

FOR THE RULE  
OF LAW

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

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## **RESHAPING THE LEGAL SYSTEM IN CZECHOSLOVAKIA**

On 10th April 1968, the State newsagency and all the mass media in the Czechoslovak Socialist Republic announced the formation of a new government and the publication of a new Programme of Action for the Communist Party. These events marked the closing of the first stage of far-reaching political and legal changes. This stage began on 5th January 1968 with the resignation of Mr Antonin Novotny as First Secretary of the Party—a key position in which he was replaced by Mr Alexander Dubcek. This was followed on 22nd March by his resignation as President of the Republic. Nine days later, General Ludvik Svoboda was elected Head of State by the National Assembly.

The events of the first three months of this year and the plans announced by the new leaders reveal a fundamental reshaping of the Czechoslovak legal system. The underlying object, as defined by the new Programme of Action, is to create a new model of marxism, a socialism in freedom.

A summary of its antecedents will show the present development in its historical context.

### **Historical Antecedents**

From 1956 onwards, the repression and police rule built up in Eastern Europe under Stalinism began to yield to the new concept of 'the restoration of socialist legality', by which a great effort was made to curb arbitrary acts of the executive, to safeguard the rights to life and personal freedom of the citizen and to eliminate serious miscarriages in the administration of justice. Fresh impetus was given to these efforts in 1961, when the 22nd Conference of the Communist Party of the Soviet Union announced in Moscow that the end of the class struggle in communist-ruled countries had almost been reached, and that 'the dictatorship of the proletariat' was gradually being replaced by 'the State of the entire people'.

The first manifestation of this movement in Czechoslovakia was the posthumous rehabilitation of Rudolf Slansky, a former First Secretary of the Communist Party, who had been driven from power, convicted in a large-scale political trial on trumped-up charges of espionage and high treason, and executed with his associates in 1952. His successor was Antonin Novotny.

After the rehabilitation of the Slansky group in 1963, reported in *Bulletin* No. 17, criticism of basic violations of law increased in the country and the need for thorough legal and economic reforms became pressing. The National Assembly passed a considerable number of laws, which proved, however, to be 'reforms without changes' (see *Bulletins* Nos 19 and 20), being carried out reluctantly and in the context of what President Novotny called a 'struggle against various liberal tendencies' towards 'unrestricted freedom for everybody'.

The growing ferment for change, inspired by intellectuals, which reached its climax at the Congress of Czechoslovak Writers in June 1967 and student demonstrations at Prague in October, caused the Central Committee of the Party to modify its policy and to undertake to carry out a series of reforms, the first of which was the change of leadership in the Party and the State.

The following is a brief survey of the legal reforms proposed by the Programme of Action of 10th April, which are expected to give new life to social and public activities in the country and to lead to the enactment of a new federal Constitution. This, incidentally, will not only safeguard fundamental freedoms for all, but also grant full self-government for the Slovaks, as well as assure respect for the rights of national minorities.

### **Socialist Democracy**

The constitutional and legal reforms set out in the Programme of Action are linked with the theory that the class struggle is coming to an end, and that the time is ripe for a society functioning under the leadership of the Communist Party for the benefit and with the participation of all its citizens. The proposed reforms are based on a new concept of marxist humanism, according to which the social order should be designed to serve the full development of man and his dignity. This far-reaching experiment has been given the name of *Socialist Democracy*.

## Fundamental Freedoms

'The foundations of the political system must provide firm safeguards against the return of subjectivism and arbitrary use of power', states the Programme. Socialist Democracy will accordingly be founded on the grant of 'all political and personal rights of the citizen'. A few of these fundamental freedoms have been given special emphasis:

1. The Constitution will guarantee freedom of association and assembly, in order to enable the establishment of such groups as voluntary organizations, clubs and societies. These organizations had previously been considered merely as 'transmission belts' from the Communist Party to the masses, used to interpret and implement its policy. Moreover, for the last 20 years the organizations have had their officers and representatives imposed upon them from outside: now they will have the right to choose their own officials.

The formation of several new organizations has been announced: such as an association of former political prisoners, victims of the Nazi and Stalinist era, an independent association of University Students and a group of non-communist writers. The Scout Movement and the traditional national-fitness organization, *Sokol*, dissolved in 1948, may soon be re-established.

2. Freedom of opinion and expression, including freedom to express minority views, will be guaranteed in a special Bill on Freedom of Expression to be submitted to the National Assembly. It will officially abolish censorship, discontinued in practice since March.

The Czechoslovak press proved to be a leading force in the drive for reform of the past few months. Together with the radio and television, it provided an impartial coverage and analysis of the new trends and published radical opinions as well as the more conservative views of those who were concerned about the scope and speed of the new developments.

3. Referring to freedom of conscience and religion, the Programme states that 'religious believers who wish to participate, on the basis of their faith, in the building of socialist society and the fulfilment of our ambitious goals' are welcome and can do so 'as equals and in the enjoyment of full rights'.

It was announced that negotiations had been opened with the Vatican for an agreement to normalize relations between the Church and State. Restrictions on the admission of students to catholic seminaries have already been lifted; and three bishops barred from ecclesiastical work for 18 years are expected to be restored to their Sees. Josef Cardinal Beran, Archbishop of Prague, who left his country in 1964 after 14 years of confinement, may eventually return. The reinstatement of persons persecuted under the former regime for their political and religious beliefs is expected to include 1,500 priests at present working in factories.

4. Priority has been given to the enactment of special legislation concerning freedom of movement. This will not only provide for the freedom to travel to any country, but also for the right to take up residence abroad. In addition, the 'iron curtain', the mine-fields and barbed wire on the country's western frontier, is being dismantled.

### **Procedural Safeguards**

Fundamental freedoms will be guaranteed under constitutional and procedural law. Among the procedural safeguards three should be mentioned:

1. The person and property of citizens will have the same protection as that which was formerly only given to State interests.
2. Under special legislation citizens will be entitled to damages for torts resulting from illegal decisions of state organs.
3. All citizens, communists and non-communists alike, who over the past years were victims of illegal acts of State organs will be rehabilitated (i.e. restored to their former position and given compensation). A Bill to provide for rehabilitation is now under preparation.

The right of rehabilitation is intended to remedy breaches of socialist legality. Damage suffered in consequence of general economic and social measures taken since 1945 is outside the scope of the law on rehabilitation. These major reforms will remain the basis of the social order. The Programme states:

It is clear that even though we are providing for full rehabilitation of persons we cannot change the consequences of revolutionary measures

taken in the past years in accordance with the spirit of class legislation aimed against the bourgeoisie and its supporting proprietary, economic and social elements.

The rehabilitation policy, if fully applied will require a revision of the files of some 35,000 political trials and detentions. The process will be costly and is expected to take two to three years.

The dismantling of the police state, the primary source of all past violations of legality and human rights, is pledged unequivocally in the Programme. The relevant paragraph reads:

The position, organization, personnel and equipment, working methods and training of the State Security (Police) must be directed to the carrying out of its function, which is the protection of the State from the activities of enemy centres abroad. Every citizen who is not implicated in such activity must have the certainty that he will not be subjected to surveillance by the State Security on account of his political convictions and opinions, or his personal creed and activity. The Party categorically declares that this apparatus must not be designed or used for the solution of internal political questions and differences of opinion within a socialist society.

It will be recalled that the Yugoslav National Assembly made a similar declaration when it provided for the re-organization of the Security Forces in July 1966. Similarly, Romanian legislation was passed to curb 'State Security Privileges' in July 1967 (*Bulletin* No. 32).

### **Constitutional Safeguards**

Constitutional safeguards of fundamental rights and freedoms depend upon the unfettered functioning of *Parliament*, as the supreme organ of control of public life, upon the existence of representative government expressing genuinely the will of the majority of the people and upon an independent judiciary. These principles are emphasized in the Programme of Action:

The Programme of Action conceives the National Assembly as a socialist Parliament having all of the functions that are Parliament's in a democratic republic.

Parliament has the right and duty to control the entirety of public life and in particular the acts of the executive. Meticulous care was taken to ensure that the personal changes at the top of the State hierarchy of March and April should be the subject of an enactment by the National Assembly. Indeed, the withdrawal of confidence, expressed by the bureau of the National Assembly,

in regard to the President of the Republic, certain ministers and office holders was followed by their dismissal or resignation. The National Assembly thus symbolically assumed supreme power in the country.

To improve the representative character of Parliament, a new electoral law is being drawn up and new elections are planned for next autumn. Some improvements, indeed, are to be introduced during the present session.

The Programme states:

Procedural formalism, such as the attempt to bring about an unconvincing unanimity that suppresses the necessary differences of opinion in the views and attitudes of deputies, should be overcome...

Parliament is and will be composed of deputies belonging to different parties organized in the National Front, in which the Communist Party intends to retain the leading role. However, the interpretation and fulfilment of this leading role will change. Henceforth, 'the Communist Party will depend upon the voluntary support of the people, will refrain from dictating its will and continuously strive to earn its authority by its own achievements'. To combat bureaucratic centralism within its ranks the Party's organs will be elected in a genuinely democratic way. The independence of organizations, based on the principle of freedom of association, will also apply to the political parties united in the National Front so long as they subscribe to the fundamental socialist objectives determined by the Communist Party. Differences in the political positions of the organizations constituting the National Front will be resolved 'by political agreement and on the basis of a common socialist concept of the policy of the National Front'.

### **Independence of the Judiciary**

The Programme of Action puts forward various projects for restoring the independence of the judiciary.

For all legal actions, including those which involve administrative decisions of State organs, the basic guarantee of legality is that the proceedings should take place in a tribunal independent of political factors and subject only to law. If this principle is to be implemented, the entire social and political role and influence of the courts in our society must be strengthened. The Central Committee of the Communist Party of the CSSR shall insure that the series of necessary proposals and measures are worked out before the next election of judges. Similarly, the position and functions of the Procuracy must be determined so that it shall not be elevated above the courts, and that the full independence of practising lawyers from the organs of State shall be guaranteed.



