

FOR THE RULE
OF LAW

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

CONTENTS

NORDIC CONFERENCE ON THE RIGHT TO PRIVACY	1
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ASPECTS OF THE RULE OF LAW

CONGO	12	HAITI	28
DAHOMY	24	KURDS	34
I.C.J. NEWS	42		

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NORDIC CONFERENCE ON THE RIGHT TO PRIVACY

On Monday, May 22 and Tuesday, May 23 1967, an important Conference of Nordic Jurists and legal experts from different regions of the world on "The Right to Privacy" was held in Stockholm. It was organized by the Swedish Section of the International Commission of Jurists in collaboration with the Secretariat of the Commission.

The Right to Privacy is of growing importance and this was the first international legal Conference at which this Right was considered comprehensively. The Conclusions of this Conference were not restricted in their application to the Nordic countries only and are intended to be of universal value.

We set out below the Conclusions of the Conference.

THE RIGHT TO PRIVACY

Preamble

WHEREAS Article 12 of the Universal Declaration of Human Rights and Article 17 of the United Nations Covenant on Civil and Political Rights of December 1966 have provided that "no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation" and that "everyone has the right to the protection of the law against such interference or attacks"

AND WHEREAS Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms has provided that "everyone has the right to respect for his private and family life, his home and his correspondence"

AND RECALLING that the International Commission of Jurists has at its first international Congress held at Athens in 1955 stressed that the Rule of Law requires that the private lives of individuals be inviolable

AND CONSIDERING that the increasing complexity of modern society makes it desirable to protect the Right to Privacy with greater particularity than hitherto

BEING REQUESTED by the International Commission of Jurists to examine the scope at the present day of the Right to Privacy and the particular problems relating thereto and to advise on the safeguards and remedies that should be made available to protect this Right

NOW THEREFORE this Nordic Conference of Jurists from Denmark, Finland, Iceland, Norway and Sweden, attended by legal experts from Austria, Brazil, Ceylon, Ecuador, France, Great Britain, India, Ireland, Japan, Netherlands and the United States, and distinguished observers from the Council of Europe, the International Press Institute, the English Law Commission, the Press Council of Great Britain, the World Federation of United Nations Associations, the International Bar Association and the World Peace Through Law Center, having considered the issues involved in the Right to Privacy, adopts the Conclusions hereinafter set forth.

CONCLUSIONS

Part I: Nature of the Right to Privacy

1. The Right to Privacy, being of paramount importance to human happiness, should be recognised as a fundamental right of mankind. It protects the individual against public authorities, the public in general and other individuals.
2. The Right to Privacy is the right to be let alone to live one's own life with the minimum degree of interference. In expanded form, this means:

The right of the individual to lead his own life protected against:

(a) interference with his private, family and home life; (b) interference with his physical or mental integrity or his moral or intellectual freedom; (c) attacks on his honour and reputation; (d) being placed in a false light; (e) the disclosure of irrelevant embarrassing facts relating to his private life; (f) the use of his name, identity or likeness; (g) spying, prying, watching and besetting; (h) interference with his correspondence; (i) misuse of his private communications, written or oral; (j) disclosure of information given or received by him in circumstances of professional confidence. (The limitations of this right are set forth in Part II.)

3. For practical purposes, the above definition is intended to cover (among other matters) the following:

- (i) search of the person;
- (ii) entry on and search of premises or other property;
- (iii) medical examinations, psychological and physical tests;
- (iv) untrue or irrelevant embarrassing statements about a person;
- (v) interception of correspondence;
- (vi) wire or telephone tapping;
- (vii) use of electronic surveillance or other "bugging" devices;
- (viii) recording, photographing or filming;
- (ix) importuning by the press or by agents of other mass media;
- (x) public disclosure of private facts;
- (xi) disclosure of information given to, or received from, professional advisers or to public authorities bound to observe secrecy;
- (xii) harassing a person (e.g. watching and besetting him or subjecting him to nuisance calls on the telephone).

Part II: Limitations

4. In modern society, the Right to Privacy, as any other human right, can never be without limitation except in the sense that nothing can justify measures which are inconsistent with the physical, mental, intellectual or moral dignity of the human person. The limitations which are necessary to balance the interests of the individual with those of other individuals, groups and the State will vary according to the context in which it is sought to give effect to the Right to Privacy.

5. The public interest frequently requires the granting to public authorities of greater powers to interfere in the individual's private sphere than would be acceptable in the case of interference by private individuals or groups. Such powers should never be used except for the purpose for which they were granted.

6. The circumstances in which a public authority may be granted such powers have been laid down in the European Convention for the Protection of Human Rights and Fundamental Freedoms as

those in which interference in the private sphere is necessary in a democratic society:

In the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

7. It is essential that the cases in which interference is permitted be defined with precision. Legislation should ensure that powers which may involve invasion of privacy should only be exercised by a specifically appointed person or agency upon the order of a judicial authority or some other public authority ultimately responsible to the Legislature. Such order should determine the period and place of the exercise of the powers concerned.

8. In relation to interference in the above-mentioned circumstances, the following considerations apply:

(a) *National Security, Public Safety and Emergency Situations*

State powers to interfere with the Right to Privacy must vary according to the situation facing a country and may not be exercised except in accordance with its international obligations.

- (i) *In peace-time* national security may require invasions of privacy for very special and limited purposes. In order to ensure that such invasions are made only in cases of genuine threats to national security, and that powers granted by law in the interests of national security are not misused for political purposes, it is desirable that some form of independent supervision or control be instituted.
- (ii) *In time of war or other public emergency* threatening the life of the nation, any additional powers to interfere with the right to privacy of the individual in the interests of public safety should be restricted to those strictly required by the exigencies of the situation and should be limited in time to the period of war or public emergency. For this purpose, they should be subject to periodic review and renewal by Parliament.
- (iii) *In cases of natural disaster* public safety may necessitate invasions of privacy to enable measures to be taken to deal with such disasters or other calamities endangering

the life of the people. The measures taken should be strictly proportionate to the threat involved.

- (b) *The economic well-being of a country* is not a concept which is capable of being precisely and narrowly defined. Therefore, it should not be relied upon except when absolutely necessary.
- (c) *The prevention of disorder or crime* may justify measures taken in the sphere of criminal law:
 - (i) for the investigation of criminal offences and the detection of offenders;
 - (ii) for the prosecution and punishment of offenders;
 - (iii) to prevent the commission of a criminal offence or the outbreak of disorder which there are compelling grounds to believe is imminent.

This presupposes that the criminal law does not make it an offence to exercise any of the fundamental human rights and freedoms. It further presupposes that legal provisions define in detail the powers of the police and criminal investigation authorities, set out the offences in relation to which they can be used and lay down precise limits to their use. These limits should, in particular, ensure that measures involving an invasion of privacy are in all cases reasonably necessary having regard to the gravity of the offence involved and that there should be a reasonable proportion between the measures taken and the magnitude of the offence. In addition, there must be reasonable grounds for suspecting that the person concerned is guilty of or is about to commit a criminal offence.

- (d) *The protection of health* may justify reasonable measures taken in order to combat or to prevent the outbreak of an epidemic, or the spread of communicable diseases. Measures taken for *the protection of morals* (otherwise than within the ordinary framework of criminal law) should be limited to those necessary for the protection of children and young persons.

9. *The Administration of Civil Justice*

The extent to which the Right to Privacy requires to be limited for the purposes of the administration of civil justice must be

clearly defined in the laws relating to procedure and evidence in civil cases.

10. *Freedom of Expression, Information and Debate*

The exercise of these freedoms is obviously in the public interest and it is inevitable that in some cases there should be a conflict between the interest of society in their exercise and the interest of the individual to live his private life unmolested. The line of demarcation between these interests is very difficult to draw. Certainly it cannot be drawn in the simple terms of the axiom that where public life begins private life must end. The private life of public figures is entitled to immunity save where it can be shown to impinge upon a course of public events. Even less acceptable is the axiom that "being in the news" of itself justifies intrusion on private life. It would be undesirable and indeed impossible to provide for all cases by legislation; but it may be insufficient to rely exclusively upon the self-discipline of the press and other mass media or upon rules of conduct laid down by the professional organisations concerned.

The subject-matter is so full of problems, and the checks and balances must be so many and so delicate that a combination of all these methods, the formulation of rules of conduct, the establishment of professional disciplinary tribunals and appropriate legislation may be required for dealing satisfactorily with this aspect of the Right to Privacy.

It should be emphasized however that, because freedom of expression is one of the great freedoms on which so many others depend, it ought not to be curbed by special legislation designed to protect privacy against invasion by the press or other mass media, unless the self-discipline of the press and other mass media and the rules of conduct laid down by professional organisations have been shown to fail. This does not imply that the press or other mass media are exempt from general legislation protecting the Right to Privacy including legal provisions which apply to improper methods of obtaining information.

Part III: Protection

11. *Protection under existing rules*

There are in most countries legal rules in other fields which provide civil remedies or criminal sanctions against certain forms

of invasion of privacy. Some of these remedies or sanctions have not the protection of privacy as their primary object and it may therefore be necessary to strengthen or modify the provisions in question in order to secure the more effective protection of privacy aspects involved. An institution which can give valuable assistance in the protection of privacy against invasion by public authorities is the Ombudsman.

12. The following invasions would seem to fall within the category referred to in the preceding paragraph. Where provisions of the nature described do not already exist, their introduction is considered necessary as part of the adequate protection of the Right to Privacy.

(a) *Entry on and search of premises and other property*

Criminal provisions in this field may not provide an adequate protection of individual interests. Similarly, civil remedies designed primarily to protect ownership or possession may not extend protection to individuals who have the mere use of premises or other property without possession.

(b) *Search of the Person*

Where existing laws provide for the search of the person, they should ensure that the search is limited to the object for which it is authorised and conducted with due respect for the individual searched.

(c) *Compulsory medical examinations and other tests*

The circumstances and cases in which medical examinations or other tests can be ordered and carried out should be clearly defined.

