

*FOR THE RULE
OF LAW*

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

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No. 29

JUST PUBLISHED

THE RULE OF LAW AND HUMAN RIGHTS

Principles and Definitions elaborated at the Congresses and Conferences held under the auspices of the International Commission of Jurists, rearranged according to subject-matter, with cross-references to the principal human rights conventions and well indexed.

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THE CONFERENCE OF FRENCH-SPEAKING AFRICAN JURISTS

Introduction

The first Conference of French-speaking African Jurists met in Dakar (Senegal) from January 5 to 9, 1967, under the auspices of the International Commission of Jurists, in collaboration with its French National Section *Libre Justice*, and the *Association Sénégalaise d'Etudes et de Recherches Juridiques*.

This Conference, which was called to discuss, within the context of present-day Africa, "The Function of Law in the Development of Human Communities", brought together some 80 jurists from 15 countries of French-speaking Black Africa and from Madagascar, as well as a large number of African and other observers and representatives of the leading international organisations. It afforded an opportunity of reaffirming the allegiance of all the jurists present to the universal ideal of the Rule of Law, and it drew up many important practical recommendations for the application of this principle in the African nations.

The Conference was opened by His Excellency, Badara M'BENGUE, Minister of Justice of Senegal, welcoming the participants on behalf of the President of the Republic, His Excellency Leopold Sédar SENGHOR, under whose Patronage the Conference was held.

After President René MAYER had expressed the thanks of the International Commission of Jurists, the Conference elected the following officers :

Chairman : Kéba M'BAYE, President of the Supreme Court of Senegal.

Vice-Chairmen : Alphonse BONI, President of the Supreme Court of the Ivory Coast.

François GON, President of the Supreme Court of the Central African Republic.

Luis IGNACIO-PINTO, Ambassador of Dahomey to Washington and Ottawa, Permanent Representative at the United Nations.

BA OULD NE, President of the Supreme Court of the Islamic Republic of Mauritania.

René H. A. RAKOTOBÉ, President of the Superior Council of Institutions of the Republic of Madagascar.

Ibrahima SALL, President of the Supreme Court of Mali.

Secretary : M^c Abdoulaye WADE, Senegal.

M. Kéba M'BAYE, President of the Supreme Court of Senegal and Chairman of the Conference, thereupon opened the first plenary working session of the Conference with a short address. He then gave the floor to M. Seán MacBride, Secretary-General of the International Commission of Jurists, who set out the problems evoked by the Theme of the Conference and arising from the working paper submitted to the participants.

Speeches were made by the representatives of the great international organisations, the United Nations, the U.N. High Commissioner for Refugees, the International Labour Organisation, the Council of Europe and O.C.A.M. (*Organisation Commune Africaine et Malgache*). The Conference then set up two Committees to examine, first, the problems arising from "The protection of Human Rights against the arbitrary exercise of power", and secondly, those relating to "Public Opinion and the Rule of Law". The officers of the two Committees were :

COMMITTEE I :

Chairman : President Edilbert-Pierre RAZAFINDRALAMBO, Republic of Madagascar.

Vice-Chairman : President Bernard PONNOU-DELAFFON, Niger.

Rapporteur : Maître Benjamin d'ALMEIDA, Dahomey.

Secretaries : Mme. Suzanne DIOP, Senegal.
M. Daniel MARCHAND, I.C.J.

COMMITTEE II :

Chairman : Maître Anani Ignacio SANTOS, Togo.

Vice-Chairman : Conseiller Pierre-Raymond TSHILENGE, Congo-Kinshasa.

Rapporteur : Conseiller Joseph BUKERA, Burundi.

Secretaries : President Oumar MAHAMAT, Chad.
Mme. Anna POUYAT, I.C.J.

The work of the Conference then proceeded in Committee, following which the reports of the two Committees were submitted, on January 9, to the plenary session for study and adoption.

The final plenary session was addressed by several speakers, including the President of the Supreme Court of the Ivory Coast, Alphonse Boni, the Apostolic Delegate, Mgr. G. Benelli, and President René Mayer, President of "Libre Justice". Maître Lamine Gueye, President of the National Assembly of Senegal, gave the principal address, and the Conference was then officially closed by its Chairman, M. Kéba M'Baye.

At the conclusion of its work, the Conference adopted by acclamation the Declaration of Dakar, which is set forth below, together with the Conclusions of the Committees of the Conference.

DECLARATION OF DAKAR

This Conference, meeting in Dakar (Senegal) from January 5 to 9, 1967, under the auspices of the International Commission of Jurists, in collaboration with the *Association Sénégalaise d'Etudes et de Recherches Juridiques* and with *Libre Justice*, and consisting of 80 jurists from 15 countries of French-speaking Black Africa and from Madagascar, reached the following Conclusions :

THE CONFERENCE,
CONVINCED

That Law is the only sure foundation of an organized world, built on Peace and Justice, which is the aspiration of all mankind ;

That in particular the Law can and must be the principal instrument of the internal cohesion and stability required for the construction of new Nations; and at the same time a dynamic force for the development of modern and prosperous States able to afford all members of the community the standard of living and the enjoyment of the rights and freedoms essential to the dignity of Man,

CONSIDERS

That the Law cannot fully perform its function unless it enjoys the loyalty, respect and support of the people ;

That the example of submission to the law must come from the State, the public authorities and leaders at every level of responsibility ;

That a campaign to inform and educate public opinion is essential in order that everyone shall understand the function of the Law, shall recognize the need for rules to govern the relations of citizens with one another and with their leaders if a country is not to be plunged into either anarchy or despotism, and shall realise that the Law exists to assist him, and in particular

the humblest of his brethren, in their political, economic and social life ;

That jurists have a duty to take the initiative necessary to give substance to these ideas in the daily lives of the citizens and to demonstrate in actual practice the advantages they may obtain from a legal system conforming to the Rule of Law whenever they consider that they have a just grievance ;

That the independence of the judiciary remains the best safeguard of legality, and that a judicial system adequate both in size and quality to perform the services expected of it, far from being a luxury even in a poor State, must be accepted as one of the essential cogs in the mechanism of society and the progress of the nation as a whole ;

BELIEVES

That abuses of power occur even in the most enlightened democracies, and it is therefore imperative to have available effective machinery to provide protection against the arbitrary use of power and to provide a means of redress if need be ;

That the political, economic and social construction of emerging nations, and especially the systematic planning of programmes for development, are liable to lead to encroachments on certain individual rights. Jurists must therefore maintain constant vigilance to ensure an equitable balance between the requirements of the public well-being and the rights of the individual, and must ensure that measures adopted to deal with pressing problems of a temporary nature are not allowed to be used as permanent solutions ;

That it is not possible to introduce discrimination into the concept of the dignity of man ; that the dignity of man in Africa calls for standards no lower than those recognized elsewhere ; that any erosion of this ideal would be an unacceptable retrograde step ; and that always and everywhere an irreducible minimum must be preserved below which the dignity of man can no longer exist ;

That the development of the nation and the advancement of the individual politically, economically and socially are not opposing, but rather mutually interacting concepts, and that the

mobilizing of the vital energies of a country can only lead to real and lasting results if it is carried out by methods consistent with the dignity of man and the principles of the Rule of Law.

AFFIRMS

That once the problems resulting from the heritage of the colonial era have been isolated, it becomes apparent that the basic requirements of the Rule of Law are not essentially different in Africa from those accepted elsewhere; that the economic, social and cultural difficulties Africa faces today cannot justify the abandonment of the fundamental principles of the Rule of Law, and that it is the duty of all jurists to make these principles the dynamic concept through which progress is achieved.

CONDEMNNS

Intolerance and discrimination in all their forms, especially racial discrimination and political systems based on apartheid, as being incompatible with the dignity of man and the principles of the Rule of Law ;

All vestiges of an outworn colonialism which hamper the growth of an African Africa towards progress, stability and unity, at the same time solemnly re-affirming that the will of the people is the only basis for the authority of those in power.

APPEALS

to all who believe in Peace and Justice to take part, each within his own sphere of activity or influence, in a vast campaign at the national, regional and global levels so that the year 1968, designated by the United Nations as the International Year of Human Rights in commemoration of the twentieth anniversary of the Universal Declaration, may be a milestone in the progress of all the peoples of the earth toward the acknowledgment, the respect and the promotion of the Rights and Freedoms which are essential to human dignity.

and ADOPTS as a whole the Conclusions annexed to this Declaration.

THE PROTECTION OF HUMAN RIGHTS FROM THE ARBITRARY EXERCISE OF POWER

Conclusions adopted by the Conference on the proposal of Committee I

CONVINCED that the protection of the individual from the arbitrary exercise of power and the right of each person to the full enjoyment of human dignity must be expressly guaranteed, not only by the Law, but also by appropriate institutions and by simple and effective procedures, both at the national and at the international level, as well as by criminal sanctions against those who infringe fundamental rights and freedoms,

This Conference of French-speaking African Jurists, meeting in Dakar, examined in particular questions relating to personal freedom, freedom of work, freedom of association, the criminal process and the protection of the individual against the arbitrary exercise of administrative power, these being matters which, in the present situation of Africa and Madagascar, appeared essential for the application of the Rule of Law.

The Conference reached the following conclusions :

ARTICLE I — *Personal freedom*

1. The status of the person is the subject of legislation which varies from one African country to another. This diversity should not, however, prevent each of the States from adopting laws which formally condemn slavery and the slave-trade, as well as other institutions or practices similar to slavery, such as servitude for debt, bond-service, oppressive labour contracts, obstructions placed in the way of a free choice of marital partner, any abuse of parental authority, especially by exploiting the work of children, and generally any situation interfering with the freedom of the individual and arising from the alleged consent of the person concerned.
2. The application of these principles should be ensured by laws providing for criminal sanctions against all who violate them, and by affording to the person whose freedom has been

curtailed, effective, practical, simple and free means — in particular by way of legal remedies — by which he may recover that freedom and fully enjoy it.