It is too early to assess the historical importance of the reforms under way. They are certainly an impressive response to a resolution which the General Assembly of the United Nations recently adopted unanimously (GA/RES 2081 (XX) II B). This asked Member States to undertake during International Year for Human Rights 1968:

A review of national legislation against the standards of the Universal Declaration of Human Rights... and to consider the enactment of new, or the amending of existing, laws to bring their legislation into conformity with the principles of the Declaration...

The events described here can be seen as the earnest that Czechoslovakia has given for the implementation of the General Assembly's resolution. Indeed, a recent resolution of the Czechoslovak Union of Journalists called for the immediate signature and ratification of the two International Covenants on Human Rights (1966) by the new government. Certainly, the causes of the reforms are independent and more complex, but the overall aim to achieve the standards set by the Universal Declaration is clearly apparent.

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## **FREE THOUGHT IN GREECE: AN ENFORCED CONFORMITY**

The major activity of the Greek Colonels since they took over the government in April 1967 has been a large-scale purging of all sectors of the population. The victims are those who are likely to show hostility to the regime, in other words to the Colonels' opinions, for these are now the only permissible criteria in the political life of the country and the daily life of the ordinary citizen. The absolute powers that the military government has arrogated to itself have greatly helped the realization of this policy.

It is hardly worthwhile recalling the measures taken to silence opinion in the private sector and the methods used in the police-state that Greece has become to bring the population into line. The methods range from the senseless bullying of the common soldier to the most savage physical and psychological torture which, according to reliable reports, is being systematically practised in the prisons of the civil and the military police. The exact number of detainees in these prisons cannot be given; but it is known that there are about three thousand deportees in the island concentration camps. In spite of their assurances and the fraudulent amnesty declared at Christmas, there is no tangible evidence that the Colonels intend to bring about a change in the situation. The strongest ray of hope in the last months has been the submission of the Greek case to the Council of Europe and its Commission on Human Rights. The European community of nations have thus shown their unwillingness to remain indifferent to such a violation of the most fundamental freedoms and rights of the individual.

Moreover, in furtherance of their plan to take the entire machinery of the national administration into their own hands, the Colonels have given themselves absolute powers and abolished all controls upon their acts, so that the freedom of the people depends upon them alone. First came the dismissal of persons who had been elected to a public office, especially town councillors, then, the successive purges in the army and the

security forces, under Basic Decree No. 6. Then it was the turn of the Civil Service, the Courts and the Teachers, under Basic Decree No. 9 on the loyalty of civil servants, complemented by Basic Decree No. 10 on the 'cleansing' of the public and other services (July and August 1967). Seldom have there been texts so patently arbitrary and so indifferent to legal principles and the Rule of Law:

Civil servants and assistant employees... members of the *Conseil d'Etat*, of the Court of Cassation, of the Court of Accounts and the Legal Council of the State, university professors and teachers including outside lecturers, staff at the National Polytechnic and at schools of higher education, employees of Parliament and the teaching staff of schools and private institutions, as from the entry into force of this Decree, are formally dismissed... if their disloyalty is established; the provisions of the Constitution concerning irremovability and all those protecting labour agreements are suspended in the cases referred to.

The effect of this first article of Basic Decree No. 9 is to suspend the whole state machinery; all employees of the public services, in the widest sense of the term—from the highest to the lowest social level, are in effect put in abeyance; they will only keep their employment if they are able to prove their loyalty. This is set out in Article 3 of the same Decree:

... the loyalty of all civil servants, employees, workers or assistants referred to in Article 1 of this Decree is subject to verification by the minister responsible for their respective services... For the purposes of verification of their loyalty, all the civil servants referred to above must submit to the minister responsible... a written declaration of their loyalty...

The second paragraph of Article 1 is particularly disturbing, running counter to law and custom and generally accepted standards. Under its terms, anybody who is deemed 'disloyal' is automatically deprived of all safeguards afforded by the Constitution, by statute, by the relevant collective labour agreement and even by contract; this last point is brought out clearly in Basic Decree No. 10;

The Minister responsible may... terminate the contracts of civil servants employed under a contract (*Article 1, paragraph 3.*) ... The dismissal or demotion is authorized of the officers mentioned above and assistants of any status, as well as non-graded and contractual employees of all categories. (*Article 1, paragraph 2.*)

All collective agreements and individual contracts of work may therefore be unilaterally rescinded at the discretion of the

State. The 'disloyal element' thus becomes a leper, outlawed by society and deprived of any means of earning his living, his conscience and his professional ability being completely ignored. At the same time Article 1 of Basic Decree No. 10 extends the term 'civil service' to cover all the categories of employment imaginable; clearly then, in Greece today, a road-sweeper who cannot 'think correctly' is deemed unfit to sweep roads. Not only must the non-conformist go in fear of losing the means of earning his living, but the insecurity of employment has been legalized by Article 3 of Basic Decree No. 10:

The Ministers are, in all cases, entitled to transfer officials within their department or the officials of local authorities and organizations under their jurisdiction without first informing the head of the respective department and even if the time fixed by law for employment in the post which the person concerned occupies has not run out.

A Minister who capriciously wishes to rid himself of an official, even if the law provides otherwise, can clearly do so by relying on the words 'in all cases': he does not even have to call the individual's 'loyalty' into question, still less his professional ability since the head of the department concerned need not be consulted.

While it is beyond dispute that the administration in Greece before the take-over had many defects and was justly the object of serious criticism, it would be wrong to mistake—as the Colonels have done—the large-scale political purge for a re-organization of the administrative system. The atmosphere of instability, fear and suspicion resulting from the Colonels' actions cannot be ideal for strengthening the sense of initiative, responsibility and efficiency in the civil service. In fact, this so-called reform constitutes an admission of its authors' inability to meet the problems facing them; for they have brought no improvement to the situation and have left the real problems untouched.

The definition of loyalty given in Article 2 of Basic Decree No. 9 is so wide that anyone can be suspected of disloyalty and immediately fall victim to the police and the regime:

The following are considered to be disloyal: the official, employee, worker and assistant who is imbued with communist or anti-national ideas, or who makes propaganda in their favour, or contributes in any way to their dissemination, or praises them, or has any form of contact or relations with the holders of these opinions, or stands out against the established government or its basic institutions, or uses anti-national or

communist slogans, or takes part in sedition or in a public open-air meeting that has been forbidden or during which anti-national or communist slogans are uttered, or who incites or defends such sedition or such a meeting, or participates in a meeting whose object is to commit a breach of the peace.

The crime of 'holding a certain opinion' has now become part of the law of the land; a normal political life under the Colonels' government is out of the question. The only opinion possible is one which conforms to the 'national' thought which the Colonels say they have brought into existence and which they do not trouble to define; to be against their 'established government' is a crime. No opposition, no divergent opinion is tolerated. It may be that a citizen is not himself contravening this prohibition, but that he is having some 'form of contact' with somebody who is; to keep such bad company may lead him directly to Averof prison. A curious familiarity comes automatically to the mind of jurists who have studied the legislation of certain countries in Southern Africa, particularly certain provisions of the South African Terrorism Act and the Rhodesian Maintenance of Law and Order Act, whose terminology is almost identical to the text quoted above. The U.N. Sub-Commission for the Prevention of Discrimination and Protection of Minorities was, it seems, justified in linking present-day Greece with such countries as Haiti, South Africa, Rhodesia and Angola, when, meeting at Geneva in October 1967, it asked for a special Commission to be set up to inquire into the systematic violation of Human Rights in these countries.

Under Article 3 of Basic Decree No. 9, the Minister is competent to judge the loyalty of the wide range of people subject to his jurisdiction; his decision is based on the evidence of allegiance to the regime that all these people are bound to furnish in their 'Declaration of Loyalty'. Enough has been said about the degrading nature of this Declaration, which violates every principle of the freedom of conscience and belief and which sets up a system of discrimination. But mention must be made of the unhealthy practice of mutual denunciation which it forces upon fellow-citizens and even families. This is the sort of question that it will ask: 'Have you ever had any kind of contact or dealing with a supporter of the Communist Party? With whom? On what occasion?' or: 'Is there anybody in your family who supports one of the communist organisations mentioned above?'—though many of these organisations are not communist at all.

This decision of the Minister is entirely discretionary:

... If, after the said verification, it is established that the official is not loyal within the meaning of this Decree, he shall be dismissed by decision of the said Minister, against which there shall be no appeal nor action for a declaration of invalidity. (*Article 3, Basic Decree No. 9.*)

This legalization of the arbitrary and absolute power of the regime by abolishing any right of appeal against its decisions or acts is also found in Basic Decree No. 10; this extends the scope of Decree No. 9 and sets out further grounds for dismissal, such as the fact of having proselytized for 'a' political party or of lacking 'for any reason whatever' the necessary 'moral integrity' for the carrying-out of one's functions:

Any action in the civil courts (any existing claim for damages resulting from the application of the present Decree being considered extinguished) and any action in the *Conseil d'Etat* against administrative measures based on this Decree are forbidden. (*Article 1, paragraph 4, Decree No. 10.*)

Immunity from legal action is given in similar terms by Basic Decree No. 15 on the appointment of teachers to institutions of higher education, whose aim is to 'cleanse' (i.e. to control) the universities and intellectuals in Greece:

Any action in the *Conseil d'Etat* to have annulled final decisions made under this Decree is inadmissible. (*Article 13.*)

All candidates for a professorship must obtain a certificate from the 'competent authority' (probably the Minister of Education himself, possibly the Police) showing that he is not a disloyal person as defined in Basic Decree No. 9. To be a candidate then the prior approval of the authorities is necessary. University professors are still, at least in principle, elected to their Chair by an electoral college of professors at the University, under a procedure (which has in fact been shortened) requiring every elector to give in addition the reasons for his vote on the academic ability 'and other qualifications' of the candidate. However, the Minister is empowered to by-pass the university's decision if he does not approve of the candidate appointed, and enforce the appointment of his choice:

The Council of Ministers, on the proposal of the Minister of National Education, not being bound by the Faculty's decision, may, if he deems the election of a professor invalid in substance or insufficiently reasoned, refer this decision for review to a special college of electors ... whose members shall be appointed by decision of the Council of Ministers on the proposal of the Minister of National Education. (*Article 4, Basic Decree No. 15.*)

The sanction against teachers, from the highest to the lowest degree, is clearly their dismissal for disloyalty by ministerial decision. In the realm of higher education alone, by a series of decisions of 15th January 1968, fifty-seven university teachers were dismissed and deprived of their status and right to teach. The effect of this was to strip Thessalonika University (27 dismissals) and Athens University of the bulk of their teaching staff. It should be pointed out that none of these decisions of dismissal is based on a particular professional fault, but simply on the personal attitude of the individual concerned which is interpreted as inconsistent with the government's policy, and their imprecision is usually manifest: e.g. '... by his behaviour... Mr. X... has shown in countless ways his opposition to the established political and social order... lacks the necessary moral integrity... has favoured a certain political party... has supported students recognized publicly as belonging to the Left... has shown a general lack of principle...'

