

*For the Rule of Law*

# THE REVIEW



## INTERNATIONAL COMMISSION OF JURISTS

### HUMAN RIGHTS IN THE WORLD

ARGENTINA	1	SOUTH AFRICA	9
BRAZIL	5	YUGOSLAVIA	17
MALAYSIA	8	URUGUAY	19

### COMMENTARIES

INTER-AMERICAN HUMAN RIGHTS COMMISSION	23
U.N. HUMAN RIGHTS COMMISSION	24

### ARTICLES

LAWYERS AGAINST TORTURE	29
DAKAR CONFERENCE ON NAMIBIA	41
PRESS FREEDOM 1970-1975	45
CONFERENCE ON HUMANITARIAN LAW — PHASE III	S. SUCKOW 51

### BOOK REVIEW

ICJ NEWS	61
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# **THE INTERNATIONAL COMMISSION OF JURISTS**

It was to realise the lawyer's faith in justice and human liberty under the Rule of Law that the International Commission of Jurists was founded.

The Commission has carried out its task on the basis that lawyers have a challenging and essential role to play in the rapidly changing ecology of mankind. It has also worked on the assumption that lawyers on the whole are alive to their responsibilities to the society in which they live and to humanity in general.

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The purpose of THE REVIEW is to focus attention on the problems in regard to which lawyers can make their contribution to society in their respective areas of influence and to provide them with the necessary information and data.

In its condemnation of violations of the Rule of Law and of laws and actions running counter to the principles of the Universal Declaration of Human Rights and in the support that it gives to the gradual implementation of the Law of Human Rights in national systems and in the international legal order, THE REVIEW seeks to echo the voice of every member of the legal professions in his search for a just society and a peaceful world.

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# **Human Rights in the World**

## **Argentina**

On 24 March 1976 a Military Junta, composed of the commanders in chief of the army, navy and air force seized control of the country. This coup d'état put an end to the constitutional government of Maria Estela Martinez de Peron. Even though these events are too recent to enable definitive conclusions to be drawn, the broad outlines of the new régime can be sketched out.

On coming to power the Junta reminded the country that it was still under the state of siege proclaimed on 6 November 1974 and that all meetings in public places and all street demonstrations were prohibited under threat of heavy penalties.

An official announcement was made to the effect that action would be taken against all forms of subversion. One of the reasons and justifications given for the coup was the inability of the previous government to prevent the flood of political assassinations by both left and right wing extremists, amounting to between 1,500 and 2,000 within a period of 2½ years, the majority being committed by right wing extremists and in particular the notorious AAA (see ICJ REVIEW No. 14, June 1975, p. 1).

The press is subject to strict control and the publication or broadcasting of news concerning guerrilla activities or alarmist information of any kind is punishable. Several publications were closed down during the first few days after the coup.

Defining their new economic policies, the authorities stated that the basic concern of the government, apart from suppressing corruption, would be to control through the state all economic sectors essential for security and development and to promote foreign capital investment.

The national and provincial parliaments were dissolved and all political and trade union activity has been expressly suspended.

Within the short space of time which has elapsed since the coup, the number of arrests carried out by the armed forces and by the police is already high. Among them is that of the former president of the republic who is being held under house arrest in the Province of Neuquén, some 1,750 kilometres south of Buenos Aires. Former ministers of state, provincial governors, parliamentarians, political and trade union leaders are in custody. The detainees include Peronist supporters as well as a large number of persons suspected of having connections with left wing subversion. From published information it does not appear that any right wing extremists have been detained. These mass arrests bring the number of political detainees to a figure which can be conservatively estimated at between 6,000 and 8,000 persons. Some estimates are much higher.

During the days immediately following the coup, the right of

detainees under Article 23 of the Constitution to opt for exile was suspended by decree.

A call for a general strike, launched on the day of the coup by the 62 Peronist trade unions met with no response from the workers.

The government has assumed control of the Workers' General Confederation of Labour (CGT) and the employers' General Economic Confederation (CGE), as well as a number of the individual unions. It has done this by dismissing officers of these organisations and appointing their own nominees in their place. All activities on the part of the 62 Peronist unions are prohibited. New decrees and orders have far-reaching effects on the labour scene. For example:

- private bargaining between employers and workers has been prohibited and the operation of new collective agreements suspended;
- many provisions of the Contracts of Employment Act protecting workers' rights have been radically amended or repealed;
- Law No. 21.261 of 24 March 1976 suspended the right to strike and provided that any violation of its provisions would entail penalties of imprisonment;
- a law was promulgated providing for the "dispensability" of public service staff during 1976. Under this law state officials may be dismissed without any reason being given. Similarly, the legislation guaranteeing security of employment for teachers was suspended. As a result, hundreds of officials and teachers have been summarily dismissed;
- the controversial "fuero sindical", legislation guaranteeing rights of trade union action, has been repealed.

The new government has endowed itself with an institutional organisation which departs radically from the system laid down in the Argentine Constitution (a representative democracy based on the classical separation of powers, each acting independently of the others). Up to the present, the new form of government prescribed by the military authorities is as follows:

**Military Junta.** This is the supreme organ of the state, endowed with the power to alter the Constitution, to supervise the normal functioning of the powers of the state, to ensure strict compliance with the basic objectives set out in the military programme, and to draw up new objectives. It has the power to appoint and, if need be, to dismiss the president of the republic, and to remove members of the Supreme Court of Justice and appoint new ones in their stead. On 26 March 1976 the Commanding General of the Army, Lieutenant-General Videla, was named President of the Republic.

**The National Executive** (or Central Government). This body is endowed with the powers granted under the Constitution to the Executive, with the exception of those now reserved for the Junta. It is also to exercise the legislative and non-legislative functions granted by the Constitution to the Parliament, acting in this respect with the advice of a Legislative Advisory Committee. It is also entrusted with the task of

appointing provincial governors. Military officers have been appointed to a number of ministerial posts and as governors of nearly all the provinces.

*The Legislative Advisory Committee.* This organ is composed of nine high-ranking military officers, three being appointed by each of the armed forces. It is empowered to advise the Executive with respect to legislation, and in this manner is involved in the approval of legislation.

*The Judiciary.* On 24 March 1976 all members of the Supreme Court of Justice were dismissed by decree, as well as the members of the superior courts of all the provinces and a number of other judges, principally in the criminal jurisdiction. Some of these judges are still under arrest. During the month of April, the military authorities proceeded to appoint new judges to replace those who had been dismissed.

In the penal and judicial fields the most striking new features are the re-introduction of capital punishment<sup>1</sup> and the setting-up of military tribunals. In Communiqué No. 33 the Military Junta published a new decree, having the force of law, which modifies the system of criminal law in a number of ways with effect from 24 March 1976. The salient features are:

1. New crimes are defined and existing ones altered, such as that of public incitement to collective violence and/or the overthrow of public order (section 1); attacks against public transport, communications, and other public services (section 2); the poisoning or pollution of waters or food or medical products, giving rise to a danger for the public (section 3); the creation of a common danger for persons or goods by fire or explosion (section 4).
2. The surprising element in these cases is that, except for those convicted of the acts described in section 1, who are liable to imprisonment for not more than 10 years, all these offences are punishable with "imprisonment for a fixed period or death". Contrary to previous practice under Argentine law, there is no mention of any minimum or maximum period of imprisonment. The period is left completely to the discretion of the courts or tribunals.
3. In the cases described in sections 2 to 4, the security forces are

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<sup>1</sup> The law relating to capital punishment has been changed many times in the last 50 years. It was completely abolished in 1921. Nearly 30 years later, Act No. 13.985 of October 1950 re-introduced capital punishment in cases of espionage and sabotage. Act 14.117 of October 1951 extended it to other cases provided in the Code of Military Justice, making it applicable to ring-leaders of rebellions. When the first Peron government fell, these Acts were repealed by Legislative Decree No. 8.315 of December 1955. Again, fifteen years later, a military government re-introduced the death penalty by Act. No. 18.701 of June 1970, for political crimes. This Act was repealed the next year, Act. No. 18.953, which, however, retained the death penalty and re-introduced it into the Penal Code. Argentine jurists were almost unanimous in their opposition to this reintroduction. They were supported by other sectors of public opinion in opposition to the death penalty and this led once again to the complete abolition of capital punishment by Act No. 20.043 in 1972. Now, once again, the death penalty has been re-instituted.

It may be noted that this new decree departs from the provisions of Article 4 of the American Convention on Human Rights, which has not yet come into force. This states that capital punishment shall not be re-established in states which have abolished it, nor be inflicted for political or politically related offences, nor imposed upon persons under 18 or over 70 at the time of the offence, nor on pregnant women (see ICJ REVIEW No. 5, p. 45).

authorised to use firearms where a person apprehended "in flagrante delicto ... does not cease upon the first warning or uses arms against the officer of the peace" (section 5).

4. Accomplices and accessories to offences punishable by the death penalty are liable to imprisonment for between 15 and 25 years.
5. The age of criminal responsibility is reduced to 16 years for offences defined in this decree, and this age limit applies to the death penalty.
6. Permanent special military tribunals (known as Councils of War) have been established throughout the country to try the offences described in the new law. Defence Zone and Sub-zone Commanders are empowered to set up such tribunals and to appoint their members. In practice there are five members, all of whom are military officers. Reports have been received of sentences by the tribunals established in Bahía Blanca, Mendoza, Cordoba and other localities, under which trade union leaders have been condemned to heavy terms of imprisonment (from 3 to 10 years) for offences such as the possession of weapons, disrespect towards the authorities or taking strike action. Sentences have also been imposed for offences not provided for in the decree. In all cases the defence of the accused was entrusted to officers of the armed forces and not to lawyers.

The new situation has not altered the tragic reality of the political assassinations which have become a feature of daily life in Argentina. Armed groups, such as the left wing ERP and the Montoneros, and right wing para-police organisations, particularly the AAA, continue their activities, bestrewn the country with corpses. In fact, the rate of assassinations appears to have increased. In the first two months after the coup, over 300 persons were murdered for political motives. Of these the greater part were leftist militants or sympathisers.

A particularly shocking assassination was that of four Uruguayan exiles whose bodies were found on the outskirts of Buenos Aires on 22 May 1976 riddled with bullets and two of them showing signs of torture. The other two victims were well-known moderate opposition leaders in Uruguay, Senator Michelini, leader of the Broad Front, and Gutiérrez Ruiz, one of the leaders of the National "Blanco" Party. At the time of their kidnapping an unsuccessful attempt was made to seize another moderate leader, Ferreyra Aldunate, the former presidential candidate of the National Party who at the last election had secured more votes than the elected President Bordaberry. It is known that shortly before this kidnapping, political colleagues of these men had been contacted in Uruguay by Alejandro Vegh, Minister of Economy and Finance in Uruguay, who is advocating a return to a limited form of parliamentary democracy. It is more than probable that there is a connection between the two events. This points once again to the close link between the authorities in Uruguay and the disappearance of Uruguayan refugees in Argentina.<sup>2</sup>

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<sup>2</sup> See the ICJ Study on *The Application in Latin America of International Declarations and Conventions Relating to Asylum*, September 1975, SFr. 10,00, available in English and Spanish.

# Brazil

In December 1974 in an article on Brazil in ICJ REVIEW No. 13 it was stated: "A number of recent events lend hope that progress towards the greater liberalisation promised by General Geisel may be achieved under his presidency." Examples of improvements were cited with the comment that "it remains to be seen whether this improvement will be permanent or be restricted to the pre-election period."

In those elections, held in November 1974, the only permitted opposition party, the Brazilian Democratic Movement (MDB) defeated the government's National Revolutionary Action Party (ARENA) in the majority of states of the federation. However, as the elections were for only some of the seats in the Federal Parliament, the government was able to retain its majority. Municipal elections are due to be held in November 1976.

On 21 March 1976, at one of the many pre-election meetings, held in a municipality in the Rio Grande del Sul, two opposition members of parliament, Nadir Rossetti and Amauri Muller, were very outspoken in their criticisms of the ruling military regime. They said that it was hard towards the people but conciliatory towards those holding economic power, that it was a regime resulting from a coup de force and not a revolutionary regime, that the country was dominated by an aristocracy in uniform, that the hour had come to end this dictatorship and that the end of the regime was certain owing to its rottenness and corruption. The government acted swiftly. On 29 March President Geisel issued a decree cancelling the membership of parliament of the two members and suspended their civic rights for ten years on the grounds that they "had offended the government, the armed forces, and the revolution". The effect of this decree is to prevent them standing again as candidates, and their constituents are left until the next election without any representation in parliament.

Three days later, on 1 April, Lysaneas Maciel, the outspoken opposition member of parliament for Rio de Janeiro, made a speech in parliament criticising this action in very severe terms, and calling attention to the lack of basic freedoms and the systematic violation of human rights. On the same day President Geisel issued another decree imposing the same penalty on Mr. Maciel. Mr. Maciel has won international repute for his courageous and concerted struggle in parliament on behalf of human rights. He has led the campaign against arbitrary arrest, torture and murders (see ICJ REVIEW No. 13, p. 5). He is also an active member of the Brazilian Presbyterian Church.

## Torture

Although some steps appear to have been taken to try to reduce the incidents of torture, tragic cases continue to be reported. Public protests have been made on a number of occasions by leaders of the Church, the MDB opposition party, and the Federal Council of the Brazilian Bar Association. These protests, which have been reported in some of the more independent newspapers, relate not only to cases of torture but to the disappearance of individuals believed to have been arrested by the

security authorities, and even in some cases to the death of detainees in military premises. In recent months the following persons are reported to have died in military custody:

- Lieutenant José Ferreira de Almeida, 65 years old; died 8 August 1975, three days after his arrest by the military police as a suspected communist party member. The official explanation by the Second Army Command, Sao Paulo, is that he committed suicide in his cell, but his lawyer, who saw him in custody, said there were visible signs of torture.
- Colonel José Maximiniano de Andrade Neto, died in military custody in September 1975 one month after his arrest. The official account is death by heart failure. According to *Le Monde*, 16 October 1975, his body was found abandoned in the street with signs of torture.
- Vladimir Herzog, a well-known journalist, died on 25 October 1975 in the custody of the Second Army Command, Sao Paulo, who said that he committed suicide after confessing to communist party membership. Security police refused to allow his family to open his sealed coffin for Jewish pre-burial rites. Following protests by the Brazilian Bar Association and journalists, a military enquiry in December upheld the suicide verdict.
- Manuel Fiel (Filho), a metalworker aged 49, died on 17 January 1976, shortly after his arrest. The Second Army Command stated the death was by suicide on the premises of the COI-CODI. This is a well-known interrogation centre.

A detailed account of torture practices and of the conditions of detention in Brazil, prepared by 25 detainees and addressed to the President of the Federal Council of the Brazilian Bar Association, has been smuggled out of prison. The authors had been arrested at various dates between 1969 and 1975. Some of their tortures occurred even after they had been sentenced. Among the cases they describe are those of suspects murdered in interrogation centres and of suspects tortured in the presence of their wives and children. They give the names of 233 torturers and the address of several interrogation centres where torture is practiced, and describe the arbitrary nature of their trials before military tribunals and the difficulties imposed on defending lawyers. Finally they describe the appalling prison conditions and the possibility of reprisals against them for making this information known. They ask the Bar Association to give copies of the document to the leading authorities of the country, the Church, the press and everyone active in the field of human rights. The outspoken newspaper *O Estado de Sao Paulo* published extracts from the document on 18 January 1976.

The death of Manuel Fiel (Filho) in January led to many protests, again published in *O Estado de Sao Paulo*, by the Bar Association, Press Association, bishops, trade unionists, and opposition members of parliament and senators. These led President Geisel to replace the Commanding General of the Second Army Command, Sao Paulo, by an officer known to be close to the President.