(d) *Interception of correspondence and other communications*

Most countries have legislation provisions prohibiting the opening of correspondence and protecting the secrecy of telegrams. In some cases these provisions apply only to employees of the postal and telecommunications services and there would seem to be a need for more general provisions—criminal and civil—protecting correspondence and other communications from interference by other third parties.

(e) *Disclosure of information given to public authorities or professional advisers*

Such disclosures are normally covered by legal or disciplinary provisions against the disclosure of confidential information given to public authorities. In the case of communications to professional advisers, their unauthorised disclosure should be made the subject of sanctions, which may be criminal, civil or disciplinary, or a combination of these, according to the circumstances of the case.

(f) *Defamation*

The law of defamation in most legal systems protects the individual against attacks on his honour and reputation. In some systems truth is an absolute defence; in others it is not. In the former types of system there is need for legal protection in relation to the publication of true but irrelevant embarrassing facts relating to the individual's private sphere.

13. *Protection under special Rules relating to Privacy*

There are forms of invasion of privacy, other than those mentioned in the preceding paragraph, infringing rights which cannot be adequately protected by straining the existing legal rules devised mainly to meet other problems in other fields. These naturally fall within a Law of Privacy and should be protected by such a Law. The following invasions are within this category:

(a) *Intrusion upon a person's solitude, seclusion or privacy*

An unreasonable intrusion upon a person's solitude, seclusion or privacy, which the intruder can foresee will cause serious annoyance, whether by the intruder's watching and besetting him, following him, prying on him or continually telephoning him or writing to him or by any other means, should be actionable at civil law; and the victim should be entitled to an order restraining the intruder. In aggravated cases, criminal sanctions may also be necessary.

(b) *Recording, photographing and filming*

The surreptitious recording, photographing or filming of a person in private surroundings or in embarrassing or intimate circumstances should be actionable at law. In aggravated cases, criminal sanctions may also be necessary.

(c) *Telephone-tapping and concealed microphones*

- (i) The intentional listening into private telephone conversations between other persons without consent should be actionable at law.
- (ii) The use of electronic equipment or other devices—such as concealed microphones—to overhear telephone or other conversations should be actionable both in civil and criminal law.

(d) *The use of material obtained by unlawful intrusion*

The use, by publication or otherwise, of information, photographs or recordings obtained by unlawful intrusion (paras. (a), (b) and (c) above) should be actionable in itself. The victim should be entitled to an order restraining the use of such information, photograph or recording, for the seizure thereof and for damages.

(e) *The use of material not obtained by unlawful intrusion*

- (i) The exploitation of the name, identity or likeness of a person without his consent is an interference with his right to privacy and should be actionable.
- (ii) The publication of words or views falsely ascribed to a person, or the publication of his words, views, name or likeness in a context which places him in a "false light" should be actionable, and entitle the person concerned to the publication of a correction.
- (iii) The unauthorised disclosure of intimate or embarrassing facts concerning the private life of a person, published where the public interest does not require it, should in principle be actionable.

14. *Need for Specific Legal Rules*

Finally, this Conference recommends that all countries take appropriate measures to protect by legislation or other means the right to privacy in all its different aspects and to prescribe the civil remedies and criminal sanctions required for its protection.

The Conference was opened by the Hon. Lennart Geijer, Minister of State, on behalf of the Swedish Government. The other principal speakers at the Opening Session were: Judge Gustaf Petrén, President of the Swedish National Section, Mr. Per Federspiel, M.P. and Member of the Commission, the Hon. Mr. Justice T. S. Fernando, Q.C., President of the International Commission of Jurists, Judge K. Thestrup, M.P. of Denmark, Dr. Stig Strömholm, Lecturer in Comparative Law, University of Uppsala and author of the Working Paper, and Mr. Seán MacBride, S.C., Secretary-General of the International Commission of Jurists.

Special credit is due to Dr. Stig Strömholm for having prepared the excellent Working Paper, which provided the basis for discussion for the Conference. Judge Gustaf Petren, President of the Swedish Section, was Chairman of the organising group, Mr. Per Federspiel, President of the Danish Section and Chairman of the Conference and Chief Justice Terje Wold, of Norway, who presided over the latter part of the deliberations, deserve particular mention for their respective contributions towards the success of the Conference.

The following were the participants from the Nordic countries:

Denmark

Mr. Per Federspiel, M.P., Mr. Jørgen Jensen, Professor M. Koktvedgaard, Professor Vinding Kruse, Mr. J. A. Melchior, Mr. Perch Nielsen and Judge K. Thestrup, M.P.

Finland

Mr. G. Ehrnrooth, M.P., Mr. Mikael Hidén, Mr. E. Hultin, Professor Bo Palmgren and Mr. Christian Reims.

Iceland

Ambassador Arni Tryggvason and Professor Thor Vilhjálmsson.

Norway

Professor A. Bratholm, Mr. J. B. Hjort, Mr. E. Løchen and Chief Justice Terje Wold.

Sweden

Mr. B. Ahrnborg, Mr. Christer Bergman, Professor S. Bergström, Ombudsman A. Bexelius, Mr. J. H. Björck, Mr. Erik Blomquist, Judge Anna-Maria Eek, Mr. S. von Feilitzen, Judge P. E. Fürst, Mr. Lennart Groll, Mr. Stig Gustafsson, Judge C. F. Hadding,

Mr. Gunnar Hansson, Ombudsman Hugo Henkow, Professor Nils Herlitz, Professor L. Hjermer, Judge Kurt Holmgren, Mr. Sven Klippvall, Mr. Jon Lindgren, Professor Seve Ljungman, Judge A. Litzén, Judge G. Ljungberg, Mr. Gunnar Lundberg, Professor A. Nelson, Judge Ulf Nordenson, Judge Sten von der Osten-Sacken, Mr. W. Patek, Judge Gustaf Petrén, Mr. Ivar Philipson, Mr. R. Rembe, President S. Rudholm, Mr. U. Serner, Dr. Stig Strömholm, Professor H. Thornstedt, Judge Bertil Voss and Judge Bertil Wennergren.

The following distinguished Jurists from non-Nordic countries also participated:

The Hon. T. S. Fernando, Q.C., President of the International Commission of Jurists, Ceylon; Mr. A. J. M. van Dal, Vice-President of the I.C.J., Netherlands; Professor Kenzo Takayanagi, Vice-President of the I.C.J., President of the Japanese National Section; Mr. Eli Whitney Debevoise, Member of the I.C.J., U.S.A.; The Right Hon. Lord Devlin, President of the Press Council in the United Kingdom; Sir John Foster, Q.C., M.P., United Kingdom; Dr. Rudolf Machacek, Secretary-General of the Austrian Commission of Jurists; Mr. Andrew Martin, Q.C., Law Commissioner, United Kingdom; Mr. Norman S. Marsh, Law Commissioner, United Kingdom; M. le Président René Mayer, Member of the I.C.J., President of the French National Section; Mr. José T. Nabuco, Member of the I.C.J., Brazil; Professor K. van Rijckevorsel, Delegate of the Dutch National Section of the I.C.J.; Dr. Enrique Sanchez Barona, Delegate of the Ecuadorian National Section of the I.C.J.; Mr. Purshottam Trikamdas, Secretary-General of the Indian Commission of Jurists, and Mr. Edward H. Tuck, U.S.A.

Observers at the Conference from other organisations were:

Mr. A. H. Robertson, Head of the Directorate of Human Rights, Council of Europe, Mr. Per Monsen, Director, International Press Institute, Miss Christina Palm, World Federation of United Nations Associations, Mr. Bertil Ahrnborg, the International Bar Association, and Mr. Johan Rosenlund, World Peace Through Law Center.

The Conference was attended by the following Members of the Commission's Secretariat:

Mr. Seán MacBride, S.C., Secretary-General, Dr. V. M. Kabes, Executive Secretary, Mr. Lucian G. Weeramantry, Senior Legal Officer, Miss Hilary A. Cartwright, Mr. Daniel Marchand and Mr. Dominick Devlin, Legal Officers.

NEW CONSTITUTION OF THE DEMOCRATIC REPUBLIC OF THE CONGO

On March 22, 1966, President Mobutu signed the following decree:

Legislative power is conferred on the President of the Republic, who shall exercise it by decrees. Such decrees shall be forwarded for information to the Chamber of Deputies and to the Senate, within two months following the date of their signature.

In this manner the Chief Executive of the State arrogated to himself general legislative authority, special legislative power having already been conferred on him by a decree of November 30, 1965. Parliament was not dissolved; but its role was purely academic, and for all practical purposes it ceased to sit since the decrees were merely submitted to it for its information. Two important functions, however, remained with it, the elimination of racial discrimination and the revision of the Constitution.

On September 5, 1966, President Mobutu restored to Parliament its constitutional powers, only retaining the right to legislate by decree in emergency situations.

On March 21, 1967, at a public meeting in Kisangani, the President of the Republic announced that a constitutional referendum would shortly be held. 'The people and the Government of the Congo', he declared, 'are in the stream of change, but its Parliament and above all its Constitution are out of touch with our present-day needs.' Parliament, at present, consists of a Chamber of Deputies and a Senate, in accordance with Article 74 of the Constitution of August 1, 1964. Its members were elected in 1965, when Moïse Tshombe* was Prime Minister, and most of them belonged to the CONACO (his political party) at the time of their election. Many of the provisions in this Constitution, adopted by referendum in 1964, have become obsolete since the *coup d'état* of November 24,

* The recent kidnapping of Mr. Tshombe has attracted public attention to a whole series of kidnapping incidents in recent years. On this subject, see Daniel Marchand: *Abductions effected outside National Territory*, *Journal of the International Commission of Jurists*, Volume VII, No. 2, and also, the next issue of this *Bulletin*, (No. 32).

1965, in particular those relating to the election of the President of the Republic (*Articles 55 to 57*), the functions of the Prime Minister (*Articles 64 to 67*), Fundamental Rights (Chapter II)*, and the freedom to found or belong to a political party (*Article 30*). Apparently, Parliament was unsuccessful in revising the Constitution, and the draft which was submitted to the electors was the work of the Government.