Although they claim to be freeing the universities from political influences, the Colonels have in fact done the opposite; for now a person's qualification for a university post is subjected to the government's political criteria. They have taken over power and are now seeking to take over the minds of their subjects; they have imposed their domination, their men, their concepts and their methods in the key sector in which the power of criticism is developed and the freedom of thought defended. An illuminating description of this process is to be found in the Declaration of the Minister of National Education, Mr Papaconstantinos, in the newspaper, *To Vima* of 28th January 1968:

The first step... was the passing of Basic Decree No. 15, by which the foundation was laid... for the renovation of the teaching staff... Higher Education is now free from elements which hitherto have actively shown their antagonism to the social and political order... or which have aided its enemies deliberately or through gross negligence... Their presence was dangerous, provocative and scandalous... The government... is convinced that the measures it has announced are in accordance with the wishes of a healthy public opinion...

In other words, Greece now has submissive teachers who express 'healthy' opinions—those of the Colonels, for all others are dangerous and scandalous giving ground for dismissal.

The Basic Decrees that the Colonels have passed show their anxiety to cover their policies and acts with a—transparent—veneer of legality. The principle of the Separation of Powers is not followed in Greece; nor is any distinction recognized between the authoritarian acts of the regime and the requirements of good government. By seeking, moreover, to render the minds of their people indistinguishable from their own, the Colonels hope to endow their acts with the highest moral and intellectual authority. It is interesting to note that each Basic Decree is prefaced by the words: 'On the authority of Basic Decree No. 1, the Council of Ministers decides . . . ' and that the preamble to this Decree, which gives the Colonels unlimited power for an unlimited period and on which all the other Decrees are based, states:

The Council of Ministers, on the authority of the power that the Army took to itself on 21st April of this year for the safety of the Nation, the transfer of this power to the government and the wish expressed by the Greek people that the political and social regime should be safeguarded against all who threaten its existence and that the provisions of the Constitution should be accordingly amended, decides . . .

While the premise that the Nation is in danger has yet to be substantiated, it is certainly true that Mr Papadopoulos, Head of the Army, took over power, which he then transferred to Mr Papadopoulos, Head of the Government. But it is puzzling to see when and how the Greek people were able to express their wish that this should be so.

The negative character of the Colonels' actions, the resulting instability and the natural resentment of those who have fallen victim to the regime are all favourable conditions for the return of past troubles, which could tragically affect the unity and prosperity of the country. Paradoxically, Greece has now opened its door to dangers from which it so clearly desires to be protected.

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The new draft constitution published recently in no way invalidates what has been said in this article. The International Commission of Jurists is at present studying it in detail and hopes to let its conclusions be known in the near future.



## GUATEMALA

The gradual return to constitutional government in Guatemala culminating in the election as President of the Republic of Julio Cesar Mendez Montenegro—former Dean of the Law Faculty at the University of San Carlos and the only civilian candidate in the campaign — was commented upon favourably in *Bulletin* No. 28. One of the first steps taken by the new President had been to end martial law and re-establish the constitutional guarantees which had been suspended for over a year.

The years preceding Mr. Mendez Montenegro's election had been characterized by political instability in Guatemala, bringing with them a series of *coups d'état* and military dictatorships and the consequent retrogression of the country in every respect. Under such conditions, the election of a civilian to the Presidency—showing unexpected adherence to the result of the polls—was a good omen. It seemed that a new period of order was about to begin in which a propitious climate would be created for solving the many complex problems facing the nation and for undertaking the reforms urgently needed in the obsolete national structures. It was seen as an excellent opportunity for launching a policy for effective political, social, and economic development under the Rule of Law ensuring respect for individual freedoms.

Unfortunately, such optimism was to be short-lived. Soon after entering office, the new President, putting his policy of national harmony into practice, tried to reach an understanding with the groups of guerrillas active in the country since 1962. The Government submitted to Congress an amnesty bill for the benefit of those groups, with a view to achieving some form of settlement. This initiative, however, was unsuccessful. During the parliamentary debates on the bill, various political groups apparently submitted amendments that transformed it completely; as a result the guerrillas rejected the proposed amnesty and continued their activities. The Government then gave the military forces instructions to put down the guerrilla movements. The methods used led to violent bloodshed verging on civil war. This situation has remained unchanged for nearly two years, and there is no outcome in sight.

According to conservative estimates, over a thousand persons were killed in 1967. With the country under a constant state of emergency, government controls were gradually tightened as events became increasingly serious until finally, in March 1968, the Government declared martial law after the kidnapping of the Archbishop of Guatemala.

In carrying out their task of maintaining order within the country and suppressing the guerrilla movements, the military forces resorted to the questionable method of organizing counter-guerrilla militia composed of civilians.<sup>1</sup> These tactics led to the proliferation of armed groups of the extreme right, whose terrorist activities in many cases are uncontrollable since each group has its own leaders. These groups were soon employing as much violence as the left, and both were committing the most heinous crimes in a ruthless struggle. Kidnappings and murders have been committed with terrifying regularity and in such numbers that mutual reprisals have constantly increased, locking both sides in a vicious circle. Politicians who had on some occasions expressed sympathy for the left and, conversely, those considered by the left to be elements of the right have been murdered, as well as the relatives, in most cases completely innocent, of a number of prominent individuals.

The extremists of the right have published lists of persons threatened with death and have then methodically proceeded to carry out their threats. The extremists of the left, for their part, publicly claimed responsibility for the murder of the head of the United States military mission and of the United States naval attaché in Guatemala as a reprisal for the part the United States was assumed to play in advising the counter-guerrilla forces. Finally, in the middle of March 1968, one of the organizations of the extreme right held the Archbishop of Guatemala captive for some days, as a manoeuvre to bring about the fall of the Government.

This absurd situation has now gone too far. The Government is virtually crippled: progressive measures can hardly be implemented in such a climate. Besides, it is under the control of the

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<sup>1</sup> In this connection, see the following passage in *Bulletin No. 32, Latin America: Integration, the Guerrilla Movement and Human Rights*, at p. 39. 'The only way to be rid of the guerrilla movement is to eradicate its causes. When Latin America has succeeded in putting an end to its overwhelming social imbalance by an equitable distribution of its wealth, when poverty has been completely overcome, the guerrilla movement will cease to be—or at least that form of it purporting to solve social problems, which up to now have been considered permanent, by means of violence.'

army, which should be responsible for maintaining order but which, identified with one of the warring factions, seems to have taken sides. The military will find it hard to recover the moral prestige needed to ensure that its part in maintaining order does not degenerate into suppressing certain groups and thus lead to increased hate and rancour.

Although it is impossible to say how much actual support it now has, the constitutional Government still has some of its former prestige. Because of its authority and the means at its disposal, it is in the best position to find a solution to the conflict. And this it must do. It cannot allow the nation to exhaust itself in a purposeless struggle, when all its energy should be used for developing the country under a programme of intelligent reforms—reforms calculated, through an efficient use and a fair distribution of the nation's economic resources, to eliminate poverty and inequality, to eradicate illiteracy, to reduce the high infant death-rate, and to solve other similar problems that are at the very root of the present situation.

Such a programme would doubtless receive the support and cooperation of all citizens who are prepared to contribute actively to their country's progress under the Rule of Law and unwilling to see it subjected to a rule of terror by the left or by the right. In this effort, jurists have a fundamental responsibility. The conference held by the International Commission of Jurists at Bangkok in 1965 clearly established the active participation incumbent on jurists in the solution of problems affecting developing countries. The principles laid down at that time apply fully to the case of Guatemala:

... Law and lawyers are instruments of social order. ... The law is not negative and unchanging. ... Order is important, but it must be an evolving order; the law must be firm yet flexible, and capable of adapting itself to a changing world. ... Poverty, lack of opportunity and gross inequality ... require leaders who understand the need for evolutionary change, so that every citizen may look to a future in which each may realize his full potential as an individual in a free society. The great need of the peoples of the Region <sup>1</sup> requires action, lest freedom be utterly forfeited. Beset by threats from the right or left, the statesman must find means to advance the economic and social development of his country and countrymen, whilst preserving or establishing the institutions and the freedoms which are the cornerstones of a free society under the Rule of Law. These problems require the lawyer to play a vital role in their solution. ... The

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<sup>1</sup> The South East Asian and Pacific Region, with which the Bangkok Conference was primarily concerned.

lawyer must look beyond the narrower confines of the law, and gain understanding of the society in which he lives, so that he may play his part in its advancement. . . The lawyer has a deep moral obligation to uphold and advance the Rule of Law in whatever sphere he may be engaged or in which he has influence and he should fulfil that obligation even if it brings him into disfavour with authority or is contrary to current political pressures. . . <sup>1</sup>

If there is present a spirit of self-sacrifice and patriotism, these principles can easily pass from the theoretical level to the practical. The following quotation, which concerns a completely different country and situation, is nonetheless relevant here; for it illustrates the putting into effect of principles similar to those set out above and reveals the alertness of the legal profession to the problems of their country: <sup>2</sup>

For many and various reasons, this country is changing so rapidly that long-standing social structures are being shaken at their foundations. The lawyer cannot remain aloof from a changing world; he must adapt himself to the environment in which he practises. Indeed, he must be in the vanguard of his time, fighting to make justice a reality for all and not merely for a small group in the community. Progress must be achieved through Law. It should be made clear to all that if reform in the Law is delayed, societies, seeing that the Law has failed to promote development, will necessarily seek progress by other means. Every lawyer must fight for Democracy, Freedom and Justice in his society through the unfailing and impartial application of Law.