3. These measures can only be effective if the public authorities do their utmost to ensure that each individual is fully aware of his rights and of his duty to respect the rights of others. The public authorities must also establish such economic and social structures as are necessary to protect or to restore the freedom of each individual, for example by adopting an appropriate land tenure system.
4. To emphasize their determination to eliminate every form of slavery, States should subscribe to the International Convention of September 28, 1926, amended by the Protocol of December 7, 1953, and the Supplementary Convention of September 7, 1956, on "the abolition of slavery, of the slave trade, and of other institutions or practices similar to slavery".

ARTICLE II — *Freedom of work*

1. The French-speaking African States are at present struggling for economic and social development, and are faced with especially difficult situations in their endeavour to ensure that each of their citizens may reach a standard of living acceptable to modern man. To accomplish this, the States should awaken in each individual the awareness of his own obligations in the building of his country.
2. Nevertheless, no exigency of development can justify forced labour, because it gravely jeopardizes the dignity and freedom of man. The public authorities have the duty to provide employment for each individual, at the same time guaranteeing him a free choice of employment and fair conditions of work, so that he may participate freely and to his utmost in the development of his country, from which he will be the first to benefit.
3. Freedom of work is nevertheless compatible with vocational guidance with a view to the utilisation of the capacities of each individual in the best interests of the community and, in exceptional circumstances, with the obligation of the citizen to perform a given task for which he shall receive a fair remuneration. In this respect, plans must be made for appropriate vocational training as well as for a fully organised

system of labour inspection in order to guarantee fair conditions of work.

4. Each State should co-operate in the initiatives undertaken in this field by the International Labour Organisation, in particular by ratifying the International Labour Conventions and by enacting the legislation required for their effective application.

ARTICLE III — *Freedom of association*

1. The right to participate in the political life of the country, freedom of religion, freedom of association and trade union rights are all aspects of the fundamental right of each individual to form and express his opinions. This right must be guaranteed against arbitrary suppression or restriction, and must not be limited in any way so long as it is not exercised in a manner detrimental to public order and safety.
2. The right of all persons to take part in public life implies the possibility for differing trends of opinion to find free expression and thus contribute to the common task of building the nation.
3. The rights and freedoms of the worker are merely illusory when they are not sustained by a free trade unionism. By free trade union is meant a trade union entirely independent of the public authorities and open to all who fulfill the conditions of membership. Membership of a trade union should not be obligatory.
4. The initiatives of the United Nations Organisation and of the International Labour Organisation in relation to freedom of expression and trade union rights, should receive the full participation of States, in particular by the ratification and application of the existing international conventions.

ARTICLE IV — *The criminal process*

1. There should be strict adherence to the principle that criminal offences and penalties must be defined and provided for by legislation. Legislative provisions should leave no margin for arbitrary interpretation, nor should they accept vague notions such as those of "idleness", "subversion", or "danger to the community". This principle requires absolute respect of the rule against retro-activity of criminal legislation.

2. Freedom from arbitrary arrest or detention should be scrupulously safeguarded by law and in practice. Preventive detention without trial must be considered contrary to the Rule of Law. Every person on arrest should be brought before a judge or magistrate within a very short time, and should be set free if he has been arbitrarily arrested. He should subsequently be able to claim compensation for damage suffered.
3. Every person accused of a criminal offence has the right to all the necessary safeguards for his defence.
4. Since complete independence of the courts is the best guarantee the individual can have against the arbitrary exercise of executive power, it is indispensable that the principle of the separation of powers should be scrupulously observed.
5. In case of war or other public danger threatening the life of the nation, the creation of special courts may be permitted only to the extent strictly required by the exigencies of the situation, and subject to the observance, in all circumstances, of the safeguards set out in this Article.

ARTICLE V — *Protection of the individual against arbitrary action of the administration*

It is essential for each individual to have a readily available remedy against acts of the administration which violate his rights and freedoms, and in particular, access to a court of law.

ARTICLE VI — *Institutions and procedures tending to promote and ensure respect for Human Rights at the international level*

1. States, in co-operation with the United Nations Organisation and its specialised agencies, should ensure respect for human rights and fundamental freedoms in practice, by putting into operation the principles contained in the Universal Declaration of Human Rights, by ratifying existing International Conventions relating to human rights, especially the Conventions designed to eliminate discrimination in all its forms, and by taking appropriate steps to ensure their application.
2. States are urged to support the project for the institution of a United Nations High Commissioner for Human Rights.

3. The International Commission of Jurists is requested, in co-operation with the competent African organisations, to study the feasibility of creating a regional system for the protection of human rights in Africa ; an Inter-African Commission on Human Rights, with consultative jurisdiction and the power to make recommendations, might be the first element in such a system.
-

PUBLIC OPINION AND THE RULE OF LAW

Conclusions adopted by the Conference on the proposal of Committee II

BELIEVING that public opinion cannot comprehend the concept of the Rule of Law unless the State affords its citizens the necessary material and moral background, free and readily available access to the law, a legal system they can understand and an appropriate educational programme,

This Conference of French-speaking African Jurists, meeting in Dakar, AFFIRMS that the immediate and absolute imperative for government action is the struggle for the economic, social and cultural advancement of the African.

IT RECOGNIZES :

— that since action for the implementation of the Rule of Law necessarily involves its full acceptance by political leaders, the latter must be convinced that this Rule of Law, far from being an impediment to action, constitutes a dynamic factor in economic and social progress.

In this respect, the African jurists draw the attention of governments to the fact that acceptance of the Rule of Law by public opinion engenders national security and stability in human relationships, without which there can be no public confidence.

I. Access of the individual to the law

1. Access to the law by individuals is best assured if they are able to play a part, under a democratic system, in the enactment of the law.
2. To ensure respect for the Rule of Law in practice, it is essential that the layman should have available to him a legal system to which he can turn with complete confidence. It is also essential that the layman should be acquainted with the institutions which exist to vindicate his rights and freedoms when he considers that they have been infringed, that these institutions should be readily available to him, and that the persons responsible for administering justice should enjoy his confidence and respect.

(a) The role of the judge is all the more important in that cases are often decided by a single judge. Hence the question of the quality of judges is a fundamental one. Their training and recruitment often raise problems for the African States, due on the one hand to technical and financial difficulties, and on the other to the reluctance of young people to embark upon a judicial career.

(b) The independence of the judiciary is the fundamental element in a system based on the separation of powers and ensuring the protection of human rights against the arbitrary exercise of power ; it should not be guaranteed solely by statute, but above all by a material and financial position which protects the judge from attempts at corruption and other pressures that might be put upon him.

It must be remembered that the judge himself plays an important part in the establishment of his independence ; therefore, he should, in particular, refrain from any activity liable to jeopardize it.

(c) Whether he is a citizen or a foreigner, the practising lawyer should be aware of the role he has to play in the public eye. The fact that he is the person to whom the litigant turns initially gives him the opportunity to act as educator and counsellor. If the layman is to have full confidence in the lawyer, the latter must strictly apply and observe the rules and ethics of his profession, which should provide the necessary safeguards both of his independence

vis-à-vis the authorities, and of conditions permitting him fully to perform his duty, especially in criminal cases.

(d) In order that assessors and interpreters may enjoy the confidence of the layman, and for the satisfactory administration of justice, certain standards of honesty and competence should govern their recruitment.

(e) In all court proceedings, it is essential that the clerks of the court perform their duties diligently and punctually.

(f) It is imperative that the citizen should understand that his attendance at court as a witness is an obligation he must fulfil with complete honesty and with no other purpose than to assist in the administration of justice.

3. Respect for the Rule of Law is also based on the effective operation of the judicial system, which implies an absolute respect for the status of the judiciary and a simple, rapid, effective and inexpensive procedure for bringing matters before the courts, for obtaining a judgment and for the execution of judgments.

4. An understanding by the layman of the language used in the courts is a necessary condition for the realisation of the Rule of Law.

5. (a) In Africa, where case law plays a major part in law-making, it is essential that the judges should be fully aware of their responsibility in the interpretation of laws likely to have a profound effect on the daily lives of individuals, and the vague wording of which may leave room for their wrongful or arbitrary application.

(b) The effective implementation of the judgments of the courts is an essential factor in establishing and maintaining the layman's confidence in the legal system and its administration. This implies a complete co-ordination between judges and other judicial officers.

6. (a) The lack of qualified judges constitutes an extremely grave impediment to the effective administration of justice in certain countries. To overcome this, it is of the utmost importance that a vast effort should be undertaken to arouse the interest of young people in a legal career.

(b) It would be desirable to explore ways and means of setting up an African inter-state body for professional

training, and possibly a system of inter-African technical assistance provided by those countries which have the greatest numbers of jurists, judges and practising lawyers.

(c) The project currently under study by the *Organisation Commune Africaine et Malgache* (OCAM) to set up a legal department within the organisation, responsible in particular for the centralisation of information and co-ordination of activities in the legal field, would be of considerable help in this connection and should be strongly encouraged and supported.

(d) It is desirable that methods for recruiting and training judges should be standardized by procedures similar to those operating in certain countries, so as to eliminate the antagonisms that might arise from varying standards and might result in a lack of respect and confidence on the part of the layman in the judgments of the courts.

(e) It would undoubtedly be valuable if young African judges could have their training broadened to include other disciplines which would enable them, along with their judicial function, to play a role as educators in a population too often ignorant of the most elementary legal concepts.

(f) The International Commission of Jurists is requested to explore ways in which it might be able to play a role in legal education and training at the higher levels, where the problem is most acutely felt.

7. (a) If the legal system is to have the full confidence of the layman, it must necessarily be physically within his reach, that is to say that courts, either permanent or operating on a circuit system, should be distributed throughout the whole territory, even in the most inaccessible places. In this connection, young qualified jurists must be firmly reminded that it is their civic duty to accept posts in rural areas.

