

FOR THE RULE
OF LAW

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

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No. 26

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

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LL.D., M.C.L.

THE CEYLON COLLOQUIUM ON THE RULE OF LAW

The Ceylon Section of the International Commission of Jurists, in collaboration with the Commission, held a very successful Colloquium on the Rule of Law at the "Hotel Taprobane", Colombo, from January 10 to 15, 1966. The Colloquium, which was a follow-up to the South-East Asian and Pacific Conference of Jurists held at Bangkok in February 1965, was attended by nearly 100 Ceylonese and foreign participants. The foreign participants were largely from Asian countries. Mr. Vivian Bose, the President of the International Commission of Jurists, Mr. Seán MacBride, the Secretary-General and Mr. Lucian G. Weeramantry, the Senior Legal Officer, also attended.

The Colloquium was opened by the Hon. Dudley Senanayake, Prime Minister of Ceylon, and among the principal speakers at the Plenary Sessions were Mr. H. H. Basnayake, Q.C., former Chief Justice of Ceylon and President of the International Commission of Jurists (Ceylon Section); Mr. Vivian Bose; Mr. Seán MacBride; Mr. Justice T. S. Fernando, C.B.E., Q.C., Member, International Commission of Jurists; Mr. M. H. M. Naina Marickar, Parliamentary Secretary, Ministry of Justice; Mr. S. V. Gupte, Solicitor-General of India; and Sir Dingle Foote, Q.C., Solicitor-General of England.

The Conclusions and Resolutions of the Colloquium, which are published below, indicate the subjects discussed by the four different Committees. The Declaration of Colombo, which crystallises the Conclusions, appears at the end of this article.

Mr. H. B. Tyabji (Pakistan), Mr. M. C. Setalvad (India), Mr. Justice Q. Makalintal (Philippines) and Mr. Purshottam Trikamdas (India) were Chairmen of Committees I, II, III and IV respectively. The Working Papers for Committees I, II and III were prepared by three Ceylonese lawyers, namely Mr. L. W. Athulathmudali, Dr. C. F. Amerasinghe and Mr. D. S. Wijewardene who also acted as Rapporteurs of their respective Committees. Committee IV used as the basis for discussion the proposal by the Secretary-General of the International Commission of Jurists for

"A World Campaign for Human Rights". Its Rapporteur was Mr. F. A. Trindade (Singapore).

The Council of the Ceylon Section and, in particular, Mr. E. A. G. de Silva, its Secretary, must be complimented on the excellent organization.

Committee I

THE RULE OF LAW AND THE COMMON MAN

Conclusions

The Committee RE-AFFIRMS

- (1) its faith in the Act of Athens, the Declaration of Delhi, the Law of Lagos, the Resolution of Rio and the Declaration of Bangkok;

ACCEPTS

- (1) that these pronouncements define the content of the Rule of Law;

BELIEVES

- (1) that the observance of the Rule of Law depends on an understanding and acceptance by public servants and members of the public of what is implied by the term "Rule of Law";
- (2) that the present time is appropriate for embarking upon a programme designed to promote a wider understanding and observance of the Rule of Law;
- (3) that all Judges, Legislators, Lawyers, Officials and other persons connected with the enactment, execution and enforcement of law should in the observance of the Rule of Law act in such a manner as to be an example to the rest of the community in this respect;
- (4) that respect for the Rule of Law is best ensured where the law recognises the economic and social needs of the people.

Therefore, the Committee RECOMMENDS

- (1) Bearing in mind both the lack of public understanding as to the function and purpose of legal procedures and the often cumbersome nature and many shortcomings of legal systems and procedures, that the International Commission of Jurists

and its National Sections should constantly review the best means of dealing with such matters as:—

- (a) What is described as “ the law’s delays ”;
 - (b) The convenience of litigants and witnesses;
 - (c) The method of appointing Judges and Judicial Officers;
 - (d) The importance of an independent and competent Judiciary;
 - (e) The need to ensure that no suspicion of bias or other improper motive will attach to members of the Judiciary or to court officials;
 - (f) The need to ensure that exorbitant costs (including court fees) do not penalise persons who have recourse to the courts;
 - (g) The provision of an adequate number of Judges and Judicial Officers;
 - (h) The provision of adequate facilities for the conduct of judicial business (i.e. court premises, consulting rooms, clerical assistance, etc.);
 - (i) Methods of simplifying legal formalities including the methods of serving court documents and of drawing court orders;
 - (j) Methods of determining and of enforcing a code of ethics for lawyers and judges;
 - (k) Methods of ensuring adequate legal education.
- (2) The provision of Free Legal Aid or the extension of existing Legal Aid Schemes to ensure that Justice is neither denied nor delayed by reason of inadequate financial means.
 - (3) That National Sections take steps in accordance with the need of each particular country to publicise the work of the International Commission in the languages of their respective countries.
 - (4) That, as the reform of the law is primarily the responsibility of the lawyer, a Committee for Law Reform should be established by each National Section in order to see that the law conforms to the needs of society.
 - (5) That each National Section should take effective steps for the purpose of disseminating information regarding the work of the International Commission of Jurists, using as much as possible all the mass media of communication available in each country.

- (6) (a) (i) The publication of school text-books concerned with the Rule of Law at the Secondary School and University level. These publications may be undertaken profitably in co-operation with national education authorities and with other international bodies, such as UNESCO.
- (ii) The study of the legal system and the Rule of Law as part of the school curriculum in such courses as Civics and Government;
- (b) That National Sections of the Commission should, if conditions permit, seek to establish school and student groups connected with the observance of the Rule of Law. Where such conditions do not exist, National Sections should take steps to provide information about the Rule of Law to schools and already existing student groups;
- (c) That information concerning the Rule of Law should be provided to all institutions and organisations considered suitable by the National Sections, including religious groups, where practicable and necessary.
- (7) That while membership of National Sections of the International Commission of Jurists should be confined primarily to persons engaged in the pursuit or study of law, members of the public interested in the promotion of the Rule of Law may be admitted at the discretion of National Sections, to full or associate membership.
- (8) That the public be invited to participate in the activities of the National Sections.
- (9) That National Sections should promote the observance of Human Rights Day in each year and on that occasion emphasize the work of the International Commission of Jurists in the effective protection of human rights through the Rule of Law.
- (10) That steps be taken to acquaint the public and public authorities with the constructive role the lawyer can and does play in the adjudication and settlement of disputes.

Committee II

NATIONALIZATION OF PROPERTY AND THE RULE OF LAW

Conclusions

Having considered the Conclusion of the Bangkok Conference that:—

“Nationalization of private enterprises by a democratically elected government when necessary in the public interest is not contrary to the Rule of Law. However, such nationalization should be carried out in accordance with principles laid down by the legislature and in a manner consistent with the Rule of Law, including the payment of fair and reasonable compensation as determined by an independent tribunal”;

BELIEVING

1. That in the background of a dynamic concept of the Rule of Law the above conclusion which is accepted by this Committee requires further elaboration and development;
2. That the public interest may sometimes require the nationalization of property for the public benefit or in order that the legitimate right of man to social justice and equality may be realized;
3. That the basic freedoms include the right of the individual to acquire, hold and dispose of property subject only to such reasonable restrictions as may be necessary in the public interest;

The Committee has arrived at the following CONCLUSIONS regarding nationalization:—

A. Definition of Nationalization

Clause 1. Nationalization of property is a category of acquisition of private property to which special rules apply.

Clause 2. By nationalization is meant the acquisition for a public purpose of a private enterprise or property consisting of the means of production, distribution or exchange by or under the authority of the legislature in order that the enterprise or such property should thereafter be publicly owned or controlled.

B. Circumstances in which Nationalization is Permissible

Clause 3. Nationalization must be for a *bona fide* public purpose, commensurate with that purpose, and must not be for the benefit of particular individuals.

Clause 4. Nationalization must be carried out without discrimination between persons.

Clause 5. Nationalization and the procedure for assessment of compensation therefore must be in accordance with local

law conforming with the principles herein declared, but in no circumstances must such local law involve the arbitrary or unjust treatment of the individual.

C. Protection of Rights of Persons Affected

Clause 6. It must not be forgotten that nationalization affects not only the owner of an enterprise but also the employees, the consumers of the goods produced or services rendered by the enterprise, and the general public, who become its owners, sharing its profits or suffering its losses. There is the danger, furthermore, that nationalization may lead to the undue growth of State power and bureaucracy, to the creation of monopoly situations with their consequent evils, to inefficiency and to political interference and political appointments, with consequent adverse effects on the individual citizen. It follows that nationalization, if it is to be in accord with the Rule of Law, must be effected in such a way that the legitimate interests of all persons concerned may be properly safeguarded, and that the dangers referred to may be avoided.

Clause 7. The legislation by which nationalization is effected should provide for the following matters in particular:—

- (a) The payment of compensation which is reasonably fair, expeditious, and effective in all the circumstances of the case, to the owners of enterprises or property, employees and all other persons who may be adversely affected; such compensation must be assessed without undue delay by an independent tribunal observing proper judicial procedures;
- (b) Alternative employment for any employees who may become unemployed by reason of such nationalization.
- (c) The setting up of an independent statutory body to which a consumer may bring his complaints, such body to be empowered to investigate and report thereon to the legislature;
- (d) Effective periodic review of the accounts and affairs of nationalized industries by the legislature;
- (e) Appropriate protection for the legitimate interests of employees;
- (f) Protection against the dangers inherent in the undue growth of State power and bureaucracy, monopoly

situations, political interference and the risks of inefficient management.

Clause 8. This Conference affirms that the problems of preserving human rights and human dignity within nationalized industries should be one of the tasks of those engaged in the promotion of the Rule of Law.

Committee III

THE NEED FOR AN OMBUDSMAN IN THE ASIAN AND PACIFIC REGION

Conclusions

It is vital to the wellbeing of every society that administration by the executive should be, and should by the ordinary citizen be felt to be, efficient, fair and humane. When the ordinary citizen has in this respect a grievance, or a sense of grievance, the legal remedies available to him in the courts of law are, in many countries in the Asian and Pacific Region, not always adequate or appropriate.

Even if, as is urgently necessary, control of executive action by the courts were strengthened, by simpler and more effective remedies, by more general insistence on fair procedures in the administrative process, by appeals from administrative decisions on points of law, by the award of damages in appropriate cases and by the provision of legal aid and advice in civil and criminal cases, there would still remain a gap in the machinery for the redress of grievances of the individual against administrative acts or omissions.