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<sup>1</sup> *The Rule of Law and Human Rights*, International Commission of Jurists, Geneva, Switzerland, 1966, pp. 36-37.

<sup>2</sup> Paragraph 9 of the *Message to the Lawyers of this Country*, issued (in Spanish) by the National Federation of Lawyers of Ecuador on 8th March 1968.

## PORTUGUESE AFRICAN COLONIES AND THE UNITED NATIONS

During its twenty-second regular session ending in December 1967, the General Assembly of the United Nations once again devoted special attention to the territories under Portuguese domination. It adopted various resolutions<sup>1</sup>—all by an overwhelming majority—referring specifically to Portugal or referring to her in conjunction with the Republic of South Africa and Rhodesia. These countries have shown an unwillingness to comply with unambiguous resolutions of the United Nations relating to the self-determination of the peoples under their administration, to the illegal and often inhumane methods used to maintain their domination, to the danger which that domination, perpetuated by force, involves for world peace, and to secondary related problems.

### Period 1960-1966

A short account of the years preceding the recent resolutions will bring their terms and spirit out more clearly. It will be seen that although the General Assembly has been constantly concerned with this situation for some time now, its persistent efforts have met with a uniformly negative response from Portugal and a complete disregard of every recommendation, request or demand made.

On 14th December 1960, the General Assembly adopted, without any dissenting votes, resolution 1514 (XV) on the *Granting of Independence to Colonial Countries and Peoples*. After affirming such values as fundamental human rights, the dignity of the human person, and the self-determination of all peoples, the resolution recognizes 'the passionate yearning for freedom in all dependent peoples' and notes 'the increasing conflicts resulting from the denial of or the impediments in the way of the freedom

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<sup>1</sup> See Press Release UN/GA/3570 (19th December 1967), which contains the resolutions adopted by the General Assembly during its twenty-second session.

of such peoples, which constitute a serious threat to world peace'.

The resolution also affirms 'the important role of the United Nations in assisting the movement for independence in Trust and Non-Self-Governing Territories', thus stressing once again the indisputable competence of the United Nations to deal with the problem; it recognizes that 'the peoples of the world ardently desire the end of colonialism in all its manifestations'; and it affirms that 'the process of liberation is irresistible and irreversible' and that 'all peoples have an inalienable right to complete freedom, the exercise of their sovereignty and the integrity of their national territory'. The resolution then goes on to set out the fundamental principles on which the subsequent resolutions, to be examined later, are based.

The five relevant paragraphs read:

1. The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and co-operation.
2. All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
3. Inadequacy of political, economic, social or educational preparedness should never serve as a pretext for delaying independence.
4. All armed action or repressive measures of all kinds directed against dependent peoples shall cease in order to enable them to exercise peacefully and freely their right to complete independence, and the integrity of their national territory shall be respected.
5. Immediate steps shall be taken, in Trust and Non-Self-Governing Territories or all other territories which have not yet attained independence, to transfer all powers to the peoples of those territories, without any conditions or reservations, in accordance with their freely expressed will and desire, without any distinction as to race, creed or colour, in order to enable them to enjoy complete independence and freedom.

In 1961, as a result of the uprising in Angola, the General Assembly and the Security Council examined the situation there and set up a Sub-Committee to investigate and report on it.

At its sixteenth session in 1962, the General Assembly adopted resolution 1742 (XVI), which reaffirmed the right of the Angolan people to self-determination and independence and called upon Portugal to cease repressive measures and at the same time to undertake reforms with a view to the transfer of power to the

Angolan people. At the end of 1962 the General Assembly, by resolution 1807 (XVII), requested the Portuguese Government to implement certain measures recommended by a Special Committee which had been set up in 1961<sup>1</sup> specifically to study the situation in the territories administered by Portugal. These measures were designed mainly to implement resolution 1514 (XV) with particular emphasis on the obligation to grant independence to non-self-governing territories.

Between 1961 and 1965, the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples<sup>2</sup> issued several detailed reports on the territories under Portuguese administration. In the light of those reports and other steps taken, the General Assembly adopted various resolutions, the most important of which, besides those already mentioned, were resolutions 1913 (XVIII), 2105 (XX) and 2107 (XX).

Because of Portugal's disregard of the various resolutions of the General Assembly, the question was referred to the Security Council on several occasions. In its resolution 218 (1965), the Security Council requested all States:

to refrain forthwith from offering the Portuguese Government any assistance which would enable it to continue its repression of the people of the Territories under its administration, and to take all measures to prevent the sale and supply of arms and military equipment to the Portuguese Government for this purpose, including the sale and shipment of equipment and materials for the manufacture and maintenance of arms and ammunition to be used in the Territories under Portuguese administration.

In 1966, the Special Committee examined the situation again, both during its visit to Africa and at United Nations headquarters, and in July it transmitted to the President of the Security Council a resolution recommending the Council to make 'obligatory the measures provided for under Chapter VII of the United Nations Charter against Portugal'.<sup>3</sup>

In December 1966, the General Assembly adopted resolution 2184 (XXI) condemning in even stronger terms Portuguese colonial policy, and setting out in detail the various aspects of the situation, which was every day becoming more serious.

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<sup>1</sup> General Assembly resolution 1699 (XVI).

<sup>2</sup> General Assembly resolutions 1514 (XV) and 1699 (XVI).

<sup>3</sup> UN/A/6700/Add.3.

## Recent Resolutions of the General Assembly

As mentioned at the beginning of this article, at its last session the General Assembly devoted special attention to Portugal's colonial policy, which openly conflicts with the UN Charter, the Universal Declaration of Human Rights and the many resolutions adopted by various UN bodies in recent years, first in the form of requests, and later, demands.

Five resolutions relating to this question were adopted during the twenty-second session. Four refer to Portugal (in general, as a colonial power) in conjunction with South Africa and Rhodesia; and one refers specifically to Portugal.

The main points of the first four<sup>1</sup> may be summarized as:

- (a) reaffirming the inalienable right of the peoples of colonial territories to self-determination and independence and to the natural resources of those territories for their own and exclusive benefit;
- (b) expressing concern that seven years after the adoption of resolution 1514 (XV) there are still territories under colonial domination;
- (c) condemning Portugal's negative attitude, intransigence, and refusal to implement the resolutions concerning it;
- (d) condemning the exploitation of the resources of the territories under colonial domination by foreign economic interest which use methods that necessarily perpetuate colonial rule;
- (e) affirming that colonial rule and the methods used to perpetuate it are a serious threat to international peace and security;
- (f) calling upon all States and international organizations to withhold assistance of any kind from Portugal, as a means of pressure to compel compliance with the UN resolutions.

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<sup>1</sup> Resolution 2288 (XXII) on the *Activities of foreign economic and other interests which are impeding the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples in Southern Rhodesia, South West Africa and Territories under Portuguese domination and efforts to eliminate colonialism, apartheid and racial discrimination in southern Africa.*

Resolution 2311 (XXII) on the *Implementation of the Declaration on the Granting of Independence to Colonial Countries associated with the United Nations.*

Resolution 2326 (XXII) on the *Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples.*

Resolution 2349 (XXII) on the *Question of the consolidation and integration of the special educational and training programmes for Territories under Portuguese administration and the educational and training programme for South Africans.*



All these resolutions were adopted by an overwhelming majority of States;<sup>1</sup> the only votes against some of them were cast by South Africa and Portugal, for obvious reasons.

In addition to these resolutions, one was adopted that refers specifically to Portugal. It is hoped that, in view of the severity of its terms and the extreme gravity of its contents, it will succeed in drawing the attention of Governments and prevail upon them to assist the United Nations to carry out the mandate of its Charter and promote international cooperation and peaceful coexistence. This resolution—No. 2270 (XXII) of 21st November 1967 on *Territories under Portuguese Administration*—was adopted by 87 votes in favour, 7 against (Australia, Netherlands, Portugal, South Africa, Spain, United Kingdom and United States of America), and 21 abstentions. In its operative part it reaffirms once more the right of the peoples under Portuguese domination to achieve independence and the legitimacy of their struggle to that end. In this respect, the General Assembly notes with satisfaction, in the preamble, the progress towards independence 'made by the liberation movements'.

The resolution then strongly condemns the 'persistent refusal' of the Portuguese Government to implement the resolutions of the General Assembly and the Security Council. It also condemns the Government's actions that are designed to perpetuate its oppressive foreign rule and the colonial war it is waging against the peoples of those territories, which constitutes 'a crime against humanity' and a grave threat to international peace and security. It is significant that this resolution was approved by 82 states and that such an energetic and severe condemnation was adopted despite the difficulty of reaching agreement in a meeting as large as that of the General Assembly.

It urges the Portuguese Government, *inter alia*, to desist from all acts of repression and to withdraw all military and other forces which it is using for that purpose.

In its last part, the resolution makes a dramatic appeal to all States, particularly the military allies of Portugal in NATO, to desist from giving Portugal military aid in the forms of arms, equipment or technical assistance which, in the opinion of the

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<sup>1</sup> Resolution 2288 (XXII): 92 votes in favour, 2 against, 17 abstentions.  
Resolution 2311 (XXII): 81 votes in favour, 2 against, 18 abstentions.  
Resolution 2326 (XXII): 86 votes in favour, 6 against, 17 abstentions.

General Assembly, would only encourage Portugal to continue its repression.

The General Assembly also recommends the Security Council to consider urgently the adoption of the necessary measures to make mandatory the provisions of its resolution 218 (1965) and those of the General Assembly concerning this question.

One of the final paragraphs of the resolution requests the Secretary-General to promote the publicizing of the work of the United Nations, so that world opinion may be sufficiently and accurately informed of the actual situation in the territories under Portuguese domination and of the continuing struggle waged by the peoples of those territories for their liberation.

