example, the Bar Council, the Law Society and the Medical Council.

He too criticized the detailed provisions of the Bill, and said that the remedy suggested was worse than the disease it sought to cure. The Bill appeared innocuous at a glance, but on careful examination was shown to be most dangerous. The Press Council was to be appointed by the Governor-General: the recommendation that it be appointed by the Judicial Service Commission, which is responsible for judicial appointments, had been rejected. The Commission (whose report had led to the Bill) had recommended that the chairman of the Press Council should be a Sinhalese Buddhist who had held high judicial office. Once the members of the Council were to be selected by the Minister, the way was open for the appointment of favourites. It had been seen that those who spoke loudly in support of the Government, even among the legal profession, were appointed to the Rent Control Board, the Income Tax Board of Review and other boards to which they were not suited.

Under the Bill, the Press would not have the right to criticize Government policy and spotlight the activities of Ministers—and that in an age when bribery was rampant. It was true that the Press Tribunal to be set up under the Bill was to be appointed by the Judicial Service Commission, but that concession was only made because the Privy Council had held that no tribunal could enjoy judicial power unless it was appointed by the Judicial Service Commission.

All the offences listed in the Bill were punishable under the Penal Code. There was no need for special tribunals when Courts of Law existed. The excuse was made that Courts involved delays, but the experience of the past ten years had proved otherwise. The principle that the accused person was considered innocent until proved guilty has been described as the golden thread that ran through the web of British justice.

But under the Bill once an affidavit was filed by the Press Commissioner the burden of proof fell on the accused. That was a most dangerous step. It had been deliberately inserted and was a pernicious clause.

The Press Bill had been agitating the minds of the public for months. It was possible for an association such as the International Commission of Jurists to study it objectively and help in shaping public opinion. Certain members of the legal profession who spoke at the recent meeting of the Bar Council, where the Press Bill was condemned, had said that democracy changed with the temperament and culture of the People. In Ceylon, therefore, it was said to mean government by Sinhalese Buddhists. Such ideas had to be eradicated. The essence of democracy was the right to think, speak and worship as one liked, provided well-defined limits were not overstepped. Under existing law the citizen was free to say what he wished so long as he did not defame anyone or hurt anyone's religious susceptibilities.

Mr. Mallory Wijesinghe said that the people had acquired certain human rights and civil liberties since the obtaining of independence seventeen years ago. The freedom of speech, which was one of the four freedoms declared by President Roosevelt, was one of them. That freedom was not so important where the people were ignorant, but in Ceylon, with free education, ignorance and illiteracy had been removed. It was, therefore, important for the people to acquire a knowledge of what was happening around them.

Controls and restrictions on freedom had become necessary during war-time, but those controls had introduced a sense of apathy and people had become used to accepting controls as a part of every-day life. Now the attempt was being made to remove the right of printing what was said by the public. The point had been reached at which the fundamental right of free speech, the one available method of mass communication, was to be removed.

A free Press was essential in the field of industrial relations both to the employer and to the employee. Without it, the worker would never have the opportunity of making his grievances known. One means of mass communication, the Radio, was already in Government hands: if television were to be intro-

duced that would also be controlled by the Government. Everyone knew what news value the Government cinema news-reels had. The only genuine means of mass communication available was the Press. Once that was also controlled, a situation similar to that in time of war or emergency would prevail, when the people would live on a spate of rumours.

It had been said that, if one had to make a choice between the newspapers and the Government news, one should prefer the newspapers. That was because a free Press would provide the opportunity for expressing views freely, would report proceedings in Parliament and would give strength to free associations. Was the position such that the country had to go backwards in time? Having become free citizens, were the people to become subject again? That was the predominant question today.

Mr. Lalith Athulathmudali said that the Press Bill should be viewed primarily from the point of view of the interest of the public and not that of the Government or the proprietors of newspapers. There were a few provisions in the Bill which were in the public interest. For example, the public interest was that the truth should be reported. In that context, the provision making the reporting of false statements an offence was in the public interest because it helped to encourage the reporting of the truth. Another measure in the public interest was the provision to prevent the publication of indecent and obscene material.

It was said that the appointment of the Press Council was a circuitous way of giving the Minister power to do what he wanted. But the Minister was himself limited by the provisions of the Bill. The problem arose as a result of the wide and vague wording of Section 8, which did give some opportunity for a person to do as he liked.

Another provision open to criticism was that regulations made by the Minister would be law until rescinded by Parliament. That was dangerous in view of the temptations which might arise during the dissolution or prorogation of Parliament. If the Bill had provided that no regulation made by the Minister should come into force until approved by Parliament, that would have been acceptable.

The provision whereby the Commissioner could compel a newspaper to publish a "correct" version of a speech if it was sent in by the speaker was intolerable. That meant that, if a person made a speech the reaction to which he did not like, he

could insist on having a "correct" version published even though the editor of the newspaper could prove that what was originally reported was correct. The editor could be accused of the offence of refusing to publish a correction in such circumstances. That section was intolerable, and did not harmonize with the provisions seeking to ensure publication of the truth.

The Bill, as a whole, was like the curate's egg, good in parts and bad in parts, and it was worthwhile to consider a re-draft.

Mr. E.G. Wikramanayake, Q.C., said that without freedom of speech and thought man was reduced to slavery. Newspapers were essential for the dissemination of ideas and the development of peoples. Under the Bill it would be possible for the Minister to cut down the avenues of information. It would be possible for the Press Council, a government creature, to decide on what should be published and what should not. The empowering of the Minister to make regulations, which were laws until rescinded by Parliament, should be opposed. Laws should only be made by Parliament. The Bill said the Minister could make regulations "to implement the principles and purposes of the Bill". That wording was so vague that one did not know what the scope of it was, and it was impossible to predict how far the power thus given might be abused. Regulations were so frequently abused today that it would be absurd to shut one's eyes to the possibility of abuse in the future. The Bill struck at the very roots of democracy in that it was a blow at the right to free speech and discussion.

Mr. H.H. Basnayake, Q.C., said the burden of the discussion was that the Press Bill was an attack on freedom of expression. The Press was, like any other body, subject to the law of the land. The organizations which published newspapers were corporate bodies engaged in the business of disseminating news. Ever since 1960, the Speech from the Throne had indicated some kind of control of the Press, yet no decision had been taken until this year. The attack on freedom of expression had created resentment throughout the entire country, and very rightly. There were many obnoxious features in the Bill. The main feature among them was the enthronement of an autocracy. The Minister was given uncontrolled power. Then the last section of the Bill provided that the provisions of the Bill should prevail over all other laws. That was a new departure in legislation of a type that had not been seen for the last 100 years.

He objected to the substitution of a tribunal for the Courts of Law. It was said that remedies provided outside the Courts were cheaper than those provided by the Courts. Again, all manner of tribunals were being appointed on the ground that the Courts were slow. But in reality the tribunals moved even more slowly. It was reported in the Press—and there was no reason to disbelieve it—that the number of cases pending before Labour Tribunals was 25,000 and it would take five years to dispose of them. Where then was the need to by-pass the Courts for the sake of speed? Where was the need to set up autocrats in power who were a law unto themselves?

Justice Goldberg of America, who visited Ceylon recently, had given an apt definition of democracy. He called it the observance of the Rule of Law. If there was a departure from the Rule of Law, the atmosphere would be created for corruption and evil.

What evil had the Press done? It might have reported speeches which some did not like. For that the newspapers and the reporters were denounced. The Press might sometimes mis-report—he had himself been misreported in the Press. It was said that the Press made false statements. Were not false statements made in Parliament too about distinguished persons who had no redress? Did that mean that Parliament too had to be controlled? All institutions showed defects with the passage of time, but that did not justify an assault on freedom of expression.

The Ceylon Section of the International Commission of Jurists is to be congratulated on taking so firm a stand on the side of those who raised a massive protest against the Press Bill. The new Government elected to power in the General Election on March 22, 1965, has clearly indicated its opposition to the control of the Press. In a message to the Nation on March 25, Mr. Dudley Senanayake, the new Prime Minister, said: "Let us, as the citizens of this Land, work together to make this a happier place for a free and democratic people to live in, under the Rule of Law, in Peace and Prosperity."