This gap should be filled by an authority which is able to act more speedily, informally and with greater regard to the individual justice of a case than is possible by the ordinary legal process of the courts. It should not be regarded as a substitute for, or rival to, the Legislature or the Courts but as a necessary supplement to their work, using weapons of persuasion, recommendation and publicity rather than compulsion.

Is an Ombudsman practical in the Asian and Pacific Region?

It is clear that the problems to be faced in introducing the Ombudsman principle in the countries of the Asian and Pacific Region are of a different character from those found in small

countries which are homogenous in nature such as Sweden or Denmark.

Whether there should be one Ombudsman or several would depend on the constitutional structure of the countries concerned and the size and distribution of their population. It is however always necessary to build up the authority and prestige of the institution by centring it around one man who commands universal respect. The institution should also be adapted to meet the special problems created by racial, religious and linguistic groupings and their relative strength in a particular country or in a particular area. It is necessary that the Ombudsman should enjoy the confidence of all sections of the population. While the full benefits of the Ombudsman concept could only be realised in Parliamentary democracies, there is considerable value in the existence of an independent office to supervise the administration and redress the grievances of citizens in regimes which do not have a Parliamentary system of government.

The Office of Ombudsman—Appointment and Tenure

Whether the Ombudsman is appointed by the Executive or by the Legislature or in some other appropriate manner, it is essential that he should enjoy the confidence of all parties in the Legislature and of the various sections of the community.

He should enjoy the same security of tenure and salary as that of a judge of the highest court. The Ombudsman should have the power of appointment, removal and disciplinary control over his staff. He should be able to report to the Legislature if he considers that the staff made available to him is insufficient to carry out his duties.

The Scope of the Supervisory Powers of the Ombudsman

The Ombudsman's powers should be declared and defined in the Act constituting the office, and persons, departments and other organisations which are within his jurisdiction should be enumerated in the Act.

The Ombudsman's power of investigation should not extend to the Head of State and judges, or to matters of discipline in the armed forces.

The Ombudsman should have the power to require full disclosure of documents except in respect of such matters as security,

defence, international relations and Cabinet papers. He should have the power to summon witnesses and the power to enter any public building for the purpose of carrying out his duties.

It is desirable that the powers of the Ombudsman should where practicable extend to local authorities as well as to the organs of central or state governments.

Procedure

The Ombudsman should deal not only with complaints lodged by any aggrieved person but also take up any matter on his own initiative.

In the case of any grievance where there is a remedy in the ordinary courts or by administrative action, the Ombudsman should have the discretion to decide whether he should insist on the exhaustion of all available remedies or proceed with the investigation. The Ombudsman need not be bound by the rules of evidence and may follow any reasonable procedure which he deems appropriate. He shall, however, give the department affected and any person against whom a complaint is directed a fair opportunity to present its or his case. On reaching a conclusion in the matter, the Ombudsman should invite the department concerned to redress the grievance, if any. Failing redress, the Ombudsman should report on the matter to the Legislature either immediately or in the annual report and recommendations which he makes to the Legislature. His report should be printed and given wide publicity.

The above conditions are subject to adaptation to suit the constitutional requirements of each country.

Committee IV

RESOLUTION I

The Special Committee appointed by the Ceylon Colloquium on the Rule of Law to discuss ways and means of giving effect to the United Nations Programme for the celebration of 1968 as the International Year for Human Rights:—

REAFFIRMS

That the Universal Declaration of Human Rights is the ideal and true standard which ought to be achieved by all nations in relation to human rights.

RECOMMENDS

- (1) That the Resolutions contained in the DECLARATION OF BANGKOK in relation to an Asian and Pacific Convention of Human Rights and in relation to the establishment of a Study Group to advise the Commission on Human Rights in the Asian and Pacific Region should be immediately implemented.
- (2) That Governments be urged to give their full support at the 21st Session of the GENERAL ASSEMBLY of the UNITED NATIONS to the Resolution to appoint a United Nations High Commissioner for Human Rights.

URGES

- (1) The Governments of the States in this region to work towards a Convention on Human Rights for the Asian and Pacific Region.
- (2) The Governments of the States in this region which do *not* have fundamental rights and freedoms entrenched in their national constitutions to endeavour to entrench at least the political and civil rights contained in the Universal Declaration of Human Rights and to provide for their effective enforcement.

Committee IV

RESOLUTION II

A World Campaign for Human Rights

This Committee welcomes the initiative of the Secretary-General of the International Commission of Jurists in proposing a World Campaign for Human Rights in conjunction with the International Year for Human Rights and gives its full approval to that proposal.

In order to make the World Campaign for Human Rights effective enough to reach all peoples at all levels, this Committee considers it necessary that the Campaign be conducted not only on a global but on a regional and national level as well.

Having considered the form and shape which the Campaign should take, this Committee recommends that the following items in particular be included in the programme for "The World Campaign for Human Rights":—

(A) *On a Global Level*

- (1) The promotion of International Conventions and Covenants on Human Rights;

- (2) The promotion of the establishment of the office of "United Nations High Commissioner for Human Rights";

(B) *On a Regional Level*

- (1) The exploration of the possibilities of securing the adoption of Regional Conventions on Human Rights and the establishment of Courts of Human Rights;

(C) *On a National Level*

- (1) The organisation of local seminars and meetings on Human Rights and the Rule of Law;
- (2) The promotion of the ratification of relevant International Conventions including Regional Conventions, and of the incorporation of clauses guaranteeing fundamental human rights with provision for their effective enforcement in written Constitutions which do not contain such guarantees;
- (3) The promotion, where appropriate, of the acceptance of the Ombudsman concept;
- (4) National Surveys on the Status of Human Rights;
- (5) The taking of steps to secure the inclusion of Human Rights and the Rule of Law as subjects in the curricula of all Universities and Schools;
- (6) The promotion through mass media of instruction on Human Rights and the Rule of Law;
- (7) The urging of members of the legal profession and governments to formulate and implement an adequate Legal Aid Scheme.

These recommendations are without prejudice to any additional steps which the International Commission of Jurists and other organisations or bodies interested in the field of Human Rights may deem necessary to take in furtherance of the World Campaign for Human Rights.

This Committee further recommends that the World Campaign for Human Rights be launched immediately with a view to ensuring its success by 1968, which has been declared by the United Nations as The International Year for Human Rights.

Finally, this Committee requests the International Commission of Jurists to give such guidance and direction as may be necessary to its national sections or other bodies working out or implementing programmes for the Campaign on a national level.

Committee IV

RESOLUTION III

Proposal for the setting up of a **Council of Asia and the Pacific**

1. On the Asian Continent and in the Pacific Region there are many countries which have achieved their independence in recent years. These and other countries in the area have numerous problems of common interest and urgency relating to fundamental freedoms and social, economic and cultural matters.
2. This Conference considers that the sharing of experience by these countries would be of great value to them all.
3. This Conference therefore considers that machinery for debate, consultation and co-ordinated action at Parliamentary and Governmental levels is necessary for implementing the common aspirations and needs of these countries, resolving their problems, and promoting peace based upon social justice and international co-operation.
4. This Conference therefore favours the establishment of an organisation representative of Parliaments and Governments for the purpose of safeguarding and realising the ideals and principles which are their common heritage and facilitating their economic and social development based on the Rule of Law and social justice.
5. Participation in this organisation shall not affect the collaboration of its Members in the work of the United Nations and of other international organisations or unions to which they are parties.
6. Matters relating to National Defence shall not fall within the scope of the Council of Asia and the Pacific.
7. In this connection it would be relevant to have regard to the manner in which similar problems in Europe have been dealt with by the Statute and the working of the Council of Europe.

Committee IV

SPECIAL RESOLUTION

This Conference of Jurists from the South-East Asian and Pacific area, held under the auspices of the Ceylon Section of the International Commission of Jurists, welcomes the announcement made on the 7th December, 1965 by the Prime Minister of the

United Kingdom, Mr. Harold Wilson, that the British Government had decided to adhere to the provisions of the two optional clauses of the European Convention on Human Rights signed at Rome in 1950.

These two optional clauses, Articles 25 and 46 of the Convention, are the ones which give the right of individual recourse to persons, who claim that their rights under the Convention have been violated, to the machinery set up by the Convention and which recognise as conclusive and binding the decisions of the European Court of Human Rights. While the Convention was signed in 1950, Britain and a number of other European countries have not so far adhered to these two cardinal provisions.

The decision of the British Government now brings the number of States who have accepted the right of individual petition to 11 and of those which have accepted the jurisdiction of the Court to 10.

The decision of the present British Government to recognise the right of individual recourse and the jurisdiction of the Court of Human Rights is of vital importance and is an earnest of the desire of the British Government to afford international protection to the individual in regard to the human rights guaranteed by the Convention. It is hoped that the impact of this decision by the British Government will result not only in similar action by other European Governments who have not yet adopted these two essential articles, but will also encourage the adoption in other regions of the world of analogous conventions for the protection of fundamental human rights. The adoption of effective machinery for the protection of human and democratic rights on an international basis has been systematically urged by the International Commission of Jurists.

This Conference records its enthusiastic appreciation of the decision of the various countries which have opted for Articles 25 and 46 and, recently, of the British Government's decision and requests Sir Dingle Foot, M.P., Solicitor General for the United Kingdom, who is a participant at this Conference, to convey to his Prime Minister the contents of this special resolution with the thanks of this Conference for the step he has taken.

The Conference requests Mr. E. Muller-Rappard of the Council of Europe, who is attending this Conference, to convey this Special Resolution to the Secretary-General of the Council of Europe with a request that it be transmitted to the Member States of the Council.

The Conference requests the Secretary-General of the International Commission of Jurists to transmit this Special Resolution

to the Members of the Commission and to each National Section of the International Commission of Jurists.

THE DECLARATION OF COLOMBO

This Conference of lawyers from the Asian and Pacific Region assembled in Colombo at the invitation of the Ceylon Section of the International Commission of Jurists from January 10th to 13th, 1966.