An extraordinary incident was reported in the Sao Paulo press on



12 May 1976. Dr. Jorge Cocicov, an examining magistrate at Riberão Preto in the state of Sao Paulo, received a report that two suspected criminals (non-political) were being tortured by the military police. He went at once with a photographer to the police station and found two policemen in the act of torturing the suspects by the well-known "parrot perch" method, in which the victim is tied by the wrists and feet and hung suspended from a bar for several hours and beaten. The judge ordered photographs to be taken and the arrest of the policemen. Several police and military authorities came to the police station. When the photographs were developed they were mysteriously found to be over-exposed, and the two detainees disappeared. The Security Secretary, Mr. Antonio Erasmo Dias, said they had escaped. Next day the two policemen were released on bail and the security authorities criticised the magistrate for having shown "lack of trust" in the police and for visiting the police station unannounced.

### The Press

The control of the press in Brazil is by no means uniform and varies from place to place, even within the same state. In some cases the censorship official who carries out pre-censorship in the office of the newspaper has been withdrawn and the newspaper is left to apply "self-censorship". In other cases the censor remains. For example, the censor was withdrawn from the offices of *O Estado de Sao Paulo* on the occasion of its centenary, a year ago, and has not been replaced. On the other hand the Catholic weekly *Sao Paulo* still has a censor on its premises and articles which have already appeared without any reaction in provincial papers have been disallowed by the censor in Sao Paulo. "Self-censorship" means that the editor has to take the risk of having his paper closed temporarily or permanently if he publishes any matter which is subsequently considered offensive. In recent months a number of journals have been closed in this way under the provisions of Art. 45 D-L of the law on National Security of 27 September 1969 dealing with "propaganda of an adverse psychological effect" and "revolutionary or subversive propaganda", or under decrees of 1970 dealing with publications affecting "public morale".

Following Vladimir Herzog's death, the Sao Paulo journalists' union issued a protest denouncing the arbitrary procedures to which journalists are exposed, saying they can at any time be taken from their homes under the pretext of being required to answer a few questions, and then held illegally in secret interrogation centres, without being able to communicate with their families or lawyers.

In May 1976 it was announced that a number of people would shortly be tried by military tribunals, including 10 journalists of the press and radio.

Censorship applies not only to the mass media but to all cultural activities. Since 1970, 480 plays have been banned or so severely censored that the authors decided to withdraw them. Popular singers who sing or compose songs about political or social matters work under great hazards. A well-known singer Chico Buarque de Holland has to sing under a pseudonym and has had to remove many of his songs from his repertory.

# Malaysia

The International Covenant on Civil and Political Rights recognises the right to suspend many human rights in the event of a "public emergency which threatens the life of the nation . . . to the extent strictly required by the exigencies of the situation". Regrettably, in more and more countries states of emergency are being proclaimed and maintained for very long periods accompanied by restrictions on basic human rights which appear to go beyond what is strictly required for protecting the "life of the nation" as opposed to the life of the government in power.

The Essential (Security Cases) Regulations, 1975, passed under the long continuing state of emergency in Malaysia, appear to fall into this category. Under these Regulations suspects may be detained on the order of the Public Prosecutor for up to 60 days without being brought before a magistrate. A suspect who absconds and fails to surrender within 30 days of a proclamation will have all his property and assets confiscated. A person charged with a security offence will be tried by a judge alone, without a jury. There will be no preliminary proceedings and the defendant is not entitled to see any prosecution witness statement. The charges may be added to or amended at any time before trial. Bail may not be granted. Any number of offences or defendants may be joined in the same proceedings. Prosecution witnesses may be heard in camera without the presence of the defendant or his counsel, or their evidence may be given on affidavit omitting any matter from which the witness could be identified. Convictions can be based on hearsay evidence, as well as on uncorroborated testimony of an accomplice or minor. A police officer can give evidence of an identification by a third person without that person being called as a witness. If the case is proved it is mandatory for the court to impose the maximum penalty permitted by law for the offence, including in appropriate cases death or life imprisonment or, where the punishment includes whipping, "the maximum of such punishment . . . in addition to any other punishment". There are limitations on the defendant's rights of appeal but those of the prosecution are unlimited. These regulations are to be seen against the background of the existing law in the Internal Security Act, 1960, under which persons charged with acting against the security of Malaysia could already be detained for indefinite periods.

Equally disturbing are the provisions of the Community (Self-Reliance) Regulations, 1975, which make every member of a household above the age of 14 responsible for the family's activities. This is either to be regarded as a form of guilt by association, or as a kind of reprisal. In either case it is a serious violation of basic principles of justice. Students have been singled out for more specific restrictions, apparently in response to widespread student demonstrations in support of the demands of farm labourers on strike in late 1974. The Universities and University Colleges (Amendment) Act, 1975, prohibits students from joining or supporting any society, political party, or trade union, inside or outside Malaysia, even if lawfully established. In addition, any student charged with any criminal offence is automatically suspended or

dismissed from his College or University. Measures such as this are bound to drive underground a great deal of student activity and to create the conditions for the spread of the subversion which the emergency is supposedly intended to avoid.

It is encouraging that Malaysian lawyers have spoken out against these new regulations.

## South Africa

### "Independence" for the Transkei

The South African government has announced that on 26 October 1976, the Transkei will come into being as the first of South Africa's supposedly independent African "homeland" states. On that date, according to South Africa law, 3 million Africans of the Xhosa Tribe will be deprived of their South African citizenship. Unless they are granted and accept Transkei citizenship they will become stateless persons. In any event Transkei citizenship will be of little value to them as it is unlikely that the Transkei will be recognised as a state by any country in the world other than South Africa. Half of these 3 million do not live in the Transkei but live and work in other parts of South Africa. They are being given no chance to choose their citizenship. This change of status is being imposed upon them to implement South Africa's *apartheid* policy of "separate development". No plebiscite has been held even among those resident in the Transkei to determine whether they want an independent state.

The government's strategy is clear. It is seeking to carve out of South Africa a number of small nominally independent states. None of these will be viable economically and the bulk of their manpower will have to remain in the townships or on the farms of the remaining "white" state of South Africa in order to earn their living. Eighty-three per cent of all adult male "Transkeians" now have to seek employment in the white areas and this is likely to continue. The attempts by Paramount Chief Kaiser Matanzima to attract foreign capital have met with little success. The number of new jobs in prospect in the Transkei is less than the number of males entering the labour market every year.

That it is the policy of the South African government to continue this economic dependence of the "homelands" is clear from a statement by Mr Botha, Minister of Bantu-Administration and Development: "... in the economic framework of the country, the economy of the homelands is interwoven with that of the republic. And it stands to reason that the development of the homelands cannot be carried out at a pace which would have a detrimental effect upon the economy of the country".

Under this homeland plan, 18 million Africans who constitute 70 per cent of the population of South Africa will have about 13 per cent of the land. The remainder, which includes the richest areas, will nominally be a "white" state although the whites in these areas will continue to be out-

numbered by the Africans. Becoming aliens in their country, the Africans will be liable to be deported at will by the South African authorities to a "homeland" which they may never have seen and which their ancestors may have left several generations ago.

When this operation is completed the South African racist government, if it has its way, will no doubt declare that it is complying with the UN Convention on the Elimination of Racial Discrimination since the convention does not apply to "distinctions, exclusions, restrictions or preferences made . . . between citizens and non-citizens". Such cynical claims will not be recognised by any country in the world. The new policy has been strongly denounced within South Africa itself. Even Chief Matanzima, who accepts the proposed "independence" of the Transkei has protested against the measure which proposes to force the Transkei to accept as citizens those who do not live in the Transkei and who have no desire to do so or to become its citizens.

### **Growing "black consciousness"**

These developments can only intensify the racial polarisation in South Africa and strengthen the growing "black consciousness" movement. A significant development was the remarkable speech of Chief Gatsha Buthelezi, the KwaZulu leader, to a crowd of 10,000 cheering Africans in Johannesburg's Soweto Township on 14 March 1976. Buthelezi, as leader of one of the largest "homelands", though ready and willing to work for the liberation of Africans within the framework of the existing laws and society, has clearly rejected the proposal for "independent" African states. Two years ago he was proposing a federal solution between black homelands and white areas. Now he appears to abandon this in favour of a unitary state based on majority rule. He says it is his hope that the "operative majority . . . will be a multi-racial majority", and he now seeks to extend his Zulu cultural organisation, Inkatha Ye Sizwe ("Power is Ours"), into a national movement embracing all Africans. He has called for a series of Black National Conventions representing all shades of black opinion. The first, on economic matters, is planned for August. Others are planned on the homeland independence issue and on South Africa's foreign policy. The drama of this occasion was heightened by Buthelezi appearing in a military type uniform with epaulettes bearing the traditional African liberation colours of black, green and gold.

It seems hardly credible that the South African government, which continues to arm itself with ever more repressive laws, will allow such a movement to develop. But if it has to end by sending Chief Buthelezi to join Nelson Mandela in Robben Island, little prospect will remain for a peaceful solution to South Africa's racial problems.

South Africa's detente policy which initially achieved a considerable degree of success has suffered two serious setbacks through the fiasco of its intervention in Angola and the intransigence of the white minority in Rhodesia. Meanwhile, the adoption of this policy externally has inevitably led to an increasing demand for an internal detente on race relations. So far from granting any relaxation the government has sought to prevent this movement gathering force by the introduction of increasingly severe repressive laws and by an unprecedented series of political trials.

## Parliamentary Internal Security Commission Bill

The first step in the new legislation was to introduce the Parliamentary Internal Security Commission Bill. This establishes on a permanent basis a Parliamentary Commission with inquisitorial powers similar to those exercised by the notorious Schlebusch Commission<sup>1</sup>.

This body is to be comprised of up to 10 members of parliament appointed by the government (formally the State President) to investigate matters referred to it by the government as affecting internal security. Matters which may be referred include not only suspected activities or organisations, but also existing or contemplated legislation or administrative procedures. It is to report to the government, who are to publish the reports (by laying them before Parliament) unless the Prime Minister decides after consultation with the leader of the Opposition that the report should "in the public interest" be suppressed in whole or in part.

The Commission will have the power to summon anyone before it to be examined under oath and to produce documents. It is an offence to refuse to take the oath or make an affirmation or, subject to the law relating to privilege, to refuse to answer questions.

As with the Schlebusch Commission, there is no provision for the formulation of any charges against persons under suspicion, for entitling them to legal representation, or for informing persons or organisations under investigation what are the allegations made or evidence given against them.

The government are taking powers under the Bill to make regulations providing for the procedure to be followed by the Commission and "for the preservation of secrecy". It may be assumed that, as with the Schlebusch Commission, provision will be made for holding the hearings in camera, and for making it an offence to disclose any evidence given before the Commission, and for setting aside the normal rules of evidence.

The proposals in the Bill amount to a legalised witch-hunt.

## Promotion of State Security Bill

The second Bill, which has met with vigorous protests from the Johannesburg and Cape Town Bar Councils, is the "Promotion of State Security Bill". This proposes to extend the powers under the notorious Suppression of Communism Act, 1950, which is to be known in future as the State Security Act.

It first provides that any organisation may be declared unlawful, not only if it is thought to further the aims of communism (as defined extraordinarily widely in the Suppression of Communism Act), but also if the State President is satisfied that it "engages in activities which endanger the security of the State or the maintenance of public order". Such a declaration can have serious consequences not only for the organisation itself but for any member who, without being given an opportunity to be heard, may be prohibited from holding any public office, or from holding office or taking part in the activities of *any* organisation, or from attending any gathering.

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<sup>1</sup> See ICJ Reviews No. 11, p. 56, and No. 15, pp. 63/64, and "The Trial of Beyers Naudé", Search Press London, 1975, ed. ICJ, pp. 27-38.

Secondly it extends the power to ban publications to any publications which the State President is satisfied "serves *inter alia* as a means for expressing views or conveying information the publication of which is calculated to endanger the security of the State or the maintenance of public order". The power to make banning orders against individuals is also extended to any person who the Minister is satisfied engages in such activities.

The provision which has attracted the most condemnation is the amendment of the famous Sobukwe clause (under which a person could be held in prison indefinitely after the completion of his sentence if the Minister was satisfied that he was likely to further the objects of "communism"). Under the amendment, the Minister will now have power to imprison *any* person without trial for a period "not exceeding 12 months at a time" if he is satisfied that the person "engages in activities which endanger the security of the State or the maintenance of public order". The supposed limitation of 12 months is meaningless as there is nothing to stop the Minister renewing the detention order as many times as he wishes. As Mrs Helen Suzman M.P. of the Progressive Reform Party stated in Parliament, the Bill could result in "unending imprisonment without trial in either a prison or an internment camp".

The Bill provides for a review committee appointed by the State President to review detainees' cases within two months of the order and thereafter every six months. Their proceedings are to be in secret and no court of law can pronounce upon their functions or recommendations. The Minister will not be bound by their recommendations. However, if he does not accept a recommendation for release he must inform Parliament of that fact within a month, giving the name of the detainee. Except in this case, neither the fact of detention nor the name of the detainee need be published, as is the case under the Terrorism Act.

Section 6 of the new Bill enables the Attorney-General in a large number of cases under the Suppression of Communism Act, the Terrorism Act and other Acts to issue an order depriving the courts of their power to grant bail. It also states that if the Attorney-General in these cases thinks "there is any danger of tampering with or intimidating any person likely to give material evidence for the State . . . or that any such person may abscond, or whenever he deems it be in the interests of such person or the administration of justice, he may issue a warrant for the arrest and detention of such person".

Prospective witnesses detained in this way are to be held in solitary confinement unless the Attorney-General decides otherwise, and need not be released until the conclusion of the criminal proceedings concerned or the expiration of six months. Again, however, there is nothing to prevent the Attorney-General issuing a fresh order for their arrest and detention. Persons have been held under a similar provision in the Terrorism Act for much longer periods than six months. No court can order the release of a person held in this way and no challenge can be made to the validity of the regulations under which he is held.

When these two Bills are seen together the impotence of the law to protect basic human rights in South Africa becomes evident.

Individuals or organisations may be summoned in secret before political inquisitions not knowing of what they are suspected or what evidence has

been given against them or by whom. They will have no right to legal representation and if they fail to answer questions will be liable to imprisonment. Judging by the precedent of the Schlebusch Commission, the reports of this body will be tendentious, biased and wholly unjudicial.

Following these reports or indeed, if it prefers, without them, the government will be able at will to ban organisations, individuals and publications, deprive people of the right to take part in any public or even social activities, arrest and detain them indefinitely in secret and without trial, and hold in the torture of solitary confinement not only persons awaiting trial but even prospective state witnesses. All this in the name of suppressing "communism" and promoting the security of a state which has been universally condemned for its inhuman policies of racial discrimination.

### Political trials

The last two years have seen a remarkable series of political trials in South Africa and Namibia. They are remarkable in three respects:

- as an attempt by the government to discredit and stifle the "black consciousness" and other movements aimed at developing the self-respect of the Africans, overcoming any sense of defeatism, and arousing them to struggle against the racist *apartheid* regime. The decisions in some of these trials, which are still in progress, will have an important bearing on the question whether an open and non-violent struggle by Africans for their emancipation is possible;
- for the remarkable spirit, courage and character shown by the defendants during the trials; and
- for the number of occasions on which state witnesses and defendants have alleged physical and psychological pressures by the security police during their interrogation under detention.

A report on these cases has been prepared by the Christian Institute of Southern Africa and published in Holland<sup>2</sup>. In the foreword the strategy underlying these trials is analysed as follows:

"The silencing of these people serves a number of purposes within the framework of the detente policy. It serves to reassure Mr Vorster's right wing that, while he might be going out of his way to ingratiate himself with foreign Blacks and even be prepared to make "concessions" internally, he is still capable of ruthlessly suppressing Black political opposition. It also allows him to go forth on his detente missions as the leader of an ostensibly peaceful and united nation. Further, by labelling a number of such Black opposition groups as subversive he is able to portray himself as a leader who is able to preserve this peace and unity in the face of terroristic onslaughts from within. This would not appear to be such a great achievement if it were realised that the "terroristic activities" which a substantial number of people have been charged with, consisted in the main of philosophising, the writing of poetry and plays and other cultural pursuits. Detentions and detente are, therefore, a further manifestation of the two

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<sup>2</sup> *Detention and Détente in Southern Africa*, available from Interchurch Aid, P.O. Box 14100, Utrecht; free, but a contribution of Dfl 2.50 per copy is suggested.

faces of White South Africa. The pragmatism for which Mr Vorster is praised in certain circles means that he is prepared to use any means for the achievement of the Nationalists' objective: the maintenance of White economic and political supremacy".