THE EAST GERMAN ARBITRATION COMMISSIONS AS AN INSTRUMENT OF SOCIAL JURISDICTION

Ideological foundations and historical development

Anyone who is interested in the details of legal practice in countries under communist domination must always remember that in every legal institution he will find the expression of a creed which claims to be scientifically demonstrable and therefore demands exclusive acceptance of its tenets. Karl Marx's teachings on dialectical and historical materialism have indeed been considerably modified by his disciples: and it is certainly impossible to speak of a contemporary "standpoint" which is equally valid in all countries of the Eastern block. But there are some basic features of that teaching which are generally accepted throughout the communist area. These include certain axioms regarding the laws of history as a process determined by economic factors and the class struggle, the ability of the proletariat to recognize the laws governing this process and to help it to develop according to those laws, and finally the idea of the classless society as the ultimate objective of the historical process, which has as its prelude the gradual withering away of the power of the state in the immediately preceding period of socialism.

The German Socialist Unity Party (SED) believes the necessary conditions for this allegedly inevitable historical development have been created in the German Democratic Republic (GDR) and in the other countries of the Eastern block as well, with the establishment of a State structure in which part of the State jurisdiction is transferred to social organs. As long ago as 1953, so-called "conflict commissions" were set up in all socialist enterprises and public offices in the German Democratic Republic. In the beginning they were asked to settle specific conflicts arising out of employment relationships, but later they were also empowered to settle civil disputes over sums below a certain level and to punish certain minor offences and infringements of "socialist ethics". Finally in the Labour Code of April 12 1961¹ their various activities were all placed on a legal basis. Some parallel

¹ GB1 I S. 27, 1961.

might be drawn between these "conflict commissions" which were set up in enterprises and government offices as institutions of social jurisdiction, and the system of works tribunals which has developed in industry and commerce in the Federal Republic of Germany and other western countries, though there are of course clear-cut differences in their functions and their competence.

Now, however, the German Democratic Republic has decided to expand its social jurisdiction and to extend it to spheres other than socialist enterprises and government offices, so that particularly in towns and rural districts—i.e. on a local basis—it plays a role similar to that of the conflict commissions. This jurisdiction is exercised by the so-called "arbitration commissions" in which, except in matters affecting certain special relationships, the citizen now sits in judgment on his fellow citizen. In this, the idea of "social jurisdiction", which first emerged in the tribunals of the French revolution and the arbitration tribunals of the Russian revolution, is carried to its logical conclusion.

Paragraph 2, Section II, of the Decree of the State Council of the German Democratic Republic dated April 4 1963¹, which has lately acquired a decisive importance in the administration of justice in the Republic, contained the first mention of arbitration commissions which were to be set up in rural districts and towns, and also in agricultural production co-operatives, production co-operatives of craftsmen, gardeners and fishermen and in private enterprises. The various laws passed under the provisions of the Decree of April 4 1963 are based on the assumption that these arbitration commissions have already been established. On August 21 1964 the State Council of the Republic issued a directive² on the establishment and functions of the arbitration commissions which gave legal sanction—the State Council as head of the executive of the GDR also having legislative powers—to the status of this branch of social jurisdiction and defined its competence and the procedures to be observed by it.

Establishment, competence and procedure of the arbitration commissions

The establishment of the required number of arbitration commissions throughout the territory of the GDR is to be carried out

¹ GB1 I S.21, ff. 1963.

² GB1 I S. 115, 1964.

by the end of 1966. This task has been entrusted to the so-called local people's representative bodies in the administrative units (regions, districts, parishes) of the GDR. These people's councils also elect the members of the commissions which are to operate on a local basis in boroughs, rural districts and parishes. The right to nominate candidates for the arbitration commissions belongs exclusively to the so-called "National Front". This is a mass organization which is clearly under the influence of the Socialist Unity Party. The only persons eligible for nomination are those whose public and private life is exemplary. Members are elected for a period of two years: but there is a provision allowing members of the commissions to be dismissed from office if they do not justify the confidence placed in them. In rural and urban districts the arbitration commissions usually have 6 to 15 members, while the commissions in production co-operatives and private firms, which are elected by different forms of suffrage, have 4 to 8 members. Each commission elects its own chairman and the required number of deputy chairmen.

The competence of the arbitration commission is many-sided and includes:

- (a) the "treatment" of minor offences—that is, offences which do not represent any considerable danger to the socialist order in the GDR,
- (b) the settlement of civil disputes involving claims up to a value of about DM 500,
- (c) the settlement of other unimportant disputes of various kinds between citizens,
- (d) the punishment of offences against "socialist ethics", in this case "work shyness" (evasion of work) or neglect of parental obligations towards children of school age whose school attendance is irregular.

A person is regarded as "work-shy" if he lives without any "socially useful" employment, and thereby impairs his own interests and those of his fellow men.¹

Each "consultation"—as the proceedings of the arbitration commissions are called—is attended by at least four members of the commission. Notice of the consultation is given to the parties concerned two days before it takes place, and most consultations are open to the public. In addition to the parties

¹ Directive of the State Council of August 21, 1964, p. 121.

involved, other persons are usually invited to attend for educational reasons, particularly members of the house communities¹, representatives of the firms in which the parties work, members of the competent committee of the "National Front" and other bodies. All those present have the right at any stage during the consultation to express their views on the character of one or another of the parties involved and their attitude to the case itself. This means that the consultations are quite often attended by a large number of persons who are only indirectly concerned and who can rapidly be transformed from an audience into a tribunal. One example of a consultation of this kind is the case described by Dr. Kurt Goerner, Chief Investigator in the Ministry of Justice of the GDR in a report on initial experiences in the work of the arbitration commissions. He writes:²

In the village of Metschow the arbitration commission held a consultation on the offence of a cowman called K. The cowman had, under the influence of alcohol, struck a peasant woman of the same co-operative who had been engaged to replace him in the cowshed, since he was incapacitated for work owing to his weakness for alcohol. The information transmitted to the arbitration commission by the investigating authorities was inadequate, as the character of the cowman had not been fully investigated and assessed. In spite of these defects in the information transmitted, however, the arbitration commission did hold a consultation for educational purposes. More than seventy citizens, most of them members of the co-operative concerned, attended. Further examples of illegal and unethical actions by the cowman were mentioned by the members of the audience. At the same time, the consultation demonstrated to all citizens that in their village and in the agricultural production co-operative excellent economic results were not enough in themselves but should go hand in hand with the cultural development of the community and the education of its members.

The actual results of this consultation are not mentioned in the report.

No special procedures are laid down for the consultations. There is no provision for the parties involved to be represented, and certainly none for an accused citizen to be defended. The task of the commission is to make a comprehensive study not

¹ Under the system prevailing in East Germany all the inhabitants of a block of flats or series of houses are automatically members of the "house community" by means of which the Socialist Unity Party through its representative keeps a watch over the lives of the inhabitants.

² *Neue Justiz* 1963, No. 22, p. 715.

only of the dispute in question but also of its social causes which, according to Marxist-Leninist ideology, are regarded as of paramount importance in every case. This latter function is sometimes so predominant that the actual case on which the consultation is being held is reduced to the importance of a mere symptom. The consultation ends with a decision which is set down in writing, and communicated to the parties.

Individual fields of competence of the arbitration commissions

As is clear from the case mentioned above, in criminal matters any consultation by the arbitration commission is based on the assumption that the case has been referred to it by the competent ordinary court, State prosecutor's office or police. The latter, for their part, must have completed their preliminary investigations and, with the transmission of the results of these investigations to the arbitration commission, their part in the proceedings comes to an end. Other grounds for referring a case to the commission are a confession by the accused and a reasonable assumption that the accused is likely to be guided in his actions by the educational influence exercised by the commission. In the case of insults, a claim by the injured party or his house community, or in certain cases by his "work team", is regarded as equivalent to an official reference of the case.

The arbitration commission may contest the reference of a case by entering an objection with the referring authorities when, in the commission's view, the case has not been adequately investigated or when the offence is not a minor one or when for other reasons is not suitable for a consultation by the arbitration commission. If the case is referred a second time by the competent authorities, the arbitration commission is bound to consider it.

As a result of its consultations on offences, the arbitration commission may decide to take one or more of the following courses:

- (a) it may require the citizen to apologize to the injured party or before the collective as a whole;
- (b) it may affirm the duty of the citizen to make good the damage he has caused, and other duties;
- (c) it may require the citizen to make good the damage he has caused by his own work or, when this is not possible, to pay damages;

- (d) it may require the citizen to withdraw his insult in public;
- (e) it may reprimand the citizen.

If the decision requires the defendant to pay damages, the court which was originally competent may, at the request of the arbitration commission or of the injured party, order this requirement to be enforceable by way of execution.