(b) To facilitate the work of judges, especially when circumstances do not make it possible for the litigants to have the assistance of a lawyer, it might prove useful to introduce a civil examining magistrate who would be responsible for establishing the facts of the case.

(c) Especially where those seeking justice are very often

poor, legal aid, easy to obtain and with maximum coverage, is indispensable for the protection of rights and freedoms.

(d) In countries where there is a particularly serious shortage of practising lawyers, it would be desirable to study ways of providing for easier access to the Bar and to the right of audience before the courts.

8. Racial discrimination and intolerance result in inequality of citizens before the law ; therefore, every regime which gives legal or factual status to a policy of apartheid must be most vigorously condemned.

II. Popular awareness of the Rule of Law.

9. Since the Rule of Law can only protect citizens to the extent that they are aware of its value and its usefulness to them, particular efforts must be made to develop this awareness in the minds of the people.
10. A massive drive to educate public opinion is therefore imperative. It must devote itself particularly to teaching all citizens :

(a) that it is necessary for them to accept and respect the rules of law governing their community, so that the relations of citizens with one another and with their leaders may not degenerate into anarchy or despotism ;

(b) that the primary purpose of these rules is to protect them, especially the humblest and weakest among them, in their political, economic and social life ;

(c) that it is therefore in everyone's interest to protect these rules and contribute to their proper functioning.

Such a programme will have to be adapted to the special conditions of the various social categories, and will have to be carried on both within the public sector, using the means available to it, and also within the private sector and the family circle, in urban centres, and especially in rural areas.

The technique of information campaigns preceding certain legislative reforms, which are necessary for the development of the country but involve profound changes in traditional customs, should be encouraged, so as to bring about popular participation in the legal life of the community.

11. General education, especially the civic education of all citizens and above all of youth, should be intensively under-

taken by the State. Popular manuals explaining the Rule of Law should be published for teaching at primary, secondary and university levels. Such publications might be prepared by the national education authorities of the various countries, in collaboration with international organisations, in particular UNESCO and the other specialised agencies of the United Nations.

12. All organisations which may have a bearing on the life of the individual should provide him with a civic training to develop his awareness of the Rule of Law. Among others, political parties, trade unions, student organisations and religious groups, can play a considerable role in this respect.
13. In countries where the majority of the population is rural, the rural leader has an essential task in promoting economic advance, the capacity to think for oneself, the diffusion of information and in providing an introduction to the modern world. His influence may be great, and the task of developing an awareness of the Rule of Law in the group to which he belongs devolves principally upon him.
14. Mass communication media are essential for imparting to public opinion an awareness of the principles designed to safeguard the Rule of Law.

It is essential that national radio stations broadcast regular educational programmes on Human Rights.

It is also essential that legislation dealing with the media of communication should provide them with a legal status guaranteeing the freedom of expression of all opinions.

Since mass communication media must also be educational, it is desirable that they should benefit from the large-scale support of the State; this should not, however, lead the government to succumb to the temptation to aid only those media which disseminate the ideas of the party in power; and a steady expansion must go hand in hand with the most complete freedom.

Well informed public opinion is an important factor in the development and construction of a country.

15. Given the essential role of woman in the social structure, economic and social progress is inescapably linked with her advancement. This requires a special effort to provide

women with the standard of education which will allow them to play their full part in society.

The efforts undertaken to this end by the legislatures of most of the African countries since independence should be continued and encouraged.

16. The States should encourage each year the observance of Human Rights Day, December 10, commemorating the adoption of the Universal Declaration of Human Rights in 1948.

The International Year for Human Rights, 1968, which will commemorate the 20th anniversary of the adoption by the United Nations of the Universal Declaration, should provide States with the opportunity to undertake among their citizens a vigorous and extensive popularisation campaign of the fundamental concepts of the Rule of Law and of Human Rights.

Part II of the article on Agricultural Collectives in Eastern Europe will be published in the next issue of the Bulletin.

CONSTITUTIONAL REFORMS IN HUNGARY

In November 1966 the Hungarian National Assembly enacted Law No. 111 of 1966 concerning the Election of Deputies to the National Assembly and of Local Council Members (*Magyar Közlöny* (Official Gazette), No. 71, November 18, 1966). This electoral law heralds a new period of constitutional reforms in Hungary: in an interview given to Jo Grimond, the leader of the British Liberal Party, and published in *The Guardian* (October 19, 1966), the Prime Minister disclosed that general elections would be held in 1967. A few weeks later, he announced to the Congress of the Hungarian Socialist Workers' (Communist) Party that the elections would be followed by the preparation of a new Constitution (*Radio-Budapest*, November 30, 1966). Election day was fixed by the State Council for March 19, 1967.

The International Commission of Jurists has drawn the attention of the readers of its *Bulletin* to the growing role of National Assemblies in many countries of Eastern Europe (No. 20, September 1964), and to constitutional developments tending to incorporate in new Constitutions a detailed catalogue of human rights and new constitutional safeguards for the application of these rights. This trend has been further emphasized in a work recently published in English in Budapest, *Socialist Concept of Human Rights*:

The realization has been gaining ground in the past years (in countries of Eastern Europe) that the strengthening of material safeguards, the pointing out of such elements of the social system which are indeed primary requirements of the exercise of such rights, are not incompatible with the detailed elaboration of the legal safeguards of these rights and their *laying down in constitutions*. (Italics in the original, p. 19.)

The new electoral law and the announcement of plans for a new Constitution in Hungary should be considered in the context of this general trend which is common in different degrees to all the countries of Eastern Europe.

The introduction of the draft Electoral Law to the National Assembly received widespread publicity in the Hungarian press. The following points which emerge from the debates, based on reports in *Népszabadság*, the newspaper of the Hungarian Com-

munist Party (November 12, 1966) sum up the intentions of the legislature.

The single-list system, which amounted to an adaptation of the proportional electoral system to the conditions of a single ruling party (and in which electors only had the choice to vote for the pre-established list of candidates or abstain) has been declared obsolete. Instead, the system of individual constituencies will be established permitting the nomination of more than one candidate for a given seat. The Rapporteur of the Bill, Ferenc Erdei, Secretary-General of the Patriotic People's Front, stated that the right to nominate several candidates had become a basic requirement of socialist democracy, but he added the caution that it has a completely different connotation in the new Hungarian electoral system than in Western countries. There two or more candidates represent two or more parties competing for power and the polls decide which of them should exercise sovereign State power. In a socialist democracy power has been won by the Communist Party, therefore it is not up to the citizens to decide what other political system they would prefer. They may choose, however, the person or persons who in their opinion would best represent the established political system. This electoral system, introduced for local council elections in 1954, has proved successful and will be applied to parliamentary elections.

The nomination procedure (amounting in fact to primary elections) is therefore of special significance. Proposals for candidates can be put forward at electoral meetings organized by the Patriotic People's Front, the mass organization of the Communist Party. The right to nominate is vested in the Communist Party, the Communist Youth Movement, the Trade Unions, factory and farm collectives and finally in every individual elector. The proposals made are then debated at the electoral meetings and voted upon, and the resulting nominations are forwarded to the local electoral committee of the People's Front. Vice-Premier Antal Apró, speaking for the Government which sponsored the Bill, stated :

"If the electoral meeting cannot agree to entrust any single person with the representation of their interests, more than one candidate may be nominated."

Elections will then be conducted by voting in the individual constituencies on election day for the one or more candidates finally nominated by the Election Committees.

Vice-Premier Apró then continued :

"I am firmly convinced that under the new Bill only those candidates can obtain a majority who represent the policy of the Party..."

The Government speaker conceded that a multi-party system is not incompatible with socialism. Indeed, he said that in some other socialist countries today, there were several political parties co-operating on the common basis of the construction of socialism. But, he added, "We are convinced that the multi-party system is not a criterion of democracy". In other words, the proposed constitutional reforms will not include the re-introduction of the multi-party system.

The Government speaker emphasized that the new National Assembly, elected on the basis of the new Electoral Law, is expected to assume a greater role in the public life of the country. An extension of legislative activities is planned, the Committees of the National Assembly are to have a greater role in the preparation of topics debated by Parliament and they will be able to introduce Bills. Generally speaking, it is intended that the Assembly should discuss all the country's major problems.

Primary elections to nominate candidates for individual constituencies, conducted by local electoral meetings and supervised by Electoral Committees, were first introduced in Eastern Europe by the Yugoslav Electoral Law of 1963 (*Official Gazette* 1963/14/211). The idea was taken over with considerable limitations by the Czechoslovak Electoral Law of January 31, 1964 (*Bulletin* No. 19) and is now followed by the Hungarian Electoral Law, which adopts a position somewhere between the original Yugoslav concept and its Czechoslovak version. The Yugoslav Electoral Law provides for primary elections in which every group of 200 electors — or at least 20 from each locality belonging to the district — may put forward nominations. The candidatures are then discussed and voted upon at electoral meetings, the results of which are communicated to the Electoral Commissions, presided over by a judge, which supervise their legality and register nominations. The list of registered candidates is published locally and in the *Official Gazette*. On election day the voters choose between the registered candidates of their constituency; the candidate obtaining the greatest number of votes is elected.

The Czechoslovak system adopted the principle of primary elections, which in Czechoslovakia are organized by the National Front, consisting of the Communist Party and its satellite parties. Candidates can be put forward by organizations and individuals. Voting is by a show of hands, as in Yugoslavia. The eliminating procedure has to be continued, however, until there is only one candidate left for each constituency. Voting at the general elections is limited to the single candidate in each constituency.

The Hungarian system theoretically allows more than one candidate in each constituency for general elections. The Government speaker mentioned that in the previous local council elections, conducted under the same principle, there were contested seats. (Of over 105,000 seats 179 were contested, *Népszabadság*, February 23, 1963.)