Having taken into account and affirmed the Act of Athens, the Declaration of Delhi, the Law of Lagos, the Resolution of Rio and the Declaration of Bangkok promulgated by previous Assemblies of the International Commission of Jurists;

BELIEVING

- (1) That the Rule of Law, if it is to be fully effective, must be understood and accepted not only by lawyers but also by every member of the community;
- (2) That nationalization, as one of the problems involved in the achievement of social and economic justice, must be governed by the principles of the Rule of Law;
- (3) That it is essential to the Rule of Law that on the one hand the citizen should have confidence in the efficiency and fairness of public officials and have prompt means of redress for legitimate grievances and that on the other hand the conduct of public officials should be vindicated when criticized without justification;
- (4) That the protection of Human Rights on the International, Regional and National levels can only be effectively achieved through the machinery and principles of the Rule of Law;

SOLEMNLY DECLARES

- (1) That it is the duty of lawyers to bring to the attention of all members of the community the practical relevance of the Rule of Law in their daily life and aspirations, to devote their labours to the improvement of those aspects of law and procedure which justifiably incur the criticism of the general public, to explain those features inherent and necessary in the legal system, the importance of which is not sufficiently understood, and generally through all means of publicity to secure the co-operation of

every element of the community in the realization of the Rule of Law;

- (2) That nationalization is not an end in itself but has to be considered in the light of the social and economic benefits it may bring to the community, the fairness of the method of assessment and the adequacy of the compensation offered to former owners, the interests of the workers in the undertaking nationalized and of the consumers involved, and the machinery set up to ensure proper supervision and control of the nationalized activities;
- (3) That a Parliamentary Commissioner for Administration or "Ombudsman" provides an informal and prompt means of drawing attention to the grievances of citizens in their dealings with the administration, of securing redress of such grievances by the weapons of publicity, persuasion and recommendation and generally of ensuring the highest standards of efficient and fair administration;
- (4) That on the international level the countries of the Asian and Pacific Region should be encouraged to press for an enforceable Covenant of Human Rights and for the setting up of a United Nations High Commissioner for Human Rights, on the regional level for Regional Conventions of Human Rights and on the national level for the more effective entrenchment of Human Rights in national constitutions;

And to this end has reached the detailed Conclusions which accompany this Declaration.

THE FIRST JUDICIAL CONFERENCE OF THE AMERICAS

The reasons why the International Commission of Jurists attaches the utmost importance to the First Judicial Conference of the Americas held at San Juan, Puerto Rico are clear. The Commission has always emphasized that one of the guiding principles of the Rule of Law is that the Judicial Power should be independent of legislative or executive control. At various International Congresses and Conferences held under the aegis of the Commission, and more particularly at the Congress of New Delhi held in 1959, the Commission has sought to define the requisites of an independent Judiciary functioning within the framework of the Rule of Law. The requisites are embodied in the Conclusions of New Delhi relating to the Judiciary under the Rule of Law and in some of the Conclusions of other Congresses and Conferences such as the Congress of Rio de Janeiro (1962) and the Conference of Bangkok (1965).

Article 10 of the Universal Declaration of Human Rights enshrines the principle of the Independence of the Judiciary as an essential pre-requisite of a society governed by the Rule of Law. It stresses the importance of independent and impartial tribunals, equality before the law and fair and public hearing in the following terms: "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations . . .". Neither equality before the law nor fair hearing can be guaranteed to the individual in the absence of an independent judiciary. As stated in one of the Conclusions of the Bangkok Conference, "The ultimate protection of the individual in a society governed by the Rule of Law depends upon the existence of an enlightened, independent and courageous judiciary and upon adequate provision for the speedy and effective administration of justice".

The Conference and the Declaration of San Juan de Puerto Rico

The First Judicial Conference of the Americas was held at San Juan de Puerto Rico from May 24-26 1965. It was presided over by

the Chief Justice of the Supreme Court of Puerto Rico, and was attended by the presidents and judges of the Supreme Courts of Argentina, Colombia, Costa Rica, Chile, Ecuador, Guatemala, Honduras, Nicaragua, Paraguay, Peru, United States of America, Uruguay and Venezuela.

Together with other gratifying moves such as the creation of the Latin American Parliament (reported in our Bulletin No. 25, March 1966) and the trend towards economic integration, which has taken concrete form in the establishment of various regional bodies such as the Latin-American Free Trade Association, the Central American Common Market and the Institute for the Integration of Latin America, this Conference reveals the existence of a clear awareness among the governing and educated classes in Latin America of the need to co-ordinate and harmonise national efforts for the effective promotion of the Rule of Law, reflects a genuine and well-founded respect for the principles underlying it, and recognizes that a system founded on the Rule of Law is the sole safeguard for human rights.

It is to be hoped that this First Judicial Conference of the Americas, the declaration of principles adopted by which, known as "The Declaration of San Juan de Puerto Rico," is reproduced below, will not be the only such conference and that, above all, future conferences will not limit themselves merely to stating universally acknowledged postulates, but will rather exemplify in their work the wisdom and courage required by the judiciary in a region where corruption, subornation and vested interests often have recourse to the use of force in an endeavour to silence demands for effective justice and for the recognition of fundamental human rights.

The Declaration of San Juan de Puerto Rico

The First Judicial Conference of the Americas, assembled in the City of San Juan Bautista de Puerto Rico from May 24 through 26, 1965, consisting of Chief Justices and Justices of the Supreme Courts of Justice of most of the nations of America, being aware that a stable judiciary, free from interference and pressure of any nature, is of paramount importance for the Rule of Law in a representative democracy, assumes its historic responsibility in the strengthening of democracy and solemnly

DECLARES

First:

A vigorous and independent judiciary is a fundamental requisite, a basic element for the very existence of any society that respects the Rule of Law. Judicial independence should be secured by means of legal and constitutional guarantees that render impossible any interference or pressure of any nature with the judicial function.

Second:

The judges and other judicial officers should be selected on the basis of their ability and integrity; political or partisan criteria should not be used in the selection of the members of the judiciary. For the attainment of these goals, taking into consideration the particular judicial structure of each state, adequate mechanisms are needed to make the principles necessary for judicial independence a reality.

Third:

Security in office is an essential element for the achievement of true judicial independence. Judges should not be removed from office except for constitutionally established reasons and by due process of law.

Fourth:

The economic autonomy of the Judicial Power, based on resources that permit the fulfilment of its high mission, should be constitutionally recognized. Judges should receive adequate compensation in order to free them from the pressures of economic insecurity. This compensation should not be altered to their detriment.

Fifth:

It primarily behooves the lawyers, as auxiliaries of the judiciary, to make sure that the principles contained in this Declaration are truly achieved and maintained.

Sixth:

Judicial independence in America will be greatly strengthened by the creation and development of permanent professional organizations and by the interchange of ideas and experiences through international congresses and conferences.

POLITICAL TRIALS IN IRAN

The trial in the autumn of 1965 of fourteen Iranians on charges of conspiring to assassinate the Shah and of membership of a group or association with communist ideology and policy focussed world-wide attention on the administration of justice in Iran in cases with a political element. The proceedings against the fourteen provide a useful focal point for an examination of the law and practice in that country.

Arrest and Preliminary Investigation

The accused were arrested shortly after an attempt had been made on the life of the Shah by a member of the Palace Guard (who was killed in the incident), and placed in the custody of the security police. By article 2 of the Law establishing the National Intelligence and Security Organization (Savak), that body is made responsible for the investigation of certain categories of offence, including those alleged in this case. The entire investigation and preparation of the file on the basis of which the trial is conducted is thus entrusted to a police body which acts in private and is subject to no form of judicial control. Examination of witnesses and interrogation of the accused, searches and the collection of documentary and other evidence, are all carried out by the Savak, and the resulting file, containing all the evidence thus gathered, is presented to the trial court. During all this period, the accused have no right to legal representation or advice, and the whole preliminary investigation is conducted independently of the courts, which have no power to interfere. In the case in question, the preliminary investigation lasted over five months, the trial itself opening on October 6, 1965.

Form of Trial

The trial was conducted before a military tribunal. The establishment of military tribunals is provided for by the Supplementary Constitutional Law of October 8, 1907, article 87 of which reads: "Military courts shall be organized throughout the country in accordance with special laws." Articles 316-320 of the Military

Criminal Code provide for the trial and punishment of those participating in, or plotting, the assassination of the Shah, and article 3 of the Law establishing the National Intelligence and Security Organization confers jurisdiction on the military courts in cases under the Penal Law concerning Instigators against National Security and Independence. Article 1 of the latter law makes it an offence, punishable with from three months to ten years imprisonment, to form or to belong to a group or association whose ideology is in opposition to the Constitutional Monarchy or is communist or Marxist in nature.

It was on the basis of these provisions that the accused were tried by a military court, and that other political trials have similarly been tried by military courts. Nevertheless, the constitutionality of such a procedure appears to be questionable, for article 79 of the Supplementary Constitutional Law of October 8, 1907, provides that "in political and press offences, a jury must be present". Objections by defence counsel based upon the terms of article 79 were overruled by the court, which based its competence to try the accused on article 87 of the Supplementary Constitutional Law (cited above) and on article 316-319 of the Military Criminal Code. *Since military courts sit without a jury, and since at least the second charge undisputably related to a political offence, the validity of this ruling must be doubtful.* It is perhaps worth noting, with regret, that in a subsequent political trial, which started on February 5, 1966, similar objections were raised by the defence, to no avail, and that in response the military prosecutor replied that for years political offences had been tried by military tribunals and that they would continue to be so tried.

The trial court consisted, in the case of the fourteen, of four high-ranking officers presided over by a Brigadier-General, and the prosecution was conducted by a military prosecutor also with the rank of Brigadier General. The subsequent appeal of nine of the accused was heard by an appeal court of nine military judges.

The actual proceedings at the trial consisted of statements by and interrogation of the accused, arguments and speeches by prosecutor and defence counsel, and references to the file compiled by the Savak and to documents found in the possession of the accused. The charges were amplified in a lengthy indictment, but the file was not available for public inspection, it was not read out in any detail, nor were the witnesses on whose statements to the Savak reliance was placed called to give evidence. It is therefore

not possible for an outside observer to form any firm conclusion as to the weight of the evidence against the accused. It can, however, be stated that sufficient evidence to justify a conviction on either of the charges was not publicly adduced.

The accused and their counsel appear to have been given complete freedom to express themselves and to present their arguments. Indeed, one of the accused remarked in the course of his address to the court that the freedom given to him was quite unprecedented and expressed his gratitude.

After the first three days, during which proceedings were conducted *in camera*, the court sat in public. This too seems to have been exceptional, in that the normal practice has been for political trials to be conducted *in camera* in their entirety. Thus, in May 1965, the persons accused of the assassination of the Prime Minister Hassanali Mansour in January 1965, were tried and convicted at what the *New York Times* described as a "twelve-day secret trial" (*New York Times*, May 10, 1965). The decision to open the court to the public marks a welcome departure, and it is to be hoped that it will set a precedent for the future. On this point too, there is an apparent conflict between the Supplementary Constitutional Law and the Military Criminal Code. Article 77 of the former provides that where it is advisable that political or press offences should be conducted in private, the decision to do so must be taken by the unanimous vote of all the members of the tribunal. Article 192 of the latter provides that "Sittings of the courts martial shall be open to the public except in cases where it might be considered against law and order, state security or morals. In the latter cases, the prosecutor shall request a secret hearing and the court shall issue an order to that effect". The wording of this provision would appear to give the court no choice but to comply with the application of the prosecutor.