The decision of the arbitration commission may be contested by the defendant or—in cases of insult—by the plaintiff, within two weeks after the decision has been announced, by means of an application to the competent district court, which will refuse any legal remedy when the application is unfounded in fact and will, in other cases, refer the matter once again to the arbitration commission, this time for a final decision. The state prosecutor is empowered, at any time within six months after the announcement of a decision by the arbitration commission, to override the decision and to bring a case before the competent State court if the offence tried by the arbitration commission is not a minor one.

If the citizen does not appear before the arbitration commission after receiving two summonses thereto, the case is referred back to the authorities which were originally competent so that ordinary proceedings can be instituted.

In civil disputes, the arbitration commission assumes the functions of a board of arbitration. If its efforts to achieve agreement between the parties are not successful, it terminates the proceedings, so as to enable the parties to have their case decided by the normal legal procedure. In cases where the arbitration commission is successful in obtaining agreement between the parties, the competent district court may authorise execution of the arbitration commission's decision.

In the two cases of offences against "socialist ethics" which the arbitration commission is competent to decide—namely, work-shyness and neglect of obligations towards children of school age—the arbitration commission may act at the request of the local people's council or the "National Front", or the head of the school concerned. The proceedings end with the acceptance of a promise by the citizen to take up some steady employment or to fulfil his parental duties, or with a reprimand to the citizen for his unethical behaviour. In these cases, too, the method of appeal is by application to the district court. If the citizen who is "work-shy" refuses to comply with an order

to work, the case is laid before the competent council of the local people's representatives, so that the latter can decide whether proceedings for compulsory labour education should be taken in accordance with the Decree of 24 August 1961.¹

Another interesting point is that the arbitration commission may also take preventive action in the sense that, in co-operation with the house communities and other collectives, it may assume the role of educator in the case of behaviour by citizens which might lead to civil offences, such as excessive consumption of alcohol, breaches of the peace, etc.

In every kind of case the arbitration commission is subordinate to and supported by the competent district court. But the latter too is bound to co-operate closely with the local people's representatives, the National Front and other authorities, particularly those responsible for the administration of justice, in which the arbitration commissions can also give direct assistance.

Summary and evaluation

One wonders whether the concept of the "withering away of the State" can have any sense in a political structure in which, over and above the State, there is an authority controlling it in the form of the Communist Party—in this case the SED—which by a variety of methods of indirect compulsion has created a highly disciplined social order. To give one example, it would be extremely difficult for a citizen summoned before the arbitration commission to refuse to appear on the grounds that his existence would be endangered, and indeed this happens very rarely in practice. Quite apart from this the State and the Party have a decisive influence both on the establishment and on the current activities of the arbitration commission. However, if one wishes to evaluate this institution in the light of the concept of the "withering away of the State", it must be pointed out that in return for a transfer of power which allegedly promotes the practice of social jurisdiction, the State receives a service which is far more than equivalent in value and serves its own interests extremely well. It abandons its supreme judicial power in cases which in any event would have led only to minor, mostly suspended, penalties, if not to a discontinuation of proceedings

¹ GBI I S.343, 1961. See also Bulletin of the ICJ, No. 12, November 1961, p. 22.

altogether. In return, in the consultations before the arbitration commission, which are greatly feared owing to the distress involved in having one's behaviour exposed before one's neighbours or factory colleagues, the State acquires a source of moral if not extensive legal sanctions, which have an incomparably greater effect than the legal penalties which might be imposed in the cases concerned. Further, the arbitration commissions, which operate on the very spot where the "social conflict" occurs, are from the ideological point of view regarded as much better qualified than a normal court to discover the causes of this conflict. Finally, however, quite apart from their undoubted preventive influence, the arbitration commissions can assist the citizen in his education to "socialist consciousness" much more effectively than the ordinary courts, so that gradually each citizen becomes an active participant in the historical process leading to the "millennium". It is in this respect that the effect of the commissions is most important. From the ideological point of view this kind of education and orientation can only be effected in the collective which, by stifling all individualistic and non-conformist tendencies, becomes the genuine nucleus of the collective society. Side by side with the workers' collective there will now also be the house community collective, which through the arbitration commission will acquire a new weapon in its power to control the individual, so that gradually the whole life of man be supervised and directed. On this point Alfred Zoch, the director of the district court at Koenigswusterhausen, has written in the Soviet zone journal "*Staat und Recht*":¹

It is essential to ensure that the old concepts and outlook are eliminated in every field of social life. The collective education of the citizens towards socialist consciousness must be ensured by the common efforts of working people in factories and residential areas.

If one also bears in mind the striking "moral jurisdiction" which undoubtedly far exceeds the power of the law, it sometimes seems as if in this case—by some ideological reversal of the Marxist-Leninist creed—the idea of the socialist order must first be drummed into the consciousness of the citizen, in the hope that it will help to give the desired shape to economic realities which still so contemptuously resist the efforts of the Communists to change them.

¹ *Staat und Recht*, 13, Vol. 8, p. 1401, 1964.

PROBLEMS OF GOVERNMENT AND REFORM IN ECUADOR

On July 11, 1963 the Latin American press announced that the President of Ecuador, Carlos Julio Arosemena, had been ousted from office by a *coup d'état*. The armed forces seized power and formed a military junta, headed by Admiral Ramón Castro Jijón and composed, in addition, of Colonel Luis Cabrera Sevilla, Lieutenant Colonel Manuel Freile and Colonel Marcos Gandara, commanders of the Navy, the Army and the Air Force respectively. The existence of a certain amount of social unrest coupled with the allegations that the President was a disgrace to the nation and showed an indecisive attitude in the face of certain anti-national tendencies, were the determining factors in shaping the attitude adopted by the military leaders. President Arosemena was forced to flee the country for Panama and the Vice-President, Reynaldo Varea Donoso, was arrested pending his deportation.

As President of the Senate, Vice-President Varea made a fruitless attempt to persuade Congress to defy the action taken by the armed forces against the established government.

The Military Junta immediately proclaimed martial law under which constitutional guarantees were automatically suspended, a curfew decreed and a strict censorship established. The new government also proceeded to cancel the presidential elections which had been set for June 1964. The number of persons arrested immediately after the *coup d'état* is unknown but was probably rather high. A large number of the arrests took place in Guayaquil, where many persons were taken into custody by the armed forces. In referring to the arrests in Quito and Guayaquil, the Minister of the Interior, Colonel Luis Mora Bowen, stated that all the extremists arrested had been imprisoned in the National Penitentiary and would be tried by a military tribunal. The Police carried out a large-scale operation against persons accused of being extremists in which they seized documents and equipment.

Despite the formal promise made to the people by one of the members of the Junta, Colonel Marcos Gandera, of a return to

constitutional government within the next two years, the military authorities recently declared that they do not intend to allow such a return to take place before 1967. This once again goes to prove the difficulty of restoring representative government once the regular constitutional processes have been violated.

It is only fair to mention, however, that the military government in Ecuador is far from resembling some other dictatorial regimes as regards the contempt shown for the law: the former has made more allowance for, and has been more responsive to, the rights and aspirations of a nation that insistently calls for a return to a constitutional form of government.

It is therefore particularly regrettable that a government that has demonstrated its good will in the face of the demands of the people for a return to normal constitutional patterns should have persisted in its disregard of one of the fundamental human rights—the universally recognized right to vote. This right is laid down in Article 21, paragraph 3, of the United Nations Universal Declaration of Human Rights which reads:

The will of the people shall be the basis of the authority of the government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

The Rule of Law requires that these conditions be observed at every stage of the electoral process.

In the 21 months that it has been in power, the Military Junta of Castro Jijón, Gandara, Freile and Cabrera has by its actions disowned a number of its own declarations of good faith and of its desire to hand power over to the civil authorities in whom it is vested under law. As regards its achievements, however, it is true that the Military Junta has got under way the General Plan for Economic and Social Development which includes one of the basic reforms—tax reform—that every genuine development policy should include, provided that it becomes in fact a reform and does not merely remain a project confined to certain aspects of the problem. At the same time it must be remembered—and stressed—that programmes drawn up for social and economic development may be self-defeating unless they are accompanied by respect for democratic institutions.

Before considering this last aspect any further, it may be interesting to mention that on various occasions the leaders of

the several political parties in the country jointly demanded that the constitutional system be restored by the Military Junta. In statements made to the press, the leaders of the Radical-Liberal Party, the Conservative Party and the Christian Social Movement declared in April 1964 that if authentic representative democracy were to be guaranteed it was essential that constitutionality be restored. Opponents of the regime continue to maintain this demand.