Since the beginning of 1974 at least 217 people have been arrested in connection with these cases and held without charge in solitary confinement for an average period of over three months. Thirty-nine of these have subsequently been charged under the Terrorism Act, seven others under the Suppression of Communism Act and 35 under the Riotous Assemblies Act. The rest were held either as prospective state witnesses (who are also held in solitary confinement) or as suspects. Some of these have been released but at least 81 were still being held without charge in April 1976.

The report deals with 26 different trials. Among the most significant are those known as the

— *SASO/BPC trial*. The charges in this case were described in ICIJ Review No. 14, p. 13. None of the defendants were accused of any acts of violence, though there was a general charge that the defendants were plotting violent revolution, a charge which they strenuously denied. Indeed, when it became clear after five months that the judge was likely to strike out the charges owing to the failure of the prosecution to give proper particulars of the alleged conspiracy, the state withdrew the indictment. One week later, on 27 June 1975, the prosecution began again with a fresh indictment. The spirit of the accused and their families and supporters throughout this prolonged trial has been outstanding. All the defendants have given evidence and have testified to the tortures and ill-treatment they received at the hands of the security police. They have defended their aims and ideas with ability, contending that they reject the policies of violence of the banned ANC and PAC liberation movements.

— *NAYO trial*. Seven members of the National Association of Youth Organisations are charged under the Terrorism Act with conspiracy to form underground cells with the intention of collecting information on strategic installations to be passed to accomplices for sabotage, bringing about a revolution against the government, studying the economy and the use of the Black labour force to cripple it, ultimately bringing about the downfall of the government, studying and smuggling revolutionary communist literature for dissemination, and inciting people to undergo military or subversive training. There is a list of 46 alleged accomplices who were not charged. Some have gone abroad and others are believed to be held in detention. The case began in Johannesburg but after a police clash with a crowd of up to 2,000 people who had gathered outside the court singing freedom songs, it was transferred to Pretoria. Capt. Cronwright of the security police admitted that he had made alterations to one of the defendants' statement in order to lay down a "guide line" for him, and agreed that his "clarifications" had ended in the statement meaning the opposite of what the accused originally wrote. A state witness who produced a document given him by Capt. Cronwright with instructions to include its contents in his statement, and who said he had signed his statement only after he had been



struck and threatened by Capt. Cronwright, was arrested after giving his evidence and charged with perjury. Several other state witnesses either refused to give evidence or were hostile to the prosecutor.

- **NUSAS trial.** Five leaders of the white students' association, NUSAS, were arrested at the beginning of December 1975 and charged with ten acts allegedly promoting the policies of the banned South African Communist Party and/or African National Congress. Some of the acts complained of are surprising to find in an indictment. They include launching a campaign for the release of political prisoners, holding a seminar on the policy and guidelines of the campaign, advocating action towards an egalitarian society, giving their head office a mandate to consider the feasibility and practicability of working towards a blueprint for such a society, planned action to change the educational system so as to prepare students for their African future and to integrate with African culture, and planning the incitement of Black workers to industrial unrest by spreading pamphlets and advocating "black consciousness". The charge sheet itself reveals the nature and purpose of the trial. One of the state witnesses was a security police sergeant who had spent a year "loafing" on the campus at Witwatersrand posing as a student. As an editorial of the *Rand Daily Mail* stated on 12 March, "the trial strikes at the root of working for change in this country. It will define the line between lawful opposition to the government's policies and offences under the Act".
- **SWAPO trial.** Arising out of the assassination of the Ovambo Chief Elifas in Namibia six members of SWAPO were charged under the Terrorism Act with complicity in acts leading to the murder. Two of the accused were condemned to death. It was conceded that one of the defendants had driven the unidentified murderer to the scene but he denied strenuously that he knew who he was or the purpose for which he was driving him there. The judge drew the inference from what appears to be slender circumstantial evidence that he must have known. The death sentences are the first ever to be pronounced under the Terrorism Act. Two other defendants were sentenced to seven and five years imprisonment and two were acquitted. An application is being made for leave to appeal.

Apart from these group trials there have been a number of individual trials of note. A young law lecturer at Natal University, Raymond Suttner, was sentenced on 16 November 1975 to seven years' imprisonment under the Terrorism Act for a somewhat futile gesture he had made in printing and distributing on the campus some tracts urging black workers to form underground factory committees. His trial was notable for the very dignified statement he made from the dock explaining why he had been persuaded to the view that it was only by illegal and underground activity that racial and social justice could be won in South Africa. By contrast, the trial a few days later of Breyten Breytenbach, the well-known Afrikaaner poet, was remarkable for the abject nature of his statement in court. He pleaded guilty to having entered South Africa under a false name in a rather

amateurish attempt to establish an underground organisation to be known as "Okhela" or "Atlas". He was trailed by the BOSS from the moment he arrived and his visit had the effect of compromising many well-intentioned people whom he had contacted. As the ICJ observer at the trial, Professor Morand of Geneva University, said "the Breytenbach trial constitutes a remarkable success for the government. It has helped to impress upon the white community the image of a vast conspiracy. It must be expected that the government will exploit this situation with further repression".

The whole series of trials has been carefully stage-managed to create the maximum impression in the public mind of a series of dangerous communist-inspired conspiracies calling for the utmost vigilance and justifying the new repressive laws. For example, the press treatment of the Breytenbach trial enabled a large number of slanderous and unproved allegations to be made against individuals and groups who, not being charged, had no means of defending themselves. The outcome of the trials is of secondary importance. If the defendants are acquitted, they are as likely as not to be re-arrested and detained under the Terrorism Act on leaving the dock, as happened to three members of AFRO (a group opposed to coloured representative council elections) who were acquitted in March 1976 on charges under the Terrorism Act and the Suppression of Communism Act.

### **The death of Mosobiya Mdluli**

Meanwhile the flow of arrests continues. In cases where they think it suits their interests, the BOSS interrogators can clearly show great subtlety and skill in handling their suspects gently, as they did to such good effect in the case of Breyten Breytenbach. It should be said that they are not guided in this by racial discrimination. There is reason to believe that Raymond Suttner was severely tortured, though he made no mention of it when he pleaded guilty at his trial. The defendants in the SASO/BPC trial have given detailed accounts of their tortures. One of the most frequent methods used was to require the victim to place his back against the wall and maintain a sitting posture on an imaginary chair for several hours, to be followed by beatings if he fell. Other methods were prolonged standing (for 8 hours), punching and slapping the face and body, banging the head against a wall, throttling, all accompanied by foul insults and threats. Sathasivan Cooper was lifted up and dropped several times on a concrete floor, causing an epileptic seizure. One of the interrogators identified by the defendants is "Spyker" Van Wyk, so named from his claim to have driven a six-inch nail into the penis of a Jewish detainee. A girl of 22, Belinda Martin, was deprived of food and drink for two weeks and compelled to drink water from the toilet to survive.

There continue to be cases of suspects meeting their death when held for interrogation. The latest is that of Mosobiya Joseph Mdluli who was arrested at his home for questioning by the South African security police at 11 p.m. on 18 March 1976. On the following day, according to the police, he "was found dead in his cell". His widow and son state that he was in perfect health when arrested. No explanation was given of the cause of death.

When his wife went to the mortuary to identify his body, she was refused

permission to see him, and told to come back two days later. When eventually allowed to see his body, she found that it was badly bruised, cut and swollen. She described the condition, "A severe swelling stretched across his forehead, his lower lip was bruised and cut, and his stomach was dilated to twice its normal size. I lifted his head and saw two criss-cross cuts at the base of the skull near the back of his left ear. Watery substance was oozing from the wounds which measured from 3cm to 5cm. The swelling on the head had subsided".

Mr Mdluli was first detained for three months in 1966. In 1967 he was convicted on two counts of furthering the aims of the African National Congress and served a year on each count. After his release he was banned for two years. Mr Mdluli's death brings the known total of detainees killed while in detention to 23. In some cases there has been evidence of signs of torture. But on all occasions, post mortem findings have been suicide or death by "natural causes" or by "accident".

## Yugoslavia

The judicial system in Yugoslavia is one which generally commands respect. As in other countries, however, strains are imposed upon it when it is required to try cases of *delits d'opinion*. Most of the decisions which have attracted criticism abroad are of this category, and the responsibility for them rests with the law-makers rather than with the judges. However, a recent case concerning a well-known Belgrade defence lawyer, Srdja Popović falls into another category. The decision in the case seems extraordinary on any basis and carries the most serious implications for the rights of defending counsel.

The origins of the affair go back to a convention of Yugoslav philosophers held in February 1974, under the topic Culture and Revolution. A Belgrade writer, Dragoljub Ignjatović, addressed this gathering and made comments which were outspokenly derogatory as to the existing state of affairs in the country. For example, in criticising the situation in which cultural life found itself, he stated that it was caused by unfavourable social and economic conditions which had resulted in stagnation of industry and agriculture and export of labour to capitalist markets. "We have today" he said "a backward agriculture, an industry which cannot compete with other industries, low productivity which is growing lower and lower, inflation, poor and disorganised health service, a nineteenth century school system, mass illiteracy, non-employment, export of labour and import of capital, rapid growth of individual wealth of the few, pauperisation of a broad strata of the population, hyperproduction of crime and delinquency, prostitution and corruption, lie as the only form of communication, and a counterfeited information system. This is no capitalism, this is no socialism, this is a false vegetation at the bottom of the semi-barbaric forms of the European civilisation with a tendency towards its most barbaric alternatives".

The author of these comments (and more in the same vein) was arrested and prosecuted under the charge of "hostile propaganda". The defence presented by Mr Popović was that his client's statements were a mixture of fact and opinion. In so far as the defendant had recited facts, he asked to be allowed to call witnesses to prove them. In so far as he expressed opinions, this was the defendant's constitutional right and could not be the subject of an offence. Hostile propaganda could only consist in making wilfully false statements of fact. The Court refused to hear the witnesses called for the defence in proof of the truth of the facts. Mr Popović argued that in these circumstances he relied on the failure of the prosecution to prove that the facts were untrue, and some of them patently were true. For example, he said one had only to make the journey from Belgrade to Valjevo (where the trial was being held) to see peasants using the same methods as were used 1,000 years ago.

The case was lost and the philosopher, Drajo Ignjatović, was sentenced on 9 April 1974, to three and a half years imprisonment. In fact he was released from prison much earlier for reasons of health, and in September 1975 the Praesidium of Serbia, at its own initiative, suspended the sentence.

This might be considered a bitter sweet ending to a sad story were it not that the defence lawyer in the trial, Srdja Popović, 18 months after the trial and one month after his client's sentence was suspended, was himself charged with the same offence on the grounds that he had adopted for his own account the statements of his client at the trial.

Astonishing as it may appear, the case against Mr Popović was actually brought to trial and he was convicted and sentenced to one year's imprisonment. The prosecutor's request that he be disbarred was refused.

The charge preferred against Mr Popović (as amended at the hearing) reads "In his final speech at the trial, the accused Popović by stating that the facts quoted [from the speech by Ignjatović] are true, spread false information with intent to incite the general public". Mr Popović defended the case on the grounds that he had conducted the case quite properly in the way described above.

The learned judge refused to hear the witnesses called by the defendant to describe what took place at the previous trial, ignored the evidence of the state witnesses which supported the accused's version, and held that the defendant had "agreed with the views of the accused Ignjatović". He seems to have based this finding partly on the evidence of a journalist who said (two years after the event) "my general impression is that the accused Srdja Popović agreed with the opinion which the accused Ignjatovic was charged with", and partly upon Popović's undisputed statement that the backward nature of Yugoslav agriculture could be seen by travelling from Belgrade to Veljevo. The judge refused to accept that the defendant had drawn any distinction between Ignjatović's statements of fact and his statements of opinion.

It seems incredible and is profoundly disturbing that a defence speech addressed by counsel to a judge in open court should form the basis of a charge of spreading false information "with intent to incite the general public". The learned judge met this by stating in his judgment "In view of the presence of numerous persons — not only officials of the court

but also members of the public — to whom the accused was undoubtedly addressing himself and trying to exert pressure on the court on deciding Ignjatović's guilt, the accused proved his intent not only to defend Ignjatović but also to defend his actions and incite disapproval among the citizens present". One may ask what a defence lawyer is expected to do in such circumstances. Is he to ask for the court to be cleared before he addresses the judge?

Mr Popović appealed against the decision and won a partial victory. The appeal court on 27 May 1976, suspended the sentence of imprisonment, but at the same time imposed a ban on his practising law for one year. This appears as a compromise decision in a case which has been widely regarded in Yugoslavia and abroad as endangering the rule of law. While the appeal was pending 30 prominent intellectuals within Yugoslavia petitioned the Praesidium of the Serbian Republic to intervene. Mr Popović is now asking the Attorney-General to give his recommendation that the case be reconsidered by the Supreme Court.

It is hoped that his recommendation will be given as the case involves an important matter of principle. In a letter to President Tito, written before the case began, urging that this prosecution should be reconsidered, the International Commission of Jurists quoted one of the conclusions reached at its Congress of Delhi in 1959 concerning the role and duties of the legal profession:-

*"It is the duty of a lawyer which he should be able to discharge without fear of consequences to press upon the court any argument of law or of fact which he may think proper for the due presentation of the case by him".*

## Uruguay

For many decades Uruguay was an example of constitutional stability and democracy, in which human rights were duly respected and protected under the Rule of Law. The Constitution provides for a representative parliamentary democracy based on the classical system of the separation of powers. Except for a short-lived episode in 1934, this system continued for three quarters of a century. The armed forces never exceeded the discharge of their professional duties and took no part in the political life of the country.

However, over the last few years Uruguay has rapidly become a state where gross violations of human rights are continuously being reported and where real power lies with the military chiefs, assisted by the elected President of the Republic, Juan Maria Bordaberry, who has remained in office.<sup>1</sup> This situation is the price which Uruguay has had to pay for calling in the assistance of the army to overcome the Tupamaro urban guerrilla movement.

In 1974 the Secretary-General of the International Commission of Jurists went on a mission to Uruguay with a research officer from Amnesty International. A report describing the legal and human rights situation in

<sup>1</sup>See footnote 3 on page 22.

the country was issued in June 1974.<sup>2</sup> The report was later updated in January 1975 and again in February 1976 on the basis of additional information received.

The situation concerning human rights in Uruguay is very grave, being comparable in all respects to that in Chile although much less is known about it internationally. This is partly because in Uruguay there was no sudden and dramatic military coup; instead, democratic rule was phased out gradually over a period of time. An article in this Review calling attention to the beginnings of this process and warning that it would lead to all political activity being reduced to the level of brute force provoked the most vociferous reactions from Uruguay (see ICJ Reviews No. 8, p. 15, No. 9, p. 1, No. 10, p. 8). Unfortunately the ICJ's predictions have proved all too correct.

The process of institutional deterioration began in June 1968 when an emergency was proclaimed. Since then, for reasons which would be too long to analyse here the country has witnessed an escalation of violence, the creation of armed groups, both right-wing and left-wing, and the beginning of a new style of government by the Executive through emergency measures, affecting principally the rights of the individual, but also covering the economic, social and political fields. The emergency has remained in force ever since and the exceptional powers conferred upon the Executive under article 168, subparagraph 17 of the Constitution for "grave unforeseen situations of external attack or internal commotion" are permanently invoked.