The new Constitution of the Democratic Republic of the Congo was promulgated on June 24, 1967, after being approved by a referendum with over 90% of the electorate voting for it; only four constituencies in the centre of the country registered less than this percentage (Kinshasa with 81%, Matadi, Songolo and Kansagulu). The participation of Congolese women, who voted for the first time, was decisive; their number of affirmative ballot slips was thought to be appreciably higher than that of the men.

The main provisions of the new Constitution establish a presidential system, a single House, centralized administration, and a single opposition party.

I. The Centralized Administration

Article 1 of the new Constitution starts with an enumeration of the eight provinces which, together with Kinshasa (the capital), make up the Republic. These are Bandundu, Equator, West Kasai, East Kasai, Katanga, Kivu, Central Congo, and the Eastern Province; the previous Constitution had provided for twenty-one provinces, (subsequently reduced to fourteen in March 1966).

Article 3 provides that any regionalist propaganda liable to endanger the internal security of the State or the integrity of the territory of the Republic is prohibited. There is no chapter corresponding to Chapter III of the previous Constitution specifying the areas of jurisdiction of the Republic and of the provinces; the new Chapter IV entitled Regional and Local Administrative Units is very brief and leaves the matter to legislation.

These amendments were in line with President Mobutu's view that the administration was too unwieldy; and they marked the

* See *Bulletin* No. 28 of December 1966: *Congo-Kinshasa: The Whitsun Conspirators*.

end of the Congo's attempt at a federation. It had, during the preceding years, become evident that the provinces, as autonomous entities, were generally incapable of functioning either smoothly or efficiently. The Congo has thus returned almost to its pre-independence division into six provinces, which have been redistributed in order to forestall any tribal, regional or separatist movements that might have been present in the larger provinces—as in fact did happen in the case of Katanga.

II. The Political Institutions of the Republic

A comparison between Article 19 of the new Constitution and Article 53 of the 1964 Constitution clearly shows the fundamental changes that have been made to the political institutions of the Republic. In 1964 they were (*Article 53*):

1. The President of the Republic
2. The Government *headed by a Prime Minister*
3. The Parliament, *composed of two Houses*

Under the new Constitution (*Article 19*); they are:

1. The President of the Republic, *Head of the Government*
2. The Government
3. The National Assembly

In addition, as in the 1964 Constitution:

4. The Constitutional Court
5. The Appellate and ordinary Courts

1. The President of the Republic is now to be elected for 7 years by *direct universal suffrage*, by an absolute majority of those voting, and no longer by a special Electoral College; (a similar development has taken place in France). Articles 20 to 30 set out the powers of the President of the Republic which are the classical powers to be found in a presidential system: he is Head of the Executive, is responsible for national and foreign policy, promulgates laws and has a right of veto, which can only be by-passed by a two-thirds majority of the Assembly voting in favour of a particular law. He ensures the execution of laws by means of Decrees, appoints and dismisses the members of the Government, who take their oath before him, fixes their powers and duties, and appoints and can dismiss public officers, such as

governors of provinces and judges of the Constitutional Court and the High Court of Justice. In brief, the Constitution puts into legal form the present factual situation, making the President, General Mobutu, the sole head of government and giving him all the powers of the Executive.

The President of the Republic is not generally responsible for the acts performed in the exercise of his functions, unless he is guilty of high treason or *wilfully violates the Constitution*, in which case he must be impeached by the National Assembly on a two-third majority of its members and by public ballot; he is then brought before the Constitutional Court which can order his removal from office (*Article 34*). The crimes, punishments and procedure to be applied under this Article are to be the subject of further legislation (*Article 35*).

2. The Ministers are the heads of their Departments, execute the decisions taken by the President of the Republic and are accountable to him for their acts (*Article 31*).

The means of control over the Government open to Parliament are: questions in the House, answered orally, or publicly in the Official Gazette, hearings by Standing Committees and Commissions of Inquiry, warning or protest. There is therefore no real form of parliamentary responsibility (*Article 32*).

3. Parliament is constituted by a single House: The National Assembly (*Article 36*). Its members represent the nation and are elected for five years by universal, direct and secret vote. All Congolese citizens over the age of 18 who do not constitute one of the cases for exclusion laid down in the electoral law are electors; all Congolese citizens over the age of 25 who do not fall into one of the categories for exclusion provided for in the electoral law are eligible for election (*Article 37*). When a member has been nominated by a political party and ceases to belong to that party, he loses his mandate to the National Assembly and is replaced by his alternate (*Article 39*). Parliamentary immunity is provided for in the usual terms (*Article 55*).

The Assembly meets in ordinary session twice a year or in extraordinary session at the summons of the President of the Republic, or at the request of one third of its Members (*Article 41*).

In the National Assembly, which is the Legislature, bills are drafted by its members jointly with the President of the Republic;

Articles 46 and 47 of the Constitution, however, determine (in the same way as the 1958 French Constitution does—*Articles 34 to 37*) the matters that are to be regulated by *laws*, and those to be subject to *government regulations*. Furthermore, the National Assembly may, of its own initiative or at the request of the President of the Republic, pass a law entitling the latter to legislate by decree, during a limited period, on matters normally to be regulated by laws (*Article 52*, which is analogous to Article 38 of the French Constitution of 1958). But the authority thus delegated to the President may at all times be modified or withdrawn by an Act of the National Assembly.

The effect of these two provisions is to put legislative power into the hands of the Executive. This power is absolute in the case of matters which are henceforth to come within the province of government regulations, and provisional, and in theory discretionary, when it is delegated by the National Assembly to the President. Only the first of these provisions (*Articles 46 and 47*) is really an innovation; the second was already in the previous Constitution, which provided for the delegation of power to the President, who would then legislate by decree. Both Constitutions provide for a third form of delegation to come into effect in emergency situations.

When there is a serious and immediate threat to the independence of the nation, such as to prejudice the regular functioning of the institutions of the Republic or the vital interests of the State, the President of the Republic, after consulting the Bureau of the National Assembly, may proclaim a state of emergency for a period not exceeding six months; he may then proceed to take the measures that the situation requires, informing the Nation thereof by a message, and convening the National Assembly in extraordinary session, if it is not sitting (*Article 54*, which is analogous to Article 16 of the present French Constitution).

4. (*Article 71*) The Constitutional Court is competent to:

- hear pleas concerning the constitutionality of laws, decrees and orders.
- decide questions on the interpretation of the Constitution;
- judge the President of the Republic in the cases provided for by the Constitution;
- ensure the regular election of the President of the Republic and of the Members of the National Assembly.

The Constitutional Court is composed of nine judges, chosen for nine years, whose term of office is not automatically renewable. They are appointed by the President of the Republic, a third on his personal initiative, a third on the recommendation of the National Assembly and a third on the recommendation of the Supreme Council of the Judiciary*; it elects its President from among its Members (*Article 70*).

The Constitutional Court may be moved (*Article 72*):

by the President of the Republic to decide questions on the constitutionality of the laws and regulations of the National Assembly;

by the Bureau of the National Assembly to decide questions of the constitutionality of the decrees and orders of the President of the Republic;

by the Supreme Court of Justice, when a defence of unconstitutionality is raised before it concerning the laws, decrees and orders of the President of the Republic;

by the President of the Republic, the Bureau of the National Assembly and the Supreme Court of Justice on matters relating to interpretation.

Any legal instrument or provision of an instrument declared inconsistent with the present Constitution is accordingly repealed (*Article 73*).

5. *The Law Courts*

The Judicial authority is independent of the Legislature and the Executive and is vested only in those Courts and Tribunals which are established by law (*Article 56*).

When a state of emergency has been proclaimed, the President of the Republic may, for a period fixed by him, for the whole or part of the territory of the Republic, take such offences as he decides away from the jurisdiction of the ordinary Courts and accord such jurisdiction to military courts. In these cases *the rights of the defence and of appeal cannot be suppressed* (*Article 58*) — this was also stipulated in the previous Constitution.

At the top of the hierarchy of the Courts there is a Supreme Court of Justice (*Article 60*), which has a common law and an administrative division. The common law division is competent to deal with appeals in cassation to the Supreme Court, and to

* This is a disciplinary body with consultative functions dealing with the members of the Judiciary.

judge the members of the Government; the administrative division is competent to deal in the first and final instances with petitions to annul the acts of the central administrative authorities, to hear appeals against decisions pronounced by the administrative divisions of the Courts of Appeal and to deal, in cases where no other jurisdiction exists, with requests for compensation. The decisions of the Supreme Court are binding on the lower Courts and Tribunals.

The status of judges, who are irremovable (*Article 63*), is fixed by law. Disciplinary jurisdiction over the judges is exercised by the Supreme Council of the Judiciary (*Article 64*).

It should be noted that the new text does not re-enact the provisions of the old Article 123, which was as follows: 'The Courts shall apply the Law *and Custom* in so far as this is in accordance with law, public order and morality', and 'shall apply government regulations only in so far as they are in accordance with law'; both provisions are, however, essential, since they give formal recognition to the validity of customary law, and to an independent Judiciary empowered to examine the legality of government regulations.

III. The Opposition

The new Constitution provides for the existence of political parties and groups (*Article 4*) which compete in elections. President Mobutu announced last April that there would be a strictly two-party system; the opposition would only enjoy legal status when it had elected a single President and a Committee, deposited its statute and pledged itself to conform to the law against tribalism, racism and regionalism; in no circumstances could it be a reconstitution of previous political groups which had been dissolved. The reason behind this rule is the desire to avoid seeing the Congo revert to the balkanization and tribal struggles which have marked its existence since it came to independence.

IV. Fundamental Human Rights

The Preamble to the new Constitution begins:

'We, the Congolese people,

Declare our adherence to the Universal Declaration of Human Rights'

and devotes a whole chapter to fundamental human rights, Chapter II (*Articles 5 to 18*). This reiterates the terms of the former Constitution, which was even more detailed and complete than the present version in this respect.