In spite of its benevolent nature, the regime imposed by the military has been the subject of certain criticisms from a number of organizations including the Inter-American Regional Organization (ORIT) of the Confederation of Free Trade Unions, which in September 1963 accused the government of having violated international labour conventions and the social objectives of the Alliance for Progress. Similar protests were made concerning the attacks aimed by the regime at various trade union organizations in its campaign conducted against trade unions and their leaders.

A further aspect requiring emphasis is the control which, under various circumstances and to varying degrees, the present government has exercised over the press since it first came into power. The seizure of publications by postal officials gave rise to a great deal of criticism in the early days of the regime.

Freedom of assembly has in effect been suppressed, since Section 7 of the Decree of July 11, 1963—which is still in force—prohibited all public demonstrations.

Student disturbances, and especially the conflict that led to the closing down of the National University of Quito, are clear signs of discontent and unrest. At the end of January 1964 the crisis broke out in full force, and Decree 162 of the Military Junta was issued, closing down the Central University. The incidents arising out of this measure led to the arrest and detention of many University students who were, however, released once order had been restored.

A number of acts of violence took place in Quito in the middle of 1964. In particular, on June 24, a bomb was exploded in the Supreme Court building, wounding its President, César Palacios Montesinos. Also in June, a group of prominent politicians were arrested and tried "for attempting to undermine national security by presenting a candidate for the Presidency of the Republic at the wrong time".

These acts are a fairly accurate indication of the social climate existing in Ecuador in the past few years. The words of General Luis Agustin Mora Bowen, Minister of the Interior, on the occasion of student disturbances in January 1964, are significant: "In a *de facto* regime the supreme law is the Military Junta and those who fail to obey its orders must suffer the consequences."

Some general remarks should be made regarding the above mentioned tax reform of September 1964. It consisted in standardizing certain taxes with a view to introducing order and method where hitherto dispersion and disorganization were the norm, without however affecting, according to the Military Junta, the rights of local interests.

As stressed in the Charter of the Alliance for Progress, a sweeping tax reform is one of the essential conditions for the implementation of any general programme of development in Latin America. The carrying out of such a reform raises complex problems. Should the transformation required for its execution be effected systematically and by stages or should it be all-inclusive and radical? Is centralization of tax collection an essential condition? Is standardization of taxes part of the reform? These are, however, strictly technical considerations which are irrelevant to our purpose here.

Of general interest is whether such reforms are likely to curb social injustice and inequality and to promote a society which is both just and free. These are obviously matters for discussion within the democratic framework. We do however feel it necessary to draw attention to the Government's attitude to the reactions provoked by the measures taken.

The tax reform in Ecuador also aims at a certain administrative re-organization intended to prevent long and costly procedures resulting from the great diversity of public bodies. The centralization of the collection of taxes provided for in the taxation and revenue policy reform programme of the General Plan for Economic and Social Development adopted by the Government gave rise to controversy between the Government and those bodies and regions that felt adversely affected.

The dispute between the central authorities and the bodies or persons with a stake in opposing this reform, especially in Guayas, produced disturbances and demonstrations of discontent. This led to the adoption by the central authorities of a stringent policy. Certain discontented groups created uprisings

in Guayaquil, which were put down by the police and resulted in numerous arrests. The Military Junta declared martial law in Guayaquil and clashes took place between students and the police. These occurred especially after the detention of prominent political leaders, including the ex-President of the Republic, Camilo Ponce. At the end of September 1964 the climate of tension and discontent produced by the tax reform spread to many other fields. Broadcasting stations were shut down because of their refusal to effect network-wide transmissions of news broadcasts from the capital to the city of Guayaquil. The official pretext for closing them down was that they had failed to pay taxes.

Because of the censorship imposed on Guayaquil newspapers, the National Press Union (UNP) lodged a protest requesting the restoration of freedom of the press and the release of a number of journalists who had been arrested. A government organ replied that there was no such censorship but merely a restriction on tendentious news. It also stated that the persons in question had not been arrested as journalists but as agents of subversion and sedition.

Still arising from the conflict over taxation, a series of lightning student rallies were held throughout Quito and Guayaquil early in October 1964, again resulting in arrests in both cities. The Military Government declared martial law in the province of Guaya.

In some of the clashes in Guayaquil, the police, to break up the demonstrations—among others, one organized by women—fired shots in the air and employed tear gas along with other demonstrations of force, with the result that various persons were wounded. Faced with the pressure brought to bear by this city—the largest in Ecuador—the Military Government was forced to give some ground and agreed to restore the administrative and economic autonomy of the social assistance institutions of Guayaquil and to release the persons imprisoned because of their opposition to government enactments depriving those institutions of their autonomy.

The problem raised by the opposition to the tax reform is twofold: the first aspect relates to the position of groups and bodies opposed to structural changes in the State and the second stems from the political implications of such changes.

Reforms and even structural changes may well be necessary to further the progress of any nation. However the implementation of these reforms and changes must not be made the excuse for endangering the principles upon which rest the fundamental liberty and dignity of the individual. The people are entitled to criticise and to raise their voices against governmental measures, even if well intentioned. Repressive measures should be constantly reviewed to ensure that they are neither excessive nor allowed to subsist beyond the actual period of emergency. The people, including critics of the Government, are entitled to protection from abuse of power. A wise government, particularly one motivated by good intentions, will account to the people for its actions rather than rely on repressive measures.

INFRINGEMENTS OF HUMAN RIGHTS IN HONDURAS

Since the violent coup d'état by which the constitutional regime of President José Ramón Villeda Morales was overthrown by the military on October 3, 1963—just ten days before scheduled elections—public opinion throughout the world and especially in Latin America has followed events in Honduras with great interest.

The reason given by the military was the one usually adduced in such cases: they accused the civil government of allowing infiltration of subversive elements and anarchy, while the government of Villeda Morales appeared to be making positive efforts to cope with social and economic unrest.

Immediately after the coup d'état, the army, on the orders of the new military regime, launched all-out operations against elements loyal to the ex-President. Martial law was declared throughout the country and remained in force for some time. With normal conditions of life disrupted, acts of sabotage, plunder, armed resistance and arson were committed in increasing numbers throughout the country. Many persons were arrested.

Now, after remaining for eighteen months head of the *de facto* government of Honduras by virtue of a decree which he himself issued just after the coup d'état and by which the Legisla-

ture was dissolved, Colonel Oswald López Arellano was on March 16, 1965 elected President of the Republic by a National Constituent Assembly constituted one month earlier.

The International Commission of Jurists views with concern any unlawful seizure of power¹ on the ground that a resulting *de facto* government is rarely conducive to a strengthening of the Rule of Law, the primary objective of this organization.

Independently of this aspect, and independently also of any analysis of the elections held in February 1965—which, as will be demonstrated below, left so much to be desired when examined in the light of the principles on which contemporary electoral laws are based and of the provisions of the Universal Declaration of Human Rights according to which special importance attaches to the effective observance of the right to vote—the International Commission of Jurists now wishes to draw attention to a more significant aspect of life in Honduras since the former commander of the armed forces, Colonel Oswald López Arellano, seized power. It is proposed to examine the alleged infringements of human rights in general and, more particularly, those due to the political intransigence on the part of the authorities towards active members of the opposition and supporters of the former government of Dr. Villeda Morales. These violations are the cause of grave concern and dissatisfaction among large national and international sectors which are anxious not only that human rights should be respected but that they should be promoted and given more effective guarantees.

Unfortunately, it is normal that a break in the constitutional order brought about by a violent seizure of power should produce—with (as was the case in Honduras at the outset) or without martial law—infringements of human rights and other violations of the principles of the Rule of Law, such as freedom of expression and consequent freedom of the press, or the Judiciary's independence vis-à-vis the Executive. In the case of Honduras, however, violation of these principles and repeated infringements of human rights have been a constant feature of the nation's life since the end of 1963.

The wave of repression against members of the opposition has reached alarming proportions. With the passive acquiescence

¹ See the articles on the Dominican Republic and Brazil in Bulletins No. 17 of September 1963 and No. 20 of December 1964 respectively.

of certain departmental, civil and military authorities, the climate of violence has taken a large toll among prominent citizens affiliated with political parties opposed to the present regime.

Some sectors of national life seem to have been especially affected by arbitrary action on the part of the authorities.