### **Situation in Portugal's African Colonies**

The so-called provinces of Portugal in Africa are the Cape Verde Archipelago, Portuguese Guinea, São Tomé and Príncipe, Angola (including Cabinda) and Mozambique. The Portuguese in Angola number approximately 250,000 (out of a total population of 4,832,677), those in Mozambique, less than 150,000 (out of a total population of 6,592,994) and those in Guinea roughly 3,000 (out of a total population of 521,336).<sup>1</sup> This means that a white population of 5% in Angola, 2% in Mozambique and less than 1% in Guinea dominates an entire indigenous negro population whose language and customs are different.

The Portuguese Constitution, as amended in 1951, states in Article 1 that 'the territory' of Portugal is situated in Europe, Africa, Asia and Australasia. The effect of this is to deny that Portugal has colonies. In practice, however, it is clear that the legal fiction of national unity is not enough to keep the various 'provinces' united with metropolitan Portugal without the support of a powerful war machine and the cooperation of the political police. In this connection, several paragraphs in the Report of the United Nations Special Committee, containing information on the work carried out in 1967<sup>2</sup> in relation to the territories under Portuguese domination, are most significant:

...Despite continued and intensified fighting in Angola, Mozambique and Guinea under Portuguese administration, Portugal remains committed to 'a military solution' of the problem of its Overseas Territories regardless

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<sup>1</sup> Europa Year Book, 1967.

<sup>2</sup> UN/A/6700/Add.3.

of the criticisms and doubts that have again been raised in recent months both in Portugal and the Territories themselves.

17. Determined to retain the Overseas Territories by armed force, Portugal, during the past year, introduced some new measures in preparation for a lengthy war. The period of compulsory national military service was extended, the Portuguese navy is being strengthened and modernized, and all sectors of the population are being called upon to share in the sacrifices needed to 'safeguard national unity'. As part of its long-term strategy, Portugal increased the civil and military defence and security forces in Angola and Mozambique; it is improving road and telephone communications and transportation both between Portugal and the Territories and within the Territories; it reorganized and centralized various administrative services and with the gradual coming into force of the Portuguese common market and escudo zone the economic development of the Territories is to be integrated in an over-all plan.

18. During the year, a number of official statements emphasized and explained Portugal's determination to remain in Africa. On the occasion of the fifth anniversary of the Angola uprising, Premier Salazar, in a speech to a delegation from that Territory, recalled the decision taken in 1961 to defend Angola 'at once and on the largest scale'.

Portugal argues that she has been in Africa for over 500 years and claims that the colonial territories are 'integrated' with metropolitan Portugal, thus forming a single nation. This is not at all the case, but even if it were, it would obviously be a forced integration since the various African peoples who have always lived in those territories have never had an opportunity of expressing their views in the matter. Indeed, they have never even been consulted.

Despite the various reforms, the Portuguese Constitution still reveals in many places the real position of the country as a colonial power. A perusal of the articles contained in Part VII, dealing with 'Portuguese Overseas Territories', shows, *inter alia*, the differences that exist, even under the Constitution, between Metropolitan Portugal and the Colonies. Article 133 purports to justify Portugal's possession of the territories. It places on Portugal a duty to carry out her 'historic mission' to colonize the lands that she has discovered and to diffuse among the indigenous population the benefits of her own civilization. But it remains a fact that the present rate of illiteracy in Angola, Guinea and Mozambique is still nearly 95%. Article 134 says that overseas territories should be known as provinces. Article 137 extends the rights and freedoms guaranteed in the Portuguese Constitution to the inhabitants of the colonial territories. However, the authors of the Constitution were necessarily aware

that the law was not in accord with the reality of the situation, and by Article 138 provided for the existence, when necessary, of special legislation to take account of native usages and customs according to the 'state of development' of the various populations. Naturally, any such legislation had to be compatible with Portuguese sovereignty.

Chapter III of Part VII of the Constitution is entitled 'Special Guarantees for the Indigenous'. It provides for a series of special measures to protect those populations. It is nevertheless surprising that in territories considered to be 'provinces' of Portugal by the Constitution, there should exist sections of the population who are not primarily 'Portuguese'. This makes one wonder whether the policy of integration developed throughout the centuries of Portuguese domination has really been successful.

Despite the 'Christian'<sup>1</sup> ideals on which Portugal claims its colonial policy is based, after 500 years of domination it was only recently that forced labour was completely abolished, at least in theory. The International Labour Organisation (ILO) appointed a Commission of Inquiry to ascertain whether the *Convention concerning the Abolition of Forced Labour* (1957) was being applied by Portugal, and as a result of the Commission's report, the Rural Labour Code, replacing the Indigenous Labour Code of 1928, came into force at the end of 1962.

These facts alone, together with the constantly growing number of troops which Portugal sends to Africa to carry on a war, about whose casualties little is known and about which little or nothing is published, owing to the dramatic events elsewhere that occupy the world's attention, explain the United Nations' concern and the appeal made in its resolutions for the widespread publicizing of its work.

Today, the case in favour of colonialism can no longer be supported. It may promise or even grant a great number of material and spiritual benefits to the peoples subject to it, but at the same time it deprives them of the most valuable benefit, namely freedom and the rights closely related to it, such as independence and self-determination. The mere existence of a colonial power is incompatible with the main instrument for

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<sup>1</sup> In his New Year address to the country, Admiral Americo Thomaz, President of Portugal, said: 'Portugal is not only fighting for its legitimate and indisputable rights, but also to preserve Western and Christian civilization', *Le Monde*, January 3, 1968.

world coexistence in modern International Law, the Charter of the United Nations. It moreover violates the Universal Declaration of Human Rights, the essential complement to the Charter, which has become part of International Customary Law.

Former colonial powers have in recent times clearly accepted this principle and have modified their policies so as to conform with the United Nations action in this field. Spain is a clear example.<sup>1</sup> The attitude of Portugal has been one of intransigence and contempt for the UN resolutions. Moreover, the alarming increase of her military resources in the territories constitutes a threat to world peace.

It is important that world public opinion during this International Year of Human Rights should be aware of these flagrant violations of the Universal Declaration, the Charter of the United Nations and the clearest resolutions of the highest world institution.

The International Commission of Jurists hopes that this brief review may contribute, albeit modestly, to fulfilling the General Assembly's request contained in the resolutions quoted above. By singling out the relevant provisions from the great number of United Nations resolutions adopted each year, many of which unfortunately pass unnoticed, it has intended to give a fair picture of a situation that deeply offends the conscience of men everywhere.

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<sup>1</sup> In 1957, Spain declared that, in accordance with the request of the UN Secretary General, she was willing to comply with Chapter XI of the United Nations Charter on 'Non-Self-Governing Territories'. In 1963 preliminary plans for the establishment of an autonomous government in Equatorial Guinea were prepared. They were incorporated in an Act which came into force on January 1st, 1964. In 1966, Spain announced that a constitutional conference for this territory would be held. Such a conference took place in 1967 and was attended by representatives of the Spanish Government, officials of the autonomous Government of Guinea and representatives of its political groups. Their purpose was to agree on the manner in which full independence could be transferred to Guinea during 1968. Furthermore, Spain has expressed her willingness that the UN should supervise the referendum in which the instrument of Independence and Draft Constitution will be submitted to the people for ratification.

## THE TERRORISM ACT OF SOUTH AFRICA

Attention has repeatedly been focused upon the Terrorism Act of South Africa during the last year as a result of the lengthy trial of 37 South West Africans under its provisions with the ultimate conviction of 33 of them, and the periodic arrests of other South West Africans in terms of the Act.

Protest at the use of the Act against South West Africans has largely been based upon the illegality in international law of South Africa's continued exercise of power over South West Africa and its inhabitants since the United Nations revoked the mandate under which South Africa had governed the territory. Such protest could equally well be based upon the nature of the Act itself; a storm of legal protest was aroused by its enactment in June 1967, and its provisions are so shocking that, particularly in view of the possibility of further trials being held under it, the International Commission of Jurists feels bound to draw attention, on as wide a scale as possible, to legislation which in terms abolishes many of the safeguards normally provided in criminal law and procedure to ensure a fair trial, and creates an offence which for lack of clarity and for breadth of scope must be without parallel.

The following are the principal points in which the Act offends against the principles of the Rule of Law.

### 1. Retrospective Operation

Enacted on 12th June 1967, the Act provides in section 9 (1):

This Act, except sections 3, 6 and 7,<sup>1</sup> shall be deemed to have come into operation on 27 June 1962 and shall... apply also in respect of or in reference to any act committed... at any time on or after that date.

Thus the 37 accused in the first trial held under the Act had all been arrested before it became law, and the charges against

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<sup>1</sup> Which relate to harbouring of 'terrorists', detention without trial and certain technical aspects of arrests.

them were all based on acts alleged to have been committed between 27th June 1962 and 20th May 1967.

## 2. Offences Created by the Act

Section 2 created the offence of ' participation in terroristic activities '. It reads as follows:

### 2. (1) Any person who

- (a) with intent to endanger the maintenance of law and order in the Republic<sup>1</sup> or any portion thereof, in the Republic or elsewhere commits any act or attempts to commit, or conspires with any other person to aid or procure the commission of or to commit, or incites, instigates, commands, aids, advises, encourages or procures any other person to commit, any act; or
- (b) in the Republic or elsewhere undergoes, or attempts, consents or takes any steps to undergo, or incites, instigates, commands, aids, advises, encourages or procures any other person to undergo any training which could be of use to any person intending to endanger the maintenance of law and order, and who fails to prove beyond a reasonable doubt that he did not undergo or attempt, consent or take any steps to undergo, or incite, instigate, command, aid, advise, encourage or procure such other person to undergo such training for the purpose of using it or causing it to be used to commit any act likely to have any of the results referred to in subsection (2) in the Republic or any portion thereof; or
- (c) possesses any explosives, ammunition, fire-arm or weapon and who fails to prove beyond a reasonable doubt that he did not intend using such explosives, ammunition, fire-arm or weapon to commit any act likely to have any of the results referred to in subsection (2) in the Republic or any portion thereof,

shall be guilty of the offence of participation in terroristic activities and liable on conviction to the penalties provided for by law for the offence of treason: Provided that, except where the death penalty is imposed, the imposition of a sentence of imprisonment for a period of not less than five years shall be compulsory whether or not any other penalty is also imposed.