A similar Election Law, concerning local and parliamentary elections on the basis of individual constituencies was adopted by the Great National Assembly of Rumania in December 1966.

In an effort to cope with developments in social life, the countries of Eastern Europe are one after the other shaping new Constitutions. Czechoslovakia adopted a new socialist Constitution in 1960; Yugoslavia followed in 1963 (*Bulletin* No. 17) and Rumania in 1965 (*Bulletin* No. 23). In other countries preparatory work for the elaboration of a new constitution has been started. Now in Hungary a time-table has been set: a new Parliament elected under the new Electoral Law is expected to produce a new Constitution in spring 1967.

Drafters of the new Constitution may rely on the best traditions of the country, the positive and negative experiences of the past 20 years and on the contributions of comparative research in constitutional law. In the middle of the 19th century, when the European Continent was swept by revolutions, the Hungarian Reform Diet of March 1848 enacted Law No. 111 introducing for the first time into Central Europe parliamentary democracy, representation of the people by general elections and a Government responsible to Parliament.

A century later, in the aftermath of World War II, when the Universal Declaration of Human Rights was only the ardent wish of a mankind shaken by terror, in Hungary the Preamble to Constitutional Law No. I of 1946 proclaimed the inalienable rights of man and Law No. X provided for legal safeguards for those human rights. The Constitution of 1946 adopted by

all the coalition parties, including the Hungarian Communist Party, transformed the thousand years old Kingdom of Hungary into a modern Republic in which Parliament acquired all sovereign rights on the principle that all political power emanates from the people. The right of Parliament to legislate was checked only by a limited power of veto of the President. Executive power was vested in a Government responsible to Parliament, and the head of the Government was to be appointed by the President after consulting the Political Committee of Parliament.

The Constitution of the People's Republic of Hungary adopted in 1949 introduced the dictatorship of the proletariat to be exercised by the Communist Party as the leading force in political life. It was enacted in the era of Stalinism and modelled closely on the Soviet Constitution of 1936. Some of its shortcomings and limitations as well as the harmful influence of Stalinism, called officially the "cult of personality", are now officially admitted.

In Hungary considerable and serious work has been done in recent years by constitutional lawyers in the formulation of practical proposals for the improvement of the existing constitutional system.

In 1962 Professor István Kovács published a remarkable comparative treatise on "*New Elements of the Socialist Constitutional Evolution*" (reviewed: *Journal ICJ*, Vol. V, No. 2). This book raised many questions which in the past might have been at the back of the mind of constitutional lawyers in Eastern Europe. Propositions were made for a complete overhaul of the electoral system and the restoration of the role of the National Assembly as an effective legislative body. Numerous articles were published in the same sense, among which that of Professor Otto Bihari received special attention (*Társadalmi Szemle*, 1965, No. 8).

"*Fundamental Questions concerning the Theory and History of Citizens' Rights*" were subjected to a thorough analysis by Professor Imre Szabó, Director of the Institute of Legal and Political Science (in *Socialist Concept of Human Rights* (1966).

These studies were undertaken on a broad comparative basis taking into account developments in other Eastern European countries in which the Soviet example has ceased to be a unique model to be copied.

A very interesting international conference was held in December 1964 at Szeged University on "*Questions of the Socialist Constitutional Evolution*" with the participation of 23 scholars of constitutional law from Bulgaria, Czechoslovakia, the German Democratic Republic, Hungary, Poland, Rumania, the USSR and Yugoslavia. The conference showed a mutual cross-fertilization of ideas and the growing importance of special experience gained in each of these countries. (Cf. *Acta Juridica Academiae Sc. Hung.* VII. Fasc. 3-4.)

Cooperation between neighbouring countries is also proceeding on a bilateral level. In November 1966 a very representative Yugoslav delegation of jurists visited Hungary and toured the country.

The delegation was headed by Professor Jovan Djordjević, one of the principal drafters of the Yugoslav Constitution, and had talks with competent leaders of constitutional theory and practice (*Magyar Jog*, 1966, No. 11). In the light of the subsequent announcement of the drafting of a new Hungarian Constitution, this visit and the close collaboration decided on this occasion may acquire special significance.

Problems of constitutional development were also discussed in November at the Conference of the Austrian Commission of Jurists in Vienna in a European setting and with the participation of eminent jurists from Eastern Europe. The discussions yielded new impulses for further work and resulted in an awareness that the implementation of fundamental human rights and freedoms — the imperative task of the day — is, differences in the political systems notwithstanding, of more common concern than is generally imagined or admitted. (See *ICJ News* in this issue.)

Reshaping a nation's Constitution implies basic decisions as to the improvement of existing methods and the bold use of new ones to improve the social structure and the administration of justice both for the benefit of the people and for the sake of conforming with the highest standards accepted by the great family of nations. Accordingly, the drafting of the new Hungarian Constitution, like the adoption of the new Constitution of Uruguay, dealt with in this issue, has an importance transcending national limits. It is therefore understandable that the preparation and adoption of the Hungarian Constitution will be followed with great interest not only in Eastern Europe but also in the world-wide community of jurists represented by the International Commission of Jurists.

INROADS INTO FUNDAMENTAL RIGHTS IN INDIA

The Indian Constitution guarantees to its citizens the basic fundamental freedoms. It thus provides that, except according to well-established judicial procedure, no person shall be deprived of his life or personal liberty. It gives an arrested person the right to be informed of the grounds for his arrest, the right to consult and be defended by a lawyer of his choice, and the right to be produced before a magistrate within 24 hours of his arrest. At the same time the Constitution, recognising no doubt the need for the resurgent nation to protect itself adequately from anti-social and subversive elements, has given a legal status to preventive detention. In accordance with the authority so conferred and subject to the safeguards which the Constitution had thought fit to impose, the Indian Parliament in 1950 enacted the Preventive Detention Act.

The Preventive Detention Act of 1950

The Preventive Detention Act enables the Central Government or a State Government to place under detention any person, if it is satisfied that it is necessary to do so in order to prevent such person from acting in any manner prejudicial to :

- (i) the defence of India, the relations of India with foreign powers, or the security of India, or
- (ii) the security of the State or the maintenance of public order, or
- (iii) the maintenance of supplies and services essential to the community.

In the case of a foreigner, the Government may place him under detention with a view to regulating his continued presence in India, or with a view to making arrangements for his expulsion from India.

Section 7 of the Act requires the detaining authority to inform the detenu, unless it is considered to be against the public interest to do so, of the grounds upon which the detention order

was made. The section also enables the detenu to make representations against the order to the Government.

The Act provides for the establishment of Advisory Boards consisting of persons qualified to hold office as Judges of the High Court. The Government is required, within 30 days of the making of a detention order, to place before the Advisory Board the grounds on which the order was made together with any representations received from the detenu. The Advisory Board is required, after considering the material placed before it and calling for such further information as it may deem necessary and after hearing the detenu in person if he desires to be heard, to submit its report to the Government. If the Advisory Board reports that there is in its opinion sufficient cause for the detention, the Government may confirm the detention order. But if the Advisory Board reports to the contrary, the Government is required to revoke the detention order and cause the detenu to be released forthwith.

The maximum period of detention is twelve months, but the Government is entitled to make a fresh detention order if fresh facts which have arisen after the expiry of the original order warrant such a course.

The Preventive Detention Act was originally enacted for a period of one year only but, as a result of periodic extensions, it continues to be on the statute book.

The number of persons detained under the Act has varied from 10,962 in 1950 to 200 in 1963. The jurisdiction of the Courts has been held under the Act to be confined solely to the examination of the question of whether a detenu has been furnished with the grounds of his detention to an extent sufficient to enable him to make his representations to the Advisory Board.

State of Emergency

The Indian Constitution empowers the President, if he is satisfied that a grave emergency exists whereby the security of India or of any part of the territory thereof is threatened, whether by war or external aggression or internal disturbance, to proclaim a state of emergency. While such a proclamation is in operation, the State is empowered to make any laws or to take any executive action notwithstanding the guarantee contained in Article 19 of the Constitution relating to fundamental freedoms. By Articles 352, 358 and 359 of the Constitution, the President

is further empowered, during the continuance of the emergency, to suspend the right to move a Court for the enforcement of any of the fundamental rights.

In the month of October 1962, the armies of the Peoples' Republic of China advanced on the northern frontiers of India. On the 26th of that month the President issued a proclamation declaring that a state of emergency existed because of external aggression.

Defence of India Rules

On the same day on which the state of emergency was declared, the President promulgated the Defence of India Ordinance. This Ordinance incorporated the provisions of the Defence of India Act which was in operation in pre-independent India during World War II. Its Rules empowered the Government, *inter alia*, to place in detention any person, whether citizen or foreigner. Unlike under the Preventive Detention Act, however, a detenu had no right to be informed of the grounds for his arrest, nor was provision made for the establishment of an Advisory Board. He did not have the right to consult or be defended by a lawyer of his choice, nor was he required to be produced before a magistrate. His detention, moreover, could be for an indefinite period. In addition, the presidential promulgation suspended the fundamental rights of the citizen set out in Article 19 of the Constitution and denied him the right to move a Court for the enforcement of his rights of equality under Article 14 and of personal liberty under Article 21.

No constitutional state could have asked for or obtained fuller or greater powers over its citizens. In fact, an Indian judge dealing with certain orders made in the exercise of these powers has said :

“If these orders were valid these persons would, it appears, remain in preventive detention so long as the emergency legislation remains in force. It would not, in our view, be an exaggeration to say, if ours was a police state and we had never heard of democracy and the Rule of Law, orders passed in such a case would not have been more arbitrary and oppressive than the orders with which we are dealing.”