Systematic violations of municipal autonomy

It appears from available information that arbitrary interference by the central government in the affairs of municipal bodies has been systematic: it has instigated changes of municipal officers, at times having them replaced by persons appointed arbitrarily in violation of the will of the people and of existing legislation on the subject. In a matter of a few months the system of municipal government, derived from democratic elections, has suffered encroachments of many kinds. Interference has taken place or officials have been supplanted in various municipalities in the departments of Comayagua, Colón, Copan, Paraíso, Intibuca, Lempira, Olancho and Valle among others. As a result, the executive board of the Association of Municipalities of Honduras has been led to request an immediate halt to interference in the affairs of all legally constituted municipal bodies and the reinstatement of all municipal officers elected by popular vote who have been unfairly dismissed by civil or military officials of the present regime. This Association has set forth in clear terms its desire that municipal self-government should be left wholly intact, thereby ensuring that the will of the sovereign people is respected. This statement was issued at Tegucigalpa on December 13, 1964.

Repressive measures against the National University at Tegucigalpa

On the occasion of the organization of a public forum to be attended by a number of groups representing various sectors of the population for the purpose of examining the national situation at the time of the elections of February 1965, a meeting was held in the University hall. It was violently broken up by members of the National Party at the instigation of their leaders, who were backing the head of the government as candidate for the Presidency. In an open letter dated January 27, 1965 the Association

of Law Students of that University accused the leaders of the Central Committee of the National Party of having backed this attack, in which use was made of firearms and projectiles.

Another particularly significant fact, still in connection with student activities, is the protest published by the Federation of Honduran University Students concerning the arrest of a large number of students by the military police. Requests made by the Federation to interview some of the students imprisoned received no reply from the authorities.

Deportation of journalists

The Inter-American Federation of Associations of Professional Journalists condemned the forcible deportation of two Honduran journalists following the coup d'état, and denounced the warnings and threats made to the opposition press and to the independent press by the *de facto* government. In view of the grave menace to freedom of expression in Honduras, it called for an intensification of efforts to ensure true freedom of expression and a struggle against any violations of that principle. A similar protest was raised by the Inter-American Association for Democracy and Freedom.

At its 20th annual Assembly in October 1964, the Inter-American Press Association (SIP) made the recommendation, with respect to Honduras, that efforts should be made to ensure that freedom of the press was restored. It should be mentioned, however, that the situation has now improved considerably in this respect.

Coercion in the exercise of political rights

Special mention should be made of several events in this field, in which violations are alleged to have taken the most diverse forms to the detriment of the rights of active participation in the political life of the country to which every citizen is entitled.

At the beginning of this year the National Electoral Board of Honduras received a protest lodged by the representative of the Liberal Party requesting that action be taken to put a stop to repressive measures against members of that party throughout the country. Another tactic employed to prevent the free exercise

of political rights on the part of those opposed to the present regime is the appointment to military posts of the leaders and principal members of the parties of the opposition. Since, under the relevant law, members of the armed forces are not entitled to vote, appointment to such posts served to curb their pre-electoral activities, thus curtailing freedom of political activities, and affecting the electoral process in all its phases.

One of the means that various authorities, mainly the military, used to destroy the opposition and to disrupt the political campaign that led up to the election of 64 members of the National Assembly on February 16 1965, was to resort to threats and violence against citizens and in this way to force them, particularly in the provinces, to sign statements of adherence to the National Party which had nominated the head of the government for the office of President of the Republic.

There were instances in which, by express order of the military authorities, the campaign publicity of the opposition was suspended, as happened at Olancheba and other towns.

On all kinds of pretexts various military and civil officials of the government harassed members of the opposition, forcing them at times to leave their homes and take refuge in the mountains. The use of threats and violence for this purpose has unfortunately been a method commonly resorted to by certain delegates and deputy delegates of the central government in various parts of the interior. San Pedro Sula is one of the towns where arbitrary measures, arrests, imprisonments and other abuses appear to have been common.

The electoral law has constantly been infringed by acts of violence. The National Electoral Board has received many complaints regarding this wave of abuses, all of which appeared to have been committed with the connivance or passive acquiescence of the military or civil authorities, to the detriment of citizens. The National Investigation Corps (CIN) has been an efficient instrument for perpetrating such acts.

The large-scale dismissals of members of the opposition who had held government posts for some years, indeed long before the October 1963 coup d'état, have also given rise to discontent and unrest, as has the fact that trade unions have been menaced for having demanded a return to constitutional government.

In summing up, there is widespread opinion that there exist systematic violations of the Universal Declaration of Human

Rights—of which Honduras is a signatory—and large sectors of the Honduras population deplore the resulting loss of prestige of this Central American republic.

In such perspective, the proposal and recommendation to set up a Central American Court for the protection of human rights—the main topic of the meeting of the Central American Chapter of the International Commission of Jurists held at Managua, Nicaragua, in October 1964—are indeed most timely. There is an urgent need to establish such a court as a supra-national body independent of pressures exerted by national authorities and forming a breakwater against the consequences of political upheavals in Central America. This court would constitute an effectual guarantee for the faithful observance of human rights and for the durable establishment of the Rule of Law as the sole effective means of checking infringements which in this specific case have occurred in Honduras but which unfortunately are constantly occurring in various parts of the continent.

GENERAL AMNESTY IN MOROCCO

The mission which the International Commission of Jurists has assigned itself often obliges it to adopt a critical attitude which is generally irritating to the governments involved. This role is not the result of a deliberate bias, quite the contrary. The Commission would certainly prefer to report only on positive achievements but in this troubled world of ours there are still more causes for concern than satisfaction in the field of human rights and fundamental freedoms. The Commission would not be living up to its responsibilities if it did not denounce as objectively as possible irregularities and injustices wherever and under whatever circumstances they occur. Moreover, these criticisms which stem directly from its role of a defender are not merely negative or sterile. Rather are they a positive affirmation of the Commission's dedication to the Rule of Law. They appeal to the conscience of lawyers everywhere and give it an expression which cannot be disregarded.

It is not long since the Commission was compelled to criticize the methods employed by the Moroccan authorities during the famous Rabat trial in autumn 1963 (see *Bulletin* No. 18). This trial was particularly unexpected as the Moroccan Constitution of 1962 (see *Bulletin* No. 16) seemed to offer the promise of a truly democratic and liberal régime as well as to provide satisfactory guarantees of the respect for human and civil rights. Furthermore, the way in which the spring elections of 1963 were carried out served to confirm that first impression.

It is with great satisfaction that the Commission has now learnt of the general amnesty declared by His Majesty Hassan II upon the occasion of Aid el Kébir, the great Muslim festival of peace and forgiveness.

According to particulars given by Mr. Moulay Ahmed Alaoui, the Moroccan Minister of Information, this amnesty "applies to the entire nation, not merely to one party or another... and is in no manner a form of bargaining." There is no reason to doubt this statement which is borne out by the first actions arising from it, namely the immediate release of political prisoners, in particular such high ranking members of the opposition UNPF (National Union of Popular Forces) as Mr. Basri, Mr. Moumen Diouri and Mr. Benjelloun. They had all been condemned to death after the Rabat trial of 1963 but their sentences were subsequently commuted by royal reprieve. There is every reason to believe that those sentenced *in absentia* and now residing abroad, such as Mr. Mehdi ben Barka and Mr. Berrada, will soon be able to return to their country without hindrance.

Moreover, this amnesty, by including in its scope all events that have taken place since 1955, will go far to remove all traces of even more remote events by affecting the partisans of former Sultan ben Arafa, who was placed on the throne during the exile of the present ruler's father, H. M. Mohammed V, as well as the rebels of the Tafilalet and Rif uprisings in 1957 and 1958. If, as is hoped, this amnesty is actually carried out it will assume a truly remarkable scope.

Finally, the Commission learnt with satisfaction of the release of Mr. Mohamed Halaoui, President of the National Union of Moroccan Students (UNEM), who had been in prison since September 1964 awaiting trial by a military court on a charge of endangering national security. This was not a case of amnesty,

as Mr. Halaoui had not been convicted by any court, but rather granted as a special favour. Nevertheless, the gesture is significant as a confirmation of the policy adopted by the King.

The importance of this policy and its timeliness are even more striking as the repression of the riots last March, mercilessly carried out by General Oufkir, had given rise to fears of a growing trend toward violence and absolutism. The Commission has always been convinced that the use of coercion and arbitrary action is a sign of weakness on the part of a government. Therefore the decision of His Majesty Hassan II takes on national and international significance and bears testimony to his statesmanship which must compel the respect of all those who believe in the Rule of Law. It also furnishes an unusual example for our times that many countries in Africa and elsewhere might do well to ponder.