(2) If in any prosecution for an offence contemplated in subsection (1) (a) it is proved that the accused has committed or attempted to commit, or conspired with any other person to aid or procure the commission of or to commit or incited, instigated, commanded, aided, advised, encouraged or procured any other person to commit the act alleged in the charge, and that the commission of such act, had or was likely to have had any of the following results in the Republic or any portion thereof, namely—

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<sup>1</sup> 'The Republic' is defined in section 1 to include the Territory of South West Africa.

- (a) to hamper or to deter any person from assisting in the maintenance of law and order;
- (b) to promote, by intimidation, the achievement of any object;
- (c) to cause or promote general dislocation, disturbance or disorder;
- (d) to cripple or prejudice any industry or undertaking or industries or undertakings generally or the production or distribution of commodities or foodstuffs at any place;
- (e) to cause, encourage of further an insurrection or forcible resistance to the Government or the Administration of the territory;
- (f) to further or encourage the achievement of any political aim, including the bringing about of any social or economic change, by violence or forcible means or by the intervention of or in accordance with the direction or under the guidance of or in co-operation with or with the assistance of any foreign government or any foreign or international body or institution;
- (g) to cause serious bodily injury to or endanger the safety of any person;
- (h) to cause substantial financial loss to any person or the State;
- (i) to cause, encourage or further feelings of hostility between the White and other inhabitants of the Republic;
- (j) to damage, destroy, endanger, interrupt, render useless or unserviceable or put out of action the supply or distribution at any place of light, power, fuel, foodstuffs or water, or of sanitary, medical, fire extinguishing, postal, telephone or telegraph services or installations, or radio transmitting, broadcasting or receiving services or installations;
- (k) to obstruct or endanger the free movement of any traffic on land, at sea or in the air;
- (l) to embarrass the administration of the affairs of the State,

the accused shall be presumed to have committed or attempted to commit, or conspired with such other person to aid or procure the commission of or to commit, or incited, instigated, commanded, aided, advised, encouraged or procured such other person to commit, such act with intent to endanger the maintenance of law and order in the Republic, unless it is proved beyond a reasonable doubt that he did not intend any of the results aforesaid.

By section 3, it is an equally serious offence to give any assistance to a suspected terrorist:

3. Any person who harbours or conceals or directly or indirectly renders any assistance to any other person whom he has reason to believe to be a terrorist, shall be guilty of an offence and liable on conviction to the penalties provided by law for the offence of treason: Provided that, except where the death penalty is imposed, the imposition of a sentence of imprisonment for a period of not less than five years shall be compulsory, whether or not any other penalty is imposed.

Acts that would be covered by these provisions include collaboration with the United Nations with a view to transferring South West Africa to the administration of that body in



accordance with the decision of the General Assembly, strike action in the course of an industrial dispute, speeches or writings criticizing the policy of *apartheid* and the way it is implemented and failure to co-operate with Government officials; the list could be extended almost indefinitely, so vague are some of the provisions.

In addition to creating an offence so wide in its terms that it could cover almost any activity displeasing to the Government, the Act places upon the accused the onus of disproving a presumed intent, often a virtually impossible task. The prosecution has merely to prove that the accused has 'committed any act or attempted to commit any act or conspired with any other person to aid or procure the commission of or to commit, or incited, instigated, commanded, aided, advised, encouraged or procured any other person to commit, any act'. It is then for the accused to prove beyond a reasonable doubt that the act did not have, or was not likely to have had, any of the results listed in section 2 (2). If he cannot disprove this presumed intention, he is guilty of the offence.

### **3. Detention of Suspected 'Terrorists' without Trial**

Persons suspected by the police of being terrorists, or of withholding information relating to terrorists or to offences under the Act, may be detained by the police, without the need for an order of a court, for an indefinite period for purposes of interrogation. Such a person may be detained until the Commissioner of Police is 'satisfied that he has satisfactorily replied to all questions at the said interrogation or that no useful purpose will be served by his further detention'. Otherwise only the Minister of Justice may order the release of a detainee.

The terms of such detention are set out in three sub-sections of section 6:

- (5) No court of law shall pronounce upon the validity of any action taken under this section, or order the release of any detainee.
- (6) No person, other than the Minister or an officer in the service of the State acting in the performance of his official duties, shall have access to any detainee, or shall be entitled to any official information relating to or obtained from any detainee.
- (7) If circumstances so permit, a detainee shall be visited in private by a magistrate at least once a fortnight.

Thus a detainee has no right of access to the courts and no right to see his legal adviser or any other visitors; and his family

has no right to any information relating to him. Detainees may in effect be kept in conditions of complete secrecy and isolation at the uncontrolled discretion of the police and the Minister of Justice.

#### 4. Special Procedure

Section 2 (3), 4 and 5 make a whole series of modifications to normal criminal procedure and substantially limit the safeguards designed to ensure a fair trial.

(a) Persons charged under the Act are deprived of the right to bail, unless the attorney-general in charge of the prosecution assents to their release. Since a period in custody awaiting trial may be preceded by a period of detention for interrogation, persons accused under the Act may be in detention for a very long time before being brought to trial. There is no time limit for the holding of a trial under the Act: it may be held 'at any time'.

(b) The normal rule that trials are held in the place where the offence is alleged to have been committed is abandoned. A trial may be held anywhere in South Africa or South West Africa irrespective of where the alleged offence was committed, and the Minister of Justice may if he chooses direct where a particular trial is to take place. A trial may thus take place thousands of miles from the scene of the alleged offence, placing the accused in serious difficulties—for example in relation to language if they are Africans, in relation to the expense of bringing defence witnesses to testify and in relation to the choice of defence counsel. This was the case in the first trial under the Act, when the accused, South West Africans mostly from Ovamboland in the north of the Territory, were tried in Pretoria, the capital of South Africa (many hundreds of miles away), in spite of their objections.

(c) Offences under the Act are to be tried in a division of the Supreme Court, where the normal procedure is for trial to be preceded by a preparatory examination before a magistrate. This stage of the proceedings roughly corresponds to the proceedings before the *juge d'instruction*, and the records of the evidence given can be compared to the *dossier* prepared by him. The Act provides, however, that there shall be summary trial without such preparatory examination. The defence therefore

has no opportunity of knowing in advance the evidence that will be brought against the accused, and is in constant danger of being taken by surprise as the evidence is given in the course of the trial.

(d) A number of persons may be tried together on charges under the Act even though they are not alleged to have committed any offences jointly. When this provision is taken together with the law relating to the offence of conspiracy to commit an unlawful act, it means that there is a serious danger of 'guilt by association'; for under a charge of conspiracy, acts by one co-conspirator in pursuance of the alleged common purpose are evidence against the others even though they had no knowledge of them. An accused may thus be in danger of being convicted on the basis of something done by another accused without his knowledge or consent. The greater the number of accused, the greater becomes the danger that it will be impossible to sort out from the evidence the responsibility of each individual.

(e) The Act provides that any written or printed matter, and any photostat copy thereof, may be used in evidence against an accused as *prima facie* proof of its contents not only if it was found in his possession but also if it

- (i) was found in the possession custody or control of any other person who was at any time an office-bearer, officer, member or active supporter of an organisation of which the accused was an office-bearer, officer, member or active supporter;
- (ii) was found in any office or premises occupied or used at any time by such an organisation or by any person in his capacity as office-bearer or officer of such an organisation;
- (iii) was on the face of it compiled, kept, used or issued by or on behalf of such an organisation or '*by or on behalf of any person having a name corresponding substantially to that of the accused*'.

There need be no connection whatever between the accused and the document; yet it will be for him to disprove statements contained in it.

## 5. Minimum Sentence

Once a person has been convicted under the Act he is subjected to a minimum sentence of five years' imprisonment—as

to which the Court has no discretion whatever—and a maximum penalty of death. The effect of this provision was seen in the trial already referred to. The Court was compelled to sentence to five years' imprisonment two of the accused who, according to its findings, had not committed violence and were unwilling participants in the conspiracy.

## **6. Double jeopardy**

Even if, in spite of the width of the definition of the offence of 'terrorism', an accused is acquitted, he is still not necessarily free. Section 5 (h) abolishes the rule against double jeopardy and provides that an acquittal on a charge under the Act shall not preclude the trial of the accused on any other charge arising out of the acts alleged in respect of the charge on which he has been acquitted.

## **Conclusion**

The Terrorism Act is a piece of legislation which must shock the conscience of every lawyer. Not only does it create offences of such uncertainty and such broad scope that no-one can predict what conduct will fall within its terms, not only does it make those offences retroactive for a period of five years, it goes on to remove most of the guarantees of a fair trial for persons charged under it by providing first for detention for interrogation without the right to counsel, and thereafter for trial at a place and time chosen by the prosecution, by a summary procedure, with the onus of proof largely transferred to the accused, whose guilt is presumed on proof of any one of a number of highly ambiguous acts.

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## **UNITED KINGDOM: SECOND-CLASS CITIZENS**

### **1. The Commonwealth Immigrants Act 1968**

The issue raised by the Commonwealth Immigrants Act, passed by the United Kingdom Parliament on 1st March 1968, is a fundamental one. For the first time, citizens of the United Kingdom and Colonies are deprived of the right to enter any part of the territories of which they are citizens.

It will be recalled that until the enactment of the Commonwealth Immigrants Act of 1962 all citizens of Commonwealth countries as well as citizens of the British colonies had the unrestricted right of entry to the United Kingdom. The growing rate of immigration, and the resulting strains imposed on the social and welfare services, as well as the human problems involved in seeking to integrate large numbers of immigrants, led to the restrictions introduced by the 1962 Act, which limited the number of Commonwealth immigrants allowed into the country each year. These restrictions applied both to citizens of Commonwealth countries and to citizens of the United Kingdom and colonies whose place of origin and home was in a colony. They did not apply to those resident elsewhere—whether in a Commonwealth country or a foreign country—who were citizens of the United Kingdom and colonies; such citizens continued to enjoy the right of entry into the United Kingdom.