In particular, the condemnation of slavery (former *Article 16*) no longer appears, nor the provisions relating to police surveillance and protective custody (former *Articles 18 to 20*). There are no longer provisions concerning the freedom of the press and the prohibition of censorship (former *Article 26*), the secrecy of correspondence and of any form of communication (former *Article 42*), and the guarantees in the event of expropriation (former *Article 43*).

The present Chapter II on Fundamental Rights includes the following provisions:

Article 5

All Congolese citizens, both men and women, are equal before the law and are entitled to equal protection by the law.

No Congolese citizen shall be the object of discriminatory measures in respect of education and eligibility to public employment, whether such measures issue from a law or an act of the Executive, by reason of his religion, tribe, sex, lineage, place of birth or of residence.

Article 6

Everyone has the right to life and security of person. No one shall be subjected to torture or to inhuman or degrading treatment.

No one shall be put to death except in the cases provided for by law and in the forms laid down therein.

Article 7

Everyone has the right to the free development of personality, provided that he neither violates the rights of others nor disturbs legal order.

No one shall be constrained to forced or compulsory labour, except in the cases provided for by law.

Military service is compulsory; it may be replaced by civil service under the conditions laid down by law.

Article 8

Individual liberty is guaranteed.

No one shall be prosecuted, arrested or detained except in accordance with the law and under the form laid down therein.

No one shall be prosecuted for an act or omission which did not constitute an offence both at the time when it was committed and at the time of proceedings.

Everyone has the right to defend himself or to be assisted by counsel of his choice.

No one shall be transferred against his will from the Judge assigned to him by law.

Article 9

Every one accused of an offence is presumed innocent until he shall have been proved guilty in a final judgement.

No heavier punishment shall be imposed than that applicable at the time the offence was committed.

Article 10

Everyone has the right to freedom of thought, conscience and religion.

There is no State religion in the Republic.

Everyone has the right to manifest his religion or his convictions, alone or in common, both in public and in private, by services, teaching, practices, the performance of rites, and a religious way of life, subject to public order and morality.

Article 11

Every Congolese citizen has the right to freedom of expression. This right implies freedom to express his opinions and sentiments, by word of mouth, in writing, or by representation. Its limits are defined by the provisions of the law and the relevant regulations.

Article 12

The family, which is the natural basis of the human community, is placed under the protection of the State. It shall be organized in such a manner as to ensure its unity and stability.

Everyone has the right to marry the person of his choice and to found a family.

The care and education of children constitutes a right and duty for parents, which they shall exercise under the supervision and with the assistance of the public authorities.

Article 13

The instruction of youth is provided for by national education.

National education comprises public and private schools, approved, inspected and taken in charge by the public authorities; they are endowed with a status prescribed by law.

All Congolese citizens shall have access to national educational institutions without distinction of origin, religion, race, political or philosophical belief.

National educational institutions shall ensure, with the co-operation of the religious authorities concerned, an education for pupils who are minors on the request of their parents and for adult pupils on their own request, corresponding to their religious convictions.

Private schools may be opened when the conditions laid down by law are fulfilled.

Article 14

Individual or collective property rights, whether acquired under common law or by statute, are guaranteed.

These rights shall only be encroached upon for reasons of general interest and in accordance with law, subject to fair compensation being paid to the rightful owner thus prejudiced.

The property of private undertakings representing an essential national interest may be transferred, in accordance with law, to the Republic, a community or an official legal entity, in return for equitable compensation of the owners.

Article 15

No Congolese citizen may be expelled from the territory of the Republic.

Every Congolese citizen has the right to freedom of residence within the territory of the Republic, and to the enjoyment of all the rights to which he is entitled in virtue of the present Constitution in his place of residence.

This right cannot be limited otherwise than by law.

Article 16

Everyone has the right to the inviolability of his home.

The public authorities may only encroach upon this right in accordance with the law and in the forms laid down therein.

Article 17

Every Congolese citizen has the right and duty to work. No person's interests may be impaired in his work on the grounds of his origin, opinions, or beliefs.

The worker may protect his rights by trade union action.

The right to strike is recognized. It shall be exercised in accordance with law.

The public authorities determine the conditions of assistance and protection which the State grants to its members.

Article 18

Every Congolese citizen has the right to form associations and societies. Associations whose aims or activities are contrary to law or directed against public order are prohibited.

V. Miscellaneous Provisions

The new Constitution also contains provisions relating to public finances (Chapter V), which can only be settled by law, and establishes a *Cour des Comptes*. * Chapter III deals with the international treaties and agreements negotiated and ratified by the President of the Republic; when these follow the adoption of

* A judicial body which acts as auditor to the national finance.

a law or the consultation of populations by referendum (for exchanges and adjunctions of territory), they enjoy higher authority than laws, subject to reciprocity; with a view to promoting African unity, the Republic may conclude treaties and agreements of association involving partial relinquishment of its sovereignty.

The initiative for the revision of the Constitution (Chapter VIII) rests with the President of the Republic and half the members of the National Assembly; the revised draft must be adopted by the National Assembly by a two-thirds majority of its members. Revision may also be effected by referendum.

VI. Transitional Provisions

The new Constitution includes transitional provisions which are of some relevance here; they form Chapter IX. First, there is the usual provision that the enactments and regulations existing at the date of entry into force of the Constitution are maintained in so far as they are not contrary to its provisions (*Article 1*).

The international treaties and agreements concluded prior to June 30, 1960 (date of independence) will only remain valid in so far as they have not been modified by national legislation (*Article 6*). This is a surprising interpretation of the rules of international law on State Succession.*

The functions of the Constitutional Court and the Supreme Court under the present Constitution (although they had been provided for in the 1964 Constitution) will continue to be exercised by the Kinshasa Court of Appeal, until the new Courts have been established (*Article 7*).

Special attention is drawn to Articles 2 to 4, which are closely related to each other, and in reality are tantamount to postponing the actual enforcement of the present Constitution to 1971, without giving any justification for such a delay.

The powers of the President of the Republic at present in office will only expire with the swearing in of the new President, who will be elected for the first time in accordance with the provisions of the present Constitution; this first election will take place within 90 days from November 24, 1970 (*Article 2*).

* See *Journal*, Volume VIII, No. 1—Summer 1967—of the International Commission of Jurists—D. Marchand: *State Succession and Protection of Human Rights*.

On the other hand, the powers of the present Legislature will expire on the date at which the new Constitution enters into force; elections to the first National Assembly will be held on the date fixed by the President of the Republic following the entry into force of the present Constitution (*Article 3*).

Finally, Article 4 is of great significance: the President of the Republic at present in office will legislate by decree up to the date on which the National Assembly is constituted, and until that date, he is competent to modify the provisions of Chapter IX (Transitional Provisions) of the Constitution. This amounts to saying that up to the date he chooses, (i.e. when the Assembly has been elected and has begun to sit), President Mobutu will enjoy full powers in the Congo, powers which will be limited by the Constitution itself; but this, it has been observed, in many spheres merely leaves the matter to legislation. The Republic is thus 'provisionally' to be governed by President Mobutu's decrees.

DAHOMEY

Public Opinion and the Rule of Law

French-speaking African jurists who were holding a conference at Dakar last January made the following declaration :

"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.

A massive drive to educate public opinion is therefore imperative."¹

The General Assembly of the United Nations, on its side, has encouraged member States to celebrate Human Rights Day each year, on the 10th of December, the date on which the Universal Declaration of Human Rights was adopted in 1948.

Dahomey has taken two steps in line with these recommendations : It regularly broadcasts a radio-programme entitled "Ignorance of the Law is No Excuse." This deals with small factual problems, intended to inform listeners on the scope of their rights and duties, and to explain legal problems and difficult concepts, such as the *Constitution*, *Law* and *Representative Government*, in terms readily understood and assimilated by the man in the street. It is highly popular with listeners, and a scheme is being worked out for its repetition in the native languages, to reach a wider audience.

On the 10th of December, 1966, Dahomey organized a radio round-table for the 18th anniversary of the Universal Declaration of Human Rights, to familiarize the Dahomey citizens with the Declaration and to show how it affects them in their daily lives. To start with, a representative of the United States traced the historical background, describing the American Bill of Rights, adopted on the accession of the United States to independence ; then a representative of France outlined the scope of the Declaration of the Rights of Man and of the Citizen (1789), reiterated

¹ See *Bulletin* No. 29, p. 15.

in the Preambles to the French Constitutions of 1946 and 1958 — which are of direct concern to Dahomey ; a United Nations representative pointed out the basic human rights provided for in the United Nations Charter and analysed the contents and impact of the Universal Declaration of Human Rights. The influence of the Declaration can be seen in the Constitutions and legislation adopted by Dahomey since its independence : and this was the subject of the following speech, made by the Minister for Law and Justice of Dahomey :

I am able to state that the Universal Declaration of Human Rights has deeply marked our legislation. You have only to read the Preambles to the most recent of our Constitutions to see that the attachment of the Dahomey people to Human Rights, as defined by the Universal Declaration, is formally recognized. But our constituent authorities have not confined themselves to a mere statement of principle : they have gone further, by introducing rules, directly based on the Universal Declaration, into the texts of the Constitutions themselves.

....

Thus, Article 2 of the 1959 Constitution begins in this way : "The Republic guarantees equal rights to all nationals, irrespective of their origin, race or religion."

This same idea is reverted to in the 1960 and 1964 Constitutions. In the latter it is formulated in the following terms : "The Republic guarantees legal equality to all, irrespective of origin, race, sex, religion or political creed."

....

The first principle of the Universal Declaration, the equality of all human beings, has thus become part of our positive law. Our Constitutions, by their letter and spirit, have compelled the legislator to conform to the basic principles of the Universal Declaration of Human Rights.

....

One of our first legislative landmarks was the Public Offices Act. A glance at this is enough to recognize the unwavering desire to ensure that all citizens who seek or already hold public office should enjoy the same rights, irrespective of origin, sex, religion or political creed.