In April 1972 the government proclaimed the suspension of individual security, for which provision was made in the Constitution, but also proclaimed a "state of internal war", for which there is no such provision. Military tribunals were then established to take over the jurisdiction of the civilian courts in security matters. In July of 1972 the Law of Security of State was passed which replaced the "state of internal war" by special security legislation.

A crisis between the government and the army in October 1972 resulted in the President being compelled to accept a "military presence" supervising the administration of the State. This took constitutional form in February 1973 when this military presence was given official status at key decision-making levels. A Junta of the Commander-in-Chief was established, as well as a National Security Council and an Economic and Social Council, both comprising leaders of the armed forces together with some civilian ministers. At the same time civilians began to be replaced by army officers in most state agencies and public sector enterprises. This process reached its final stage on 27 June 1973 with a coup d'etat.

On that date the government dissolved the Parliament and all local legislative bodies. A few days later it banned various political parties and groups and student organisations. All political activities have been prohibited ever since, including activities of those groups which had not been outlawed. This situation is referred to as a "party political recess".

Education at all levels, university, technical college, secondary and primary school has been placed under government control and strict

<sup>2</sup> *Informe de la Mision al Uruguay*, 1974, with supplements 5 Swiss Francs; available only in Spanish. President Bordaberry has repeatedly suggested in speeches that this mission made no findings of serious torture in Uruguay. The contrary is the case as the report shows.

military supervision. Hundreds of teachers have been dismissed, gaoled or forced to leave the country, and they and the education authorities have been replaced by government nominees, the majority being members or former members of the armed forces. Important changes have been made to the curricula, particularly in the field of the political, economic and social sciences. The only precedent of this kind of state intervention in education (the independence of which is guaranteed under the Constitution) occurred in 1970 when the government intervened in a similar manner in the technical college and the secondary schools. This was done under the emergency powers, but when the matter came before Parliament it was rejected.

The press and other media are strictly controlled, even more than in Chile. Many decrees and resolutions have been adopted closing dailies and periodicals, temporarily in some cases, definitively in others. Publications from abroad are frequently confiscated, particularly Argentine or Brazilian newspapers carrying information or commentaries on the economic, social or political situation in Uruguay. Some foreign press correspondents have been asked to leave the country. Personal mail is subjected to control and inspection under the provisions of a special decree, only contravening the Constitution. The repression continues to affect a wide range of cultural activities. It has reached the point of burning or otherwise destroying books and other printed matter and gramophone records, forbidding theatre plays, and prohibiting folk and pop singers from performing.

In the labour field, following the coup the government dissolved and outlawed the trade union congress and individual unions. It prohibited or severely restricted the exercise of basic union rights such as the rights of expression, assembly, association and strike. Many union headquarters and premises have been occupied or closed and their property confiscated. There have been thousands of redundancies, arrests and imprisonment of union activists who had tried to use the rights conferred upon them by the Constitution, trade union legislation and international agreements.

In the economic field there has been a serious deterioration with growing inflation and foreign indebtedness. Police and military expenditure, excluding arms purchases, represents 53 per cent of the national budget.

These developments have taken place under a system of ruthless political repression, involving thousands of detainees, a number of whom have met their death in custody. The repression was first aimed at groups of urban guerrillas, in particular the Tupamaros. After their military defeat, it was turned to other sectors of the left and eventually suppressed any type of political dissent directed against the government. Uruguay has perhaps now the sad honour of housing in its barracks, prisons and internment camps the greatest number of political prisoners relative to its population of any country in Latin America.

Since April 1972 the jurisdiction of the civilian courts has been ousted in all political cases and transferred to military courts. At first this was done under the "internal state of war", and later under the "Law on the Security of the State". Civilians are now tried and judged by military courts, again in violation of the Constitution. These courts do not form part of the judiciary. They are composed of army officers, very few of whom are qualified lawyers, and who are all subject to military discipline and hierarchy.

The remedy of habeas corpus is ineffective in practice and the government continues to be empowered to keep persons under administrative detention indefinitely without having to bring them before the courts. For this purpose it invokes the emergency measures ("medidas prontas de seguridad") under the Constitution, but these are being applied without the parliamentary controls for which the Constitution provides.

Torture has become an everyday instrument frequently applied to political prisoners, be they men, women or even children. There have been a number of deaths as a consequence of torture and ill-treatment. Particulars are given in the Second Supplement to the ICJ Report issued in January 1976, and six further cases are known to have occurred since then. These tortures occur during interrogation and usually take place in the barracks of the armed forces rather than in police stations or prisons.

The lack of security resulting from the fear of being arrested at any time without charge and/or dismissed from employment, and from related economic insecurity, has caused tens of thousands to take the road to exile. Many of them have gone to Argentina where, with a similar political system now prevailing, they are subjected once again to the same risks.

In short, the citizen has virtually no remedy against arbitrary or illegal acts: there are no elected political representatives through whom he can complain, no trade unions able to support him, no habeas corpus and no recourse to civilian courts in political cases.

Prospects for a return to democracy are not encouraging. During the last few months some disagreement has been reported between the President and the military commanders and among the latter. Under the Uruguayan Constitution a general election should be held on the last Sunday in November 1976. Those in power are unanimous that the present "revolutionary process" must continue on the basis of the "legitimacy born with the decision of 27 June 1973". They are less agreed about who should direct that process. Three alternatives are currently being considered: (a) postponement of the election and prolongation of the President's term of office; (b) cancellation of the election and direct rule by a military junta; (c) return to a limited form of democratic rule with a general election. If the latter course were adopted, measures would be introduced to prevent the participation of certain political groups or leaders, mainly of the left but including quite a number of personalities of the centre.

A secret document was recently published by the newspaper *Excelsior* in Mexico, reported to have been written by the Uruguayan President to the heads of the armed forces. In it the President recognises the realities of the present power situation and suggests that it should be written into a new Constitution. In his judgment, the power now resting with the armed forces and the President ought to be legally consolidated and regulated. He appears to favour a referendum for an extension of his mandate or even to continue in office with no referendum. However, he wants the armed forces to take the final decision. President Bordaberry also states that the power of the political parties and that of the armed forces are mutually exclusive, and that present-day democracies are not capable of withstanding the assaults of international marxism.<sup>3</sup>

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<sup>3</sup> While this article was in the press, the armed forces eliminated the first of the above three alternatives by ousting President Bordaberry on 12 June. They are reported to prefer the third alternative.



## **Commentaries**

### **Inter-American Commission on Human Rights**

The resignation of Dr Luis Requé as Executive Secretary of the Inter-American Commission on Human Rights is a serious set-back to the international implementation of human rights in the Western hemisphere. The Commission, which was set up by the Organization of American States, has its headquarters in Washington.

Under Dr Requé's guidance the Inter-American Commission has made some remarkable findings about violations of human rights within the member states. The Commission acts upon complaints by individuals and by non-governmental organisations as well as on complaints by other governments. Formerly it was a normal practice for the Commission to send its Executive Secretary and/or a mission to the country concerned to investigate cases which appeared to merit it. In recent years it has become rare for any government to permit investigations of this kind and the Commission has had to make its findings on the basis of the evidence which has reached it outside the country, together with the comments and evidence supplied by the government concerned.

Examples of the findings of the Commission have been the torture, abuse and maltreatment of persons of both sexes while deprived of their liberty in Brazil, the execution, illegal detention or inhumane treatment of prisoners in Cuba, and the killing of over 100 Bolivian peasants by the army in putting down an anti-government demonstration in 1974.

Perhaps the most remarkable of all its reports was that of August 1974 on the violations on human rights occurring in Chile since the military coup in September 1973. This report was the work of a committee chaired by the distinguished international lawyer, Dr Justino Jimenez de Aréchaga of Uruguay. The report went into great detail in explaining the overthrow of the Rule of Law in Chile and the violations of the Inter-American Declaration on Human Rights which had occurred, including the systematic torture of prisoners and the illegal killings by the authorities following the coup.

When the General Assembly of the Organization of American States failed to take any action on this report, and decided to hold its June 1976 meeting in Chile, three members of the Inter-American Commission, namely Dr Jimenez de Aréchaga together with Dr Genaro R. Carrió of Argentina and Robert F. Woodward of the United States, announced that they would not seek re-election at the end of the Commission's term in June 1976. In doing so Dr Aréchaga stated "the experience has left me sceptical about the dedication of many Latin American countries to human rights" and Dr Carrió said "the Chilean case has persuaded me of the futility of staying with the Commission".

The Commission is reported to be under great pressure from certain

member governments to restrict its activities, and it is clear that it is these pressures which have led to the resignation of Dr Luis Requé. In his letter of resignation he stated that steps taken against him had even included a threat to kidnap his nine-year-old daughter.

## UN Commission on Human Rights

The Commission on Human Rights met in Geneva for its 32nd session from 2 February to 5 March 1976. It was a politically controversial but rather unproductive session which received scathing criticism from some of its western members and from the western press. The *Sunday Times* of London referred to its methods of work as evidence of "a conspiracy to oppress". The United States delegate considered the Commission to be "an instrument of evil". Perhaps in reaction to these criticisms this session was the first to receive a commendation from the Economic and Social Council for its contribution to the promotion of human rights.

These widely differing views illustrate the problem which exists for the Commission in setting a mutually acceptable course. Much of the criticism directed against the Commission falls wide of the mark. To say that it is politically motivated is only to state the obvious. It is an intergovernmental organisation composed of representatives of governments from all regions of the world. Questions relating to human rights are of political importance and sensitivity for them. The members of the Commission have no independent existence of their own. They have to refer back to and obtain the instructions of their governments on almost every issue. *In spite of these difficulties, the Commission at its 32nd session found matters on which they could agree and on which some progress was made.*

The work of the Commission falls broadly into two parts,

- implementation, which includes enquiry into and pronouncing judgment upon those human rights situations upon which the members can agree to take action, and
- setting standards or norms on subjects relating to human rights, which can serve as guidelines for member governments of the United Nations and for the general public. These may, for example, take the form of draft covenants or conventions, or declarations or statements of principles, or resolutions.

The most notable recent achievement of the Commission is its action on violations of human rights in Chile. In 1975 the Commission set up an ad hoc working group to study this question. The government of Chile had indicated at that session that it would permit the group to visit Chile, but that consent was withdrawn only a few days before the mission's arrival. Despite this setback, the working group was able to meet on a number of occasions in Europe and the Americas to receive substantial testimony and documentation upon which its final report to the Commission was based. On receiving the report, the Commission listed the human rights found to be violated and called upon the govern-

ment of Chile to take all necessary steps to restore and safeguard those rights. The Commission made a finding that the DINA, the state intelligence agency, systematically practised torture and called for an investigation as well as the termination of these practices. It authorised the working group to continue for another year and to report upon any developments, legislative or otherwise, which may occur to re-establish respect for human rights. Meanwhile, the Commission appealed by telegram to the government of Chile for the immediate release of thirteen individuals who have been in detention for over two years and who were about to be brought before a military tribunal. The ad hoc working group has succeeded within one year in producing two impressive reports, appears now to have brought Chile to the bargaining table, and may yet gain access to the country to investigate further. In the time-scale in which the UN usually operates, this is a considerable achievement.

Equally valuable has been the work of the ad hoc working group of experts which for eight years has reported on various questions relating to human rights in Southern Africa, including Rhodesia and Namibia. Chaired by one of the most respected members of the Commission, Mr Keba M'Baye, President of the Supreme Court of Senegal, the group meets intersessionally to investigate and review testimony and documentation. The most recent report to the Commission presented findings on the homelands, the farm labour system, consequences of apartheid on the family, student movements, and recent political developments. It made a number of recommendations to the governments concerned which have regrettably gone unheeded. The Commission drew the attention of states and international and non-governmental organisations to the Declaration of Dakar and its Programme of Action resulting from the Conference on Namibia co-sponsored by the ICJ<sup>1</sup>, and asked the ad hoc working group to evaluate the Declaration and Programme and to present specific proposals to the next session.

Although both these ad hoc groups have been denied admission into the countries under review, they have proved much more effective procedures than those established by ECOSOC Resolution 1503 (XLVII) for reviewing situations which reveal a consistent pattern of gross and reliably attested violations of human rights. The Commission's failure to initiate a thorough study or investigation of any situation since the adoption of that resolution in 1970 is profoundly disturbing. Perhaps it is time for the Commission to carry out a review of the working of this new procedure with a view to its improvement.

The delays between the receipt of a communication and the substantive consideration of its merits is so protracted that most cases are either moot or out of date by the time they are considered by the Commission. It takes about a year for the Commission to receive information on a situation under these procedures, and where the Commission defers decision to future sessions there is little chance that additional communications relating to that situation will come to its attention.

The Commission has decided that the Sub-Commission and its work-

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<sup>1</sup> See page 41 below.

ing group on communications should be given access to the Commission's confidential records and related documents on cases under review. This should put the Sub-Commission in a better position to decide on further material to forward, but it seems more logical that once a situation has been referred to the Commission, all further communications relating to that situation should be made available direct to the body which is seized with it.

The United States proposed a resolution on these lines. Although there was some concern that the governments' right of reply be more explicitly protected and that the Secretary-General be given clearer guidelines for the selection of additional communications, the resolution presented by the United States met with general approval. With the wide support that it received it is to be hoped that a resolution on these lines will be adopted at the next session.

It would also help to make the procedure more effective if there could be more activity between sessions to facilitate decisions on the merits. The ad hoc working groups on Chile and Southern Africa have shown what effective work can be done when working groups are given authority to enquire into a situation and receive information from all quarters. Perhaps a similar procedure could be evolved for the Commission's Working Group on Communications. It could not be exactly parallel to that of the ad hoc working group, if the confidentiality of the procedure is to be preserved.

A number of other items on the Commission's agenda related to matters of implementation. Once again the Commission passed a resolution deploring Israeli violations of human rights in the occupied Arab territories. It adopted a conciliatory position on Cyprus designed to facilitate negotiations between the parties on the return to their homes of refugees and displaced persons, and urged all parties to refrain from unilateral actions changing the demographic structure of Cyprus.

On the basis of the Sub-Commission's first progress report on the effect for the enjoyment of human rights of assistance given to Southern African regimes, the Commission called for strict adherence to sanctions against Rhodesia and the natural resources decree of the Council for Namibia<sup>2</sup>, a prohibition of recruitment of mercenaries, and a total Security Council embargo on arms supplies to South Africa.

In its normative role, the Commission was asked by the General Assembly to draft a statement of principles for the protection of all persons subject to any form of detention or imprisonment. The International Commission of Jurists presented a draft statement which was welcomed by a number of delegates. As there was no time to discuss this item in detail, the Commission asked its Sub-Commission to draw up a statement of principles and submit them to the next session of the Commission. This could be an important development in the campaign against torture, following the General Assembly's Declaration on Protection from Torture in Resolution 3452 (XXX).

In contrast with the sense of urgency shown about this subject, the Draft Declaration on the elimination of religious intolerance and dis-

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<sup>2</sup> See ICJ Review No. 14, p. 8.

crimination has lingered on the Commission's agenda for several years. Politically controversial between East and West and low in priority elsewhere, it is far from completion. During the last three years a working group has met during the sessions of the Commission, but so far it has produced no more than a few preambular paragraphs. Once again, this raises the question whether the Commission as at present constituted and financed is capable of carrying out the responsibilities placed upon it. Its agenda is so heavy now that few items receive substantial consideration in a given year.

The tendency to politicise items seriously hampers the Commission's output. An important resolution on improving the channels of communication between youth and the UN was seriously threatened by a controversy over the obligations of youth in relation to wars of liberation and against aggression. As a result, the long-standing question of conscientious objection was taken out of the resolution and deferred once again for future consideration.

The Commission is very conscious of its present inability to carry through adequately its programme of work and long and somewhat inconclusive debate took place on this subject. The discussion was not helped by a prolonged controversy between the western and socialist countries over their respective interpretations of the Helsinki accords. The real limiting factor is finance. Proposals which involve additional expenditure have little prospect of being adopted. However, if the Commission is to be entrusted with more and more tasks by the General Assembly, it is essential that it has the means to carry them out.