Within one month of these Rules coming into force, more than 200 members of the Indian Communist Party in various Indian States, including leaders of the opposition in West Bengal, Kerala and Andhra Pradesh, were arrested on the ground that

their activities were against the national interest. At the end of the fourth month, in February 1963, the then Home Minister, Mr. Lal Bahadur Shastri, informed the Lok Sabha that 957 persons had been detained under the Defence of India Rules, and that of the arrested persons 199 had been released and the remaining 758 were still in detention. The Home Minister explained that the Government had taken action only against those persons, to whatever party they might belong, who by their speeches and expression of opinions had created an embarrassing situation for the Government. He said the Government had used and would use the provisions of the Defence of India Act in the most judicious manner.

By the end of the year 1963, after fourteen months of emergency rule, Indian opinion began to express the view that the threat of Chinese aggression was no longer real. Indeed, the Home Minister himself told the Congress Parliamentary Group that a beneficial psychological atmosphere prevailed in the country; the defence production had gone up, the yield from taxes had risen appreciably and the law and order situation was satisfactory. He, however, expressed the view that the Emergency must continue in order to conserve these positive results achieved so far. Prime Minister Nehru, though less optimistic, showed no real cause for concern himself. Addressing a seminar conducted by the Press Institute of India, he said :

“The state of emergency cannot be ended now because it will mean an indication to all concerned in India and outside that we have become complacent, that we have no trouble to face, and it will be a most dangerous situation that we will be creating out of our own volition. . . . The situation is not safe ; anything may happen at any time though fighting may not actually take place on the borders.”

In February 1964, resolutions were presented in both Houses of Parliament seeking to end the state of emergency, and with it the suspension of fundamental rights. Speakers from almost all the opposition groups who supported this resolution contended that the situation which called for the proclamation of emergency no longer existed. They cited the holding of by-elections and, drawing attention to the various pronouncements to the effect that the situation had improved, pointed out that every activity of the Government and the ruling party appeared to indicate the absence of an emergency. They charged the Government with misusing emergency powers in order to stifle opposition to

the ruling Congress Party. The new Home Minister, Mr. Gulzarilal Nanda, intervening in the Parliamentary debate, emphasized that the enemy was not fought only on the border. "Supplies had to be maintained, backed up by increased production. All these required the Government to keep in its armoury powers of an extraordinary character to ensure unhindered preparations for defence." He denied that emergency powers had been exercised to curb legitimate trade union activities and referred to recent threats of strikes and hunger-strikes. These, he said, would have an intimate bearing on the country's defence efforts and could not be tolerated.

Meanwhile, the Government continued to use its extraordinary emergency powers in fields which had no apparent relationship to the original emergency. For instance, when Bombay's taximen issued an ultimatum that, if the Government did not appoint a committee to study the taxi-fare structure, they would enforce revised fares prepared by their own union, the Government, acting under the Defence of India Rules, arrested the President of the Bombay Taximen's Association, George Fernandes. When the city's 7,000 taximen began a one-day strike in protest against what they described as a "flagrant abuse of emergency powers", the police "in order to prevent a breach of the peace" rounded up 280 more. The Praja Socialist Party (PSP) in a statement issued to the Press said :

"The charge that Mr. Fernandes under the guise of trade union activities is trying to disrupt the national defence is all the more objectionable, since this statement attributes anti-national motives to Mr. Fernandes, whose patriotism and loyalty to the nation are beyond doubt."

In Calcutta, when seven leftist parties and trade union organisations called a 10-hour hartal * to protest against the "recent steady rise" in prices of essential commodities and also to back the demand for an early settlement of a six-month old dispute between the workers and management of a local engineering firm, the Government, acting under the Defence of India Rules, made over 200 preventive arrests on the eve of the hartal.

In Madras, 210 volunteers of the Dravida Munnetra Kazhagam (DMK), who were picketing Central Government offices in pursuance of the party's anti-Hindi campaign, were arrested under the Defence of India Rules.

* A mass disobedience movement.

In August 1964, India's Community Development Minister was reported to have warned the Government of the possibility of food riots if the impending food crisis was not tackled quickly and effectively. Shortly afterwards, the pro-Moscow right-wing Communist Party organised a 5-day food agitation which took the form of picketing, street-marching and slogan-shouting rallies throughout the country. Its leaders explained that they knew that their movement alone would not help the people to get food at lower prices. However, it was planned to develop a countrywide agitation against profiteers and hoarders and to force the Government to adopt a food policy which would ensure better distribution. On the first day, 1,600 demonstrators were taken into custody under the Defence of India Rules — the biggest number of political arrests in one day since Mahatma Gandhi's civil disobedience movement for freedom 20 years previously.

In September 1964, the former Kashmiri Prime Minister, Bakshi Ghulam Mohamed, was arrested under the Defence of India Rules. No charges were brought against him, and the then Indian Prime Minister, Mr. Shastri, told Parliament that the Central Government had not been consulted or informed about the arrest before it happened. In an application for a writ of *habeas corpus* made on behalf of Bakshi Ghulam Mohamed it was alleged that the order of detention was made *mala fide* and for the purpose of avoiding a no-confidence motion that was due to have been tabled by him in the Kashmiri Assembly on the morning of his arrest.

In December 1964, more than 500 members of the Communist Party of India, including its Parliamentary leader A. K. Gopalan, were arrested and detained under the Defence of India Rules. It was alleged that these arrests were primarily aimed at the Kerala State Assembly elections which were scheduled for February 1965. Kerala was the only State in India which had had a Communist Government.

At about the same time, there was agitation throughout India by the Republican Party, a small group dedicated to advancing the cause of the Harijans, or former untouchables. In the Punjab alone, over 100 of these demonstrators, including the local president, were arrested under the Defence of India Rules.

In August 1965, nearly 130 Samyukta Socialist Party (SSP) workers who were demonstrating in front of the Prime Minister's

residence in Delhi against the Kutch cease-fire agreement were arrested under the Defence of India Rules.

In March 1966, in Amritsar, where Hindu-Sikh rioting had broken out over the Government's proposal to give the Sikh community a Punjabi-speaking State of their own, the Sikh leader, Master Tara Singh, and two of his chief associates were detained under the Defence of India Rules.

The Jurisdiction of the Courts

In view of the several applications for writs of *habeas corpus* made in various parts of the country on behalf of detenus under the Defence of India Rules and in view of the different decisions made on these applications by different High Courts, the whole question of the right of a detenu to move a Court challenging the validity of his detention on the ground that it amounted to a violation of the fundamental rights guaranteed to him in the Constitution was referred to the Supreme Court of India, the highest Appellate Tribunal in the Republic. Dealing with the question referred to it, the Supreme Court, in the case of *Makhan Singh v. the State of Punjab* held that the following pleas were open to a detenu under the Defence of India Act :

- (1) that the order for detention was made in violation of the Act ; for example, if the order was made by an officer not authorized to make it or if the grounds of detention mentioned in the order were not grounds under which a valid detention order could be made. It was also held under this head that an order served on a person who was in gaol was not a valid order.
- (2) that the order was made *mala fide* or for purposes extraneous to the Act.

The Court commented adversely on the fact that the Act enabled the Government to delegate the power of making detention orders too freely among officials.

On the legal effect of the Presidential Order made under the Act Chief Justice Gajendragadkar observed that :

What the Presidential Order purports to do by virtue of the power conferred on the President by Article 359(1) is to bar the remedy of its citizens to move any Court for enforcement of their specified rights. The rights are not expressly suspended, but the citizen is deprived of his right to move any Court for their enforcement.

The 18th Amendment Bill

In the same case the Supreme Court, though it rejected the application for a writ of *habeas corpus*, pointed out that Parliament did not appear to possess the legislative power of enacting laws of indemnity to protect the Government and its officers against actions for false imprisonment, etc., which may be brought against them after the emergency was over. In view of this observation of the Court, the Government attempted to rectify this lacuna in the Constitution by a proposed 18th amendment to the Constitution, which sought to immunise the Executive against any likely claim for compensation by persons detained under the Defence of India Rules.

All sections of the Opposition in the Indian Parliament opposed this proposed constitutional amendment and walked out of the chamber in protest. 67 members of the Supreme Court Bar, including several former High Court Judges, addressed a letter to Prime Minister Nehru strongly opposing the Bill which sought, in effect, to replace temporary suspension with the complete abrogation of fundamental rights.

In May 1964, the Government announced that in deference to public opinion both in and out of Parliament, it had decided not to proceed with the 18th Amendment Bill.

An Appeal by Jurists and Prominent Citizens

In February 1966, 34 jurists and prominent citizens "belonging to no particular political creed" appealed to President Radhakrishnan and Prime Minister Indira Gandhi to "take the bold step of revoking the Emergency":

"What moves us to this action is a solicitude for the fundamental rights of the citizen many of which have stood suspended during the emergency, and for the fair name of our democracy which stands tarnished in the eyes of the world by the adoption of methods characteristic of a police state."

The appeal, which included amongst its signatories three former Chief Justices of India, six ex-Judges of the Supreme Court and the High Courts, eight editors of leading Indian newspapers, four Vice-Chancellors and several other men of eminence, was initiated by Mr. M. C. Setalvad, former Attorney-General and now President of the Bar Association of India. The appeal continued that :

"The provisions of the Constitution under which the Proclamation was made envisage a grave situation threatening the security of the country by war or external aggression or internal disturbance. Leaving aside the short period following the Chinese aggression and the period of the recent conflict with Pakistan, could it seriously be suggested that the country was in a state of such grave emergency as is contemplated by the Constitutional provisions? The emergency provisions in the Constitution are meant in our view for use in periods of real danger to the country. It would, it appears to us, be exposing these provisions to ridicule if we continue to use them after the real danger has passed and merely in apprehension of a danger which may supervene at any time hereafter. A grave emergency lasting over three years and resulting in the exercise of arbitrary powers by the executive over such a long period has, we venture to state, not been known in any democratic country.