Concerning Algeria, for example, world public opinion was relieved upon learning of the reprieve granted by President Ben Bella to Mr. Ait Ahmed. This act of clemency, although it cannot completely erase the alarming impression of a trial carried out with flagrant contempt for the rights of the defence, is nevertheless a welcome gesture. Good news was also the closing of Barberousse Prison in Algiers and of several other penitentiaries, and the freeing of about 1,200 prisoners to commemorate the festival of Aid el Kébir. Certainly, this is an important event which should not remain unnoticed. Nevertheless, it must regretfully be noted that these are only partial measures of clemency and that the generosity of President Ben Bella has still to be extended to many political prisoners whose continued detention scarcely appears to be justifiable. Certain indications seem to justify the hope that the President will in the near future take further steps to remedy this unsatisfactory situation.

SOUTH AFRICA

Since the publication of the Report of the International Commission of Jurists on South Africa and the Rule of Law in 1960, the restrictions imposed on the movement and residence of non-whites, described in that Report as "the most basic, and at the same time perhaps the most resented, application of apartheid", have been considerably extended, notably by the Bantu Laws Amendment Act, 1964, which came into force on January 1, 1965. The result of this most recent legislation is to deprive native Africans (who are now referred to in legislation as Bantu, a term which will be used in this article to avoid confusion) of any remaining security they had in both urban and rural areas outside the Bantu reserves. The cumulative effect of the restrictions introduced over the years may best be demonstrated by outlining the position as it now is after the entry into force of the 1964 Act.

1. In urban areas

Entry and residence

A Bantu may only enter and remain in an urban area for more than 72 hours if

- (a) he has since birth resided there continuously;
- (b) he has worked there for one employer for at least ten years or resided there lawfully and continuously for at least fifteen years and is not employed outside the area and has not been sentenced to a fine of more than 100 Rand or more than six months' imprisonment;
- (c) he has been granted permission by a labour officer;
- (d) he or she is the wife, unmarried daughter or son under taxable age of a Bantu within category (a) or (b) and ordinarily lives with him.

The onus of proving that he falls within one of the above categories is on the Bantu concerned. (Natives (Urban Areas) Consolidation Act, 1945, as amended.)

Even if he is lawfully resident in the area a Bantu may be required to take up residence in a location, native village or native hostel, which need not itself be in the urban area in which he lives and works. (Ibid.)

Employment

A Bantu may only seek employment through the labour bureau for the area in which he wishes to work. The labour officer in charge of a labour bureau is given extensive powers over all Bantu within his area. In particular he may:

- (a) grant or refuse permission to be in the area;
- (b) refuse to sanction the employment or *continued employment* of any Bantu in his area and cancel his contract of employment on a number of grounds including the fact that "such employment or continued employment impairs or is likely to impair the safety of the State or of the public or of a section thereof or is likely to threaten the maintenance of public order, provided the Secretary (for Bantu Administration and Development) concurs in such refusal or cancellation";
- (c) offer him alternative employment in his own or any other area;
- (d) "With due regard to his family ties or other obligations or commitments" order a Bantu and his dependents to leave the area;
- (e) refer him to a Bantu aid centre (which is dealt with below).

In addition to the above, a labour officer has the powers of a peace officer under the Criminal Procedure Act, 1955, i.e. the powers of arrest and search of a police officer, including the power to arrest a person obstructing him in the execution of his duty and a person who refuses to give his name and address.

These provisions now extend even to those persons who were until January 1 1965 entitled to live in an urban area by reason of birth or long residence there, so that a Bantu who was born and has all his life lived and worked in an urban area is now subject to the constant insecurity created by the knowledge that permission for him to work in the area of his birth may be withdrawn if he loses his job, or his contract of employment may be cancelled on one of a wide number of grounds and an order made for him to leave the area. Some protection against an arbitrary decision is given to such Bantu in that in their case an order has to be confirmed by the Chief Bantu Affairs Commissioner, but since a person aggrieved by a decision of a labour officer may in any event appeal to the Commissioner, Bantu born and long resident in urban areas are now virtually placed in the same position as those who have only recently come from the reserves.

A final point that should be noted in this connection is that appeal against the decision of a labour officer only suspends the operation of that decision if the Chief Bantu Affairs Com-

missioner so orders. Thus, the appellant might find himself uprooted and removed from his home while his appeal against the decision that he should move is still pending.

Removal

In addition to the power of a labour officer to order a Bantu to whom he has refused permission to be in an urban area or whose employment he has refused to authorize to leave the area, the following provisions enable Bantu to be removed from an urban area.

1. *S. 6, Bantu Laws Amendment Act, 1963.* Subject to certain exceptions, if a Bantu lives in an urban area and there is no location, native village or native hostel in which he can conveniently be accommodated, having regard to his place of employment, he may be required to remove to a reserve.

2. *Bantu aid centres*, a new institution established by the 1964 Act. While they are said by the government to be designed to help Bantu to find suitable employment, the provisions governing their establishment and functions make them sound much more sinister. They are managed by an officer appointed by the local authority who may exercise the powers of a court under S. 352 of the Criminal Procedure Act, 1955, (i.e. he may postpone decision or suspend the enforcement of his decision and impose conditions with which the Bantu concerned must comply under threat of enforcement of the decision) and who is deemed to be a peace officer for the purposes of that Act, and thus endowed with the powers of arrest that have been described above.

Further, the Bantu affairs commissioner may hold court in an aid centre, and S. 27 of the Criminal Procedure Act 1955 applies to them as if they were police stations (i.e. persons brought to an aid centre must be treated as persons brought to a police station on arrest without warrant).

It is not surprising that in these circumstances the Act contains the warning that "nothing in this section is to be construed as authorizing the detention of a Bantu in an aid centre".

The following categories of Bantu may be admitted to an aid centre:

- (a) Those referred to it by a labour officer who has refused them permission to be or work in an urban area.

(b) Those charged with an offence against the Native Labour Regulation Act, 1911, (such offences include breach of contract of employment), the Natives (Urban Areas) Consolidation Act 1945, or the Natives (Abolition of Passes and Consolidation of Documents) Act, 1952, either on conviction or on mere arrest on such a charge.

(c) Those requesting admission.

Once a Bantu has been admitted to a centre, or is detained in a police station on a charge under one of the above Acts, the officer managing the centre has the following powers:

(a) to place the Bantu in employment;

(b) to repatriate him and his dependants to his home or last place of residence;

(c) to send him to a settlement, rehabilitation scheme or any other place.

3. *On conviction* of an offence against the Natives (Urban Areas) Consolidation Act, 1945, a Bantu may, instead of being referred to a Bantu aid centre, be removed from the urban area together with his dependants under powers conferred by that Act as amended by the 1964 Act. Pending his removal, he may be detained in a prison or police cell.

4. *Idle and undesirable persons.* A Bantu may at any time be arrested on suspicion of being an idle and undesirable person, and then if, on being brought before a Bantu affairs commissioner, he is unable to give a good and satisfactory account of himself, he may find one of the following orders made against him:

(a) that he be removed to his home or to a place specified by the commissioner;

(b) that he be detained in a retreat or rehabilitation centre;

(c) that he be detained for up to two years in a farm colony, refuge, rescue home or similar institution established or approved under the Prisons Act;

(d) that he be sent to a rural village, settlement or rehabilitation scheme or other place established or approved under any law within a reserve, and be detained and work there;

(e) he may be given the option of taking up employment proposed to him by the commissioner, and may be

detained in custody until he is taken to the place of such employment;

- (f) if he is between the ages of 15 and 19 he may be sent home to his parents or detained in an institution established by law for a specified period.

The dependents of a Bantu may be removed with him. While he is given a right of appeal, an appeal does not operate as a suspension of the order unless the Bantu affairs commissioner so orders.

"Idle and undesirable person" includes persons who persistently fail to work (even though they have adequate means), who have repeatedly been dismissed from employment, who through their own fault fail to maintain their dependants or who beg or who have been convicted of any one of a variety of offences involving intoxicating liquors or drugs, violence, sabotage or incitement to commit offences by way of protest against any law or in support of any campaign for the repeal or modification of any law. Thus after a person has served his sentence on conviction for an offence of this nature, he may still find himself subject to proceedings as an idle and undesirable person.

2. In rural areas

Residence

The presence of Bantu in white farming areas is governed by Chapter IV of the Native Trust and Land Act, 1936, which is substantially amended by the 1964 Act. The principal categories of Bantu residing in white farming areas are:

Bantu employees, who are employed in farming operations or domestic service by the owner of the land on which they live;

labour tenants, who in exchange for the right to occupy land perform domestic or farming services for the owner;

squatters, i.e. occupants of land who are neither tenants nor employees and in respect of whom the owner has not got written permission from the Secretary for Bantu Affairs and Development for them to be present;

wives and dependants of the above.