Defence Facilities

As already stated, in cases falling within the investigatory jurisdiction of the Savak, a suspect or an accused person has no right of access to a legal adviser during the investigation of the case. Once the investigation is completed, the accused has a right to select one or more military personnel (either present or retired officers) to act as defence counsel. Once defence counsel has been appointed, he must be allowed between five or ten days to study the file and prepare the defence. He has the right to examine the file in

the court office and make notes from it, but he cannot remove it. From the beginning of the trial, he has the right to visit and talk to the accused freely. (See articles 182-186 of the Military Criminal Code.)

While at the trial of the fourteen defence counsel (all retired officers, the majority without legal training) spoke freely and appeared to defend their clients' interests vigorously, it is difficult to resist the inference that they were in some degree inhibited and rendered cautious by the fate of four military defence counsel in an earlier political trial. These retired officers had defended a number of members of the Iranian National Front at a trial in October 1963. An indictment was signed against them on December 29, 1964, charging two of them with incitement of the people against the national government, the other two with insulting the Head of State and all four with the dissemination of propaganda in favour of a group holding an ideology and policies in opposition to the Regime of Constitutional Monarchy of Iran. The charges are based entirely upon statements made by the accused officers while acting as defence counsel during the trial of their clients—the whole of the proceedings having been tape-recorded by the Savak—in spite of the fact that, as the indictment against them concedes, "the defendants having indicated . . . that they had no object in their statements made during the trials except that of defending their clients". According to the Iranian National Front, these officers were tried in secret by a military tribunal in November 1965 and sentenced to terms of imprisonment alleged to be severe. As far as is known, no official announcement of the trial has been made.

The Result of the Trial

The two charges—of conspiracy to assassinate the Shah and of membership of a communist group or association—were unconnected, save that the four accused of the first charge were also accused of the second charge. Of the four accused of the conspiracy, all were convicted at first instance and two of them were sentenced to death. A third, who was charged not with conspiring but with "participating in the conspiracy", received three years' imprisonment. These three sentences were upheld on appeal. The fourth accused, who was alleged to be the leader of the communist group and whose sole link with the alleged conspiracy appears to have been a close acquaintance with one of the other alleged conspirators, was acquitted of this charge on appeal and his sentence of life

imprisonment was reduced to one of ten years imposed in respect of the second charge alone. Of the other ten accused, who were charged solely with membership of a communist group, two were acquitted and the rest sentenced to terms of imprisonment varying from six months to eight years. Of the five who appealed, two had their sentences confirmed while three were increased—the prosecutor having also appealed on the ground that the sentences were too low.

By an act of grace that is all the more to be welcomed in that the Shah had, during the proceedings before the military court of appeal and before it pronounced its decision, expressed his conviction that the two accused condemned to death at first instance were guilty of plotting against his life in an interview with the correspondent of *Le Monde* (see *Le Monde*, December 9, 1965), his Imperial Majesty commuted the two death sentences to terms of life imprisonment.

Unconstitutional Procedures

Attention has already been drawn to two aspects of political trials in which the legislation applied appears to conflict with the Supplementary Constitutional Law. There is another practice resorted to in at least one recent case of a political nature which also appears to be unconstitutional. In November 1964, the Iranian leader of the Shi'itish Muslim sect, Ayatollah Khomeini, was exiled to Turkey. Article 14 of the Supplementary Constitutional Law provides that "no Iranian may be exiled . . . except in cases specified by law". No law has been cited or referred to as authorising the exile of Khomeini. The decision to do so was stated to have been taken "on the basis of reliable information and sufficient evidence of his instigations against the nation's interests, security, independence and territorial integrity". It is unfortunate that these allegations were not made the subject of criminal charges rather than resort being made to the doubtful institution of banishment.

The Future

Political trials are likely to remain a feature of life in Iran in the foreseeable future. On February 5, 1966, the trial of four leaders of the Iranian Socialist Party opened before the Teheran military court. While foreign press correspondents were at first allowed to attend the trial, this permission was withdrawn on March 6 (*Le Monde*, March 9, 1966) and thereafter reports of the proceedings

appeared only in the local press until the sentences—terms of imprisonment ranging from one to three years—were announced on March 15. At the same time, the trial was proceeding of 55 persons, largely students, arrested in October 1965, on charges of plotting the violent overthrow of the régime. This second trial, which resulted in one death sentence and a number of prison sentences, was not open to foreign correspondents or observers and little is known about it. On appeal, the death sentence was confirmed, seven persons were sentenced to forced labour for life and forty-six to varying terms of imprisonment; one was acquitted. (*Le Monde*, April 19, 1966). The death sentence was later commuted to one of life imprisonment. Considerable numbers of members of the Iranian National Front are also said to be detained and awaiting trial. It is to be hoped that in future political trials at least the greater freedom and publicity granted in the trial of the fourteen will be maintained. It is also highly desirable that the unsatisfactory elements in the present practice—the entrusting of the investigation entirely to the Savak, the limitations on the right to defence counsel, the denial of a jury, the tendency to hold trials in private—should be removed, and a procedure in which justice is not only done but is seen to be done should be instituted. Those who view with sympathy the Shah's measures of reform hope that the new spirit which is sweeping Iran will be brought to bear also in the handling of political opponents of the régime.

In the foregoing account of present Iranian practice, no mention has been made of the treatment to which political prisoners are subjected. Widespread allegations have been made that they are ill-treated and tortured. At least one of the accused in the trial of the fourteen claimed on appeal that he had been subjected to torture. The Iranian Government has firmly denied these allegations. Nonetheless, they continue to be made, suggesting both that prisoners awaiting trial are tortured and that convicted prisoners are held in insanitary and unhealthy conditions. These allegations are clearly doing harm to the Iranian Government's reputation, and it would, it is suggested, to be in the interest of the Government as well as that of the other parties involved that an independent investigation of prison conditions be undertaken by the International Committee of the Red Cross. Such an investigation could, of course, only be carried out at the request of the Iranian Government; it would undoubtedly be the best way of dispelling the doubts that have been created by the persistent adverse reports.

THE ADMINISTRATION OF JUSTICE IN UGANDA

by the Hon. C. J. Obwangor, M.P.,
Minister of Justice of Uganda.

Editorial Note

The relationship between the executive arm of government and the judiciary and the lawyers is always a delicate one; the more so in a new state. Having been deeply impressed by the pronouncements of the Minister of Justice for Uganda, the Secretary-General invited him to contribute an article for the Bulletin. He willingly agreed, and the article is reproduced hereunder. We express our gratitude to the Hon. C. J. Obwangor, M.P., for the excellent article which he has written for this issue of the Bulletin. The guide-lines he has laid down concerning the administration of justice in Uganda are of general application and set a standard which might well guide ministers of justice in other parts of the world.

The article was written before the recent constitutional crisis in Uganda; irrespective of the outcome of this crisis, it does appear that the high standard of the administration of justice will be maintained.

The function of Law

There was a philosophy, widespread in Europe two hundred years ago, that mankind was naturally good: that, freed from social and economic disabilities that had warped his development, man would exist—as he had existed at the beginning of time—in an undisturbed state of peace and happiness, whilst the trappings of government would fall from society, unwanted, superfluous. This belief is not yet dead: there still persists the fallacy—as I see it—that if man is well fed, well housed, well occupied, and freed from social and economic cares, then wars, poverty, ignorance, intolerance, the pursuit of power for its own sake, will disappear. And the supporters of this view argue further that any means may properly be used to achieve the goal of economic and social perfection.

What these means are, and what their immediate effects are, become unimportant; the rights of minorities and individuals, the

freedom of a man's conscience, are swept aside in the name of progress. I cannot subscribe to this dream. I cannot believe that we will ever be completely free from malice, from the love of power, from envy and intolerance, and believing this I believe also that progress, in whatever field, must therefore depend first and foremost upon a strong and stable government. There must be a framework of sound administration, good order and justice; there must be security against exploitation, against discrimination, against arbitrary action—whether by the state or by the individual. Given this security, the progress we all want will follow.

It is in providing this security that I see the main task of a Minister of Justice. He is in the Government to take charge of the administration of justice, and the way in which he discharges this duty is, I firmly believe, of fundamental importance, not only to the happiness of everyone, but to the ultimate development of a country.

At the same time, it is important to realise that the well-being and security of a nation depend upon the respect paid to the law by the citizens of that nation, whether from inner compulsion or from fear of consequences. The solemnity and majesty of the law are aspects of national life deeply rooted in three assumptions, that:

- (a) in the eyes of God and the law all men are equal;
- (b) that all men have the same inherent right to fair treatment; and
- (c) that to deride the sovereignty of the law is to attack the foundations upon which national life is based.

The realization of these assumptions is the function of the administration of justice. Before going on to consider what this implies, let me emphasize one thing that the administration of justice does not mean. It does not mean any interference whatsoever with the courts. The independence of the Judiciary is no empty formula; every judicial officer, from a Judge of the High Court to a magistrate of the Third Grade, when sitting in court, exercises his functions free from fear or favour. No man, be it the Prime Minister himself, may influence the decisions reached in the courts, nor may any judicial officer suffer in any way as a result of a judgment he has given. He is there to find the truth, and the wishes of government, the embarrassment of politicians or officials, the expediency of the moment, must count for nothing with him. This judicial independence is the keystone of our system, and it is the responsibility of the Minister of Justice to ensure that it remains so.

The Elements of the Administration of Justice

What, then, does the administration of justice involve? It involves, to my way of thinking, seven major factors. *First*, the creation of a courts system adapted to the circumstances of our country. *Second*, ensuring that justice is available to every person in Uganda, however humble. *Third*, the maintenance of a proper relationship between the courts and the services on which they depend—the police, the prisons, the probation services. *Fourth*, ensuring that the law remains a dynamic and flexible instrument, in accord with the development of the country. Law, contrary to much popular opinion, is not a fossil: it is a living thing which must adapt itself to the circumstances in which it operates. *Fifth*, the establishment of an efficient and contented judicial service, from Judge to Clerical Officer. The exercise of the law involves great concentration, continued study, considerable intellectual detachment; everything must be weighed dispassionately and impartially. But if this is to be so, the judiciary must be as free as possible from worries over matters of detail, from personal cares, and external distractions. In a phrase, the judiciary must be backed by a flawless administration. *Sixth*, the exercise of the prerogative of mercy. Circumstances of which the law cannot take cognizance may sometimes justify a remission of sentence. The Minister of Justice is empowered under the Constitution to advise the President in such cases: this entails the most careful consideration of every petition he receives from convicted persons, their friends or their relatives. But the general prerogative of mercy goes further than this. Many people feel they have suffered personal or administrative injustices: many of these complaints are not suitable matters for judicial remedy. The Minister of Justice has to review with care every complaint he receives before taking such action as he thinks proper. He must be accessible to everyone: people who are confused, who are frightened, who have suffered any injustice must know that they may turn to him for advice and remedy. And, *finally*, and perhaps most important of all, though hardest to define accurately, is his responsibility as guardian of the Constitution and the Rule of Law. The phrase “watchdog of the Constitution” would perhaps not be out of place, and as such he must guard against any erosion of the people’s liberties and freedoms, whether by legislation or by administrative decree.