One of the new tasks imposed on the Commission will be that of considering the periodic reports of governments under the International Covenant on Economic, Social and Cultural Rights. In one of its resolutions this year the Commission decided to examine at its next session "the possibility of grouping the appropriate agenda items into two groups — one consisting of items related to civil and political rights, and the other consisting of items related to economic, social and cultural rights — to be considered in turn at alternate sessions, while items of an urgent nature, such as those relating to specific situations of alleged gross violations of human rights, would be considered on a priority basis at every session". If this procedure is adopted and no other intersessional procedures are introduced, it means that much of the work of the Commission will make even slower progress than it does now.

During recent sessions of the Commission one of the most significant trends has been the increasing unity and influence of the Third World "non-aligned" countries. These countries have for long enjoyed a majority in the Commission, but they have only recently begun to exercise their power.

Representatives of the western countries, who used to dominate the Commission, sometimes give the impression when their proposals are rejected that they think the Third World countries are uniting with the socialist countries to defeat any action except when it is aimed directly or indirectly at the western powers. If this is their view, it is unduly pessimistic. It must, of course, be recognised that many of the newly independent countries of the Third World are very sensitive to criticism

from the west that individual rights in their countries do not enjoy the same protection as they do in the more prosperous, stable and developed pluralist societies of the west. The problems these countries have to face are so different and so much greater than those of the west and their resources to overcome them are so much more limited, that they cannot accept that they should be judged by western standards. Consequently, they are very cautious about allowing implementation procedures to develop which they think may later be turned against themselves.

Secondly, these countries have a different order of priorities. On the one hand, the achievement of economic, social and cultural rights have for them a more urgent priority than civil and political rights. On the other hand, the existence of the racist regimes of Southern Africa is for them by far the most serious violation of human rights occurring in the world, and they blame the western powers for not taking more effective action to apply the principle of self-determination in these countries.

In spite of all these factors, there is a genuine concern in the Third World to try to advance the achievement of basic human rights and fundamental freedoms. Considerable patience, persuasion and persistence must be shown, however, to win support for measures which are proposed. When this is done, constructive proposals can still be carried through despite all the difficulties and pressures. This was shown in the recent session when the patience of the West German delegation, who worked tirelessly throughout the session to win support for two draft resolutions on the treatment of prisoners, was finally rewarded by their resolutions being unanimously adopted on the last day *even though* there was no time for them to be discussed in any detail in the formal meetings.

# LAWYERS AGAINST TORTURE\*

## INTRODUCTION

"Professional legal bodies should aid lawyers in their own and other countries who are persecuted for defending political dissidents or for drawing attention to acts of torture." (*Final Report of the Amnesty International Conference for the Abolition of Torture, Paris, 10-11 December 1973, p. 15.*)

There can be little doubt that the legal profession bears a special responsibility with regard to the protection of every individual against torture or other cruel, inhuman or degrading treatment or punishment. Legislators are responsible for securing adequate safeguards, such as an unequivocal prohibition of torture, an independent judiciary, and the detainee's right to immediate access to a lawyer upon detention. Members of the judiciary are responsible for the due process of law, including the obligation to examine allegations of torture made during the judicial procedure and to exercise proper control over detaining authorities. Defence lawyers are responsible for disclosing acts of torture that come to their knowledge. Academic lawyers and legal bodies are responsible for assuming a leading role in improving the legal system whenever necessary and safeguarding it from potential or real abuses.

In countries where torture exists as a systematic, and often officially condoned or even authorized practice, it represents a political rather than a legal problem, in which the legal profession is sometimes left only with the dilemma of becoming either a silent or an overt accomplice. In either case, the legal profession often remains powerless in the face of corruption of the Rule of Law

Nevertheless, legal professionals can and do find the ways and the courage to speak out, as individuals or as a body. In this document, examples are given of defence lawyers who contest evidence extracted from their clients by torture; of prominent lawyers who denounce the

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\* This document was prepared by the staff of Amnesty International in September 1975 in furtherance of their Campaign for the Abolition of Torture, a campaign which has received the full support of the International Commission of Jurists. In the belief that it merits the widest possible circulation among lawyers in all countries, it is reproduced here. It is hoped that individual lawyers and legal organisations, both in countries where torture is practiced and in those where it is not, will give earnest consideration to the recommendations at the end of the document. Amnesty International and the International Commission of Jurists will gladly advise or provide information to those wishing to take action in support of these recommendations.

gross violations of fundamental human rights in their countries; of bar associations that intervene on behalf of persecuted colleagues.

In some of the documented cases, intervention has been successful, but in others their efforts have not only failed, but they themselves have also had to face the harsh consequences of their courageous actions, resulting in detention, torture and even death. *They* are the ones who run the risks and in doing so, they need and deserve solidarity and support from colleagues abroad. This need for support becomes all the more important in view of the fact that, as the case studies demonstrate, the safety of independent members of the legal profession in any society may become more precarious than that of anyone else in the community once fundamental human rights are violated, for by the very nature of their duties, lawyers are particularly vulnerable to these violations.

The following compilation of public statements and other actions taken by individual lawyers or professional legal bodies against torture practices in their own countries is by no means exhaustive. But it is hoped that this paper can serve to increase understanding of the problems involved, and thus stimulate lawyers and legal bodies to come to the aid of their colleagues who are risking or suffering persecution because of their publicly stated position on the question of torture, or because they simply attempted to pursue the work of their own chosen vocation to the best of their ability.

The survey is followed by some conclusions and recommendations with regard to making the best possible use of existing opportunities within the legal profession to contribute to the mounting national and international efforts to eradicate torture.

### **Spain**

Defence lawyer Carlos Garcia Valdes three times questioned his client before the Public Order Court in Madrid in January 1972, in order to establish whether his client's confession had been extracted under torture. He was charged with contempt of court and "insult to the Spanish nation". His conviction was reversed on appeal only after some hundred members of the Madrid Bar in an open letter to the President of the Supreme Court supported Sr Valdes' conduct and offered to confirm the torture allegations. They expressed their belief that "Sr Garcia Valdes has fulfilled his duties as a defence lawyer throughout, and that the fact that a lawyer can be persecuted in this context is a violation of the liberty and independence of the legal profession".

More than 300 professionals, mainly lawyers, doctors and university teachers, addressed an open letter to the Ministry of Interior in mid-1973, calling for a public inquiry into allegations of police brutality. Attached to the letter was a dossier, documenting 22 cases of alleged torture in the Madrid headquarters of the security police.

Since April 1975, when a State of Exception was declared in two Basque provinces, followed by widespread ill-treatment and torture by the security police in that area, about 100 lawyers have been arrested in various parts of Spain during meetings to discuss problems inherent in their profession, and released on bail. Several others have been ill-treated, had their offices ransacked or were otherwise harassed. In all these cases the lawyers concerned were defending political prisoners. A prominent Spanish lawyer told an Amnesty International mission to Spain in July 1975 that he and his colleagues "live in absolute judicial insecurity".



## South Korea

The report of an Amnesty International mission to the Republic of South Korea in March-April 1975 to investigate allegations of torture, prison conditions and the conduct of trial proceedings, documents in great detail the total absence of legal safeguards for anyone suspected of political offences, irregular and arbitrary judicial procedures, systematic harassment of the legal profession and widespread torture.

It suffices to quote from the chapter entitled "Intimidation of the Legal Profession":

"The individual who seeks to establish his innocence in a political trial is handicapped further by the systematic intimidation that any lawyer acting in his defence is liable to encounter. The situation in South Korea is such that no indigenous group has been able to dissent publicly and remain unchallenged. In that vein, the government is aware that if the legal profession were allowed the degree of independence usual in democratic countries, it would be a powerful and influential body with which to contend. As appears below, defence lawyers in political trials are subjected to continual harassment in court, whilst lawyers for the prosecution are permitted to brow-beat a defendant in a particularly intimidating manner.

"The authorities do not want this situation to be known, and as a result intimidation by them starts early in the pre-trial process. A lawyer who agrees to act in a political case is likely to be threatened that if he continues so to act, he or his family will suffer. . . .

"Members of the Korean Bar are frequently detained for questioning by the KCIA and the civilian police. These periods of detention vary in time. The questioning is rarely intended to derive information; it is merely a tactic to intimidate. . . .

"Another (example) is the case of lawyer Kang Shin-Ok. Attorney Kang was instructed to appear on behalf of poet Kim Chi-Ha, nine Christian students and Yo Chong-Nam, in trials under certain ones among the now repealed Presidential Emergency Regulations.

"On 9 July 1974, Attorney Kang made his closing speech on behalf of the defendants. Whilst so doing he criticized the court for not allowing him to make a full defence (see below) and he alleged that his clients had been tortured. He further argued that the Emergency Regulations were anti-democratic and in violation of the principle of free speech, and that therefore it was the duty of the court to hold that they were void and of no effect.

"Before the trial had finished, that is before the client had made his personal appeal to the court, Attorney Kang was taken from his seat by the KCIA for interrogation. The court made no move to prohibit their action. Although he was allowed his liberty for three of the following six days, he was arrested on 15 July 1974 on a charge that he did, on 9 July whilst in court, publicly oppose and defame the Constitution of the Republic of Korea contrary to Emergency Regulation No. 1 of 8 January 1974.

"Ninety-nine Korean lawyers offered to appear for the defence. At the court-martial hearing, for such was the tribunal that heard his case, the defence was refused permission to call any witnesses. A defence application was made that the court hear evidence from the presiding judge to whom Attorney Kang had made his submission. This was rejected. A further application was made that the court hear evidence from a respected Korean professor of the philosophy of law. This too was rejected.

"Attorney Kang was sentenced to 10 years' imprisonment, and a consecutive 10-year deprivation of civil rights. The effect of this sentence is that he is prohibited from practising his profession until the year 1994.

"The sentence was affirmed on appeal. A further appeal has now been

lodged with the Supreme Court and is due for hearing in the near future. Attorney Kang was released in the conditional amnesty of February 1975. His appeal is now pending and as the presumption of innocence theoretically applies under Korean Law, there is presently no legal bar to his exercising his profession. The KCIA have informed him that if he takes any cases, he will suffer severely."

The case of Attorney Kang, quoted in full from the report, exemplifies the tragic situation that has evolved in South Korea and that is still continuing despite numerous international protests and interventions.

## **Brazil**

Addressing the national congress of the Brazilian Lawyers' Association on 12 August 1974, the highly respected professor of law Heleno Claudio Fragoso declared that the human rights situation in Brazil presented "a grim picture". He told of unwarranted arrests, made possible by legislation empowering the suspension of due process of law with regard to alleged offences against national security or the economic and social system of the state, and of torture in the prisons of his country. He said the Lawyers' Association had discovered that people reported missing were being held in prison, where they were subjected to gross ill-treatment.

A leading Brazilian magistrate, Judge Aliomar Baleeiro of the Supreme Federal Tribunal, told a legal symposium in Sao Paulo on 29 January 1975 that serious crimes had been committed against important rights: "These crimes are the illegal arrests, the tortures, the disappearances — if somebody disappears nothing more is found, not even the ashes of his corpse — and the oppression of the freedom of thought". His remarks were published in most of Brazil's newspapers, following a relaxation of censorship.

Following his release on 4 March 1975, lawyer Roberto Camargo testified before the Federal Council of the Brazilian Bar Association about his experiences at the hands of the security police during a short spell of detention. Kidnapped from his office in Rio de Janeiro on the afternoon of 28 February, he was hooded and locked up in a place he was unable to identify. There he was stripped naked, beaten and subjected to electric shocks on his hands, feet and genitals. A doctor would check his pulse and give him a drink of water at intervals, then his torturers would start again, trying to force him into confessing that he helped the banned communist party. He was told that his wife was in an adjoining room, and his torturers threatened sexual violence both to him and his wife. Finally, when almost unconscious, he was forced to sign a document, but had no idea what it said.

The President of the Bar Association, Mr Jose Ribeiro De Castro Filho, announced that a report would be sent to the Minister of Justice and to the local army commander. He told the Council that this was only one of a series of cases that had come to his knowledge. He mentioned a journalist whose face was disfigured from beatings, of another lawyer who had committed suicide, and another who was tortured in the presence of a doctor who would revive him when he suffered heart failures. He accused the political police of lying when the Bar Association was trying to locate Camargo, fellow lawyer Jaime Amorim Da Miranda and a doctor. The police had denied that any of them were under arrest. "It is patent that the political police brutally violated the law and failed to tell the truth. I am sure that Jaime Miranda is imprisoned and being tortured.

In July 1975 the Bar Association sent President Ernesto Geisel a report denouncing "all the violences practised not only against lawyers but also against citizens".

## People's Democratic Republic of Yemen

Tawfiq 'Az'Azzi, called to the bar at Lincoln's Inn, London, in 1966 and Chief Magistrate at the Aden Supreme Court, disappeared from his flat in Fakri Building, Tawahi in March 1972, apparently because he had refused to convict and sentence some political detainees. He had acquitted them on the ground that they had committed no offence under the Penal Code. Disappearances are not uncommon in People's Democratic Republic of Yemen, and allegations of torture are numerous, although often difficult to verify. Despite family enquiries to security headquarters, the President and the Minister of the Interior, 'Az'Azzi's present circumstances are unknown.

In May-June 1975 two Amnesty International delegates visited the People's Democratic Republic of Yemen and were told that Mr 'Az'Azzi had been released on 22 August 1974. They were also told that he was working in one of the Persian Gulf countries, possibly Abu Dhabi, and that his Somali wife was living in Maalla. This information was checked with Amnesty International contacts in the Gulf who maintained that Mr 'Az'Azzi was not in that area, and later Amnesty International received confirmation that the information supplied to the delegates by the People's Democratic Republic of Yemen Director of Prisons and the Permanent Secretary to the Minister of the Interior applied to an entirely different person. Tawfiq 'Az'Azzi is believed to be still alive and in detention.

## Greece

Six lawyers, Constantinos Alavanos, Antonios Vgontzas, Panayotis Kanellakis, Nikos Karamanlis, Dimitrios Pappas and Dionysios Bouloukos, were arrested in March 1973 because they had defended activist students before the courts of the now deposed military junta. Later in March they smuggled a message out of the prison in Athens, pleading for help because of the "unbearable suffering". Another prisoner reported hearing Alavanos screaming day and night.

## Argentina

The most recent comprehensive study of the predicament of lawyers in this country, increasingly torn by civil strife and socio-economic chaos, was published by the International Commission of Jurists in Spring 1975. In his *Report on the Situation of Defence Lawyers in Argentina*, following a two-week visit to Buenos Aires, Dr Heleno Claudio Fragoso from Brazil documents the widespread persecution, ranging from harassment to torture and assassination, of those lawyers who engage in the defence of political detainees. It lists lawyers held at the time "at the pleasure of the Executive", lawyers threatened by the notorious AAA (Argentine Anti-Communist Alliance, a para-police death squad responsible for a large number of political assassinations since the death of President Juan Peron in July 1974), lawyers who, as a result of repeated threats, have left the country, lawyers whose offices were violently attacked, and cases of lawyers who were murdered.

The tragic case of Dr Silvio Frondizi illustrates what can happen to a defence lawyer of political detainees in Argentina today. At a press conference held in August 1974 by the defence counsel for arrested guerrilla fighters in Catamarca, it was stated that all the prisoners had been subjected to brutal torture, including drugs. The detainees were examined by a medical board formed of seven doctors appointed by the Catamarca Medical Association, which found that they had been the victims of torture including electric shocks and long privation of water and food. In a statement, Dr Manuel Gaggero and Dr Silvio Frondizi denounced "interference and all types of intimidation to which

counsel undertaking to defend those arrested were subjected". In the early afternoon of 27 September 1974, in a busy Buenos Aires street, Dr Frondizi was kidnapped in a commando operation in which his wife, his son-in-law and a neighbour were wounded. Dr Frondizi was later found dead; the AAA claimed responsibility for the act. In March 1975, Buenos Aires newspapers published a statement by his brother, the former President of Argentina Arturo Frondizi, to the effect that "it will not have escaped anyone's notice that torture is becoming almost an institution in our country. If on the one hand the terrible degradation of torture is not fought against, no attempt can be made at extirpating that other terrible degradation consisting of the death of innocent people in guerrilla warfare".