Registers are kept of the first three categories, and by the 1964 Act control over them is strengthened and provision is made for the gradual elimination of labour tenants and squatters.

Removal

The ultimate object is that only those Bantu shall remain in white farming areas who are necessary to provide domestic and farming labour for the white farmers. In addition to the provisions designed to terminate progressively all labour tenancies and to remove all squatters, there are now two methods of removing Bantu more rapidly from these areas.

(a) On conviction of an offence

Both owner and occupier are guilty of an offence if Bantu who are not by the Act authorized to live in a white farming area "congregate or reside" on land in such an area. On conviction the court may order the ejectment and removal of the Bantu and his dependants to a place named in the order. Even if the court does not make such an order the Bantu affairs commissioner may step in and remove him and his dependants to his home or last place of residence, to a rural village, settlement, rehabilitation scheme, institution or other place. Pending his removal he may be detained in prison or in a police cell. The Bantu concerned may be compelled to pay the costs of this forcible removal. Even then he may not have reached the end of his journey, for if the Bantu affairs commissioner for the area to which he has been removed is satisfied that there is no suitable accommodation for him, or that he can be more suitably accommodated elsewhere, or that there is no employment for him in the area, the commissioner can remove him to "a suitable place".

(b) By control boards

Labour tenant control boards have long been established. They are now joined by Bantu labour control boards, which supersede the former in the areas in which they have been established.

If such a board suspects that there are too many labour tenants or Bantu employees, as the case may be, on any particular land, it may hold an inquiry—at which the owner of the land, but not the Bantu whose home and livelihood are in question, must be given an opportunity to be heard—and may fix the maximum number of Bantu who may reside on the land. The owner must then reduce his tenants or employees to that number within a period of twelve months. The Board is given power to

cancel contracts of employment extending beyond that period with the Bantu employees, labour tenants and members of their families.

No provision is made in the Act for any assistance to the Bantu who are thus to be uprooted from their homes without even being heard—unless they are held to come within the category of “persons aggrieved” by a decision of a board, who are given a right of appeal to the Minister. If they fail to find somewhere to go within the prescribed time they presumably become guilty of an offence under the Act and subject to its provisions for compulsory removal.

The attitude of the Government to the relative rights and interests of the white and Bantu population is neatly illustrated by the provisions of S. 38 ter of the Native Trust and Land Act, 1936, as inserted in that Act by the 1964 Act:

If in the opinion of the Minister

- (a) the congregation of Bantu on any land or the situation of the accommodation provided for Bantu on any land or the presence of Bantu in any area traversed by them for the purpose of congregating upon any land, is causing a nuisance to persons resident in the vicinity of such land or in such area, as the case may be; or
- (b) it is undesirable, having regard to the locality of any land, that Bantu should congregate thereon,

he may prohibit the owner from allowing Bantu to congregate or reside thereon.

Before making such a prohibition the Minister must advise the owner of the land, but not the Bantu affected, of his intention, and allow him, but not the Bantu, to make representations.

The legal powers vested in the Government and local authorities for complete separation of residence now seem to be complete. They can take steps whenever they deem it desirable to remove an unwanted Bantu from an urban area, to restrict severely the number of Bantu resident on white farms, and to secure their removal from those areas in the white farmlands where their presence may disturb white residents.

The indications are, however, that the Government is not yet satisfied: separation of residential areas is not enough. It has recently introduced the first measure under which it can legally restrict contact between the racial groups in the spheres

of sport and entertainment where mixed participation has so far been lawful even if not usual in practice. Under a recent proclamation it is necessary to obtain a permit from the regional representative of the Department of Community Development or the Department of Planning before any public function at which members of more than one race may be present can be held. Such functions include church fetes, agricultural shows, banquets, and horseracing meetings, the cinema, the theatre and sports meetings. Both organizer and those who attend a meeting for which a permit has not been obtained are liable to a maximum fine of R 400 or two years' imprisonment or both. It is not necessary to obtain permits for private parties unless they are held at clubs which are specifically referred to in the proclamation. Nonetheless, the mixing of the races at such private social gatherings is frowned upon, and considerable anxiety is felt as to the length to which the Government may go in seeking to limit still further all contacts between the races. That this anxiety is not restricted to opposition elements is shown by a decision of the Cape Town City Council on April 26 1965 to disregard the requirement that permits must be obtained for racially-mixed audiences and to continue to allow non-segregated audiences at concerts by the municipal orchestra in the City Hall. It is reported that only four members voted against the decision. The Minister of Planning demonstrated his determination to enforce Government policy by announcing the next day that he would prosecute the City Council for failure to comply with the requirement, and that if the courts uphold the City Council's contention that there is no law compelling it to do so the Government would consider introducing legislation to make mixed entertainments illegal.

Another matter giving cause for alarm, particularly to the Commission which is constantly alert to uphold the freedom of the legal profession, is the stated intention of the Government to introduce legislation preventing "Communists" from practising as advocates. In view of the extraordinarily wide definition given to "Communism" by the Suppression of Communism Act, 1950, as amended, this would mean in effect that any advocate seeking to oppose the policies of the Government in the racial field runs the risk of being debarred from practice. If a Bill of this nature is introduced, it will be possible to disbar practising lawyers on the grounds of their political beliefs and actions even if those beliefs or actions in no way affect their professional

conduct or integrity. The threat to the independence of the legal profession, and in particular to those who undertake the defence in political trials, is obvious. South African lawyers can be confident that the protests which they will undoubtedly make against such a proposal will be supported by members of the legal profession throughout the world.

UNITED KINGDOM: PROPOSED RETROSPECTIVE LEGISLATION

A Bill intended to have retrospective effect and specifically designed to reverse a decision of the House of Lords affecting four claims for damages and to bring to an end those four and eight other pending actions is at present before the United Kingdom Parliament. Retrospective legislation is generally accepted as being contrary to the principles of the Rule of Law, and when proposed legislation is intended in addition to deprive a litigant of the fruits of an action in which he has succeeded before the highest court in the land it is to be doubly condemned.

The War Damage (No. 2) Bill arises out of a judgment of the House of Lords in 1964 holding on a preliminary point of law that four subsidiary companies of the Burmah Oil Company were entitled, subject to proof of certain facts, to compensation against the British Government for losses sustained during the last war when, on the instructions of the General Officer in Command of Burma, their installations near Rangoon were destroyed to prevent them from falling into the hands of the Japanese Army. The House of Lords held that, while the demolitions were lawfully carried out in the exercise of the Royal Prerogative, payment must be made for the resulting loss, and the cases were remitted to the trial court for further hearing on the detailed issues of fact and damage.

As long ago as June 1962, when the proceedings were begun, the Conservative Government warned the Burmah Oil Company that if they succeeded in their action legislation would be introduced to indemnify the Crown against their claims.

The Bill is in the following terms:

- (1) No person shall be entitled at common law to receive from the Crown compensation in respect of damage to, or destruction of, property caused (whether before or after the passing of this Act, within or outside the United Kingdom) by acts lawfully done by, or on the authority of, the Crown during, or in contemplation of the outbreak of, a war in which the Sovereign was, or is, engaged.
- (2) Where any proceedings to recover at common law compensation in respect of such damage or destruction have been instituted before the passing of this Act, the court shall, on the application of any party, forthwith set aside or dismiss the proceedings, subject only to the determination of any question arising as to costs or expenses.

The second clause, which is designed to bring to an end the Burmah Oil Company's claims and those of eight other claimants who have also started proceedings, and the retrospective element in the first clause, have been subject to widespread criticism in the United Kingdom, both in Parliament and outside. An example of the nature of the objections thus expressed is provided by a letter written by Sir John Foster, Q.C., a leading barrister and Member of Parliament to *The Times* on January 15 1965. He stated:

This Bill raises a very grave question of principle, namely, whether a litigant who has been successful should be deprived by legislation of the fruits of victory just because the Government is disappointed or annoyed with the decision.

Sir, such action seems to me to be unethical and unwise. Unethical, because the courts are established to decide in such a case who is right and who is wrong. If the Government intended to escape the consequences of their taking the wrong point of view by passing an Act defeating the successful party, then why go through the farce of litigation. It is unwise because foreign Governments will have a precedent which they can invoke.