Preservation of the Constitutional Order

Now, I want to take each of these responsibilities separately, and examine it in the context of our own country; and indeed, in the context of any developing country. Let me take them in reverse order. First, then, my duty as guardian of the Constitution. A Constitution has been defined as "a selection of legal rules which govern the government of a country . . . usually embodied in one document". This is the crux—rules which govern the Government. Our Constitution embodies three cardinal principles: that it has a higher status in law than other legal rules, that by its very existence it recognizes the existence of individual rights which are fundamental to human society and which—subject to certain safeguards—are not alterable in law, though they must be legally protected: the Rule of Law. In itself, this is excellent, yet a constitution is nothing more than a scrap of paper unless it is recognized as the supreme law and is accepted by every one of us as embodying the form of government we want. Apathy, ignorance, loss of faith in its ultimate authority, will reduce our Constitution to the farcical status the constitutions of certain countries in the world have reached, where they are altered or over-ridden at will by those in power without a word of protest from the people themselves. This has not happened here; I do not believe it ever will. Yet in a young, expanding, trustful country—a country in a hurry—there is a tendency, albeit a very natural one, to become impatient of the restraints and delays in the law. There is a danger of thinking that we can temporarily ignore the law until we have got to where we are going. But those who think thus are so very wrong. Once the law has been over-ridden, once the rights of the individual have been cast aside, then the rule of the law has been lost, and lost forever. My duty is to protect the law and the constitution. It is not an easy duty, often not a popular one, but it is a responsibility I will not, and cannot, discard.

Law Reform

The Minister of Justice is also responsible for the adaptation of the laws and their reform, when necessary, to match the conditions in which they operate. Our present laws are a mixture of English, Indian and Ugandan legal institutions. This mixture is the result of the haphazard manner in which our present legal system has developed. With the advent of independence the time came for us to examine our legal and judicial institutions, whether inherited or

indigenous, with a view to bring them in line with our view of justice and morality. To this end a Standing Committee was set up under the name of the Law Reform Committee, with the task of examining and reporting on the statute law of Uganda, with a view to undertaking the replacement of any statutes found to be out of step with new conditions. The Committee has in particular the following functions:

- (a) To advise on the reform of any existing law.
- (b) To advise as to the best method of ensuring that our legal system is abreast of the times, that it adequately provides for the needs of society and that it operates smoothly.
- (c) To act as a standing consultative body on any legal matters which may occur from time to time.
- (d) To initiate proposals for a series of new basic laws for Uganda.

The Police and Prison Services

The relationship between the courts and police and prisons is not a problem peculiar to a developing country. Here again, however, during the first years of adjustment and flux, this relationship needs careful supervision. A Minister of Justice must never be blind to the danger—however slight it may be—that in their enthusiasm the police may at times overlook that their job is one of prevention, detection and apprehension, and may find themselves also deciding guilt. Once this happens the courts are expected to rubberstamp decisions already taken by the police, and the Rule of Law is again threatened. The maintenance of the proper balance is a delicate task, and is one of importance.

The System of Courts

If everybody is to have ready access to justice, the system of courts must be adapted to the needs of the country. Uganda, like many African countries prior to Independence, had two separate and distinct courts systems. The principal system of courts was introduced by the former Colonial Government and consisted of the High Court and the Resident Magistrates' Courts. These courts had jurisdiction over all races and laws and usually tried the more serious cases. Alongside this imposed courts system was the African Courts system. This developed over the years from our own indigenous system of courts. In the course of time the African Courts

became a highly developed system hearing by far the greater number of criminal and civil cases in Uganda. This system became an anachronism after Independence because it was discriminatory. By that I mean that the jurisdiction of these courts was limited to hearing cases arising between Africans only and the law they applied was limited to customary law except in so far as permission had been granted to these courts to hear certain limited offences arising under the Laws of Uganda.

For many years now it has been recognised that it was wrong to have two systems of courts running parallel to each other doing the same job, namely administering justice, and yet being quite separate and discriminatory in their approach to a common task. The joining together of these two systems has always been considered an ultimate objective, and the first step towards it was taken when the African Courts Ordinance of 1957 was passed, providing that the African courts were to be guided by the Penal Code, Criminal Procedure Code and Evidence Ordinance. Hitherto they had been governed by customary rules and procedure. In 1962 the Criminal Procedure Code and the Subordinate Courts Ordinance were amended equating the powers of the African Courts and the Subordinate Courts. Further, the Chief Justice was empowered to make certain African Courts Subordinate Courts in addition to their jurisdiction as African Courts. Finally, the judges and magistrates of African Courts were to be appointed by the Judicial Service Commission and the power to appoint, dismiss or discipline the staff of African Courts passed from the hands of the District Councils into the hands of an independent body, namely the Judicial Service Commission.

All this preparatory work culminated in the Magistrates' Courts Act of 1964, which is being applied progressively to each Chief Magistrate's area. It is this Act which is the culmination of all our work and endeavour and represents the fulfilment of Government policy, which is to provide speedy, effective and impartial justice for all, from the highest to the lowest, in Uganda. When this Act is applied to the Kingdom of Buganda pursuant to the provisions of section 74 (5) of the Constitution, the Buganda Courts Ordinance (Cap. 77) will cease to have effect.

The system introduced by this Act provides, at the lowest level, for Subordinate Courts of the third class which will operate eventually throughout every sub-county in Uganda. The magistrate presiding over this court is a Subordinate Court magistrate of the third class and he is in addition also a judge of customary civil

law. The next grade of court is that of the magistrates of the first and second class who are also the chief judge and senior judges of customary civil law. They operate at Federal and District Headquarters, hearing criminal and civil appeals as well as exercising original criminal jurisdiction. In time we shall have at least one first class magistrate at every Federal and District Headquarters, and he will be legally qualified. The Courts of the second and third class magistrates are staffed by the Judiciary of the former African Courts and, of course, have jurisdiction over all races and laws in their capacity of subordinate courts. Above these courts there are the Chief Magistrates' Courts. Like the first class magistrate, the Chief Magistrate will be legally qualified, and there will be some six Chief Magistrates in the Federal and District Administration and two or so in Kampala. The Chief Magistrate's Court hears appeals from the second-class magistrate and also exercises original jurisdiction.

Finally, there is the High Court. Any person who is aggrieved by any decision in a criminal or a civil trial has a right of appeal to the next superior court up to the High Court.

In so far as concerns the former African judicial staff and their clerks, they have become Central Government civil servants, with an overall improvement in their salaries and opportunities for the best of them to gain substantial increases in salary through promotion.

Turning to the laws administered by this new integrated courts system, they apply the Law of Uganda and customary civil law only. On the criminal side they administer the Penal Code and on the civil side the law of torts, contract and so on. Where questions arise which relate to purely customary civil law matters—such as inheritance, marriage and dowry, land and so on—they administer the customary civil law of the area in which the cause of action arises.

The implementation of this scheme has given us what is probably the most coherent and advanced courts system in East and Central Africa, since it brings under one system of law and administration both an imposed and an indigenous system of courts and law. This unified system does not discriminate between either persons or the law, and we feel that its implementation is in keeping with and indicative of our political philosophy, namely that the proper dispensation of justice is the cradle of good government, and good government means a contented people and a happy and prosperous country. The Government of Uganda has directed its policy

to the end that justice will be impartial, effective and speedy. We are proud of our new system and determined to see that it works.

Its success depends in large part upon having a better trained judiciary, and as early as September 1961 a Law School was established at Entebbe to train African Courts staff, and it later extended its activities to the provision of a diploma course for magistrates under the new courts system. The Government of Uganda is determined that the magistrates shall fulfil their duties in the way in which the Judiciary in the past has always fulfilled its duties, with proper high standards.

These, then, are some of the achievements of independent Uganda in the field of the administration of justice. They have been undertaken in the awareness of the tremendous importance of the Rule of Law in preserving our individual freedoms, and of the need for efficient, impartial, good and fearless justice.

THE SINYAVSKY - DANIEL TRIAL

In his final plea at Court—which had to reach the outside world in a clandestine way—Andrei Sinyavsky, author and professor of literature, summed up his and his co-defendant's case by placing it in the perspective of history:

“I do not know an author of satirical works of reputation who was not accused of calumny. On the other hand, until now none of them was legally prosecuted for his works. As far as I know, there never was in the history of literature a criminal trial like the present one, not even against authors who published their works abroad... In my opinion, literature cannot be judged in legal terms...”

The present comments are focussed on the general legal aspects of the trial, which seems to be unique in many ways, and on its evaluation in the light of the generally accepted rules of criminal procedure and of legality as defined in the Universal Declaration of Human Rights.

Events leading to the trial

In September 1965, Andrei Sinyavsky and Yuli Daniel were secretly arrested by the Security Police (KGB) on charges of

disseminating anti-Soviet propaganda. The Soviet press reported the case as late as January 13, 1966. The news of their arrest became known in the West, however, through a statement by Signor Vigorelli, Secretary-General of the Community of European writers, in Rome on October 9, 1965.

The *Izvestia* article of January 13, 1966, signed by D. Yeregin, Secretary of the Moscow Chapter of the Union of Soviet Writers and Stalin-Prize winner, was evidently designed to convey the official view on the case. *Izvestia* wrote among other things:

The enemies of Communism have found what they were looking for—two renegades for whom duplicity and shamelessness have become articles of faith. Shielding behind the pen names of Abraham Tertz and Nikolai Arzhak, the two have for several years been sending to foreign publishing houses and published abroad their dirty libels of their own country, the Party and the Soviet system... In the end they descended to crimes against Soviet authority. In so doing, they placed themselves outside the community of Soviet people. From petty nastiness to high treason this was the course they ran. The lampoonists are raising their hands not only against Soviet society, they are spitting venom at all progressive mankind, at its ideals and at its sacred struggle for social progress, for democracy and for peace. (Taken over by Tass and broadcast on January 12, 1966)

Mrs. Zoya Kedrina of the Union of Soviet Writers in the January 22 issue of *Literaturnaya Gazeta* branded the two authors as pornographic anti-semitic scribblers and dubbed Mr. Sinyavsky "a plagiarist and plunderer of Russian and Western novelists". She also made it clear that Communist dogmatists were primarily shocked by the loose, free, imaginative manner in which the two accused authors wrote.