Let me give you another example. Article 10 of the Universal Declaration states : "Every person, without distinction, is entitled to a fair and public hearing by an independent and impartial court in the determination of his rights and obligations and of any criminal charge against him." This primarily implies that justice is to be administered by independent and impartial judges ; that was the principal aim of the law on the status of the Judiciary. I would add that prior to this, the Judicature Act had realized the equality of one and all before the courts by providing for a single juris-

diction in civil and commercial cases, freely accessible to everyone without distinction. This had already been done in criminal matters, long before Independence.

It is a fact that our most recent Constitution has been suspended for nearly a year, but you know as well as I that human rights are not endangered thereby. I can affirm that the Government is determined to safeguard in its entirety the sovereign dignity of human nature, on which the whole Universal Declaration is based. Everything that has been gained in this respect since Independence subsists; and future laws will in no way invalidate what I have said.

....

To bring this round table to a conclusion, I should like to make this statement: on the basis of the principles set forth in the United Nations Charter and the Universal Declaration of Human Rights, we accept that the recognition of the dignity inherent in all the members of the human family and of their equal and inalienable rights constitute the foundation of liberty, justice and peace in the world.

We profoundly believe in the basic rights of man, the dignity and value of the human person and the equal rights of men and women; and we are resolved to leave no stone unturned to promote social progress and establish better living conditions with greater freedom.

On that day (the 10th of December, 1966) the text of the Universal Declaration of Human Rights was reproduced and distributed to school teachers, to be read and explained to their pupils.

In Dahomey, then, although the Constitution has been suspended since December 1965, the Minister for Law and Justice has stated that "Human Rights are not endangered"; and an able guarantor of this is found in the person of H.E. Mr. Louis Ignacio Pinto, President of the Supreme Court. However, article 21 of the Universal Declaration gives this basic guarantee for Human Rights:

Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

In this context, the French-speaking African Jurists, at their meeting in Dakar, recognized that:

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.¹

¹ See *Bulletin* No. 29, p. 12.

It is our hope that Dahomey will soon be able to return to fully democratic institutions ; and the inspiration for such institutions can only come from citizens who are conscious of the rights and duties which are theirs.

HAÏTI

Haïti has again made news in the world's press recently. Unfortunately, for some years now, each report is worse than the one before. It is difficult to describe the present state of affairs with any accuracy. The systematic violation of every single article and paragraph of the Universal Declaration of Human Rights seems to be the only policy which is respected and assiduously pursued in this Carribean republic. The Rule of Law was long ago displaced by a reign of terror and the personal will of its dictator, who has awarded himself the title of Life President of the Republic, and appears to be more concerned with the suppression of real or imaginary attempts against his life than with the governing of the country. He is leading his nation not in the direction of prosperity but towards the final disaster that can be seen in its political, social and economic collapse. Haïti has, in fact, become the poorest country in Latin America as a result of the incompetence, inertia and corruption of its government.

President Duvalier has taken full advantage of the geographical position of the country to isolate it in every sense of the word. Foreign visitors are not welcome. Requests by various bodies to visit Haïti have been refused on every kind of pretext. The Inter-American Commission for Human Rights has been denied authorization on numerous occasions, being met with incredible legal technicalities and, in the last resort, with an over-worked government's statement that permission to investigate a particular situation might be construed as interference in Haïti's domestic affairs.

However, notwithstanding the painstaking efforts to put a hermetic seal between Haïti and the outside world, enough news filters through for the present state of affairs to be known. Since the beginning of time, it has been practically impossible to stifle the cries of human beings suffering death and torture, which make themselves heard all over the world.

In early June, it was announced that nineteen army officers had been shot and that the sentence was pursuant to an official

charge of 'mutiny and treason'. No details are available and the fact that Haïti is an island again helps to prevent news escaping. But the simple fact is known: the deaths of yet another group of citizens have been added to the already long list. It is also known that some of the officers sought political asylum in various Latin American embassies and that, with its characteristic effrontery, the Government applied every kind of pressure to compel the embassies concerned to return them. Needless to say, this sort of action is always accompanied by open or veiled threats that any diplomat failing to co-operate with the wishes of the Life President will be declared *persona non grata*. *

Murder and persecution thus continue and increase in Haïti.

A few months ago a large group of senior army officers managed to obtain asylum in various diplomatic missions in Port-au-Prince, thereby escaping certain death as described above. Since they had succeeded in evading the programme prepared for them, they were tried in their absence by a farcical court-martial full of political overtones and with wide coverage in the local press. The indictment, dated 3 December 1966, was reproduced in the Haïtian press, and contained four separate counts, accusing the officers of a) sedition; b) high treason; c) desertion during a rebellion; d) conduct to the prejudice of good order and military discipline. The count of sedition was grounded on the 'criminal' act of 'having sought asylum in foreign embassies, remaining therein for purposes of sedition at a time when the nation was in imminent danger of invasion'.

On the count of high treason, it was stated that the 'manifest purpose' of seeking asylum was to demoralize and cause panic in the armed forces, thereby helping 'foreign conspirators who are threatening the sovereignty and national integrity of the Haïtian state'. The count of desertion was based on the act of remaining in the embassies for a longer period than that allowed by military discipline, 'constituting the offence of desertion'. Since all the officers concerned had previously been ordered to

* On August 3 1967, it was learnt that Haïti had denounced the Inter-American conventions on diplomatic and territorial asylum, thus enabling the government to escape its obligations under those treaties to accord safe conduct to the great number of people who have already been granted asylum by the various Latin-American embassies.

resign their commissions, it is difficult to see how an officer not on regular active service in the armed forces can desert.

In its last count, the charge claims that the purpose of the request for asylum was to lower the prestige of Haiti's constitutional government, and to sow the seeds of discontent and disorder throughout the country.

The legal contradictions, the grotesque features of the charge-sheet and the farcical aspect of the whole trial deserve no further comment; needless to say, the accused were condemned to death.

There was an interesting feature of the independence and impartiality of the court-martial proceedings: on 3 December 1966, its presiding officer, Colonel Jacques Laroche, signed the charge-sheet. On 26 December, less than a month later, when the case was still *sub judice*, he joined 25 other staff officers as co-signatory of a statement published in the press on 28 December, which, couched in almost servile language, referred specifically to the 'treason' of his fellow officers, and reaffirmed his loyalty to Duvalier.

On 26 January 1967, to ensure that the rigour of the regime should be substantially appreciated by the officers concerned, the Life President promulgated a Decree ordering all the goods and real property of the accused to be confiscated, their ownership passing to the State, on the grounds that they had embezzled public funds. This decree is just one of many examples of how the Law is twisted to suit the dictator's ends, and how puerile efforts are made to provide his acts with a façade of legality. The preamble of the Decree, which is legally binding, states that the President is acting with 'full powers' granted by the Legislative Assembly—a totally superfluous grant, incidentally—and refers to a number of articles of the Constitution, mainly affecting individual rights, which are in suspense by virtue of the same extraordinary powers. Ironically enough, it is recalled in the *consideranda* that the basic reasons for the resolution of 1957 (which brought Duvalier to power) were 'popular discontent with the corruption, the criminal acts, the embezzlement and social injustices of all kinds'; and that the election 'by the people' of a Leader, later appointed for life, made him 'The Conscience, the Mind and the Arms of his resolution'. After a series of arguments in the same vein, the Decree concludes that

failure to impose a punishment in face of evidence of criminal embezzlement would constitute 'a betrayal of the people'.

Meanwhile, the level of illiteracy in a country whose population is almost 4,500,000 is still over 80%; infant mortality for the period 1960-1965 was 203 per 1,000 live births; malaria, pulmonary ailments, parasitic and other diseases take their toll of the adult and infant population without respite. Most of the few professional people that Haïti possessed have fled the country. Even the very poor have seized any chance to escape and several have reached the Bahamas in small boats. Others in search of better conditions have crossed the land frontier to the Dominican Republic, and some of these through lack of documentation were treated by the latter as illegal immigrants and imprudently returned to Haïti. There are strong grounds for believing that they were subsequently massacred.

The country's economy is far from flourishing and the following extract from a report* speaks for itself:

While the national revenue and population increased by 2% per annum for the period 1950-1962, the *per capita* product in 1955 terms remained stationary at about US \$85, the lowest figure in Latin America and hardly more than one-fifth of the average for the region. Since 1962 there has been a drop in the level of commercial activity and it has been calculated semi-officially that the *per capita* product for 1965 was 20% lower in real terms than in 1962. Taking the population growth into account, the real *per capita* product has sunk to US \$63 and semi-official preliminary calculations point to a further decrease in 1966. However, these calculations should not be taken as final and should be regarded mainly as an indication of current trends.

All this reconfirms that for a long time in the future the grounds given in articles 196 and 197† of the Haïtian Constitution in 'justification' of the life appointment of the President of the Republic will continue to be a tragic example of

* *Progreso Socio-Económico en América Latina*; Trust Fund for Social Progress. Sixth Annual Report, 1966. Inter-American Development Bank, Washington, D.C., 1967; p. 255.

† *Article 196*: The Legislative Assembly issued from the elections of April 1961 shall exercise the legislative power until the second Monday of April 1967, the date on which the term of the present deputies expires. In these circumstances, and in view of the fact that he has awoken national consciousness for the first time since 1804 by carrying out a radical change in the political, economic, social, cultural and religious situation in Haiti, the citizen Dr. François Duvalier, Supreme Leader of

† the Haitian nation, is elected President for life, to ensure the conquests and the permanence of the Duvalier revolution under the flag of national unity.