Dr Fragoso states in his report that "as a result of these events, the lawyers who were working on political trials and who were still at large, began to refuse systematically this sort of case, alleging that they were given no protection. Political prisoners began to be defended by public defenders who only provided a totally ineffective *pro forma* defence". It should be noted that these political prisoners include many non-violent opponents and critics of the government.

## USSR

Defence lawyers in the USSR who are to act as counsel in political cases need special clearances (*dopuski*), which can be withdrawn if they conduct a too vigorous defence or refuse to "compromise". Soviet lawyers are thus continually facing an institutional dilemma of having to choose between exercising their professional duties to the best of their ability, in "strict and undeviating observance of Soviet laws", and complying with the demands of party policy. It should be noted that defendants in political cases almost invariably receive the sentences asked for by the prosecution. Some lawyers nevertheless continue to refuse to compromise their professional responsibilities: S. Kallistratova, D. Kaminskaya and Yu. Pozdeyev have recently had their clearances withdrawn, and B. A. Zolotukhin, who conducted the highly admired defence of A. Ginsberg in Moscow in 1968, was eventually expelled from the Collegium of Advokati after having been expelled from the Communist Party and having lost his membership in the Presidium of the Collegium.

In the context of this document, the case of Yu. Pozdeyev is note-worthy, in that he made a courageous stand against the infamous practice of confining political prisoners in psychiatric institutions. In the course of his defence of 20-year-old Olga Iofe before the Moscow City Court in August 1971, Mr Pozdeyev strongly attacked the validity of the preliminary psychiatric examination of his client, by which the diagnosis commission had found her to be of unsound mind (diagnosing "creeping schizophrenia of a straightforward type"). The representative of the commission failed to answer Mr Pozdeyev's questions adequately. Nevertheless, the sentence followed the original indictment, and Olga Iofe was accordingly sent for treatment to a psychiatric hospital of a special type. As said, Mr Pozdeyev's clearance has recently been withdrawn.

## Singapore

Mr T. T. Rajah, aged 53 and married with two children is well-known for being practically the only lawyer who has been willing to undertake the defence of political detainees. An outspoken critic of the government, he was suspended from legal practice in February 1973 for alleged improper behaviour and allegedly making remarks which "disgraced" the court during a trial in

which women political detainees complained that they had been assaulted by prison officers. Mr Rajah was arrested on 20 June 1974, together with at least 40 others suspected of being members of the Malayan National Liberation Front, a section of the banned Malayan Communist Party. After having been held in solitary confinement for some time following his arrest, he is still detained under the 1960 Internal Security Act in Moon Crescent Center, Changi Prison. A diabetic, he is reportedly in poor health.

## Turkey

Among victims of torture giving evidence in a secretly made film shown on British television on 12 March 1973 was a respected lawyer, Mukkerem Erdogan. Because he had defended several alleged opponents of the government, he was eventually himself arrested and tortured.

In a report submitted in January 1974 by the Turkish Bar Association's Executive Committee to the Association's annual meeting, various judicial abuses, including torture, were strongly attacked. The report criticized the restrictions on a prisoner's rights to defend him or herself in court, and the newly established State Security Courts, set up under pressure from the military, which were likely "to turn into a political arena". Political developments during 1974 led to the release of all political prisoners in Turkey, and the practice of torture, previously widespread and systematic, appears to have sharply declined.

## Chile

Most lawyers have remained silent in face of the gross violations of fundamental human rights that have swept Chile since the military coup in September 1973. Those who have not have almost without exception had to face the consequences of their courage. Even the President of the Colegio de Abogados (Bar Association), Alejandro Silva Bascunan, by no means a supporter of Allende, was forced to resign his function in November 1974 by a pro-junta pressure group, because of his willingness to heed the petitions of concerned lawyers and permit a degree of freedom of speech within the Colegio's General Council. His successor is a military officer.

The former Dean of the Law Faculty of the University of Chile and one of Chile's most prestigious lawyers, Eugenio Velasco Letelier, has frequently urged the Colegio de Abogados to take a more courageous stand for the defence of human rights and the rule of law. In August 1974 he addressed a long open letter to the Colegio, denouncing the widespread illegal arrests and torture, and condemning the Colegio for its reluctance to act: "The truth is that the Colegio has adopted a baffling attitude: longwinded and innocuous correspondence with some ministers; very little interest and even inactivity in the face of colleagues being arrested, tortured or murdered; slowness and apathy when it comes to protecting the very practice of the law; vague declarations that indirectly justify what is going on in Chile, such as your letter to Amnesty International; enormous efforts during the assembly of 10 May to avoid the reading and voting on the motion we had presented on behalf of colleague Jaime Castillo; no statement of the least protest whatsoever. . . . Whereas the Catholic bishops, like many international bodies, have stated their opinion courageously, it is unacceptable that we, Chilean lawyers, maintain a shameful silence". Mr Velasco has consequently been charged with violating the Law of Internal Security. Several colleagues who supported him were also detained, some others exiled.

One of those supporting Professor Velasco, Fernando Ostornol Fernandez, well-known for his defence of Communist Party leader Luis Corvalan Lepe,

was arrested as recently as 11 April 1975. No charges have been brought against him, and his place of detention is unknown. He has probably been tortured (in reply to a query from the Inter-American Commission on Human Rights, the authorities acknowledged his arrest as having taken place on 17 April — leaving a highly suspicious gap of six days), and fears have been expressed for his life.

### **Egypt**

In an unprecedented move, a Cairo court in April 1975 ordered the Egyptian Minister of War to pay \$75,000 in damages to lawyer Ali Greisha, who alleged that he had been tortured in the Cairo Military Prison in 1965 and 1966 before being sentenced to 12 years at hard labour for "anti-government activities". The court further suggested that four former ministers of justice be tried on charges of having condoned torture and the degradation of Egyptian justice under President Nasser in the late 1960's. Finally, the court asked President Sadat to order the demolition of the Cairo Military Prison "as a monument to the humiliation of the Egyptian people".

### **South Africa**

The case of Albie Sachs is well-known. As advocate of the Supreme Court of South Africa he conducted the defence in a large number of cases, some of them political, in which Africans were involved. In 1963 he was detained for 163 days, during which period he suffered psychological torture. He now lives in Britain.

Although the South African authorities have apparently become more sensitive about overtly harassing members of the legal profession, their work still meets with considerable obstruction from the part of the judicial authorities. At the end of 1974 defence lawyer S. M. Chetty was unsuccessful in obtaining an injunction preventing the security police from further interrogating black detainees held under the infamous Terrorism Act. He had, on the basis of a disclosure made to him by one of the detainees during a short spell without the presence of guards that some of his fellow-prisoners were unable to walk as a result of ill-treatment, accused the police of assaulting and unlawfully interrogating the detainees. The Terrorism Act of 1967 allows for detention in solitary confinement and without access to a lawyer or relative for an indefinite period of time, "until the security police are satisfied that the detainee has answered all their questions adequately".

Lawyer Kader Hassim and articled clerk Sonny K. Vankatrathnam, members of the African People's Democratic Union of South Africa (APDUSA), were arrested in February 1971 with 11 other APDUSA leaders. After five months detention, during which they were allegedly tortured, they were charged with offences under the Terrorism Act. Sentenced in 1972 to eight and six years imprisonment respectively, they were detained on Robben Island, where they organized a petition signed by 50 prisoners, requesting "basic rights and privileges" from the prison authorities. As a result they were each placed in solitary confinement for six months. They contested the prison authorities' action, and when the case came to court in 1973, the judge found the prisoners' complaints justified and the solitary confinement illegal. Attempts are now being made to have Kader Hassim struck off the South African roll of attorneys.

### **Indonesia**

An outspoken critic of the government, Adnan Buyung Nasution became well-known for his willingness to take up civil rights cases. He founded the Indonesian Institute of Legal Aid, sponsored by the Indonesian Bar Association

and the Jakarta Municipal Government but prevented by the army from establishing itself outside Jakarta. In August 1974 he was awarded the first International Legal Aid Award by the International Legal Aid Association "in recognition of his outstanding contribution to the advancement of legal services to the poor".

At the end of 1973 he expressed his sympathy with students' criticisms of the government, and publicly declared that he considered the Special Powers of the Command for the Restoration of Security and Order (*Kopkamtib*) unconstitutional. *Kopkamtib* is the army section, headed by President Suharto, that since the abortive coup of 1965 has taken over all police tasks with regard to political suspects and detainees, and which has repeatedly been accused of systematically torturing political detainees. Mr Nasution was arrested on 16 January 1974 together with several hundred others following the January 1974 anti-Japanese demonstrations. He is detained in an unknown place under *Kopkamtib*, probably on a charge of subversion, and is reportedly in poor health.

### Uruguay

Prior to the military coup of 27 June which dissolved the elected Congress and later led to the banning of all left-of-centre political parties, lawyers occasionally and in various ways voiced their dissatisfaction with inadequate judicial procedures. For example, at the end of 1972 the Uruguayan Bar Association sent communications to several governmental authorities protesting against violations of the right of defence, ill-treatment of detainees and the irregular situation of lawyers detained without trial. After the coup, the Rule of Law decayed rapidly to an extent that outspoken criticism from within the legal profession was virtually stifled.

It is perhaps the almost total erosion of the Rule of Law, together with the arbitrary and brutal suppression of any form of dissent or opposition to the regime that can explain the recent silence of the legal profession. Although the imposition of the State of Internal War in 1971, subsequently lifted and replaced in July 1972 by the Law of National Security, enabled the authorities effectively to crush the violent urban guerrilla Tupamaro movement, the continuing violations of human rights now affect ever wider circles of peaceful, non-violent dissent, including amongst others, trade unionists, journalists and teachers. The odds faced by defence lawyers working on behalf of such political prisoners were summed up by a report of a joint mission to Uruguay in April-May 1974 by the International Commission of Jurists and Amnesty International — and reports received by Amnesty International during the second half of 1974 and the first half of 1975 indicate that the situation has by no means improved: "In practice, arrested persons do not know under what authority they are held. Neither they, nor their families, nor their lawyers are told why or on what authority they have been arrested, and the names of arrested persons are not published, except when there is an eventual notification to the Council of State. No document is ever issued authorizing an arrest. It is usually only by pursuing energetically enquiries of the civil and military authorities that families and lawyers are able to find out where arrested persons are detained, and by whom and for what reason. . . . Habeas corpus has proved quite ineffective as a remedy to determine the place of detention. The authorities usually simply neglect to make any answer to enquiries of the judges."

On the subject of torture, the report states: "The laxity of these procedures is serious from the point of view of legal protections against ill-treatment of suspects. We received many complaints of torture and other ill-treatment. The general view among defence lawyers is that almost all persons detained in military barracks and some of those detained in police stations are still being

severely ill-treated either during or as a preliminary to interrogations. The most conservative estimate we received was that it occurred in about 50% of the cases. . . . The Military Judges of Instruction said that hundreds of complaints of torture had been made to them, but they had not found a single case proved. The burden of proof lies in such cases on the complainant".

## **CONCLUSIONS AND RECOMMENDATIONS**

The first conclusion on the basis of this survey must be that the various forms of protest against torture by lawyers or legal bodies are not overwhelmingly effective, and that such actions sometimes seriously jeopardize the position of the lawyers concerned. To call this a foregone conclusion would, however, go too far. Although the effect, for instance, of a public denunciation of torture by a bar association will often be intangible, it can nevertheless have a positive influence, in that governments in many of the countries where torture is practised are not in a position to ignore entirely the views of a body representing the legal profession. This would hold true if only for the reason that legal bodies can usually gain easy access to international public opinion. But it is also in the interest of a government not to antagonize an important section of society like the legal profession. Furthermore, a public stand by a leading legal body may offer a certain degree of protection to its members who, confronted with instances of ill-treatment or torture in the exercise of their profession, are determined to bring such instances out in the open.

In this connection it is clear that support from abroad, from equivalent national legal bodies and from international legal organizations, can be very valuable in raising the matter to an international level of attention, with a view both to bringing more pressure to bear upon the government in question and to lending moral support to the colleagues involved.

It also follows from the survey that in a considerable number of countries where torture is known to take place, the legal profession is unable or unwilling to take any action at all with regard to the question of torture, even when colleagues are affected directly. Individual lawyers in such countries face overwhelming odds if they are to disclose facts of torture that have come to their attention. Clearly, action from the outside has to take different forms under such circumstances, with a particular emphasis on regular pressure on a high level, stressing the need for sufficient legal safeguards for detainees *and* for their lawyers and members of the judiciary.

Involvement of the legal profession in action against torture can thus contribute to the struggle of their colleagues in countries where torture exists today. It could be beneficial both for individual colleagues victimized by arbitrary state violation of human rights and for legal bodies that endeavour to reverse a process of erosion of the Rule of Law in their countries. But there is another important aspect to it, in that it can also serve to strengthen the protective legal framework in those countries that are free of torture, by alerting the legal profession, nationally and internationally, to the potential dangers if this legal framework is allowed to be disrupted. For it cannot be stressed enough that these dangers exist in every society and are not bound to any particular political system.



Individual lawyers and national and international legal bodies are invited to consider the following recommendations:

1. When lawyers are tortured, persecuted or harassed because of their activities in opposition to torture, appeals should be made on their behalf to the appropriate authorities, including embassies of the country concerned. National and international legal bodies should make such appeals publicly. National legal bodies should also work through their own parliaments and governments to request diplomatic action on behalf of these colleagues.
2. When individual lawyers or legal bodies denounce or otherwise oppose the practice of torture and other violations of fundamental human rights in their country, individual lawyers and national and international legal bodies should express their solidarity with and support for such action publicly, and take other steps deemed appropriate to safeguard their colleagues' position.
3. Individual lawyers and national and international legal bodies should enter into a dialogue with individual colleagues and with their equivalent organizations in countries where torture is known to exist, and invite them to make relevant information available. By these and other means, including on-the-spot investigations and talks with appropriate authorities, they should also further or initiate research into the position of the legal profession in such countries and into the national legal aspects relevant to torture. Findings of such research should be submitted to the government in question and to inter-governmental organizations, and made available to other national and international non-governmental organizations and, where considered appropriate, to the media.
4. National and international legal bodies should assist in the sponsoring and/or financing of missions of inquiry, trial observations, legal aid and research. Where they themselves engage in missions of inquiry or trial observations, they should report publicly on such findings as considered appropriate.
5. Academic lawyers should include teaching on human rights in curricula on penal and international law.
6. National and international legal bodies should work towards adoption of an international code of ethics for lawyers, relevant to torture. Draft principles and provisions for such a code have been formulated by Amnesty International in consultation with the International Commission of Jurists (see Appendix). Whether or not formally adopted, such ethical guidelines should be disseminated as widely as possible.
7. Individual lawyers and legal bodies should co-operate with Amnesty International and with the International Commission of Jurists on matters involving the legal profession as outlined above.
8. Individual lawyers should work within their national legal bodies, and national bodies within their international associations, in pursuance of the aforementioned objectives. International legal bodies should, in co-operation with other international non-governmental organizations, promote the strengthening of international protective and preventive machinery against torture.

## APPENDIX

### DRAFT PRINCIPLES for a CODE OF ETHICS FOR LAWYERS, RELEVANT TO TORTURE and other CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Torture of detained persons has spread rapidly around the world, in spite of the fact that it is a criminal offence in nearly every country. The practice mostly remains uncontrolled because the victims have no means to assert their legal rights or are obstructed in asserting them. Lawyers are often victimized and penalized for raising the issue of torture on behalf of their clients, or even for just defending them, for investigating allegations or evidence of torture in their capacity as prosecutors and judges, or for protesting such methods as representatives of government offices.