Izvestia published readers' letters in derogatory terms and calling for strict punishment.

There were, however, also signs of sympathy for the arrested writers. Western news agencies reported on December 17, 1965 that 200 students—mainly from the Gorky Institute of World Literature, at which the two detainees were working—demonstrated in Pushkin Square in Central Moscow demanding their release or a public trial. (*Le Monde*, Dec. 14, 65; *Times*, Dec. 20, 65).

In the West the Soviet press campaign launched against the accused provoked lively reactions. Among other protests, newspapers published on January 31 and February 1 an appeal for freedom signed by about 50 of the best-known writers in France, Germany, Great Britain, Italy, and the United States, speaking also in the name of the International PEN and the Community of European Writers. The closing paragraph read:

Believing as we do that authors have the right to have their work published, we appeal once more to the tolerance and good sense of the Soviet authorities and ask them to release these two colleagues of ours whose books we regard as notable contributions to contemporary writing. (*The Times*, Jan. 31, 1966).

The Trial

The trial opened on February 10, 1966 in Moscow in the Supreme Court of the RSFSR, as announced in a *Tass* report which was published in *Pravda* (Febr. 11, 1966). The report contained the summary of the indictment and of the first day of the trial. The alleged criminal activities of the defendants were put in the broader context of a world-wide imperialist campaign against the Soviet Union. This campaign, *Pravda* said, is fought at present mainly in the ideological field and is aimed at impressing world public opinion. The defendants were charged with having furnished material for this "libel" campaign.

It was announced that Sinyavsky and Daniel were taken into custody on a warrant of the General Procurator of the USSR in September 1965. The investigation was carried out by the Committee of State Security (KGB). The Bench of the Supreme Court of the RSFR conducting the trial was composed of L. N. Smirnov, Chairman of the RSFSR Supreme Court, and two people's assessors, N. A. Chechina and P. V. Sokolov; the Registrar of the Court was T. V. Vorobeva. The prosecution was conducted by O. P. Temushkin, assistant to the Procurator-General of the USSR, flanked by two "social prosecutors", A. N. Vasilev and Z. S. Kedrina, both obscure members of the Soviet Writers Union. Defence counsel were E. M. Kogan and M. M. Kisenishsky, members of the Moscow Collegium of Advocates.

The indictment was read; it accused the defendants of having transmitted since 1956 by the intermediary of Helen Pelletier-Zamoyska, daughter of the then French Naval Attaché in Moscow, a series of manuscripts for publication in the West. These manuscripts were published by bourgeois ideological centres under the pen names of Abraham Tertz and Nikolai Arzhak and were used for anti-communist propaganda. The defendants pleaded *not guilty*: they acknowledged the authorship of the incriminated publications, denied however their anti-Soviet character.

In his final plea, cited above, Sinyavsky had the following to say concerning the charges against himself and his co-defendant:

"I am unconvinced by the arguments of the prosecution and I stick to my previous attitude. The arguments of the prosecution give one the feeling of being up against a blank wall, against which one batters one's head in vain, and through which one cannot penetrate in order to get some kind of truth.

The arguments of the prosecution are the same as those of the indictment and I heard them many times during the preliminary investigation. It is always the same quotations over and over again . . .

At this point the law of "either-or" comes into operation. He who is not with us is against us. At certain periods—in revolution, war, civil war—this logic may be right, but it is very dangerous in times of peace, when it is applied to literature. I am asked: where are your positive heroes? Ah, you haven't got any; ah you are not a socialist! Ah you are not a realist, ah you are not a Marxist, ah you are a *fantaisiste* and an idealist and you publish abroad into the bargain! Of course, you are a counter-revolutionary! . . .

. . . Well, I am different. But I do not regard myself as an enemy; I am a Soviet man, and my works are not hostile works. In this fantastic, electrified atmosphere anybody who is "different" may be regarded as an enemy. But this is not an objective way of arriving at the truth. Most of all I do not see why enemies have to be invented, why monsters have to be piled on monsters by means of a literal-minded interpretation of literary images." (Sunday Times, April 17, 1966)

These arguments—which were not published in the Soviet Union—were ridiculed by Soviet press reporters and met, according to their reports, with roars of laughter from the public present in the courtroom.

The judgment delivered by the Court was reported in *Pravda* on February 15, 1966. It summed up the speeches of the two "Social Prosecutors" who as members of the Soviet Writers Union acted as literary critics and experts in the case and asserted that the works in question had no literary value, but on the other hand were profoundly anti-Soviet. The Court found the two defendants guilty of the crime of anti-Soviet propaganda under Article 70 of the RSFSR Criminal Code of 1960. Article 70 deals with anti-Soviet agitation and propaganda and provides that:

Agitation or propaganda carried on for the purpose of subverting or weakening Soviet authority or of committing particular, especially dangerous, crimes against the state, or circulating for the same purpose slanderous fabrications which defame the Soviet state and social system, or circulating or preparing or keeping, for the same purpose, literature of such content, shall be punished by deprivation of freedom for a term of six months to seven years, with or without additional exile for a term of two to five years, or by exile for a term of two to five years.

The Court sentenced Sinyavsky to seven years "strict regime in a corrective labour camp", the maximum punishment,

and Daniel to five years in a similar camp—as requested by the prosecution. It did not, however, impose the supplementary punishment of exile to be added to the period in a labour camp. Since the case was dealt with by the Supreme Court of the RSFSR as a court of first instance, the decision is final and without appeal. According to AFP (*Le Monde*, Febr. 20-21, 1966). Mr. Daniel intends to ask for a revision of his case on the basis of procedural shortcomings of the trial.

Reactions to the Trial

The reactions to the trial outside the Soviet Union expressed grave concern over its conduct and the sentences meted out. Writers and literary Circles all over the world were shocked. Communist parties in Western Europe especially took a highly critical stand on this kind of administration of justice. It was in fact the first time in the post-war history of the international Communist movement that an official act of Soviet internal policy aroused unanimous condemnation among the Communist parties in Western Europe. Mr. John Gollan, Secretary-General of the Communist Party of Great Britain, reproached the Soviet Court for applying the presumption of guilt to the detriment of the accused and for suppressing publicity for the cases of both prosecution and defence (*Daily Worker*, Febr. 15, 1966).

L'Humanité, the daily newspaper of the French Communist Party, published an article by Louis Aragon, the well-known writer and member of the Central Committee of the French Communist Party. He deplored that the two authors were “deprived of their liberty for the contents of a novel or a short story; this is to make of an error of opinion a crime of opinion, it is to create a precedent more harmful to the interests of socialism than the works of Sinyavsky and Daniel”. The trial, continued Aragon, might induce the public to the conclusion that such a procedure is inherent in the nature of Communism. Such a conjecture should be most energetically rejected at least as far as France and the French CP are concerned (*L'Humanité*, Febr. 16, 1966).

The French Association of Democratic Lawyers, led by prominent French Communist lawyers, issued a statement conveying their deep concern over the conduct of the trial, the charges under which the accused were convicted and the extreme severity of the sentences. (*Le Monde*, Febr. 1966).

"An essential safeguard of the administration of justice consists in the full and loyal publicity of the arguments (of the trial) and it is only thereby that public opinion can effectively control justice administered in the name of the people . . . On the other hand, in French as well as in Soviet law, the accused is presumed to be innocent before he is found guilty and finally, every criminal trial should provide for at least one appeal . . ."

The statement closed by expressing disagreement with the sentence imposed for a "crime of opinion".

The Chairman of the Swedish CP, C. H. Hermansson, in his statement issued to the official Swedish press agency on February 15, found it necessary to "fully dissociate himself from the sentences passed on the two authors as well as from all other encroachments on freedom of expression in capitalist as well as Socialist states".

L'Unità, the newspaper of the Italian Communist Party, devoted an editorial to the summing up of Western Communist condemnations of the trial and added that "the Soviet comrades cannot and must not be surprised by our reactions".

Whereas western public opinion, communist and non-communist alike, was unanimous that this precedent harmed the reputation of the Soviet Union more than the incriminated works of Sinyavsky and Daniel could ever have done, the Soviet press persisted in its assertions of perfect legality.

On February 19, *Literaturnaya Gazeta* published an open letter from the Soviet Writers Union replying to foreign literary organizations who asked the Union "to exert all possible moral pressure on Soviet administrative bodies in order to whitewash the actions of Sinyavsky and Daniel". The Union repeated the claim that:

"The trial . . . was conducted with strict and scrupulous observance of all the standards of Soviet law" (*Soviet News*, Febr. 21, 1966).

Pravda in an article of Febr. 22, 1966 reported on the efforts of the Western press "to usurp the trial of Sinyavsky and Daniel for a new anti-Soviet campaign, bemoaning alleged violations of freedom and democracy". It admitted that many honest people were misled by this campaign and a good number of progressive personalities had put the question: Is the development of democracy in the USSR in danger? Does the sentence entail that creative freedom will be jeopardized in the Soviet Union? To such doubts, *Pravda* opposed a stereotype reply: "We have reached a new, higher stage of democracy which has its favourable impact on the

whole life of society". But, responding to foreign pressure, the spokesman of the Soviet Information Office promised that the documents of the trial would be published shortly.

This, however, was not the end of the repercussions. Views contrary to the policy line disclosed at the trial were also expressed in the Soviet Union. On March 18, 1966 Western news agencies announced that Lev Smirnov, the Chief Justice of the RSFSR, who presided at the trial, was invited by the Soviet Writers' Union to give an explanation of the trial. At that meeting there were cited the statements of John Gollan and Louis Aragon; the question was raised as to why foreign correspondents were barred from the audience. To this Judge Smirnov's only reply was "You have to address that question to *Tass*". Answering another question, he summed up the record on criminal trials against writers in the Soviet Union. There has only been one case, in 1921, in which a writer, Mr. Gumilev, was tried; but it was not his literary activities that were the object of the charges: he was accused and found guilty of "counter-revolutionary conspiracy to overthrow the Soviet regime". No reference was made to writers like Isaac Babel, Boris Pilnyak, Ossip Mandelstamm and others who had not been tried but simply vanished during the thirties. Judge Smirnov in his replies did not advance any new relevant elements and confined himself to reiterating the thesis of the judgment, namely that the accused violated Article 70 of the Criminal Code.