Article 197: Whereas Dr. François Duvalier

has, by a timely reorganization of the armed forces, ensured the maintenance of public order and peace, gravely jeopardized by the tragic events in 1957;

has paved the way towards and brought about a reconciliation between the political factions which were violently opposed as a result of the fall of the 1950 regime;

has laid the foundations of the country's prosperity by promoting agriculture and the country's progressive industrialization by a programme of public works and by constructing the necessary infrastructure;

has placed the State on a stable economic and financial footing despite the sinister manoeuvres of a conspiracy of domestic and alien forces, and the aggravation of the situation by recurrent disasters arising from the violence of the elements;

has ensured the effective protection of the toiling masses by bringing into harmony the interests and aspirations of capital and labour;

has advocated and established a nation-wide organization of the rural sector and has, by means of a new code, introduced regulations governing life in the country areas and thus brought justice to the peasant and opened the way to his complete rehabilitation;

has undertaken and achieved the eradication of mass illiteracy and has thus fulfilled the aspirations of the humble and weak for enlightenment and well-being;

has established the requisite agencies for the protection of women, for mother and child welfare and for the family;

has established the State University of Haiti and met the legitimate ambitions of Haitian youth which aspires to the commanding heights of knowledge and the mastery of the future through learning;

has imposed respect for the rights of the people and the prerogatives of national sovereignty, has consolidated the prestige and dignity of the Haitian community and safeguarded the sacred heritage of our forebears against any assault;

has by his domestic policies gathered all social strata under his benevolent protection and, by a dignified foreign policy, defended the integrity of Haïti's territory and its national independence;

has directed his every action towards building a strong nation capable of fulfilling its destiny in full freedom and dignity, for the happiness of all its sons and for the peace of the world;

Inasmuch as he has thus become unchallengeable leader of the revolution, the champion of national unity, the worthy heir of the founding fathers of the Haitian nation, the restorer of the fatherland;

and inasmuch as he has merited the unreserved acclaim of the vast majority of the people as head of the national community for an unlimited period;

NOW THEREFORE Dr. François Duvalier, elected President of the Republic, shall exercise his high functions for life, pursuant to the provisions of article 92 of the present Constitution.

one of the most shameful insults to a nation's dignity and one of the basic falsehoods of an unlimited demagogy. It is also a mockery of civilized countries, and of Latin American countries in particular, since Haïti is one of them and has also signed and ratified most of the regional treaties, the observance of which should require the government to behave in a completely different way, particularly in the matter of Human Rights.*

Nevertheless, the life mandate, albeit enshrined in the Constitution, is no guarantee whatsoever for the dictator. There are obvious signs of the growing instability of the regime, and this, added to the other enormous problems, makes its position all the more precarious.

The present state of affairs in Haïti will leave a tremendous burden of responsibility on Duvalier's successors. The country which they will inherit, impoverished and debilitated, will need to be rebuilt from its foundations. The task will call for a single-minded devotion to their country's needs and the long-term subordination of their political ambitions to this herculean labour. Its completion will also call for the united efforts of the entire nation. This alone will gain the sympathy and co-operation of other countries. It may be that, one day, the people of Haïti—so often cheated—will have as its sole authority the Rule of Law.

* On July 26 1967, it was reported in the press that the government of Ecuador had broken off diplomatic relations with Haïti, 'since it could no longer remain indifferent to the continual violations of Human Rights perpetrated by the Haïtian government'.

THE KURDISH PROBLEM

There is no state called Kurdistan: in the Middle East there is an area of land, a little larger than the size of Syria, where the vast majority of inhabitants are members of one distinct ethnic group—the Kurds. This area covers the south-eastern part of Turkey, touches the Soviet Union and Syria, and takes in one strip of land in north-west Iran, and another in northern Iraq.

Conflicting figures have been given concerning the population within this area; a conservative estimate might place:

2-3 million Kurds living in the Turkish part,

1½ million in Iran,

1¼ million in Iraq,

250 thousand in Syria,

100 thousand in the Soviet Union.

The History of the Kurds

The Kurds, an attractive people—sometimes cruel, often generous—have a long and troubled history. All that can be said with certainty about their origin is that they are Aryans. They can probably be identified with the Gütü, a mountain tribe which had settled within the area referred to above by the year 2000 B.C. This tribe fought the Sumerian dynasties and the Assyrian monarchs, marched in the armies of Cyrus and Darius, harassed the retreating soldiers of Xenophon, and on the fall of the Persian Empire absorbed a large body of Medes into its number.

After the Arab conquest the Kurds were converted to Islam, but retained their national character. Under the leadership of Saladin, himself a Kurd, together with the Arabs they championed the cause of Islam against the Western World. In the year 1257, they massacred 20,000 Mongols who had been sent out to suppress 'these Kurdish robbers'.

In the Middle Ages, the Kurds, who consisted of a large number of independent principalities separating Persia from the Ottoman Empire, became involved in the power struggle between these two states. Most of the Kurds, being Sunnite Moslems

supported their co-religionists in Turkey; some, who were Shi-ite Moslems, supported the Persians. In 1514, after the Battle of Tchaldiran, the Turkish Sultan, in return for their allegiance, recognized the independence, traditions and customs of the allied Kurdish principalities, and promised his protection against Persia. A similar arrangement was made between the Shah of Persia and his Kurdish allies. The various principalities then fought in the opposing camps of their two feudal overlords until 1639, when a Treaty was made, fixing the frontier between Persia and the Ottoman Empire. This Treaty, dividing the Kurds between two Nations, is the source of the present Kurdish problem. Over a period of two to three centuries the feudal Principalities were gradually reduced to mere provinces. The people, nevertheless, retained their national characteristics, having their own language and customs, and giving birth to Kurdish poets, historians and sometimes strong leaders who carried on a temporary and often brutal resistance in certain regions.

The Kurds in Iraq

At the end of the First World War, the Treaty of Sèvres, (signed by Turkey and the allied victors in 1920) created new states out of the defeated Ottoman Empire and, *inter alia*, promised the Kurds, living within the old empire, autonomy and potential independence. The relevant provisions were these:

Article 62: A Commission . . . shall draft within six months from the coming into force of the present Treaty a scheme of local autonomy for the predominantly Kurdish areas lying east of the Euphrates, south of the southern boundary of Armenia as it may be hereafter determined, and north of the frontier of Turkey with Syria and Mesopotamia . . .

Article 64: If within one year the Kurdish peoples defined in Article 62 shall . . . show that the majority of the population of those areas desires independence from Turkey, and if the (League of Nations') Council then considers that these peoples are capable of such independence, and recommends that it should be granted to them, Turkey hereby agrees to execute such a recommendation and to renounce all rights and title over these areas.

The Treaty of Sèvres was never implemented. The following years were taken up with a dispute between Great Britain and a strong nationalist Turkey (under Mustafa Kemal), as to the legality of Britain's attaching the *wilayet* (district) of Mosul—the

majority of whose inhabitants are Kurds—to Baghdad and Basrah to form the new state of Iraq. Under the Treaty of Lausanne (1923), the dispute was referred to a League of Nations' Commission of Enquiry, which reported that the bulk of the inhabitants of the *wilayet* favoured inclusion in Iraq, rather than to return to Turkey. It added, however, that the feeling of the population was neither Turkish nor Iraqi, but Kurdish. It said: 'If a conclusion must be drawn from the argument of ethnic isolation, it would lead to calling for the creation of an independent Kurdish State.' A second Commission was sent to Mosul, and in its report (which was ratified by the League of Nations' Council) it recommended the inclusion of the territory in Iraq. It also pointed out: 'The wishes of the Kurds that officials of their race be appointed to the administration of their state will have to be taken into account, as well as the use of the Kurdish language as the official language of justice and instruction in the schools.'

The next year, Turkey finally accepted the tracing of a frontier between herself and Iraq along a line driven through 'the predominantly Kurdish areas' as defined in the obsolete Treaty of Sèvres. The thirty-seven years of the Kingdom of Iraq were marked by British and Iraqi promises to respect the local autonomy of the Kurds, and by repeated Kurdish revolts against direct administration from Baghdad.

The Recent War

Iraq was declared a Republic after a *coup d'état* on July 14 1958. The King and his Prime Minister were killed, and General Kassem became President. The new regime at first seemed favourable to the Kurds. Their 'national rights' were guaranteed in a new Constitution, and General Barzani was allowed to return from exile in the Soviet Union and given a substantial pension. However, the more Kassem became a dictator, the harder it was for him to allow such a large minority (perhaps one quarter of the population) autonomous rights.

Mulla Mustafa Barzani, Commander-in-Chief of the Kurdish National Army in Iraq, has had a most colourful career. He led an insurrection against the Iraqi government in 1931, in 1943, in 1944, and again in 1945 when, hard-pressed by the government army, with two thousand followers he crossed over into Iran.

There, he supported the ephemeral Kurdish Republic at Mahabad. (At the end of the Second World War, Government administration in the Kurdish areas of Iran had virtually ceased. With the tenuous support of the Soviet Union, who were occupying the nearby district of Azerbaijan, an independent Kurdish Republic was established at Mahabad). When the Republic collapsed, on the withdrawal of Soviet troops from Iran, General Barzani did not surrender to the Irani government. His resistance to the troops sent against him revealed the formidable fighting qualities of his men. Finally, after great hardship, he and many of his followers retreated into the Soviet Union, where they were granted asylum. Although Barzani has sought assistance from many countries, among which are the Soviet Union, Great Britain and the United States, his only allegiance has been to Kurdish nationalism.

The first phase of the 'Kurdish War' began in September 1961. In spite of the aeroplanes and heavy artillery used by the government, Kurdish successes were significant. In January 1963, Kassem sought to negotiate peace with the Kurds. When peace talks began in the next month, Kassem was dead, his regime overthrown by a military faction headed by Abdul Salam Aref. A member of the new government stated: 'The Kurdish provinces will receive their own administration in all their dominions--The decision we have taken is primarily to conform to the principle of the rights of the people to choose their future, and secondly it is the result of an objective analysis of the actual situation in Iraq.'

The Peace talks failed. The cause for the failure might have been a total opposition to any kind of Kurdish autonomy on the part of the Ba'ath party in power; or Barzani, encouraged by his military success, may (as the Iraqi Chargé d'Affaires in London alleged) have been 'intransigent in the negotiations and (have) demanded an autonomous status which no reasonable government could be expected to concede'.

The terms which Barzani submitted to the government at the beginning of the negotiations, in addition to providing for the complete equality of Kurd and Arab, demanded a 'national apparatus' within Kurdistan (i.e. Kurdish Iraq), having a Kurdish legislature, executive and judiciary responsible for internal administration. Affairs of State (such as foreign policy, defence, nationality, oil affairs) would be exercised by the Central

(Iraqi) Government, whose laws or regulations relating to Kurdistan would be executed by the local Executive Council.