The results of this ban on fundamental rights and the consequent conferment of arbitrary power on the executive have been alarming. Armed with the wide powers conferred by the Defence of India Rules, the executive has used these powers not for the purposes of the defence of the country but for collateral purposes. In order to evade the checks which would be exercised on them if they acted under the ordinary laws, the executive has used these powers in substitution of the ordinary law. Traders and hoarders have been dealt with under these emergency provisions and ordinary criminals against whom conviction was difficult to obtain in ordinary criminal courts have been detained under the preventive detention powers under the Defence of India Rules. These matters have frequently come up before the courts of justice who have strongly commented on the abuse of these extraordinary powers by the executive."

The appeal emphasized that the issue was not one of policy or for political debate :

"The issue relates to the basic foundations of a democratic government. A democratic Constitution necessarily has to contain provisions to enable the nation to tide over emergencies. But the use of these emergency powers when the emergency has long receded is to turn a democratic government into what has been called a constitutional dictatorship."

In the context of the wide public agitation to end the emergency, the following observations of the Chief Justice of India, Mr. Gajendragadkar, in the case of *Sadanandan v. The State of Kerala*¹, are noteworthy :

"When we come across orders of this kind by which citizens are deprived of the fundamental right of liberty without a trial on the ground that the emergency proclaimed by the President in 1962

¹ See Digest of Judicial Decisions on Aspects of the Rule of Law, *Journal of the International Commission of Jurists*, Vol. VII, No. 1 (Summer 1966), pp. 146-7.

still continues and the powers conferred on the appropriate authority by the Defence of India Rules justify the deprivation of such liberty, we feel rudely disturbed by the thought that the continuous exercise of the very wide powers conferred by the Rules on the several authorities is likely to make the conscience of these authorities insensitive, if not blunt, to the paramount requirement of the Constitution that even during an emergency the freedom of the Indian citizen cannot be taken away without the existence of justifying necessity specified by the Rules themselves. The tendency to treat these matters in a somewhat casual and cavalier manner which conceivably results from the continuous use of such unfettered powers may ultimately pose a serious threat to basic values on which the democratic way of life in this country is founded."

Conclusion

Despite statements by the Indian Government from time to time that it would review the continuance of the 4-year old Emergency, the position remains substantially unchanged. The Chinese aggression on the North-East Frontier and the Pakistani attack at the Banihal Pass in Kashmir are now matters of the past. The International Commission of Jurists does not seek to arrogate the right of the Government to decide whether circumstances yet exist which would justify the continued suspension of fundamental rights. But such prolonged suspension of those rights, which are the very essence of a democratic form of government, when the features of a grave emergency do not appear to exist any longer, has given rise to increasing concern in all parts of the free world where India has been looked upon as the bastion of fundamental rights and the Rule of Law in Asia.

SIERRA LEONE: A DRAFT CONSTITUTION

Sierra Leone is one of the few countries left in Africa with an active opposition party, represented in Parliament, and unafraid to speak its mind. A proposal by the government last year to introduce a one-party state met with such vociferous popular opposition that it has been abandoned.

Nevertheless, opposition allegations that the government of the Sierra Leone People's Party, under Prime Minister Sir Albert Margai, is seeking to concentrate too much power into its hands, appear to be confirmed by some of the provisions of a draft Republican Constitution, published by the government in December 1966, with a view to its debate in Parliament at the beginning of the new year.

The objectionable provisions of the draft Constitution have no necessary connection with the change-over from a constitutional monarchy to a Republic, a change that has been made by most of the Commonwealth countries, and there seems no doubt that the proposal for a republic is accepted in principle by the vast majority of the people of Sierra Leone.

There are two principal innovations in the draft Constitution which, if implemented, will place in the hands of the government powers which will endanger seriously the future of Sierra Leone as a democratic state.

In the first place, while apparently respecting popular feelings against an executive presidency, by providing for a President as head of State with a prime minister as head of the government, the draft Constitution in effect makes the President a mere puppet in the hands of the government, in that he is to be appointed by, and removable by, the Cabinet. It does not even lay down any conditions of eligibility for appointment as President, but leaves an absolute freedom of choice in the hands of the government of the day.

Provisions such as this can only bring the office of head of state into contempt. A President should be someone who commands the respect and support of the people as a whole and

should, as is invariably the case, be chosen through some form of election, either by the electorate as a whole, or by an electoral college or by Parliament. It is to be hoped that some such provision will be introduced into the Republican constitution before it is adopted.

The second important objection to the draft Constitution concerns the provisions relating to the Judiciary. In the first place, the Chief Justice is to be appointed by, and removable by, the President acting on the advice of the Prime Minister. While the draft also provides that after removal a former Chief Justice shall remain a judge of the Supreme Court, there is no doubt that such an innovation would constitute a serious interference with the independence of the Judiciary and make the Chief Justiceship, potentially at least, a mere tool in the hands of the Executive. It is all the more disturbing in that there have already been two changes within fifteen months in the holder of the office of Chief Justice, which have given rise to serious criticism. In October 1965, Chief Justice Sir Samuel Bankole Jones was "promoted" to the Presidency of the Court of Appeal, an office of far less constitutional importance. He was replaced by Acting Chief Justice Cole who in December 1966 was appointed Sierra Leone's representative at the United Nations, and Mr. Gershon Collier, who has in recent years been active as a politician and diplomat rather than a lawyer, was appointed Acting Chief Justice.

The removal of security of tenure from the office of Chief Justice is accompanied by two provisions which tend to diminish the independence of the other members of the Judiciary. In the first place they are no longer to be appointed on the advice of the Judicial Service Commission — which would be merely concerned with magistrates and the officials of the superior courts — but "by the President", which inevitably leads to the inference that the Prime Minister or the Cabinet as a whole will be able to influence the choice of judges.

Secondly, while the judges continue to be irremovable save for incapacity or misbehaviour, the provisions for the adjudication of charges against them by a judicial tribunal are abolished and replaced by the requirement of a resolution of Parliament adopted by a two-thirds majority. This procedure for removal, while it is in force in a number of Commonwealth countries, is undoubtedly less satisfactory than the procedure by way of

judicial tribunal, which was incorporated into the independence Constitutions of all the newer Commonwealth countries.

It is not going too far to say that, if the provisions of the draft Constitution relating to the Judiciary are adopted, the future of the Rule of Law in Sierra Leone, and of the fundamental rights and freedoms of its citizens, will be endangered for, in the words of the African Conference on the Rule of Law, held at Lagos in 1961 and attended by the Attorney-General of Sierra Leone, "in a free society practising the Rule of Law, it is essential that the absolute independence of the judiciary be guaranteed". If this safeguard, which was again emphasized by the French speaking jurists of Africa at the Dakar Conference¹, is abandoned, the way is opened to political interference in the judicial process, and to abuses such as occurred under President Nkrumah's regime in Ghana².

By the existing constitution, amendments to entrenched clauses — some of which are affected by the new proposals — must be passed by two successive sessions of Parliament, a general election having been held between the two. A general election has to be held in Sierra Leone before the month of May 1967, when the five-year period of office of the present Parliament is due to expire, and this will permit the electorate to express its views on the draft Constitution.

A number of voices have already been raised in protest against the proposals criticised in this article. In particular, the Bar Association, which has an admirable tradition of outspokenness and vigilance on matters relating to the Rule of Law, and the Law Department of Fourah Bay College, have produced detailed memoranda commenting on the various provisions of the draft Constitution and pointing out the dangers inherent in it. It is most earnestly to be hoped that their views will be heeded.

¹ See page 10 of this *Bulletin*.

² See *Bulletin* No. 18, p. 9 ff.

A NEW CONSTITUTION FOR URUGUAY

November 27, 1966, was a date of great importance for Uruguay and of peculiar interest for the rest of Latin America. For the Uruguayans themselves it marked the date of new elections, differing from those held in the past 15 years in that they could be the first step towards a solution of the political, social and economic crisis which the country is undergoing. For the rest of Latin America, the Uruguayan elections, while obviously being an aspect of the purely internal affairs of a sister country which had no great practical consequences for outsiders, served once again to call attention to the thoroughness and strict legality with which the electoral process was carried through, so much so that one leader-writer described Uruguay as carrying out its "revolutions" through electoral channels.

The whole process does in fact reveal how democracy operates in practice in Uruguay, a democracy which has matured and been perfected through long years of an extremely active political life which has resulted in its becoming a real way of life shared by the whole nation, and not just a traditional and formal abstract concept, the differing and distorted interpretations of which have led to so much injustice and outrage in Latin America and throughout the world.

In Uruguay it is the practice to perfect, amend or reform the institutions of the nation through consultation of the people by means of elections contested by candidates whose platforms and proposed programmes are well known, or through referendums in which various ways of bringing about the desired changes are laid before the citizens. The political situation is the subject of daily discussion and in this way the proposed changes are gradually prepared as the fruit of constant discussion in newspapers, on the radio and in day-to-day conversation. Compared with other countries, a surprisingly high proportion of the citizens take part in this analysis of the problems facing the country. All seem to take an interest in the running of the country and seem ready to advance solutions in line with the thinking which has kept the two traditional political groups more or less unified,

or, outside these groups, through the incessant formation of new groups or sub-groups surrounding a personality whose opinions and actions best reflect a specific political approach. Even though such a situation offers undoubted advantages, it entails as a less positive consequence an excessive politicisation, which often results in dedication to politics for politics' sake, with the innumerable plans and complete or partial solutions often remaining mere dreams. Such an approach in most cases distracts attention from the main objective, which is to find an efficacious solution to national problems which are becoming so complex that as time passes the failure to deal properly with them results in precipitate action of various kinds and, in the long run, leads the country into a situation of real crisis, the solution of which calls for experts, time, great sacrifice and enormous sums of money.