When torture is an institutionalized practice, lawyers may be greatly aided by the support of other lawyers in the exercise of their duty to protect individual rights. For this reason, professional associations of lawyers should adopt and circulate a code of ethics which specifies the obligations of lawyers, regarding torture and other cruel, inhuman or degrading treatment or punishment of detainees. The associations should make known to their members and to similar organizations that they will come to the full support of any lawyer who adheres to the code.

1. (1) A defence lawyer representing a person who alleges that he has been subjected to torture or other cruel, inhuman or degrading treatment or punishment while detained by any authority and for any cause should be prepared to raise such allegations before the competent authorities, unless instructed to the contrary by his client.
- (2) If the client wishes to have such allegations raised, the lawyer must do so fully and fearlessly. He should take a detailed statement from his client and present to the court or competent authority all the evidence or information available to substantiate the allegations, and use all procedures available to obtain protection and an appropriate remedy for his client.
2. A prosecuting lawyer has a personal duty to introduce as evidence in any proceedings only those statements which he honestly believes are freely made and obtained without the use of torture or other cruel, inhuman or degrading treatment or punishment. In case of any doubt, the prosecutor must reject the statement.
3. (1) A judge or other judicial authority should reject any statement made by an accused person or witness unless he is satisfied that the statement was freely made and obtained without the use of torture or other cruel, inhuman or degrading treatment or punishment.

- (2) A judge or other judicial authority must not summarily reject allegations that an accused person or witness has been subjected to torture or other cruel, inhuman or degrading treatment or punishment. He has a duty to inquire thoroughly into such allegations and to provide the complainant with full facilities for submitting evidence in support of the allegations.
4. Lawyers in government service should do all they can in their official capacity to promote the incorporation of the Standard Minimum Rules for the Treatment of Prisoners into the law of that jurisdiction and to see that the Rules and all standards relating to the treatment of detained persons are observed and enforced and that violations thereof are subject to disciplinary action or criminal prosecution.
5. (1) All lawyers, both individually and through their professional associations, should give their full support to lawyers carrying out the obligations of this code.  
(2) They should insist before the competent authorities that the code be respected and observed, and, especially at the highest level of their professional organizations, they should come to the aid of any lawyer victimized or penalized for adhering to the principles of this code.

## **DAKAR CONFERENCE ON NAMIBIA**

An international Conference on Namibia and Human Rights was held at Dakar from 5 to 8 January 1976 on the invitation of the Government of Senegal and under the sponsorship of the United Nations Commissioner for Namibia, Sean MacBride. It was organised by the International Institute of Human Rights, Strasbourg, in collaboration with the International Commission of Jurists and the International Association of Democratic Lawyers.

The objectives of the Conference were twofold: to throw light on the human rights situation and on the struggle for human rights in Namibia, and to lay the foundations and determine the conditions for an indepen-

dent Namibia in the spirit of the Universal Declaration of Human Rights.

The Conference was attended by representatives of most of the countries of Africa, several national liberation movements, in particular the South West Africa People's Organisation (SWAPO), and several intergovernmental and non-governmental organisations, as well as a number of individual experts and prominent jurists in the field of human rights.

The Conference approved two documents, a declaration of principles called the Declaration of Dakar on Namibia and Human Rights, and a Programme of Action proposed to international organisations, states and non-governmental organisations of all kinds to help secure for the people of Namibia the exercise of their right of self-determination. Both these documents were later circulated to all member governments of the United Nations as a Security Council document at the request of the government of Libya.

### **Declaration of Dakar**

In its Declaration, the Conference stated that the exercise of the right of self-determination by the people of Namibia was a prerequisite for their enjoyment of human rights. The rights of self-determination, the Conference declared, involved the liberation of the people of Namibia from the yoke of South Africa's colonialism and the restoration of Namibia's fundamental national rights — independence, sovereignty, the right to dispose of its natural resources and the unity and integrity of its territory. The Declaration stated that the policy of bantustanization was contrary to the purposes and principles of the United Nations Charter.

It declared that maintenance of the occupation of Namibia by South Africa and of the system of *apartheid* was a continuing threat to peace and security in southern Africa, the whole of Africa and the world. The Declaration stated that the use of the territory of Namibia as a base for intervention in the internal affairs of independent African countries aggravated the threat to international peace and security. The international community as a whole was called upon to strongly denounce and vigorously combat South Africa and its colonialist, racist and aggressive policies.

The Conference, in its Declaration, expressed regret that the triple veto of the United States, the United Kingdom and France had prevented the Security Council from taking effective action and, more precisely, from applying the sanctions provided for by Chapter VII of the Charter.

It should be possible, the Conference declared, to use judiciously Decree No. 1 of the United Nations Council for Namibia, proclaimed in 1974 with the aim of protecting the natural resources of the Territory, to ensure that they were not exploited to the detriment of Namibia, its people or environmental assets.

The Conference rejected the South African detente policy and denounced the constitutional conference convened in Windhoek. It called for economic or other measures of compulsion to oblige South Africa to

comply with the decisions of the international community, adding that "so long as the international community does not use the means with which it has endowed itself, or can endow itself, to put an end to the illegal occupation of Namibia, all means including armed struggle are justified to liberate the country".

### Programme of Action

In its programme of action, the Conference suggested follow-up actions by the Security Council to its Resolution 366 (1974), in which the Council demanded steps by South Africa to withdraw from Namibia.

The proposed new action included a complete embargo on the sale, gift or transfer of arms and all other forms of military equipment to South Africa. The embargo, the Conference said, should include existing and future agreements for the provision of radar and telecommunication systems for strategic or military purposes between South Africa and any other country or military alliance.

The Conference suggested that the Security Council request the European Economic Community, the European Free-Trade Association and all States having economic or financial relations with South Africa to suspend them so long as South Africa continued illegally to occupy Namibia or to practise the system of *apartheid*. The Council should also call on the Government of the Federal Republic of Germany to close its consulate in Windhoek and to undertake an education campaign for the reorientation of the German population in Namibia so as to enable them to live in a free Namibia. It should also require all states to refrain from extending facilities to enable South Africa to undertake the production of nuclear materials or reactors.

The Security Council was also called on to declare that it was imperative that free elections be held in Namibia, under United Nations supervision, in the whole of Namibia as one political entity. The Security Council should also demand that South Africa release all Namibian political prisoners and abolish the application in Namibia of all racially discriminatory and politically repressive laws and practices.

Among other recommendations, the programme of action urged the establishment of a United Nations radio transmitter in some part of free Africa to transmit United Nations programmes relating to racism, decolonization and Namibia, in all languages spoken in Namibia. All nations were asked to contribute to the UN Fund for Namibia and to the UN Institute for Namibia to promote the training and education of Namibians so as to fit them for assuming the administration of their country.

The programme also proposed an international week of solidarity with the people of Namibia each year in the week after 27 October, and the establishment of National Aid to Namibia Committees, and called upon all organisations and public opinion to give maximum political and material support to SWAPO as the authentic representatives of the people of Namibia, and to extend their support to those churches in Namibia which oppose the racist colonial administration and assist the victims of South African oppression, including prisoners and their dependents.

## Reactions to the Conference in South Africa

Among those invited to attend the Conference were two professors of law in South Africa, Professor John Dugard and Professor Van der Vyver, as well as a South African journalist, Mr J. H. P. Serfontein, who specialises in questions relating to Namibia. Shortly after the Conference the South African Institute of International Affairs held a symposium on the Namibia issue in Johannesburg, at which all three spoke about the Dakar Conference. In his report Professor Dugard made three recommendations to the South African government, which he said "would go a long way towards satisfying the international community of South Africa's determination to lead South-West Africa towards self-determination and independence". The three recommendations were:

1. The government should abolish or substantially modify the Terrorism Act and the 1972 Ovambo emergency regulations, which have come to symbolise South African repression in South-West Africa in the eyes of the international community.
2. The government should recognise SWAPO — not as the "authentic representative of the Namibian people" as demanded by the UN and by the Dakar Conference — but as a political force to be reckoned with and spoken to. SWAPO, he said, is a modern, well organised, relatively sophisticated organisation which appeals to the South West African educated black élite and which has a measure of support beyond the confines of Ovamboland. To delay negotiations with SWAPO will be to perpetuate violence and terrorism in South West Africa, to open wounds which will take years to heal.
3. The government should make a formal declaration committing itself to withdrawal from South West Africa within a fixed period of time.

These recommendations provoked considerable discussion within South Africa and on 17 May the Prime Minister, Mr Vorster, made a surprising statement in Parliament. He said that he would not prevent SWAPO from taking part in the constitutional talks. He knew, of course, that stated in that form there would be no prospect of SWAPO agreeing to participate in the Windhoek constitutional talks. SWAPO have in fact made it clear that they cannot enter into any discussions with the South African government about the future of Namibia until their preconditions are met, including the release of political prisoners, the return of Namibian exiles, the withdrawal of South African forces and recognition of Namibia's territorial integrity. Nevertheless, this is the first occasion upon which the South African government has indicated any willingness to negotiate with SWAPO, and offers the first faint hope of a peacefully negotiated settlement for an independent Namibia.

## **PRESS FREEDOM 1970-1975**

The International Commission of Jurists, like other non-governmental organisations with UN consultative status, was asked by the UN Human Rights Commission to furnish information on developments concerning freedom of information during the period 1970-1975. The following are some extracts from the memorandum which was submitted to the UN Secretary-General in response to this request. The International Commission of Jurists is indebted to the International Press Institute in Zürich for much of the material upon which the memorandum was based.

### **Summary**

The period under consideration witnessed new restrictions on the freedom of information in many countries, but it also witnessed some striking examples of a return to extensive press freedom after years of repression. There are also cases where there has been some relaxation of previous controls. In some of these, unfortunately, the liberalizing process did not last and restrictions were re-imposed. In yet other countries new restrictions have been introduced.

Chile and Uruguay are the clearest examples of countries where prior traditions of freedom of information have been ended, and extensive restrictions imposed. On the other hand in Greece and Portugal years of repression have given way to extensive press freedom. Between these extremes there are two countries where liberalization and restriction have altered, e.g. Argentina and Brazil.

The following examples of developments affecting freedom of information in a number of countries. They are not intended to be either comprehensive or exhaustive.

### **Argentina**

In September 1970 the Argentine Government lifted its ban on a number of political journals it had closed down by decree the year before. The situation deteriorated again as the State of Emergency continued and a 1972 amendment to the penal code restricted the reporting of actions by terrorist groups. On 6 November 1974, a state of siege was proclaimed and a number of newsmen were detained without being brought to trial. Some newsmen have been assassinated by paramilitary groups. The Government has closed several newspapers and magazines by executive decrees.

### **Brazil**

A decree published in 1970 by the Brazil Ministry of Justice made all Brazilian and foreign publications subject to pre-censorship. This had

the effect of stopping reports on torture which had earlier been carried by a number of foreign-published newspapers. In September 1972 the Government issued instructions to newspapers which said: "...it is prohibited to publish news or comment of any kind on the subject of free politics, development of democracy or matters pertaining to these subjects, or amnesty for those people who have had their civil rights suspended, or critical comment on official financial and economic matters...". In the following two years the pre-censorship continued to be applied but took a stronger turn when the Government closed Radio Cultura for 15 days for criticism of the political situation in the country. There was some relaxation of press censorship during the period of the elections in 1974, but in August 1974 the Government tightened its controls again. At the beginning of 1975, the President of the Republic promised a re-examination of the functioning of censorship over the press and cultural activities. However, no substantive steps were taken and the control of press and cultural activities continues in effect.

### **Cambodia**

In Cambodia pre-censorship was imposed on the press in August 1970. Control was exercised through a new press code. Censorship was applied to outgoing press cables. The pre-censorship was shortly afterwards replaced by a control a posteriori. Full pre-censorship was again re-imposed at the end of 1971. In June 1972 a new restrictive press code was published and enforced by the Government. Seven opposition newspapers were immediately suspended by the Government. The Cambodian Government fell in 1975, and since then no information is available as the existence of a press.

### **Chile**

In Chile the first act of the military after the toppling of President Allende's Government in September 1973 was the imposition of censorship. The effect of this decree and others resulted ultimately in the closure of 30 newspapers and 12 broadcasting stations. Forty days after its imposition, the pre-censorship of news was withdrawn but the Government maintained its control over the press through decrees, one of which provided for Government machinery to approve or kill news stories before they were published or broadcast. After the coup many journalists were killed, tortured, dismissed, forced to go abroad or arrested.

### **China**

In China the nation's restricted circulation daily newspaper, Reference News, carrying relatively complete foreign news reports, has been permitted by the Government a wider and more general circulation (now about six million) but it still does not sell on the streets (as does the better known Peoples Daily).

### **Egypt**

In Egypt at the beginning of 1972 the strict censorship on the despatches of foreign correspondents was relaxed, though not lifted. Censorship remained on the local press. Press censorship was totally



lifted in February 1974. In May of 1975 the President set up a Higher Press Council to act as watchdog on the press.

### **Great Britain**

One law in Great Britain had its side effects on the press in 1972 when it was held that the law of contempt applied to the new National Industrial Relations Court. A newspaper reporting comments of a strike leader boasting his refusal to obey the court could be held in contempt.

### **Greece**

In Greece a new press law in October 1971 tightened controls on a press already under the pressure of a dictatorship and martial law. Journalists made a vigorous protest against the original form of the law (which required all journalists to sign annually a "certificate of loyalty") and the Government modified its original draft. In its final form the "loyalty" clause remained but was only to be signed by new members joining the Greek press unions. Foreign correspondents included in the first draft were also relieved of the obligation to file such certificates in the final version. The suspension of martial law and the amnesty for certain press offences in 1973 eased some of the pressures on the press in Greece. However, the law of 1971 still stood (as did an earlier repressive law of 1969 which affected the press). In 1974 the dictatorship collapsed and with it the restrictions on the press. Since then there has been a flourishing of the press both in terms of numbers and the freedom with which information is being reported.

### **India**

In India the Government declared a state of emergency in June 1975 and imposed press censorship. Restrictions were placed on foreign journalists, compelling them to submit copy to the censors. The pre-censorship was quickly modified to self-censorship, but foreign journalists had to sign an agreement containing a set of censorship regulations. In July 1975 the Government issued a new decree prohibiting the press from reporting the transactions of certain parliamentary sittings and an action in the High Court.

### **Indonesia**

In June 1972 the military regime of Indonesia issued rules for foreign correspondents which included a stipulation that all copy be sent through the official Indonesian news agency.

An earlier imposed state of emergency in Iraq was eased in January 1971 when the censorship on outgoing foreign press cables was lifted.

### **Jordan**

In Jordan in 1972 a press law was promulgated drawing the limits to which Jordanian newspapers could go in reporting and publishing. It also gave the Government power to withdraw temporarily or cancel a publishing licence. Press censorship was imposed in December 1973 for unstated reasons. In July of the following year (1974) it was lifted.

## **Lebanon**

In mid-1970 the Lebanon abolished all forms of press censorship and broadcasting was freed from ministerial control. However, in May 1973 the Government reimposed censorship after the declaration of a state of emergency. For foreign newspapers the censorship was lifted a few weeks later. In 1974 the Government amended the existing press law and relaxed a provision that had earlier permitted journalists to be held in "provisional detention".

## **Libya**

In Libya in June 1972 a new press law was promulgated which brought in censorship both for the local press and for foreign correspondents. This action followed the Government's order to all daily newspapers except one to close down and the cancellation of their publishing licences.

## **Madagascar**

In Madagascar censorship was imposed during the last few days of 1971 (when a state of emergency was imposed). This censorship was toughened in February 1975 when it was decreed that the contents of all journals must be seen by the military before publication.