Persons in this category consisted mainly of those who had retained U.K. citizenship on the accession of colonies to independence. Thus the Asians resident in Kenya when it became independent retained citizenship of the United Kingdom and colonies, with the right to enter the United Kingdom unless they acquired Kenyan citizenship. In other cases persons resident in former colonies acquired dual nationality: they were able to become citizens of the newly independent country while retaining their U.K. citizenship.

Both these categories of citizens—those enjoying dual nationality and those who have only U.K. citizenship—have now

been deprived of their right of entry into the United Kingdom, unless they were born, or one of their parents or grand-parents was born, in the United Kingdom. A limited number—fixed by the Home Secretary at 1,500 *plus* their dependents—will be allowed into the United Kingdom each year under a system of entry certificates granted at the place of residence before their departure to the United Kingdom.

The Act thus creates a new category of second-class citizens, who are by law kept out of the country to which they belong by virtue of their citizenship. The fact that these citizens are non-white inevitably gives the legislation a racial character.

It may be accepted that it was necessary for the United Kingdom to impose restrictions on immigration from the Commonwealth, whose citizens have a home in their own country. The arrival in the United Kingdom of large numbers of persons from overseas, whose way of life is very different, who often speak little or no English, and who are easily distinguishable by their colour, has undoubtedly caused problems that cannot be solved overnight. The strain on housing, educational and health services has been considerable, and there has been widespread resentment—partly based on genuine difficulties, partly arising from prejudice—on the part of the British people among whom the immigrants live.

All these are the arguments advanced to justify the Commonwealth Immigrants Act, 1968. Important as it may be to establish harmonious race relations in the United Kingdom and to prevent the efforts to this end from being frustrated by a flood of new arrivals, a principle is involved in this case which is even more important, since it relates to fundamental human rights. Citizens are, for the first time in the history of the United Kingdom, deprived of their right to enter their country. According to spokesmen of the British Government, a total of between one and two million persons are involved,<sup>1</sup> all of whom could have come to the United Kingdom without any form of control. It appears however that all but some 350,000 of these are also citizens of the country in which they live, and thus have the right to remain there. But the 350,000 who have no other

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<sup>1</sup> The figure of 2,035,000 was given by the Lord Chancellor in the House of Lords on 29th February 1968. The Government Chief Whip, however, gave a total of 1¼ million.

citizenship now find themselves with no country in which they have a right to live.

The international human rights instruments adopted since the Second World War all recognize as a fundamental human right the right to enter one's own country. The *Universal Declaration of Human Rights* provides: 'Everyone has the right to return to his country.' The *International Covenant on Civil and Political Rights* provides: 'No-one shall be arbitrarily deprived of the right to enter his own country', and the Fourth Protocol—which the United Kingdom has signed but not ratified—to the European Convention on Human Rights provides: 'No-one shall be deprived, of the right to enter the territory of the State of which he is a national.'

These principles were unanimously reaffirmed by the *Bangalore Conference of Jurists on the Right to Freedom of Movement*, held in January 1968,<sup>1</sup> in the following terms: 'The right of a citizen to enter his own country should be recognised without limitation.'

In addition to violating the principles embodied in these provisions, the Commonwealth Immigrants Act, 1968, is a clear breach of faith in relation to those who are caught by its terms. It may be true, as has been stated in Parliament, that no express undertaking was given that persons choosing United Kingdom citizenship in preference to citizenship of a newly independent Commonwealth country would always have the right to enter the United Kingdom. But at that time United Kingdom citizenship had always carried with it the right of entry and such a right was indisputably implied in the offer of citizenship. Those who chose United Kingdom citizenship invariably did so—as in the case of the Kenyan Asians—because they did not belong ethnically to the country where they lived and feared that the fact might render their position difficult in the future: they wished to retain an alternative if this happened. This alternative, which was provided by the offer of United Kingdom citizenship, has now been taken from them.

It is true that the Home Secretary conceded, during the debate on the Bill, that any United Kingdom citizens who were compelled to leave Kenya would have to be admitted into the United Kingdom.

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<sup>1</sup> For the Conclusions of the Conference in full, see *Bulletin* No. 33, p. 8.

However, subsequent explanations of what was meant by this concession appear to indicate that it was intended to refer to isolated cases; there seems to be some doubt as to whether it would be respected in the case of a large-scale expulsion. It is certainly to be hoped that it would apply to the victims of a large-scale expulsion, for the alternative would be the creation of a new category of refugees who, although not strictly stateless and not driven by persecution from the country of which they are citizens, have nowhere to go.

It is also to be hoped that the Kenyan Government will not help to create such a situation by undertaking a massive expulsion of Asian non-citizens. It is undoubtedly the case that that Government has contributed to the creation of the problem which now faces the Asian resident in Kenya, in the first place by its slowness in granting citizenship to many thousands who have applied for it, thus undermining the confidence of the Asian community, and secondly by the manner in which its policy of restricting employment where possible to citizens has been introduced, and the impression that has been given that it is in truth rather a policy of 'Africanization' that is being implemented.

Long-term residence in a country does create, if not legal rights, at any rate certain expectations; and persons who have a long period of residence behind them should be entitled to different treatment from that of other non-citizens. Indeed, the Bangalore Conference of Jurists went so far as to affirm that long-term residents should only be denied the right to continue living in their country of residence in the most exceptional circumstances. It is to be hoped that the Kenyan Government will bear these considerations in mind in deciding future policy.

## **2. Immigration Appeals**

At the present time decisions relating to immigrants to the United Kingdom are subject to no form of appeal or review. Immigration officials have an absolute discretion; their decision whether to allow a person to enter the country cannot be challenged. This system applies both to aliens and to Commonwealth immigrants.

Growing calls for a fairer immigration procedure with some form of appeal led to the appointment of a Committee to study



the question. In August 1967 the Committee recommended a system of appeals against both deportation orders and refusals of entry. The system proposed would allow an appeal first to a senior immigration official and ultimately to an Immigration Appeal Tribunal.

While the Government has still taken no steps to implement these recommendations, it has responded to parliamentary pressure for some form of appeal machinery for United Kingdom citizens who are refused entry under the 1968 Act. This machinery has been established by administrative decision and on an *ad hoc* basis for Kenyan Asians only. Two lawyers have been sent to Kenya to hear appeals against refusals of entry certificates. The Home Secretary in announcing this system undertook to accept the decisions of the lawyers hearing the appeals. There is however no indication at present that this right of appeal is to be extended to other immigrants or placed on a statutory basis.

### 3. Effects of the Act

It has already been stated that one reason for limiting immigration of non-white United Kingdom citizens is to prevent a massive influx from making yet more difficult the establishment of harmonious race relations in the United Kingdom. The indications are, however, that rather than helping the new measure will exacerbate an already difficult situation. The Act is interpreted as racist by immigrant communities, and appears to them as the act of a racially-intolerant government.

The Government-sponsored National Committee for Commonwealth Immigrants, headed by the Archbishop of Canterbury, was not even consulted about the legislation. It afterwards publicly expressed its concern about the effect of the Act, and of the failure to consult those in touch with immigrant opinion, upon race relations in the United Kingdom. An officer of the Committee stated that the Act had put back race relations work in Britain by ten years. This view was also put forward by those responsible for race relations at the local level. There is a general feeling that immigrant confidence in those working for harmonious race relations will have been destroyed. Nineteen staff members and members of advisory panels of the National Committee for Commonwealth Immigrants, as well as two

members of the Committee itself, have resigned. They felt that the Committee could no longer do any useful work.

The Act is all the more unfortunate in that it was passed not long before publication, in April, of the second United Kingdom Race Relations Bill. It will be recalled that in 1965 the first Race Relations Act was passed, outlawing racial discrimination in public premises. When this proved inadequate, the Government promised stiffer measures, and the new Bill goes a long way to meet the demands of immigrant representatives. It makes illegal racial discrimination in employment, housing, insurance, banking, hire-purchase and all the service industries. Briefly, it provides machinery for conciliation of cases of alleged discrimination and, where this fails, enables the victim of discrimination to recover damages both for financial loss and for loss of opportunity. The courts will also be able to grant injunctions restraining further discrimination by those found guilty of it.

It is greatly to be regretted that, at a time when the Government is making considerable efforts to combat racial discrimination within the United Kingdom, it should have introduced a measure which is bound to arouse suspicion and make those efforts more difficult of success. There is no doubt that the United Kingdom's reputation as a bastion of civil liberties has been seriously shaken.

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## HUMAN RIGHTS IN ARMED CONFLICTS: VIETNAM

*This article was originally published by the Commission as a Press Release, on 7th March 1968 (before the opening of talks to end the Vietnam and Nigerian wars). While it was written predominantly in reference to the Vietnam conflict, the principles that it sets out are equally valid in other situations and apply to all armed conflicts. Similarly applicable are its suggestions for ensuring a greater respect for humanitarian laws in any armed conflict. This is one of the principal reasons for its publication in this Bulletin.*

The spread of brutality throughout the world and its contagious effect on humanity was the subject-matter of a statement made by the International Commission of Jurists in September 1966:

The Commission deplores the increasing brutality which marks this era. Neither fatalism nor the violence of the age should ever be permitted to dull the sense of horror and indignation which executions and imprisonment without trial, massacres, torture and like acts of brutality must arouse in mankind... These acts erode human standards; the inherent dignity of all mankind suffers.

This statement, made a year and a half ago, is unfortunately no less relevant today. The wave of brutality that was condemned then has gathered momentum and threatens to submerge the world in a cataclysm of horror. The unprecedented scale of the massacres in Indonesia, for example, and the widespread slaughter that is accompanying the civil war in Nigeria have aroused a profound sense of shame and indignation throughout the world. However, the present situation in Vietnam, where a steady escalation in brutality is taking place, is undoubtedly the most striking and most distressing example of this tendency in the world today.

Declared or undeclared, the mere existence of a state of war is an abrogation of the Rule of Law, which the International Commission of Jurists is pledged to uphold and promote throughout the world. Faced with a war, a body such as the

Commission can do little more than draw attention to the basic principles of humanity involved and condemn their violation; it has no other means of influencing events.