Uruguay is experiencing a crisis which has been growing worse for some time. This has become particularly apparent in recent years by reason of an accelerated and dangerous rate of inflation, which has brought the exchange rate of 4 pesos to a dollar 15 years ago to the current official rate of 75 pesos to a dollar, with official statistics revealing a rise of more than 50 % in the cost of living during the past year. The reason for this is ascribed to various factors of a most diverse nature, but it would appear that one of the principal causes lies in the issues of currency made to balance the budget whenever a fall in agricultural and livestock production resulted in inadequate returns from exports.

The difficult economic situation called for rapid solutions, efficacious in nature and implemented in full, but the Government, by reason of its structure, was apparently unable to introduce such measures. This situation gave rise to a growing body of opinion that the collegiate system of government was not adapted to the needs of a modern State in general and to those of Uruguay in particular. The operation of this system in Switzerland had been admired at the beginning of the century by a leading Uruguayan politician who thought that it might prove to be the ideal political formula for his country, where, even though the former Constitution of 1830 had as yet not been amended, there had been set up since the end of the past century a series of institutions, which were impeding the efforts of the State. Moreover, experiments with various electoral

systems had given the Uruguayan people some degree of political experience. With the new century the country also entered upon an era of political peace in that there was an end to the violent revolutions which had brought about the abrupt fall of several governments; this was accompanied by economic progress resulting from the large-scale development of the meat trade following energetic efforts to bring a system of refrigeration plants into operation. In strict theory, it can be said that the collegiate system of government was conceived of as being perfect, since it apparently avoided various problems and defects which arise as a matter of course with any form of administration. Switzerland, moreover, was the most obvious example of the fact that the practical application of such a system could only yield the best results. This being so, following extensive political discussions and manœuvring, a particular form of collegiate government was approved in 1918, coming into operation in 1919. This consisted in an Executive divided into a President, to whom essentially political functions were assigned, and a National Administrative Council which, as its name indicates, was entrusted with the real "administration" of the country.

The intention in introducing such a structure was to avoid the excessive concentration of power in the hands of one person, while at the same time "depersonalising" the Executive as such and, finally, ensuring that, apart from the essentially "political" functions of government entrusted to the President, the other aspects of the administration of the State would be approached from a technical, and almost scientific, viewpoint, which would also, of course, be apolitical. Unfortunately, in practice the system did not work as well as had been hoped. The fact that the Council included representatives of both the traditional political groups, with one or other in the majority depending on the outcome of the elections, resulted in an excess of politics to the detriment of effective administration.

In 1933 President Terra assumed extraordinary powers and introduced a constitutional reform which abolished the collegiate system and reverted to a one-man Executive. This lasted only until the end of 1951 when — following a plebiscite which had been preceded by interminable discussions in Congress, in the press, at meetings, etc., in the course of which the most diverse arguments and counter-arguments were voiced — it was decided by a narrow majority to revert to the system of a collegiate

Executive. On this occasion the Constitution provided that "the Executive Power shall be exercised by the National Council of Government". This Council was formed of nine members whose term of office was four years, with six seats going to the group which had secured the largest number of votes and three seats going to the next group. The chairmanship rotated on an annual basis among the majority group.

The new collegiate system, which came into operation in 1952, failed, for the reasons already mentioned, to give the hoped-for results, and the country once again found itself engaged in a discussion of its political institutions and again faced with the alternative of returning to a one-man Presidency or of perfecting the system of a collegiate Executive, which for more than ten years had been giving proof of its incapability, attributed by some to the politicians and by others to the very nature of the system, which discouraged any initiative.

The protracted strikes and demonstrations which occurred in 1965 and grew worse in 1966 clearly revealed the economic, social and political disquiet prevalent in the country. It was obvious that a solution to the continuing serious problems of the country could no longer be postponed.

On 27 November 1966 extremely complicated elections combined with a referendum were held. In the first place, there was a list of candidates for the renewal of the National Council of Government; it was accompanied by a referendum on the question of whether there should be a return to a one-man Executive or whether the system in force should be retained, which required a vote on four different proposed amendments to the Constitution. To cater for the possibility that there should be a majority in favour of a reform of the Constitution, several candidates for the Presidency of the Republic went forward. It should be mentioned that at the same time elections were held for the renewal of both houses of Congress as well as local government elections.

The elections resulted in a substantial majority in favour of reform, with clear support for the reform proposed jointly by the two traditional political groups, a reform which was approved as the new Political Constitution of Uruguay. In addition, Don Oscar Gentido, General of the Air Force (retired), was elected President of the Republic and entered into office on March 1, 1967.

Examining the new Constitution from a formal viewpoint, it can be said that, in essence, it retains the structure of the preceding (1951) Constitution, many of the provisions of which are taken over word for word. It is an extremely lengthy text (332 articles), which is particularly striking by reason of the wealth of detail contained in each of its provisions and the inclusion of many matters which in other countries having a different constitutional practice are regulated by ordinary laws or regulations.

Among the new articles there is one which merits special attention. Even though in content it is to some extent foreign to questions relating strictly to constitutional reform, its importance from the continental viewpoint goes beyond the geographical boundaries of Uruguay. The article in question is Article 6, paragraph 2, the text of which reads as follows: "The Republic shall strive for the economic and social integration of the Latin American States, in particular as regards joint protection of their products and raw materials. Similarly, it shall aim at the effective integration of their public services".

The symbolic significance of this provision for Latin America is great. One of the countries of the region is showing that it has acquired an "awareness of integration" and that it has decided to continue on the path leading thereto. This objective has not been expressed in a government statement; instead the country has chosen to include it in its Fundamental Charter by means of a referendum, thus giving it the force resulting from the support of a large majority of the citizens, a force which is lacking in government decisions, no matter how strong or worthy in content.

This important declaration of principle by the country in which the treaty instituting the Latin American Free Trade Association was signed and in which, moreover, the Secretariat-General of the Association is located, will lead to considerable reaction (positive, it is to be hoped) on the part of the other members of the Association at a particularly crucial time for the policy of regional integration, which is, unfortunately, distinguished by the absence of really serious decisions to press forward with this common task.

The articles devoted to individual guarantees once again reflect the fact that these are a basic concern of the Uruguayan, jealous in the extreme as regards his freedom. These guarantees

are set forth and regulated in minute detail. Provision is made for the right of an accused person to legal assistance and to the presence of a lawyer from the initial stages of judicial proceedings. The responsibility of the State and of its various organs is clearly laid down, together with their obligation to provide compensation in respect of damage caused to private citizens, and administrative tribunals are established to enforce the performance of this obligation.

There are very clearly-worded provisions protecting the security of the individual in the event of a state of emergency being declared, thus eliminating the possibility of arbitrary measures being taken which might possibly have appeared to be justified by exceptional circumstances.

The Constitution also deals with social matters and it is interesting to note that it enshrines the right of every citizen of the Republic to "decent housing", laying an obligation on the State to enable this right to be enjoyed by facilitating access to ownership and promoting the investment of private capital in the building of such housing.

In addition, to stimulate endeavours to solve labour and welfare problems, two new ministries were created: Labour, and Social Welfare. The functions of these two ministries had formerly been combined with those of other ministries.

The establishment of a Central Bank, formerly non-existent, was an indispensable measure for the regulation of the monetary and banking policy of the country. The Welfare Funds were amalgamated into one system, with the Social Welfare Bank being established as an autonomous organ having the aim of co-ordinating the various state social welfare services. The importance of such an institution in a country which numbers 360,000 pensioners in a population of 2,600,000 can be readily appreciated.

In order to stimulate legislative action, the slowness of which had led in recent times to the piling up of a large number of bills, some of them being of vital importance, the new Constitution amended the system of time limits for discussion of bills and the whole procedure for designating a bill as urgent, and in some cases went so far as to provide for automatic approval should Congress fail to act. This sound measure reveals a firm intention on the part of the authors to make Congress live up to its responsibilities in an effective manner.

The foregoing are the broad outlines of the principal innovations made by the new Constitution, but the reform which is of greatest interest and which was the real reason for the adoption of a new political charter was that which introduced a change in the system of government. Parts IX and X, and some further individual articles, are devoted to the Executive.

In the campaign preceding the elections there was much talk about the need to return to the presidential system as the only means of finally solving the serious problems facing the country. The statements following the elections, both by politicians of various persuasions and by the local and world press, revealed satisfaction with the newly approved system of government and welcomed the election of a "President of the Republic" having "sufficient power" to govern effectively. However, a strictly theoretical analysis of the new structure of government resulting from the Constitution leads to the conclusion that what is being instituted is a parliamentary-type system with an executive under the control of a president whose attributions are fairly limited. This is fully understandable in view of the traditional reluctance of all Uruguayans to grant any powers in excess of those that are strictly necessary to the various authorities throughout the hierarchy of the country.

An illustration of this characteristic is the national feeling in favour of a collegiate system which, at least in part, is a result of the aversion to any sort of "personality cult", which is avoided by every possible means. It is usual to provide in Uruguayan constitutions or laws for the supervision of every authority and for the possibility of subjecting every measure to some form of review. While this in itself is sound and represents a safeguard against injustice, or even mere human error, it can, if taken too far, yield negative results and lead to ineffectiveness and loss of all initiative.

Article 149 of the Constitution establishes an Executive Power exercised by the President of the Republic "acting in conjunction with the appropriate Minister or Ministers or with the Council of Ministers...". Thus it stresses the necessary and constitutional participation of the ministers or of the Council of Ministers in acts undertaken by the President. This participation is further corroborated in the following articles, which give the Council powers of decision in certain fields, by providing, curiously enough, that the President of the Repub-

lic shall have the right to address, and to vote in, the Council in connection with its deliberations and resolutions, and that his vote shall be decisive only in cases of deadlock, which would seem to imply that, at any given time, a majority of Ministers could over-rule a proposal of the President of the Republic in a meeting of the Council. This interpretation is confirmed by Article 165, which reads as follows :

Resolutions originally agreed upon by the President of the Republic with the appropriate Minister or Ministers may be revoked by the Council, by an absolute majority of those present.