The Government was offering a 'decentralized system' by which Iraq would be divided administratively into 'Governorships', each enjoying sufficient freedom of action for the administration of its affairs under the supervision of the Central Government.

How far either of the proposals was modified during the four months of peace talks, and again, during a nine-month truce which was to begin in February of the next year, it is impossible to say.

By June 10 1963, the Kurdish positions presented an immediate threat to the oil fields around Mosul; and after giving an ultimatum, the government troops attacked. Kurdish allegations that government forces bombed villages inhabited mostly by women and children, and that it used napalm, incendiary bombs and poisonous gas, during the war, do not lack corroboration. They have been supported by the world press, by a newspaper correspondent, Dana Adams Schmidt, who in his book 'Journey among Brave Men' gives an eye-witness account of the bombing of villages by Iraqi aircraft, by an estimate of a British journalist (who had spent eight weeks travelling through the region) that some twenty thousand Kurds in the villages, mostly women, children and non-combatants had been killed since 1961, and by the entry of thousands of refugees from Kurdish areas into Turkey and Iran.

The Kurds have demanded a United Nations' Commission of Enquiry, and have appealed to the U.N. Secretary-General and to the International Committee of the Red Cross (whose aid was refused by the Iraqi government). At the 36th session of the Economic and Social Council (in July 1963), a draft resolution proposed by the Soviet Union, condemning the acts of the Iraqi government as being contrary to the provisions of the U.N. Charter and constituting an act of genocide, was received sympathetically, but rejected, on procedural and other grounds. In October 1963, the International League for the Rights of Man, in a letter to the U.N. Secretary-General, protested against this 'virtual genocide of the Kurds'.

The war ended in June 1966. President Aref had been killed in a helicopter accident the previous April and had been succeeded by his brother. In September 1965, Abdul Rahman

Bazzaz had been appointed prime-minister, the first civilian to become a member of the government since the Republic began.

In June 1966, Dr. Bazzaz declared an amnesty for the Kurdish combatants, and put forward his ' twelve point plan ' for settling the conflict, which was accepted by Barzani.

The main provisions of the plan are these:

A permanent Constitution will guarantee the equal rights and duties of Kurds and Arabs, (Point 1). This will be realized by a provincial law, which is to be promulgated ' on a decentralized basis '. Each province, district and subdistrict will have its own elected council, exercising wide powers in education, health and other local affairs, (Point 2). The Kurds will be represented in the national Council in a percentage proportionate to the whole population. They will have equal opportunity of taking public employment. Provision is made for Kurdish to be an official language, for scholarships being awarded to Kurds, and for a free Kurdish press. Compensation will be paid to the war victims and their families, and funds will be spent on reconstructing the Kurdish areas.

In August 1966, Dr. Bazzaz fell from power. In December, General Barzani addressed a memorandum to the president and the new prime-minister alleging that not one of the twelve points was being implemented, and recommending the setting up of a joint committee with governmental powers having the authority to implement the plan. He gave an assurance of the Kurds ' whole-hearted support in re-establishing order, the Rule of Law and the prosperity of the people. '

* * *

The history of the Kurds in Iraq provides a picture of a situation that is repeated in many countries of the world. It shows an ethnic minority wishing to express itself in its individual way, within a State which cannot tolerate any qualification upon its national unity, and which, instead of coming to terms with its problem, blindly seeks to stamp it out.

The Kurdish problem, brought about by the circumstances of History, is, it is true, by no means easy to solve. The Kurds, one, often dissatisfied, national group inhabiting a considerable portion of three different countries,—Iraq, Iran and Turkey—must threaten to some extent the internal and external security of these countries. The Iraqi solution—that of military force—is all too common in the modern world. It is a shameful indictment on

our times that it is only when force meets resistance too strong for it that the path is free for moderate men, like Dr. Bazzaz, to come to the forefront, and a peaceful and just solution is reached.

If the solution which Iraq has arrived at is not put into practice, these fourteen months of peace will merely be a short interval in a tedious Kurdish war.

The Kurds Elsewhere

The war has brought the Kurds in Iraq on to the pages of the world's newspapers, and has gained some sympathy for their cause. The Kurds outside Iraq have remained in obscurity, and the world would do well to direct its attention towards them.

Turkey

Turkey (whose Kurdish population numbers at the very least two to three million people) appears to be ignoring Articles 38 and 39 of the Treaty of Lausanne, in which she agreed to respect the rights of minorities. The teaching of Kurdish in schools is forbidden. Attempts to bring out Kurdish publications have been suppressed and the editors imprisoned. A recent decree (6/7635) forbids the import of Kurdish printed matter and sound-recordings. There has been reported discrimination against Kurdish students. There have been reports of the forcible evacuation of Kurds from whole districts. There have been accounts, similar to those concerning Iraq, of the killing of women and children during the suppression of Kurdish revolts. Officially, in Turkey, the Kurds are not Kurds, but 'mountain Turks'.

Syria

Last May, the Secretary-General of the Committee for the Defence of the Kurdish People's Rights, in a letter to the International Commission of Jurists, stated that the Syrian government had begun to carry out its 'Arab Belt' plan, whereby thousands of Kurdish peasants, living on a strip of land 10 kilometres deep, adjacent to the Iraqi and Turkish frontiers, are to be removed to desert land, and to be replaced by Arabs and Bedouins from elsewhere. In one region the government has already confiscated the land and crops of the villagers, who, refusing

to move, are suffering from starvation and disease. At present, 150 to 160 thousand Kurds are threatened by the ' Arab Belt ' policy.

Outside these areas, the letter continues, the Kurds are in no better position. In one region, as a result of a new population census, 150 thousand Kurds have been deprived of their nationality, are no longer considered to be persons before the law, and cannot avail themselves of the social amenities in Syria since their identity cards have been withdrawn. They are, moreover, unable to travel to another region or village without a permit from the military government, which is almost impossible to obtain.

If but a part of these allegations should prove to be well-founded, this would constitute a barbarous violation of fundamental human rights.

* * *

As international relations now stand, states are reluctant to give concrete support to ethnic minorities like the Kurds; they feel that to do so would be to interfere in the governing of the country concerned. Consequently, in many parts of the world discrimination and persecution continue to be applied against a minority people; and, if the minority has the will to resist, there arises the situation—which was seen in Iraq—where men and women, both Kurd and Arab, are trampled on uselessly.

If the world today is to realize its determination that problems should be resolved by the Rule of Law rather than by the old Rule of Force, it must establish international machinery whereby the rights of ethnic minorities and unpopular groups living within a state may be protected.

ICJ NEWS

The ICJ is in mourning for its Vice-President, Professor Kenzo Takayanagi (Japan). He died suddenly on his return journey from the Stockholm Conference, in which he had taken an active part. It was there that his 80th birthday had just been celebrated.

Professor Takayanagi was an old gentleman with a store of wisdom and knowledge. His eyes shone with intelligence and vivacity behind his steel spectacles, and his whole expression was one of kindliness and benevolence. Laden with honours, titles and high offices, he was remarkably active, even in his old-age. After a long and brilliant university career, he was still, *inter alia*, Professor of Law at Seikei University, Professor Emeritus of Tokyo University, member of the Japanese Legislative Research Committee, Chairman of a Parliamentary Committee set up to revise the Constitution, member of the Constitutional Research Committee and member of the Japanese Academy. A staunch supporter of the Rule of Law, founder and first President of the Japanese National Section, he was elected Vice-President of the I.C.J. at its last plenary session in the autumn of 1966. To the Commission, to the international legal community and to his countless friends the world over, his death is a great loss.

NATIONAL SECTIONS

GREAT BRITAIN

The ten years of *JUSTICE*, the British Section of the ICJ, were highlighted by its anniversary celebrations. Outstanding personalities in the British legal world, members of the British Government and other public officers, together with representatives from the ICJ Secretariat and the Austrian, Dutch, French, German and Irish Sections, attended an official dinner at the Mansion House, presided over by the Lord Mayor of London. At the same time, *JUSTICE* arranged for this occasion to coincide with a very useful exchange of views in a Franco-British Colloquium with *Libre Justice*, the French National Section, under its president, Mr. René Mayer, enabling numerous participants from both countries to explain and compare their respective legal systems. They discussed the 'Organization and Control of the Legal Profession', and the 'Education and Training of Judges and Lawyers'. Immediately afterwards, *JUSTICE* held its Annual General Meeting, at which Lord Justice Salmon gave a well-constructed Address on 'The Bench as the Last Bulwark of Individual Liberty'. All these events have provided fresh evidence of the life and vigour of *JUSTICE*, and of the well-earned influence that this Section has acquired.

GHANA

The Ghana National Section, founded by the late Dr. Danquah, which had of course suspended its activities under Dr. N'Krumah's government, has now been revived. A new Section has been constituted under the name of 'Freedom and Justice', and its Statutes approved. The members of its Council are: President, Mr. Justice N. A. Ollennu; Vice-Chairman, Sir E. O. Asafu-Adjaye; Secretary, Mr. Joe Reindorf; Members: Mr. N. Y. B. Adada, Mr. E. N. Moore, Mr. Justice M. A. Charles, Mr. W. R. A. Ofori Atta and Mr. Ebenezer S. Aidoo. It is very encouraging to observe that the Rule of Law has always remained alive in Ghana, despite the various set-backs, and that the efforts and lessons of those who were its leading pioneers have not been in vain. We warmly wish this new Section every success in its work for the triumph of freedom and justice.

NEPAL

A new ICJ Section has also been formed in Nepal, under the Chairmanship of Mr. Dev Nath Verma. The other members of its Council are: Mr. Ballabha Shum Sher, J.B.R., and Mr. Hora Prasad Joshi, Vice-Presidents; Mr. Madhu Prasad Sherma, Secretary-General, Mr. Komal B. Shah, Assistant Secretary and Mr. Krishna B. Basnet, Treasurer.