It is nevertheless essential, whatever the circumstances, that those involved in an armed conflict should not be allowed to forget the minimum rules of humanitarian conduct, which are derived from the conscience of mankind and which must be respected in every armed conflict. This is what prompted the International Committee of the Red Cross on the 9th February last to draw attention to the situation in Vietnam in the following terms:

The International Committee of the Red Cross reminds belligerents that in all circumstances they are bound to observe the elementary and universally recognized rules of humanity. These rules demand that the lives of combatants who have been captured shall be spared, that the wounded, the sick and those giving them medical care shall be respected, that the civilian population shall not be subject to attack from the air and lastly, that summary executions, maltreatment or reprisals shall be prohibited.

The International Committee of the Red Cross has often made known to those taking part in the hostilities the obligations they must fulfill. It ardently hopes that they will shortly put an end to this blood-stained conflict and meanwhile urgently calls upon them to observe the basic rules of humanity.

The right of the parties to a conflict to adopt means of injuring the enemy is not unlimited. Therefore, the International Commission of Jurists feels itself bound to endorse this statement of the International Committee of the Red Cross and to call upon all those throughout the world who believe in human rights and the Rule of Law to make every effort to ensure that these fundamental and imperative principles are no longer trampled upon in Vietnam by any of the parties to the conflict.

The Commission further draws attention to certain relevant factors:

1. Whatever the motives which inspire them, acts of barbarity such as those mentioned in the Red Cross statement, have never served the cause of civilization. The commission of atrocities by one side to a conflict can neither justify nor excuse the atrocities of the other. All who are guilty of such acts remain fully responsible. Thus, the deliberate killing of a prisoner of war, which was instanced by recent widely-published press photographs (in respect of which no denial has been issued) has become

notorious. Such an act is even more inexcusable when it is committed by a person of high rank, for it is then bound to be regarded as an example to be followed. Under any view it must be considered a crime which calls for sanction.

2. Attention should also be drawn to the fact that on the 19th May 1967, the International Committee of the Red Cross in a communication to all governments drew attention to the need to provide more up-to-date and comprehensive international safeguards for civilian populations and other victims of armed conflicts. In this communication the Red Cross points out: 'As a result of technical developments in weapons and warfare, given also the nature of armed conflicts which have arisen in our times, civilian populations are increasingly exposed to the dangers and consequences of hostilities.' This appeal by the Red Cross does not appear to have received the attention which it deserves from governments. While the elaboration of a new Convention may take time, the initial preliminary steps should not be further delayed.

3. The 'laws of war' date from The Hague Convention of 1907, before the invention of the means of mass destruction used in modern warfare such as napalm, aerial bombardments, chemical warfare and nuclear weapons. Its provisions nonetheless remain relevant today and do provide a guide. Attention should in particular be drawn to the Preamble:

Until a more complete code of the laws of war can be drawn up the High Contracting Parties deem it expedient to declare that, in cases not covered by the rules adopted by them, the inhabitants and the belligerents remain under the protection and governance of the principles of the laws of nations, derived from the usages established among civilized peoples, from the laws of humanity and from the dictates of the public conscience.

It is undoubtedly time that the Hague Convention was revised in the light of technological developments which have made a new codification of the law and customs of war essential. In the meantime, however, the principle set out in the Preamble to the Convention, which requires that both in the use of weapons and in the conduct of operations the civilian population and the combatants should be protected, remains fully in force. The same principle applies to 'classical' warfare as to less orthodox forms of warfare, equally ruthless and resorted to with increasing frequency.

It is also highly desirable that strict adherence be given to the provisions of the Geneva Protocol of 1925 which prohibits 'the use of asphyxiating, poisonous or other gases and of all analogous liquids, material or devices'.

4. The parties to the Geneva Conventions are bound by article 1 not only themselves to respect the humanitarian rules contained in these Conventions but also to *ensure their respect in all circumstances*. While this obligation falls primarily upon those states which are parties to the Vietnam conflict, it also binds all other governments to do everything in their power 'to ensure their respect in all circumstances'. Therefore each of the 117 States which is a party to the Geneva Conventions has a direct duty to use its best endeavours to secure the observance of the Geneva Conventions. By so doing, Governments would help to protect the minimum standards of human civilisation which have been codified in the Geneva Conventions.

It is regrettable that this collective responsibility arising out of the Geneva Conventions has never been acted upon in the Vietnam conflict; this failure is probably due in part to the absence of any procedure for its exercise. This serious defect will have to be remedied sooner or later.

In present circumstances<sup>1</sup> there is little hope that the voice of reason will persuade the belligerents to open negotiations for a cease-fire and a peaceful solution of the Vietnam conflict. In the meantime, however, it is becoming daily more important that the United Nations and the Red Cross should join forces in an effort to ensure that the Hague Convention and the Geneva Conventions are more fully respected. These Conventions, binding in international law, provide an essential protection for the combatants in the Vietnam conflict, whatever their nationality, as well as for its civilian victims.

It would be desirable and possible to initiate immediate consultation, under the neutral aegis of the United Nations and the Red Cross—the two international bodies with the greatest moral authority—limited to questions relating to the protection of combatants, of prisoners of all categories and of the civilian population. Such consultation might well result in decisions which would alleviate sufferings on both sides and would act as a brake to the escalation of brutality. In the face of the tragedy

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<sup>1</sup> See preface to this article.

that is being enacted in Vietnam, of which the rest of the world is the helpless witness, an initiative of this sort is surely worth attempting.

Consultations of this nature could equally well take place in other cases, such as that of Nigeria where there is open warfare, or the Sudan where a secret war is being carried on. In both these cases there is the same urgent need to ensure that human rights are protected in armed conflict. It is imperative to the stability of our present civilization that the growing brutality and the massacres of innocent victims in Vietnam and in other strife-torn areas be brought to an end.

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## ICJ NEWS

### HUMAN RIGHTS YEAR

#### MONTREAL

An Assembly for Human Rights was held at Montreal (Canada) from 22nd to 27th March of this year—Human Rights Year. This large-scale meeting, organized on the initiative of the Johnson Foundation, benefited from the financial and technical support of other private philanthropic foundations and of certain individuals. About a hundred delegates and observers, internationally recognized as experienced in human rights questions, took part, coming from all continents and over thirty different countries. The Secretary-General of the Commission, Mr. S. MacBride, who was co-Chairman of the Assembly, presided over some of the discussions.

The purpose of the meeting was to consider the rights and duties of the individual throughout the world, in the context of contemporary political, social and economic conditions and technical developments. Discussions centred around three main subjects: the evolution of the status of human rights since the adoption of the Universal Declaration, twenty years ago, and the work that the United Nations and other intergovernmental organizations have done in this field; the status of human rights in the world today; and the potential for increasing the protection and promotion of human rights and the difficulties to be overcome. In this latter part of the discussions, the Assembly examined the influence of scientific advances on human rights, questions relating to the improvement and strengthening of existing institutions and machinery, the possible establishment of new institutions, legal developments in this field and the implementation of international agreements enabling the individual to fully exercise his rights. In this connection, the Assembly gave its full support to the appointment of a UN High Commissioner for Human Rights.

The Conclusions of the Assembly were submitted for the consideration of the United Nations Conference on Human Rights held at Teheran from 22nd April to 13th May 1968. The text of this 'Montreal Statement' is precise and detailed, dealing with a series of human rights questions. In view of its importance, it has been published in its entirety in this (June) issue of the *Journal for Human Rights Year*.

#### TEHERAN

The Secretary-General, Mr. Seán MacBride, represented the International Commission of Jurists at the United Nations Conference.



## ROME

The Italian National Section of the ICJ held a meeting in honour of Human Rights Year on 20th January. It was attended by many outstanding Italian practising and academic lawyers and Judges. Professor Umberto Leanza of Messina University gave a striking address on the subject: 'Can Human Rights really be Protected?' This was followed by a lively discussion.

## LONDON

*JUSTICE*, the British Section of the ICJ, held a one-day conference in London on 17th February 1968, as part of its contribution to Human Rights Year. The subject was 'The Duties of those who Administer the Law to Safeguard Human Rights'; representatives of the Bench, the Bar and the Police took part, as well as members of the United Kingdom Committee for Human Rights Year. Among the speakers was Dr. A. H. Robertson, Head of the Directorate of Human Rights of the Council of Europe. The ICJ was represented by Miss Hilary Cartwright, a member of its legal staff.

## BANGALORE—ERRATUM

An inaccurate statement, for which the Commission apologizes, crept into the last issue of the *Bulletin*. Mr. C. Selvarajah, Secretary of Committee III at the Bangalore Conference, came from Malaysia, and not—as stated—Ceylon.

## SECRETARIAT

Mr. Daniel Marchand, from the legal staff of the Secretariat, visited Morocco from 7th to 11th April. He had official meetings with members of the Government, including the Minister of Justice, and several eminent lawyers. The main purpose of the meetings was to explore the possibility of forming a Moroccan National Section of the ICJ.

At the request of the International Federation of Editors in Chief (IFEC), the ICJ gave technical assistance in the drafting of a preliminary text for an International Convention for the Protection of Journalists engaged in Dangerous Missions. Many distressing incidents in recent years have illustrated the need for such a Convention giving protection to journalists in the exercise of a profession which is increasingly recognized as essential to the public interest. Human Rights Year is a perfect occasion for launching such a project. Mr. Kellerson and Miss Cartwright, members of the legal staff, who are continuing to study the question, attended the World Congress of the International Federation of Editors in Chief at Montecatini (Italy) from 6th to 8th May, where the subject was on the agenda for discussion. The text of the draft Convention was unanimously adopted by the Congress.

The International Commission of Jurists is a non-governmental organization which has Consultative Status with the United Nations, UNESCO and the Council of Europe. It is also on the International Labour Organisation's Special List of NGOs. The Commission seeks to foster understanding of and respect for the Rule of Law. The Member of the Commission are:

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The second part (Vol. IX, No. 1) is now available. In addition to the Human Rights articles and the Digest of Cases, this volume contains the Jamaica Conclusions on Civil and Political Rights, the Montreal Statement of the Assembly for Human Rights and an article on the Judicature of New Zealand.

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