Protests went further than the questioning of Judge Smirnov at the Writers' Union. The Central Committee of the Communist Party of the Soviet Union (CPSU) received a letter signed by more than forty outstanding personalities of Soviet intellectual life, among them Nobel Prize and Lenin Prize winners, warning against the rehabilitation of Stalin or Stalinist practices at the forthcoming 23rd Congress of the CPSU. (*Le Monde*, March 17, 1966). The same letter also asked for a revision of the Sinyavsky-Daniel trial. A few days later a letter to the same effect was addressed to the Party leadership by another group of Soviet intellectuals from Leningrad (*Le Monde*, March 23, 1966).

Conclusions

1. The trial of the Soviet writers, Sinyavsky and Daniel, has in fact become a test case of the administration of justice in the Soviet Union. It revealed the changes which have taken root since the death of Stalin but also the inherent weakness of the system which

could still transform proceedings on political issues into a mock trial by violating generally accepted principles of legality in general and of criminal procedure in particular.

First of all it should be recalled that under Stalin's dictatorship cases of free thinking intellectuals such as the one under discussion were settled by the Security Police out of court in a completely arbitrary manner. Only the family and close colleagues of the victims noticed their disappearance. This time there was a trial in the course of which the Soviet press and mass media repeatedly claimed the fullest observance of legality. Members of the family and a few colleagues were admitted to the courtroom, the accused were represented by defence counsel and were allowed to plead "not guilty". Indeed, it was the first time in the history of Soviet political trials that the defendants were able to state openly their views on the case and to argue their innocence. The great significance of the plea of not guilty entered with remarkable courage by the two writers is not diminished by the effort of the Soviet information media to limit the impact of the defendants' pleadings to a handpicked hostile audience. The general public, both Soviet and foreign, was informed on the trial by Soviet information services in a biased and distorted way, but the coverage was extensive and contrasted with the past practice of silence on any courtroom argument other than the case for the prosecution and the final judgement.

The pressure groups which succeeded in staging the trial were obviously torn between the public demand for regular criminal proceedings and the policy of full control over them. Circumstances indicate strongly that the conduct of the trial was a compromise resulting from a bitter controversy between the orthodox elements of the Soviet establishment, determined to keep control over all aspects of public life, and of the more open-minded groups of the Soviet intelligentsia in general and of the literary community in particular. It was no more possible to disregard—or to silence—the voices raised in defence of an artist's creative freedom of expression. They have not yet prevailed but the world may register with satisfaction the growing intensity and impact on Soviet public life. It was the influence of the progressive forces which obtained that the writers could not be disposed of without trial. This trend seems by no means to be limited to students and politically non-committed citizens; it is equally in evidence within the Party and can be expected to be strengthened by the adverse national and international reaction to the Sinyavsky—Daniel trial. Thus, the

trial may be appraised as a milestone marking the point of no return of the Soviet moral progress towards overcoming Stalinism.

2. The criminal law reform which followed the reign of Stalin postulates that the purpose of the administration of justice is to distinguish between innocent and guilty. Article 2 of the Code of Criminal Procedure of the RSFSR contains a somewhat emphatic statement on the desire to break away from the dark ages of the "personality cult". It stated that the "task of criminal proceedings" is "that not a single innocent person shall be criminally prosecuted or convicted". This basic aim of judicial procedure in Soviet courts is further expressed in a number of specific provisions. The Code of Criminal Procedure of the RSFSR provides that it is the duty of the prosecutor to prove guilt and that the accused has the right to defence. It also provides for impartiality of judges, the principle that no one may be prosecuted except on the ground of, and in accordance with, a procedure established by law, climaxing in the basic provision of Article 309 (of the Code of Criminal Procedure) which stated the principle of the presumption of innocence:

A conviction may not be founded on assumption and shall be decreed only if during the course of the judicial examination the prisoner's guilt in committing the crime is proved.

The President of the Supreme Court of the USSR, A. Gorkin, wrote as late as December 2, 1964 in *Izvestia*, the Soviet Government newspaper, a firm article asking for the observance of the presumption of innocence in press reports on trials. A series of articles in the leading legal Soviet periodical, *Sovetskoe Gosudarstvo i Pravo* was published in the same vein, asking for further elaboration and application of the basic principles of criminal law and procedure incorporated in the new Soviet criminal legislation.

In contrast to these claims, formulated by lawyers, the conduct of the Sinyavsky-Daniel trial seemed to be dominated by methods associated with the investigating Security Police and the Stalinist faction of the Soviet literary establishment. The guilt of the accused was presumed by Soviet mass media from the very first article published. As far as can be seen from the material published on the trial, the same trend was discernible also in the Court. This attitude violated, in addition to the rules of criminal procedure of the USSR, Article 11 (1) of the Universal Declaration of Human Rights upholding the presumption of innocence "until guilt is proved according to law in a public trial at which the defendant has had all the guarantees necessary for his defence".

3. According to Article 18 of the RSFSR Code of Criminal Procedure (1960):

The examination of cases in all courts shall be open, except in instances when this contradicts the interest of protecting a state secret. In addition, a close judicial examination shall be permitted, upon a reasoned ruling of the court, in cases of crimes of persons who have not attained the age of sixteen years, cases of sexual crimes, or other cases for the purpose of preventing the divulgence of information about intimate aspects of the lives of persons participating in the case. The judgments of courts shall in all cases be proclaimed publicly.

The court had no reason to apply any of these exceptions. There was no state secret involved, and the Soviet press, including *Izvestia*, the official organ of the Soviet government, gave wide publicity to the defendants' background and record. And yet, by no means were the proceedings public.

The RSFSR Supreme Court assumed jurisdiction over the case under Article 38 of the Code of Criminal Procedure, which provided that it "shall have jurisdiction over cases of special complexity or of special social significance, upon its own initiative or upon the initiative of the Procurator of the RSFSR". Although the case went to the Supreme Court and was thus marked as of singular importance, the access of the public to the courtroom was strictly limited and their reactions testified to a careful preselection of the audience. In spite of the fact that the Security Police promised to the students who demonstrated in December 1965 for the release of the writers a fair and public trial, the courtroom was barred to the general public as well as to foreign correspondents and observers. Coverage was limited to an official version which was biased and distorted. The speeches of the defence counsel were not reported, the answers and speeches of the defendants were referred to in a prejudicially unfair manner. Only witnesses for the prosecution were admitted to testify. Witnesses for the defence, among them the well-known writer Paustovsky, were barred. All this constitutes a violation of Soviet law and of Article 11 of the Universal Declaration.

The trial itself did not grant a "fair and public hearing by an impartial and independent tribunal" as required by Article 10 of the Universal Declaration. The indictment for anti-Soviet propaganda was based upon texts taken out of their context in order to secure a conviction. Thus, once more, a Soviet Court was used for a purely political objective. The supreme Court of the RSFSR gave striking evidence that, contrary to the Soviet Constitution

which stipulates that Courts are subject only to the law, it was subject to political considerations and not free to its vocation to administer justice according to the letter and spirit of legality.

The International Commission of Jurists regrets that the recent reforms in the USSR criminal law and criminal procedure have proved so inadequate when put to the first real test; a test in peace time on an issue of literary criticism. One cannot escape the fear that in a graver charge in a time of stress the judicial protection of the individual would be non-existent.

The only hopeful feature of this sad episode has been the independent reaction of communists, both within and without Russia. This criticism echoed the criticisms which the International Commission of Jurists has been compelled to make so often in regard to authoritarian regimes—be they of the right or the left.

Whoever was responsible for this blundering travesty of justice must now realize the damage that has resulted from it to the image of Soviet justice. How much higher the reputation of the RSFSR Supreme Court would stand in Russia—and throughout the world today—had they thrown out these absurd charges!

This case stressed once more the vital importance, under *any* system, of an independent judiciary who will not be influenced by the transient and often shortsighted views of the police or the Executive. It may not be too much to hope that this sad episode will bring this realization to all lawyers in Eastern Europe.

ICJ NEWS

Maître Jean Kréher, an eminent Paris advocate and President, since its inception, of the Executive Committee of *Libre Justice*, former President of the World Federation of United Nations Associations, International President of the *Union des Résistants pour une Europe Unie*, and Member of the International Commission of Jurists since February 1957, died in Paris on April 26, 1966.

Maitre Kréher, whose health was seriously affected by a prolonged period of detention in Buchenwald concentration camp, was a lawyer of the highest integrity and totally devoted to the cause of the Rule of Law and individual liberty. As a member of the Executive Committee of the Commission, he made numerous contributions to the activities of the Commission, which bore witness to his spirit of humanitarian understanding and to his unconditional devotion to the service of our common cause.

The International Commission of Jurists will cherish grateful and respectful memories of Maître Kréher.

SECRETARIAT

EXECUTIVE COMMITTEE

At the last meeting of the Committee, held in Geneva on March 4-5, 1966, it was decided to hold the full meeting of the International Commission of Jurists in Geneva. The Commission will thus meet in Geneva from September 30 to October 2, 1966. The next meeting of the Executive Committee will be held in Geneva from July 9 to 10, 1966, and will be principally devoted to preparing for the full meeting of the Commission.

WORLD CAMPAIGN FOR HUMAN RIGHTS

As a result of discussions held since the call of the Secretary-General of the ICJ, on December 10 last, for the launching of a World Campaign for Human Rights culminating in 1968, designated by the United Nations as International Year for Human Rights, the ICJ invited the representatives of the principal non-governmental organizations active in this field and which had indicated their desire to take an active part in the Campaign to a meeting in Geneva on May 14, 1966. The object of this meeting was to appoint a preparatory committee for the Campaign, which is to be responsible for working out concrete and detailed proposals for the structure, organization and programme envisaged for the Campaign, in the light of the exchanges of views and suggestions already made on the subject. At the moment of going to press it is not possible to give a detailed account of this meeting, which will be dealt with in the next issue of the *Bulletin*.

RESIGNATIONS AND APPOINTMENTS

The Executive Committee accepted, with great regret, the resignation of Sir Owen Dixon, former Chief Justice of Australia, for health reasons.

President René Mayer, President of *Libre Justice*, the French National Section of the ICJ, *Maitre des Requêtes honoraire* in the *Conseil d'Etat*, former Minister of Justice and former President of the Council of Ministers of France, was elected a member of the Commission and member of the Executive Committee.

Mr. Edward St. John, Q.C., President of the Australian National Section, was also elected a member of the Commission.