It may be argued that a situation in which the Cabinet hinders action by the President can easily be remedied since Article 174, last paragraph, provides that one of the grounds for vacating the office of Minister is a decision to this effect by the President of the Republic. The question nevertheless arises of whether there will not be times when it would be preferable for Ministers to have less say as regards Presidential action, thus avoiding a situation the remedy for which is time-consuming, involves delay in dealing with current problems and will certainly lead to party-political disputes which must necessarily be settled by political deals prejudicial to the country as a whole.

As has been pointed out, the Parliamentary system, while it is in accordance with the most free and liberal exercise of democratic powers, in that it permits motions of censure on the acts of the Government, nevertheless does not seem to be the best for a country experiencing a crisis, and one whose political life has become so complex. Article 174 (4) of the Constitution ties the President's hands by establishing that he "shall allocate the Ministries to citizens who, by reason of their parliamentary support, are assured of permanency in office". The Head of State is thus obliged to descend into the political arena, which, as experience has shown, can fully absorb the attention of a government by distracting it from the examination of the different problems facing the nation. On the one hand, it avoids excessive "personalism" but, on the other, it may lead to the rise of political bosses whose support is indispensable for stable government.

As a counterbalance, and in the event of a conflict between Congress and the President of the Republic if the former maintains its censure of the government and the latter continues to

support the Minister or Ministers censured, the Head of State may dissolve Congress and call new elections. The new Houses of Congress will be called upon to decide, by an absolute majority of the members, on the maintenance or revocation of the vote of censure.

Logically, and still in the sphere of purely theoretical speculation, it is not necessary to go to such extremes in order to hinder government action through political manoeuvres which would by no means exceed the provisions of the Constitution or the powers of Parliament. To revert to the more practical field of post-electoral realities in Uruguay, the President-elect has called for the support of all his fellow-citizens, irrespective of their political beliefs, in making a start on the difficult task of re-organising the country and gradually restoring it to its proper position, which it occupied not so long ago thanks to its economic resources and the high level of civic development attained by its people. The various political leaders also hastened to offer every form of co-operation, undoubtedly appreciating the complex task facing the new Head of State.

In any event, really patriotic support will be indispensable to make the new Constitution work effectively. By reason of its provisions and its very structure, as has already been mentioned, the most insignificant partisan differences or problems within the governing party will suffice to render it inoperative, thus forcing the President of the Republic to engage in all sorts of negotiations in order to be able to continue his work in strict legality.

These fears nevertheless appear unjustified in the light of the political history of Uruguay, and thus Latin America confidently hopes that the Republic of Uruguay will find a solution to all its economic, social and political problems through a process which will once again serve as an inspiring example for the Continent. Democrats throughout the world await new proof that, with patriotism and without interfering with individual safeguards, even the most complex problems can be solved. This task is easier wherever, as in Uruguay, democracy and respect for human rights are part of the way of life.

ICJ NEWS

INTERNATIONAL CO-OPERATION

VIENNA CONFERENCE

The Austrian Commission of Jurists, the National Section of the ICJ, held its annual conference in Vienna from November 23 to 25 1966. This meeting, which was organised by the Austrian National Section and its able Secretary-General, Dr. Rudolf Machacek, and which was held in the historic setting of the Hofburg Palace, was particularly noteworthy. The participation at the inaugural session of the President of the Austrian Republic, His Excellency Franz Jonas, and the Federal Chancellor, Mr. Josef Klaus, and the active participation in the discussions of the present Minister of Justice, Professor Hans Klecatsky, and his predecessor, Dr. Christian Broda, were a further demonstration of the importance attached to the Austrian Commission of Jurists in the juridical life of the country, while the attendance of leading jurists, both from Austria and abroad, was a proof of the esteem in which it is held by the legal profession.

Indeed, this conference was much more than a merely domestic occasion: eminent jurists from 12 Eastern and Western European countries — Bulgaria, Czechoslovakia, France, Federal Republic of Germany, Hungary, Ireland, Italy, the Netherlands, Poland, Switzerland and the United Kingdom — joined their Austrian colleagues in an exchange of views and experiences. The discussions, which were cordial and frank and were held in an atmosphere of mutual respect and interest in the point of view of others, were devoted to the general subject of: "The citizen, democracy and the Rule of Law".

This was the second occasion on which the Austrian Commission of Jurists had organised such a meeting between East and West. Mr. Seán MacBride, Secretary-General of the ICJ, stressed in particular the importance and timeliness of such initiatives and the keen professional interest of jurists in such endeavours to seek an East-West dialogue. This desire to preserve meaningful contacts was emphasised in the course of the discussions.

WORLD CAMPAIGN

The International Committee of Non-Governmental Organisations for the International Year for Human Rights held a working session on December 9 1966 at the *Palais des Nations* in Geneva, attended by representatives of more than 70 non-governmental organisations. The United Nations, UNESCO, the International Labour Organisation, the Office of the High Commissioner for Refugees, the Council of Europe and the International Committee of the Red Cross also sent representatives in order to show the importance they attached to the work

of the Committee and to provide information and put forward views concerning the International Year.

In the course of its meeting the International Committee approved the report on its activities submitted by the Chairman, Mr. Seán MacBride, and put forward many suggestions of a practical nature concerning the future activities of the Standing Committee. At the conclusion of its meeting, the Committee published, on the occasion of Human Rights Day (December 10) a press release commemorating the victims of violations of human rights, recalling the need, in all places and at all times, for effective protection of these rights and calling for universal good will in contributing to the success of the International Year.

The next meeting of the International Committee, to which it has extended an invitation to representatives of any other international non-governmental organisations wishing to attend, has been arranged for March 15 1967.

FREEDOM OF THE PRESS

The ICJ was represented by one of its Members, Mr. Purshottam Trikamdas, at the 15th General Assembly of the International Press Institute which was held in New Delhi (India) in mid-November 1966. Recalling the untiring efforts of the Institute in this field, Mr. Trikamdas stated, in particular: "A free and responsible Press is the best guarantee of a free society and the best defence against tyranny, not only the possible tyranny of the State but also that of outdated social institutions."

ADOPTION OF INTERNATIONAL HUMAN RIGHTS CONVENTIONS

Since the proclamation of the Universal Declaration of Human Rights in 1948, continuous efforts have been made, either with or without the co-operation of the United Nations, with a view to the adoption of international legal instruments codifying the international protection of human rights and providing machinery for their enforcement. Draft international covenants were drawn up by the United Nations Commission on Human Rights and submitted to the General Assembly in 1954, which has been considering them ever since. In December 1966, in the course of its 21st Session, the General Assembly finally adopted, unanimously, the texts of an international covenant on political and civil rights and an international covenant on economic, social and cultural rights. The adoption of these texts can only be welcomed, even if the implementation machinery does not appear, in certain cases, entirely to reflect present-day realities. They will be printed in their entirety in the Journal, Volume VIII, No. 1 (Summer, 1967).

NATIONAL SECTIONS

GERMANY

The German National Section held its annual general meeting simultaneously with the legal conference it is in the habit of organising each year. The two principal subjects dealt with at the conference

were: "Capital punishment" and "The problems of fundamental freedoms in East Germany". These meetings were held at the historical University of Marburg on December 10 and 11; the Secretariat of the ICJ was represented by Dr. János Tóth.

AUSTRIA

The Austrian National Section held its annual general meeting in Kapfenberg from October 7 to 9 1966. The resolutions and recommendations adopted on this occasion related in particular to the following:

- Devotion to the cause of fundamental human rights;
- Support for the idea of instituting an international body having as its object the effective promotion of human rights and supervision of their application, and support for the proposal to create a United Nations High Commissioner for Human Rights as being one of the best ways of achieving these aims;
- Proposal for the creation of an International Institute for the study of problems relating to human rights, possibly located in Vienna;
- Establishment of an Austrian National Committee to handle preparations for the International Year for Human Rights.

ITALY

In October 1966 the Italian National Section communicated the composition of its Council following the last general meeting, as follows:

President: H.E. Angelo Sigurani; Vice-Presidents: Mr. Giuseppe Cassano, Prof. Giuseppe Ferri; General Secretary: Prof. Mattia Persiani; Treasurer: Mr. Franco Ligi; Members: Alfredo Albanesi, Ermanno Belardinelli, Prof. Ludovico M. Bentivoglio, Prof. Giuseppe Bettiol, Leone Cattani, Prof. Cesare Fabozzi, Prof. Lionello Levi Sandri, Giovanni Noccioli, Prof. F. Santoro-Passarelli, Prof. Giuseppe Suppiej.

MEXICO

Mr. Sergio Dominguez Vargas, President of the Mexican National Section, has just been appointed to the important position of Director-General of Cultural Relations and Exchanges of the National University of Mexico.

JAPAN

Meeting in Dakar on the occasion of the Congress of African Jurists, the Executive Committee of the ICJ approved the constitution of the Japanese National Section, the officers of which are as follows:

Members of the Executive Council: Kenzo Takayanagi, President; Kyozo Yuasa, Vice-President; Toshio Irie, Jyuhie Takeuchi.

General-Secretary: Miss Kinuko Kubota, Professor at the University of Rikkyo, Tokyo.

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:

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

Secretary-General: SEAN MACBRIDE s.c.,
Former Minister of Foreign Affairs of Ireland

Executive Secretary: VLADIMIR M. KABES
LL.D., M.C.L.

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The next issue (Vol. VIII, No. 1) will contain articles on the International Court and South West Africa: the Implications of the Judgment; Succession of States and the Protection of Human Rights and the Indian Constitutional Court; the full texts of the recently adopted United Nations Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights; the Digest of Cases and Books of Interest.

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2, QUAI DU CHEVAL-BLANC, GENEVA, SWITZERLAND

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