ICELAND

In Iceland, a Committee of Jurists has been set up to make arrangements for the forming of a National Section. Its members are: Mr. Agust Fjølsted, advo-

cate to the Supreme Court; Mr. Jón N. Sigurosson, advocate to the Supreme Court and President of the Icelandic Bar Association; Mr. Pall S. Pálsson, advocate to the Supreme Court.

MADAGASCAR

From July 19 to 22, the Secretary-General paid an official visit to Madagascar, where he had valuable discussions with lawyers and members of the government. The links of friendship and co-operation already forged with the Malgasy jurists attending the ICJ Conference at Dakar were renewed and strengthened, and the plan to form a National Section in Madagascar, which was well-received, is now under consideration.

INTERNATIONAL COOPERATION

GENEVA

The Secretary-General of the ICJ, Mr. Seán MacBride, took an active part in the *Pacem in Terris—II* meeting, (May 28-31), and was present at the discussions of the 16th General Assembly of the *International Press Institute*, June 19-23. The ICJ has always given the greatest importance to the freedom of the Press, which in many respects is a valuable criterion of a country's freedom and democracy; and it has followed the Institute's courageous action with admiration. Among the Assembly's Resolutions was a text, unanimously adopted, which condemned the abolition of the freedom of the Press in Greece following the military *coup d'état*, expressed the Institute's solidarity with the journalists who are victims of arbitrary measures and demanded that they should receive protection from the law and restitution of their rights and freedoms.

The Secretary-General addressed the twenty first Annual Summer School held from July 9 to 21 under the joint auspices of the *World Federation of United Nations Associations* and the *International Student Movement for the United Nations*. The general theme of the discussions was 'Human Rights and Responsibilities'. This Seminar, primarily intended for students and teachers, took the form of a series of lecture-discussions and study-groups on special subjects. Their purpose was to make a comparative analysis of the texts concerning Human Rights, and to formulate programmes which the various United Nations Associations could carry out, with a view to promoting a greater awareness and recognition of human rights and their corresponding responsibilities. Mr. Lucian G. Weeramantry, the Senior Legal Officer, and Dr. János Tóth, Legal Officer, acted as advisers to study-groups.

The ICJ was represented at the International Congress organized by the *World Peace through Law Center*, which was attended by numerous members of the legal professions (July 9-14).

The Secretariat also closely followed the summer session of the Economic and Social Council of the United Nations.

NEWS

SINGAPORE

Mr. Abishega-Naden represented the ICJ at the conference on the Rule of Law organized last May by the Student's Law Society of the University of Singapore. The Minister of Law, Mr. E. W. Barker, the Chief Justice, Mr. Wee Chong Jin, and the Speaker of the Singapore Parliament, Mr. P. Coomaraswamy, took part in this meeting, together with a large number of students from Australasia, Ceylon, Indonesia and the Philippines. Three topics were discussed: the Position of the Ombudsman and the Rule of Law, the Problem of the Costs of Litigation and the Rule of Law, and Legal Aid and the Rule of Law.

WARSAW

Two important events took place in Warsaw during August. The first was the *United Nations Seminar* (August 15-28) on Economic, Social and Cultural Rights, organized by the UN Human Rights Division and the Polish Government. The Secretary-General, Mr. S. MacBride, represented the ICJ. The second was the Conference organized at the Polish Academy of Sciences (August 20-26) by the *International Federation of Women in the Legal Profession* on 'The Present-day Family and its Legal Protection'. Mrs. A.-J. Pouyat of the Secretariat represented the ICJ.

PARIS

Miss Monique Desforges, a member of the Paris Bar, represented the ICJ at the annual meeting of the Assembly for World Law. Professor Levasseur of the Paris Faculty of Law, member of *Libre Justice* (the French national section), represented the ICJ at the second Conference on Crime Prevention, held from July 10-14 in Paris by the Crime Prevention Society. The subject discussed was 'The Prevention of Genocide'.

NEW YORK

On August 10th, 1967 Governor Nelson A. Rockefeller announced the setting up of a Governor's Committee to Review New York Laws and Procedures in the Area of Human Rights. Mr. Eli Whitney Debevoise, Member of the ICJ, was appointed Chairman of the Committee.

HUMAN RIGHTS YEAR

The *Ad Hoc Committee of the Non-Governmental Organizations (NGO)* for *International Human Rights Year* met on July 10 in Geneva. The practical organization of the Human Rights campaign in 1968 was the main subject of discussion. It was decided to call a meeting of an enlarged NGO Committee in January 1968 in Geneva. The work will be shared between four committees, which will respectively study problems concerning: civil and political rights, cultural rights, economic and social rights and the necessary machinery for the effective implementation and protection of these rights. The Committee should

then be in a position to submit comments and practical suggestions to the International Conference on Human Rights being organized by the United Nations in Teheran for April 1968. At the same time, a special effort is to be made to set up national action committees, with the members of the NGO National Sections forming the nucleus of these. In addition, a public relations committee was set up.

The meeting noted with satisfaction the adoption by ECOSOC of the project to create a UN High Commissioner for Human Rights (17 votes for, 4 against and 5 abstentions). The final decision now lies with the General Assembly at their next meeting in the Autumn.

RACIAL DISCRIMINATION

The Secretary-General of the ICJ gave a dinner on Sunday, July 9 in honour of the members of the UN Sub-Committee on *apartheid*, who were then in Geneva. On the following day the Secretary-General with some members of the Legal Staff met the Sub-Committee and placed before it suggestions for strengthening and co-ordinating action against *apartheid*. The ICJ has, for a long time, been carrying on an untiring campaign in this field.

On July 24 the Secretary-General of the ICJ left for Kitwe (Zambia) to attend the *UN Seminar on Apartheid, Racial Discrimination and Colonialism in the countries of Southern Africa*. Some seventy delegates were present, as well as observers from non-governmental organizations working in this field and several outstanding personalities who received personal invitations. The report of the Seminar will be forwarded to the next UN General Assembly.

THE SITUATION IN GREECE

The ICJ is still seriously concerned by the course of events in Greece following the military *coup d'état*, last April. Each day seems to bring a worsening in the situation. Even if the government's claim that it was compelled to take extreme measures in order to combat a danger 'threatening the life of the nation' were unreservedly accepted, the acts of the military junta in power are far in excess of those permitted by the European Convention on Human Rights, which confines any measures derogating from a State's obligations under it to those 'strictly required by the exigencies of the situation'.

In a series of Press Releases, the ICJ has made public its outright disapproval of the more notorious occurrences, among which were: 1) the dissolution of the Bar Councils; the arrest and detention of a number of distinguished lawyers, and the countless petty restrictions put in the way of the normal exercise of their professions; 2) the removal of the judicial power of the *Council of State* to control the acts of the government, thus leaving the victims of an illegal administrative decision without remedy; 3) the waves of arrests affecting people of almost any political opinion, creating police state conditions and an atmosphere of general insecurity, and compelling thousands of Greeks to choose freedom through exile; 4) the suppression of all Trade Union activity; 5) the censorship of the Press and the enforced publication of propaganda,

rendering non-existent all freedom of opinion and expression; 6) the disqualification of elected local Councillors, taking away the citizen's right to take part in the governing of his country; 7) the large-scale purging of the officers in the Army and in the Administration.

The acts of those in power in Greece are not only incompatible with the Rule of Law, but also in open contradiction with their own statements of policy. It would seem to be most dangerous to claim (perhaps in good faith) to be restoring democracy by uprooting it. The methods employed for the realization of the official policy would seem to be of doubtful efficacy, as, indeed, is a rigid system of enforcement of general application, which has provoked an often violent reaction. The censorship of the works of the great classical authors, and the obligation on civil servants to go to mass (regardless of their religious belief), will not bring into being a high moral order or any kind of order.

The Commission particularly condemns the humiliating procedure, valueless in law and illusory in practice—whereby detainees, in return for their liberty, are compelled to sign a document stating that they will not engage in 'subversive activity' and will, in future, take no part in politics. According to an official statement, all judges, civil servants and teachers, under pain of dismissal, will be made to swear an oath of loyalty to the regime. This brings to mind similar and unwelcome precedents and tends to compromise the partiality and freedom from political bias of the Courts in future. Those in power seem to have forgotten that the most natural way to gain the people's support of government policies is by means of free elections, and it is this that they have refused to countenance.

At the same time, the ICJ has publicly approached various authorities requesting that the Council of Europe should take up the Greek case. It was therefore a matter of great satisfaction to see that the Legal Committee, and later the Political Committee of the Council of Europe, have put forward opinions that have completely corroborated the ICJ's stand in this matter. On June 23, the Standing Committee of the Assembly of the Council of Europe, acting on behalf of the whole Assembly, adopted an unambiguous Resolution *inter alia* considering: 'that respect for the Statute of the Council of Europe and for the European Convention on Human Rights constitutes the very foundation of the Council of Europe's existence', and that 'in an important and serious case of this kind the Contracting Parties to the Convention have a duty to act under Article 24 of the Convention' (that is, by separately or jointly referring the breaches of the Convention committed by Greece to the European Commission of Human Rights). If the Contracting Parties do not act as requested, 'the mechanism of collective guarantee of human rights set up by the Convention runs the risk of becoming meaningless'.

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 (Honorary Presidents)	Former Judge of the Supreme Court of India
T. S. FERNANDO (President)	Judge of the Supreme Court of Ceylon; former Attorney-General and former Solicitor-General of Ceylon
A. J. M. VAN DAL	Attorney-at-law of the Supreme Court of the Netherlands
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U CHAN HTOON	Former Judge of the Supreme Court of the Union of Burma
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The next issue (Vol. VIII, No. 2) will be the first of two, in a special edition to celebrate Human Rights Year 1968. The articles, contributed by distinguished men from many parts of the world, will deal with the Rights and Freedoms set out in the Universal Declaration of Human Rights. As usual, there will be an article on a Constitutional Court (The *Conseil d'Etat* of France), the Digest of Cases and Books of Interest.

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