GUYANA

On the occasion of the accession to independence of British Guiana, under the name of Guyana, on May 26, 1966, the ICJ is very happy to welcome the emergence of the young Guyanese nation on to the international scene, and to address to the Guyanese nation and people its warmest wishes for a harmonious and prosperous future.

It will be recalled that the Report of the Commission of Inquiry constituted by the ICJ at the request of the government, to examine the problems of racial balance in the public service and to make appropriate recommendations on this subject, was one of the important documents before the constitutional conference on the future of British Guiana which was held in London last autumn. Truly striking evidence of the value attached by the participants at this conference to the work of the ICJ was provided by Order in Council no. 2161 of December 22, 1965, the preamble to which makes direct reference to the report of the Commission, and the operative part of which amends the Constitution of British Guiana with a view to implementing the recommendations of the Commission on recruitment into the police force.

VENEZUELA

Special mention should be made of the very remarkable initiative taken in Venezuela within the framework of the World Campaign for Human Rights.

In reply to the appeal launched by the Secretary-General of the ICJ, the Academy of Social and Political Science of Caracas, through its President, Dr. Angel Francisco Brice, officially notified the Secretariat of its participation in the Campaign. The Academy subsequently decided to create a Chair of Human Rights, an initiative which must be regarded as a major contribution to the Campaign. The facilities thus provided are intended principally for the students of the three universities of Caracas, and more especially for those studying law and journalism, but the public will be admitted. The courses, designed to last six months, will lead up to a special diploma. The curriculum, drawn up with exceptional ability, should effectively lead to the acquisition of a sound knowledge of the various historical, theoretical and practical aspects of the problems relating to human rights and their protection. It is to be hoped that the fine example thus set by the Academy of Social and Political Science of Caracas will be followed by other institutions in Latin America and elsewhere.

TECHNICAL ASSISTANCE TO AFRICA

On the occasion of the visit of Mr MacBride to Uganda, the ICJ was invited to appoint a commission of inquiry to examine and report on the requirements of lawyers for Uganda over the next ten or twenty years, within the general framework of the situation in East Africa and the probable evolution of the region. Indeed, the need for highly qualified professional lawyers, aware of their responsibilities towards a developing society, will increase with economic and social progress.

The governments of Kenya and Zambia have shown a very lively interest in this project. An inquiry of this nature is, in the eye of the ICJ, of very considerable importance, and the Commission hopes to be in a position to undertake it in the near future.

MISSIONS

Mr Edward St. John, President of the Australian National Section, visited Indonesia on behalf of the Commission. Following upon reports received from Mr St. John, the Secretary-General cabled to the Secretary-General of the United Nations urging him to use his good offices to secure the ending of the wholesale execution of communist supporters in Indonesia.

On his African tour, following his participation at the Ceylon Colloquium in Colombo and at the Annual Congress of the World Federation of United Nations Associations at Dar-es-Salaam, the Secretary-General was received by Mr. Julius Nyerere, President of Tanzania, Dr. Hastings Banda, President of Malawi, Mr. Kenneth Kaunda, President of Zambia, and Mr. Léopold Senghor, President of Senegal. Mr. MacBride informed President Senghor of the plans to hold a Regional Conference of French-speaking African countries in Dakar early in 1967.

On his way back from the Ceylon Colloquium on the Rule of Law, the Senior Legal Officer, Mr. L. G. Weeramantry, visited Bangalore (Mysore State, India) Karachi (Pakistan) and Amman (Jordan), where he had discussions with

the leading political and legal personalities. As a result of these exchanges of views, the Minister of Justice of Jordan and a number of other leading individuals showed a very lively interest in the work of the ICJ and were favourable to the possible creation of a national section of the Commission in Jordan.

On February 19, Mr Weeramantry addressed a special meeting of the Pakistan Bar Association on "The International Commission of Jurists and its work in promoting the Rule of Law." Mr A. H. Brohi, the President of the Bar Association, presided.

In April the Executive Secretary visited Algeria and Tunisia, where he renewed contacts with the Bench and Bar and discussed the possibilities of a closer co-operation with the lawyers of the Arab countries. In Tunis, Dr. Kabes addressed the 18th Congress of the Association of the Attenders and Alumni of the Hague Academy of International Law on "Economic Development and Legality".

In April Miss Hilary Cartwright, a member of the legal staff, visited Cyprus on behalf of the Commission. She visited the Supreme Court and a number of District Courts, and had talks with members of the Government, the Bench and the Bar, and with the legal adviser to the United Nations in Cyprus.

INTERNATIONAL CO-OPERATION

HUMAN RIGHTS

The Secretary-General travelled to New York for the 22nd session of the United Nations Commission on Human Rights, which was held from March 8 to April 4, 1966. The proposal of Costa Rica for the creation of a High Commissioner for Human Rights had been placed on the agenda of the session at the request of the General Assembly of the United Nations.

The discussion, which lasted four days, assumed the character of a major debate. Mr. MacBride, who was invited to address the Commission, emphasised the value of the proposal and the support it had received from the international organisations working in the Human Rights field. A resolution was finally adopted by 16 votes to 5 welcoming the proposal, establishing a Working Group of nine member States to study the proposal in depth and instructing the Secretary-General to prepare an analytical and statistical study for the Working Group. The following Member States voted for the resolution adopted: Argentina, Austria, Chili, Costa Rica, Dahomey, France, Israel, Italy, Jamaica, Netherlands, New Zealand, Phillipines, Senegal, Sweden, United Kingdom and United States (16). Those voting against were India, Iraq, Poland, Ukraine and the U.S.S.R. (5). The Commission of Human Rights consisted of 21 Member States: all voted.

The Working Group appointed consists of the following Member States: Austria, Costa Rica, Dahomey, France, Jamaica, Phillipines, Senegal, United Kingdom and United States.

NEWS

THE STATUS OF WOMEN

Miss H. Cartwright, a member of the legal staff, attended the 19th session of the United Nations Commission on the Status of Women, which was held in Geneva from February 22 to March 11, 1966, as an observer on behalf of the Commission. She used this opportunity to recall the efforts of the ICJ towards the elimination of all forms of discrimination, particularly in regard to women, and called for concerted action in this field within the framework of the World Campaign for Human Rights leading up to the United Nations International Year for Human Rights.

DISARMAMENT

Miss Cartwright also represented the ICJ at the non-governmental organisation seminar on disarmament, held at the *Palais des Nations* in Geneva from March 29 to 31, 1966, on the initiative of the World Veterans' Federation.

BURUNDI

Having taken note of recent events in Burundi and of the Press Release issued by the International Commission of Jurists on January 8 1966 relating to these events, the International Labour Office drew the attention of the United Nations Commission on Human Rights to "the question of violation of Human Rights in Burundi". The representative of Burundi at the Commission gave an undertaking that a mission would be sent to the International Labour Office and that it would furnish all information sought.

NATIONAL SECTIONS

INDIA

The Indian National Section has decided to organize a regional conference in the relatively near future. Following upon the Bangkok Conference and the Ceylon Colloquium, this welcome initiative will not fail to have extremely important repercussions on the development of the activities of the ICJ in Asia and on respect for the Rule of Law in this region. The very active Mysore State Commission of Jurists has offered to act as host for the conference. On his way back from Ceylon, Mr. L. G. Weeramantry, Senior Legal Officer, discussed this matter with the leaders and members of the Mysore State Commission. The possibilities that can be offered by Mysore, both for the holding of such a conference and for the accommodation of the participants, seem at first sight to be promising.

NORTHERN IRELAND

This Section has recently published a critical report dealing with the new Criminal Justice Bill introduced by the Stormont Government.

MEXICO

It was announced in the last issue of the Bulletin that an organizing committee had been set up in Mexico with a view to the formation of a Mexican

National Section. This has now been completed, and the Executive Committee of the ICJ, at its last meeting in March, approved the statute of the new Mexican National Section.

PAKISTAN

Last February a constitutive meeting of the Pakistan National Section was held in Karachi, in the presence of the Senior Legal Officer of the Commission, Mr. L. G. Weeramantry. The Executive Committee of the ICJ approved its statute at its last meeting. The new national section will be called "The Pakistan Rule of Law Society". Its seat will be in Karachi. Two sub-sections will be set up, one for East Pakistan and the other for West Pakistan. A meeting has already been held in Dacca, under the chairmanship of Mr. Justice Murshed, Chief Justice of East Pakistan, with a view to the formation of the East Pakistan sub-section. The National Section will be directed by an elected council of between 20 and 30 members, the two regions being equally represented. A first interim council has been appointed, with Mr. H. B. Tyabji as Chairman and Mr. Iqbal Kazi as Secretary.

UNITED KINGDOM

The first report of a Committee set up by *Justice*, the British National Section of the Commission, to enquire into the conduct and costs of civil claims, on Civil Claims arising out of Motor Accidents, was published on March 10, 1966. This report, which received widespread publicity in the British legal and general press, was widely acclaimed. Copies are obtainable from the Secretary of Justice, 12 Crane Court, Fleet Street, London, E.C.4., at a cost of 6s. to members and 9s. 6d. to non-members.

TRINIDAD

The Chairman of the Trinidad branch of "Justice", Mr. George Dhany, has approached the Attorney-General requesting discussions on the appointment of an Ombudsman with a delegation from Justice Trinidad.

It will be remembered that a similar provision was recommended in principle by the ICJ Commission of Inquiry which sat in British Guiana in October, 1965, and that the appointment of an Ombudsman was included in the new Guyana Constitution.

RECENT PUBLICATIONS OF THE INTERNATIONAL COMMISSION OF JURISTS

Journal of the International Commission of Jurists

Volume VI, No. 2 (Winter 1965): The Federal Constitutional Court of the Federal Republic of Germany; Comparative Law in Eastern Europe; The Rule of What Law? A Korean Conundrum; Southern Rhodesia and the Rule of Law; United Nations Draft International Convention on the Elimination of All Forms of Religious Intolerance; Digest of Judicial Decisions on Aspects of the Rule of Law; Books of Interest.

Bulletin of the International Commission of Jurists

Number 25 (March 1966: Aspects of the Rule of Law: Haiti, Hungary, Latin-American Parliament, Papua and New Guinea, Poland, Turkey; I.C.J. News.

SPECIAL STUDIES

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).

Executive Action and the Rule of Law (June 1965): Report on the proceedings of the International Congress of Jurists, held in Rio de Janeiro, Brazil, in December 1962.

The Dynamic Aspects of the Rule of Law in the Modern Age (July 1965): Report on the proceedings of the South-East Asian and Pacific Conference of Jurists held in Bangkok, Thailand, in February 1965.

Racial Problems in the Public Service (October 1965): Report of the British Guiana Commission of Inquiry constituted by the International Commission of Jurists.

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