Two law journals, the Law Society's Gazette and the Justice of the Peace, commented unfavourably on the Bill, and on the 20th February, 1965, JUSTICE, the British Section of the International Commission of Jurists, published the following statement:

At a recent meeting of the Executive Committee of JUSTICE the members present, who included lawyers who are members of all the main political parties, considered the War Damage Bill in the context of the principles of the Rule of Law which JUSTICE is pledged to uphold.

It was the unanimous view of the meeting that the passage of this Bill into law would constitute a serious infringement of the Rule of Law by which

is understood the supremacy of the Courts. The refusal to meet a legitimate claim for compensation affirmed by the highest Court in the land, namely the House of Lords, is in the view of JUSTICE an action inconsistent with the Rule of Law and a dangerous precedent for the future. It is entirely wrong that when a litigant has won his case, legislation should be produced revising decisions retrospectively so that the successful plaintiff is deprived of his victory.

The fact that a threat of legislative action was made during an early stage of the proceedings, and long after the right of legal action had arisen, so far from justifying the enactment of this Bill, makes it clear, in the opinion of JUSTICE, that both Conservative and Labour Governments have failed to recognise the over-riding need to respect the decisions of the judiciary.

In the House of Commons the Opposition was unable to oppose the Bill on the point of principle, since they had taken the initial steps for its introduction while still in office, and in spite of vigorous criticism by many Members of Parliament the Bill passed through all its stages in the House of Commons. However, the House of Lords passed an amendment removing the retrospective element from the Bill. This amendment was rejected by the Commons on May 12, 1965, and the Government has indicated that it will persist in seeking to enact the Bill in its original form. Since the House of Lords only has power, in the last resort, to delay legislation which has the support of the Commons for a period of one year, the indications are that the Bill will ultimately become law unless the Government changes its mind. There will now be further opportunities for debate, and if the Government could, even at this late stage, be persuaded to reconsider the position and—as was urged in the Commons—to seek to negotiate a settlement of the claims, there would be widespread relief in many countries that the United Kingdom has refrained from setting a precedent that could be called in aid by Governments seeking to introduce legislation of a much more dubious character.

ICJ NEWS

A NEW FEATURE

It is proposed to include as a regular feature of the Bulletin a short summary of the principal activities of the International Commission of Jurists and of its National Sections. National Sections are invited to notify the Secretariat of activities for inclusion in this section.

Bangkok Conference

The South-East Asian and Pacific Conference of Jurists, held in Bangkok, Thailand, from February 15 to 19, 1965, brought together 105 jurists from 16 countries of the Region and over 30 observers to discuss the Rule of Law in a Developing Society. The Conference worked in three Committees and an Advisory Group on the formulation of conclusions and resolutions, the essence of which was expressed in the Declaration of Bangkok, which were unanimously adopted by the closing plenary meeting. The Report of the proceedings of the Conference will be published shortly and circulated to all subscribers and supporters.

National Sections

Organizational Activities

As a result of an initiative taken by Central American lawyers at the Congress of Rio in December 1962, and of a preliminary meeting held in San José, Costa Rica, in September 1963, a Central American Chapter of the International Commission of Jurists was formally established at a meeting in Managua, Nicaragua, on October 18, 1964. The first object of the new organization is to encourage the formation of national sections in all states of Central America. Dr. Fernando Fournier Acuna, of Costa Rica, was appointed Co-ordinator and Chairman of the Committee of the Chapter;

the other members of the Committee are: Mr. E. Caceres Lehnhoff of Guatemala, Dr. C. Hayem of el Salvador, Mr. R. Valladares Soto of Honduras, Dr. L. Pasos Argüello of Nicaragua and Dr. E. Valdéz of Panama. As its first act, the Central American Chapter issued the Declaration of Managua of October 18, 1964, urging the states of Central America to observe the principles of the Rule of Law and to take steps to adopt and implement the Draft Central American Convention on Human Rights, and calling upon the lawyers of Central America to work for the objectives of the Chapter.

Publications

At the end of 1964, the Ceylon National Section published a translation into Sinhalese of the International Commission of Jurists' Report "Tibet and the Chinese People's Republic".

In March 1965, the French National Section published the first issue of its own Review, "Libre Justice", which contains an important report of a conference organized by them on October 24, 1964, on "La Grève et le Droit" (Strikes and the Law).

Also in March 1965, the Indian National Section published the report of its Committee of Inquiry into "The Recurrent Exodus of Minorities from East Pakistan and Disturbances in India".

Missions

On December 5, 1964, the Secretary-General travelled to New York to address the Hudson County Bar Association on "The Role of the Lawyer in the Modern Age".

On February 21, 1965, the Secretary-General and the Executive Secretary visited Pnom-Penh on the invitation of the Government of Cambodia, where they had discussions with the Minister of Justice and other officials and where the Secretary-General addressed the Law Faculty of the University.

The Executive Secretary went on to Japan where he spent six days meeting and holding discussions with representatives of the Japanese Government, Bar and academic community.

The Secretary-General went from Cambodia to New Delhi where he saw the Indian Minister for Foreign Affairs and the

Minister for Education, addressed the International Law Society and gave a talk on All-India Radio. He then proceeded to Pakistan where he had talks with the Minister for Foreign Affairs and the Chief Justice.

On his return trip from Asia, the Secretary-General visited Cairo, where he met the United Arab Republic Minister for Foreign Affairs and other members of the Government and representative of Egyptian legal circles, and had talks with representatives of the Arab League. The Secretary-General gave a talk to the Egyptian International Law Society in Cairo on the work of the Commission.

On March 14, 1965, the Secretary-General travelled to Addis Ababa, where he met and held discussions with representatives of the Organization for African Unity and gave a lecture at the Law Faculty of the Haile Selassie University, Addis Ababa.

In December 1964, on the invitation of the Spanish United Nations Association, the International Commission of Jurists was represented by Dr. Hector Cuadra, Legal Officer for the Iberian and Latin-American areas, at a Week of Information on Human Rights sponsored by the Association in Barcelona. On December 10, 1964, Human Rights Day, Dr. Cuadra addressed the Conference on "Man, His Rights and the World of Today", and on subsequent days he directed working sessions on the future policy and work of the Association and on the International Commission of Jurists. He was also interviewed by the Barcelona and Spanish Radio networks.

On January 29, 1965, Dr. Cuadra conducted a seminar on "Development and Democracy", organized in Fribourg, Switzerland, by the European Service of Latin-American Students and attended by 20 participants from Latin-American countries. A further seminar on a similar topic is planned.

On April 4, 1965, the Executive Secretary addressed an International Seminar at the University of Montpellier on the Dynamic Aspects of the Rule of Law.

United Nations

On March 10, 1965, the Secretary-General was notified by the Director-General, René Maheu, of the admission of the Commission to consultative status with UNESCO.

From January 11 to 29, 1965, members of the Secretariat attended as observers the meetings of the U.N. Sub-Commission on Discrimination and the Protection of Minorities, which was working on the draft of a Convention for the Elimination of all Forms of Religious Discrimination. At one of its meetings, the Secretary-General addressed the Sub-Commission on the proposal for the establishment of the office of a U.N. High Commissioner for Human Rights, a suggestion which he had put forward publicly for the first time in a speech to the International Lawyers' Club of Geneva on December 16, 1964, and which has since received considerable publicity and support. On January 21, 1965, the Secretary-General gave a dinner in honour of the members of the Sub-Commission.

The International Commission of Jurists was also represented, as an observer, at the meeting of the U.N. Commission on Human Rights when it met in Geneva from March 22 to April 15, 1965. On April 7, 1965, the Secretary-General gave a reception in honour of the members of the Commission.

Future Activities

From May 24 to 26, 1965, the Austrian National Section will hold a seminar on the subject "The Lawyer and the State under the Rule of Law" (Jurist und Rechtsstaat). Invitations to take part in the Seminar have been sent to national sections and individual lawyers in Germany, Great Britain, France, Italy, Holland, Sweden and Switzerland; and to observers from Yugoslavia, Hungary, Rumania, Poland and Czechoslovakia.

On July 3 and 4, 1964, "Libre Justice", the French National Section of the International Commission of Jurists will be celebrating its tenth anniversary; it has announced its intention of inviting representatives of other European National Sections to mark the occasion.

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 21 (December 1964): Aspects of the Rule of Law: Human Rights in Armed Conflict; Freedom of the Press; Amnesties in Eastern Europe; Peru; Tibet; USSR.

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.

Regional Conference on Legal Education of the University of Singapore Faculty of Law: A report on the proceedings of the first regional conference, held in Singapore, August-September 1962. (Published for the University of Singapore Faculty of Law).

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