## **Philippines**

In September 1972 a state of emergency declaration in the Philippines together with its accompanying quasi military rule abolished the long established constitutional guarantees. Despatches for foreign correspondents were censored, though this was lifted again in November. Radio and television stations were disenfranchised. In October 1974 the Government altered its mode of control of the press, replacing the Media Advisory Council with two self-regulatory councils with newspaper and broadcasting publishers and owners taking part.

## **Poland**

In Poland in 1973 pre-censorship was lifted on a trial basis on the journals representing the Central Committee of the Communist Party (Tribuna Ludu, Polityka).

## **Portugal**

In Portugal, where in August 1971 a dictatorship still ruled, a press law abolished — in principle and in normal times — the previous 45 years of press censorship. However, the rules of publication required considerable self-censorship. Less than a year later the Government brought in new and tougher censorship regulations. The publishers and editors were made responsible for everything published. With the collapse of the dictatorship in April 1974 all restrictions on the press were lifted. This was formally given effect in October 1974 in a press law lifting censorship.

## **Rumania**

In March 1974 the Rumanian Government adopted a press law which provides that the media "must, in all its activity, serve the cause of the people, the supreme interests of the socialist nation . . . spread out its activity under the direction of the Rumanian Communist Party . . .". The law also provides that "press freedom cannot be used for purposes hostile to the socialist regime . . .". The decree, however, makes it an obligation on the part of Government officials to help journalists. Another provision bans the exertion of pressure and intimidation. Yet another provides for the protection of an individual's privacy. It should be noted that this 1974 press law is the first in Rumania, wherein all the provisions regarding the press are included in one law.

## **Singapore**

In Singapore a new law on press and printing was promulgated in 1974. It stipulated that newspapers and periodicals must be published by Singapore "publishing houses", and that the directors of such publishing houses must be Singapore citizens.

## **South Vietnam**

In South Vietnam, early in 1970 a new press law was published. It stated in its preamble that press freedom was a basic freedom in Vietnam. It was almost immediately followed by mass seizures of Saigon daily newspapers reporting matters distasteful to the authorities. A year later, in January 1971, the Government started to issue fresh decrees, imposing a variety of restrictions on the press. In the following year, May 1972, the Government tightened the press restrictions still further under the state of emergency, forbidding the press to criticise the Government in any way. In August, the Government brought in yet more repressive anti-press legislation, issuing regulations that required newspapers to pay a large monetary deposit to provide for the payment of possible fines. The result of this law was to close almost the entire opposition press. New regulations published in the same month banned the entry of certain foreign journals. Following the collapse of the Government in April 1975 the old regulations fell away, to be replaced by new provisional press regulations. Their immediate effect was to reduce Saigon's daily press from 13 to one — a Government-run publication.

## **Spain**

In Spain, the restrictions on the press under the authoritarian rule tightened in 1975 with the publication of the Anti-Terrorist Decree Law, No. 10, of 26 August 1975, which curbed both civil rights and the rights of journalists. Within 24 hours of its publication the Government had seized five national weekly magazines. Following widespread protests within Spain and abroad the provisions about the press in the Anti-Terrorist Decree were repealed by Decree Law No. 2 of 18 February 1976.

## **Turkey**

In April 1970 a state of emergency was declared in Turkey. It was renewed several times. The emergency regulations restricted the press in several ways: several newspapers were closed, some journalists detained, editors were compelled to self-censor. In October 1973 after the parliamentary elections the Turkish press situation eased and all proceedings against the press were suspended. The state of emergency was lifted and with it many regulations suppressing press freedom.

## **U.S.S.R.**

Early in 1972, TASS news agency was given power by decree to supervise local information agencies. In August of the same year the organisations for press and cinematography were transformed into state committees.

## **Uruguay**

Censorship of the press was imposed for the first time in 1968 on the basis of a kind of state of siege ("medidas prontas de seguridad", Const. Article 168) which has continued in force ever since. Periodical closures were imposed on the press and on radio stations. On 10 July 1972, a law of national security was passed, including "press crimes". On 27 June 1973, the date of the coup d'état, strict censorship was imposed (Decree 464 of 27 June 1973). After the coup, journalists were arrested, condemned by military tribunals, and newspapers and magazines were permanently closed (at least 13 newspapers and magazines). Foreign correspondents are required since October 1973 to give a copy to the Ministry of the Interior of all news or articles they send abroad referring to the Uruguayan situation. Many of them have been arrested and some expelled from the country. Argentine and Brazilian newspapers have been seized in Uruguay for publishing articles about the situation in the country.

## **Yugoslavia**

In Yugoslavia in July 1974 the Government passed a new law intended to guarantee a freer flow of information to foreign correspondents in the country. (A law has existed since 1961 granting in principle wide freedom to the foreign press.) The new law stated that there would be no censorship but that restrictions could be imposed for reasons of the internal security of the state. One serious restriction in the new law, however, was a ban on foreign correspondents making public enquiries.

# HUMANITARIAN LAW CONFERENCE

## A Progress Report

by

SAMUEL SUCKOW

The third Session<sup>1</sup> of the Diplomatic Conference on the reaffirmation and development of international humanitarian law applicable in armed conflicts, opened in Geneva on 21 April 1976, and terminated its activities on 11 June. As indicated by the title of this article, it did not fulfil the hope of its organisers that it would complete the work of approving two additional protocols to the four Geneva Conventions of 1949. Indeed, some may question whether the word "progress" in the title does not deserve to be placed between quotation marks. Nevertheless despite the slower pace of this year's results and despite the last minute failure to achieve general agreement on one of the most important issues under discussion, the right to prisoner-of-war status for guerrilla type fighters, the session did have some important achievements to its credit. The fact that greater progress was not made was in part due to the fact that some of the more difficult problems had been left over from the last session and in part to the methods of work of the Conference.

From the outset it was clear that this was to be a working session. The clearest expression of this was a "non-event". At the first plenary meeting of the third Session of the Conference, the President, M. Pierre Graber, announced the list of newly independent countries who had been invited for the first time to the third Session. Basing himself on the criteria followed by the convening power (Switzerland) namely that an invited State be either a party to the 1949 Geneva Conventions whether or not a member of the United Nations, (140 States), or a member of the United Nations although not a party to the Conventions (13 States) he listed six new States admitted in the inter-session to the United Nations — Mozambique, Cape Verde, Sao Tome and Principe, Papua New Guinea, Surinam and the Comores. This Session of the

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<sup>1</sup> For a review of developments at the first and second sessions of the Conference, see: Suckow S., "Development of International Humanitarian Law — A Case Study", ICJ Review No. 12, and "Conference on Humanitarian Law — Phase II", ICJ Review No. 14.

Conference had, however, opened almost in the wake of the complete victory of the M.P.L.A. government in Angola, crowned by almost universal diplomatic recognition. Yet no delegate rose to propose that an invitation be extended to the new Angolan State. Apparently, this result had the consent of the Angolan authorities themselves. The political symbolism of this "non-event" must be seen against the background of the bitter political battles that were waged at both the first and second sessions over the proposal to seat the Provisional Revolutionary Government of South Vietnam. The absence of any effort to seat an Angolan Delegation can only be ascribed to a general political will to put aside external divisive issues and seek compromises on the politically explosive issues inherent in the provisions of the Draft Protocols.

A disappointing aspect of this session of the Conference was the continued formal absence of several States, some of which had already absented themselves from the previous session. Thus China and Albania once again informed the President of their intended absence although expressing a continued interest in the work of the Conference. They were joined this year by Botswana, El Salvador and Kenya. South Africa which had stayed away from the second session once again was missing. In addition to the formal absences it is also to be regretted that many other States did not participate in the Conference. In total 106 out of 153 invited States attended and of those formally attending some did not play an active role. In order to re-equilibrate international humanitarian law, which in the past has been developed primarily by the western States, the Conference deserves the more active participation of the many States which have gained their independence since the 1949 Geneva Conventions were prepared.

The work of the Conference is carried out by the three main Committees, with their respective groups and sub-groups, taking up article by article the texts of the two Draft Protocols as proposed by the International Committee of the Red Cross. In addition an ad hoc Committee has been discussing the possible banning or restriction of specific weapons. The two draft protocols are one dealing with international conflicts, which at the first session was expanded to include national liberation wars, and the other dealing with internal conflicts, which at the second session was restricted to situations approximating to classical civil wars by requiring that the rebel party effectively control a part of the territory.

The usual working procedure involves a general debate of a particular article in one of the Committees followed by a referral to a working group and sometimes to a sub-working group, which then reports back up the chain to the Committee where the proposed text is adopted. (Committee II's working group is called a "Drafting Committee", and it sets up its own sub-groups). Finally, there is a Conference Drafting Committee which considers in order the articles which have been approved by the three main Committees from the point of view of drafting. All of these procedures are time consuming and if the fourth Session which is scheduled to meet in Geneva in April 1977, is to be the final session, some streamlining of procedures will be needed, possibly with separate working groups on the technical clauses which do not give rise to controversy.

## **PROTOCOL I**

### **Committee II**

Of the three principal Committees the most productive in each of the sessions has been Committee II, primarily because it has been dealing with technical, less politically sensitive issues. At this Session it completed work on a series of definitions of terms for the section of Protocol I dealing with the protection of wounded, sick and shipwrecked persons (Art. 8); an annex of thirteen articles covering the identification of medical and civil defence personnel and their means of transport, as well as an article providing for the periodic revision of this annex (Art. 18bis).

A more important accomplishment of this Committee was a series of articles (temporarily designated as 20 bis to 20 quater) dealing with the exchange of information on missing persons and the recovery of the remains of those who died in the conflict. This was a matter of considerable importance to the United States delegation in view of problems which arose after the Vietnam War.

The Committee also adopted a series of Articles dealing with medical ships and aircraft (Arts. 24, 31, 32). Still remaining before the Committee were matters of civil defence upon which work has already begun and questions of relief for the civilian population.

### **Committee I**

Committee I, which during the first session bore the brunt of the battle for the acceptance of liberation wars as international conflicts and then went on at the second session to approve 19 articles and parts of a 20th, was faced this time with some of the fundamental issues of Protocol I. These included the matter of repression of breaches of the Protocol, reprisals, and an independent investigating body.

Although the Committee held general discussions of these matters it was able to give approval at this session only to articles in the first category. However, it approved what is probably the most important article in this category, Art. 74, entitled, "Repression of Breaches of the Present Protocol". The Article provides that a grave breach of the Protocol will constitute a war crime, as does a grave breach of the 1949 Conventions. Among the existing grave breaches under the Conventions were the wilful killing, torture or inhuman treatment of protected persons, as well as extensive destruction and appropriation of property protected by the Conventions which is not justified by military necessity and is carried out unlawfully and wantonly. Compelling prisoners of war to serve in the forces of a hostile power or to deprive a prisoner of war of a fair trial were also grave breaches, as were the taking of hostages and unlawful deportation or transfer or unlawful confinement of a protected person under the Conventions. Finally, wilfully depriving any protected person of a fair and regular trial or compelling him to serve in the forces of a hostile power were condemned as grave breaches. (Art. 51, 1st Geneva Convention, Art. 51, 2nd Geneva

Convention, Art. 130, 3rd Geneva Convention and Art. 147, 4th Geneva Convention.)

What the new article 74 does is first to apply all these pre-existing prohibitions to the treatment of any person who would be considered as a prisoner of war under the Protocol (Art. 42, not yet adopted) or a presumed prisoner of war (Art. 42 bis) as well as to stateless persons and refugees (Art. 64, not yet adopted).

Art. 74 also refers to the provisions of a prior article (Art. 11) which categorizes as a grave breach any wilful act or omission which seriously endangers the physical or mental health or integrity of any wounded, sick or shipwrecked person who has fallen into the hands of the adverse party, and goes on to make the following acts grave breaches if they are committed wilfully in violation of a provision of the Protocol and *cause death or serious injury to body or health*:

- (a) making the civilian population or individual civilians the object of attack;
- (b) launching an indiscriminate attack affecting civilians or civilian objects *with knowledge* that it will cause excessive loss of life, injury to civilians or damage to civilian's objects;
- (c) launching an attack against works or installations containing dangerous forces *with such knowledge*;
- (d) making non-defended localities and demilitarized zones the object of attack;
- (e) attacking a person *hors de combat*; and
- (f) perfidiously misusing one of the protective signs (emphasis added).

It will be noted that in these cases it is a condition for qualification as a grave breach that death or serious injury results, in addition to the act being wilful and in violation of the Protocol. There is an additional list of grave breaches where the condition of death or injury does not apply. These are:

- (a) transfer by an occupying power of parts of its own civilian population into territory it occupies or deportation of all or part of the population of an occupied territory within or outside of that territory in violation of Art. 49 of the Fourth Geneva Convention;
- (b) unjustified delay in the repatriation of prisoners of war or civilians;
- (c) practices of *apartheid* and other inhuman and degrading practices involving outrages upon personal dignity based on racial discrimination;
- (d) attacks causing extensive damage against historic monuments, places of worship or works of art constituting the cultural heritage of peoples, which have been given special protection by special arrangement, if they were not being used by the adverse party in support of its military effort.



Another sub-division re-affirms that denial of a fair trial to the category of persons first mentioned in this article constitutes a grave breach.

This article was adopted (as were most articles at this session) by consensus, but not before an attempt was made to add a provision that would have included in the category of grave breaches the use of weapons prohibited by the laws of war or which violate the traditional principles of international law and humanitarian rules. The attempt was made by the Philippines and received support from Pakistan, Yugoslavia, Indonesia and Rumania.

The United States took the position that the prohibition of certain categories of weapons would not be appropriate in this Protocol and would risk compromising Art. 74 in its entirety and possibly even the Protocol. The Soviet Union opposed the proposal on the ground that the prohibition of specific categories of weapons is not within the competence of the conference. A Norwegian suggestion that the matter be put off until next year when any results of the Ad Hoc Committee could be examined was followed and the amendment not pressed to a vote.

Committee I was able to complete one other article of Protocol I providing that a superior is not absolved from penal responsibility for breaches committed by a subordinate if he knew or had information which should have enabled him to conclude that his subordinate was committing or was about to commit a breach, and if he did not take all feasible measures within his power to prevent or repress the breach (Art. 76).

The obligations of the parties to the Protocol to prevent and repress breaches is adopted from the 1949 Conventions by reference.

There still remains for the consideration of this Committee 21 proposed articles for Protocol I, plus the preamble and part of Art. 2, consisting of definitions which have not yet been approved. Among these, apart from the eight or so proposals still having to do with the repression of breaches, the most difficult will be those concerning reprisals and an independent investigating agency.

The proposal on reprisals was introduced by France. It seeks authorisation for a party to a conflict, victim of "serious, manifest and deliberate breaches . . .", to resort to reprisals if other efforts to halt the violation have failed or are not feasible, and the victimized party "clearly has no other means of ending the breach", provided that the decision to order a reprisal is taken at the highest level of government and the violating party is given specific, formal and prior warning that such measures will be taken if the breach is continued or renewed. In no event must the extent and means of application of a reprisal exceed the extent of the breach, and it must cease when it has resulted in the cessation of the breach it is intended to correct. Finally, reprisals may not be of such a nature as to violate any of the prohibitions of the 1949 Geneva Conventions. What is not restricted, however, are acts which would otherwise violate the Protocol. As many provisions have already been adopted in the Protocol which expressly bar reprisals in specific cases, particularly against civilians, it is not surprising that this proposal has met much opposition. Nevertheless it has a certain amount of support from states who feel that existing enforcement procedures are not

effective and a reprisal must be available as a last resort. A compromise on such divergent positions will be very difficult indeed to obtain.

The other potential source of controversy in the path of agreement next year is the proposal by Denmark, Norway, Sweden and New Zealand envisaging the establishment of a permanent International Enquiry Commission to investigate alleged violations of the Conventions and Protocol. Pakistan and Japan have also made proposals in this regard, and in general the proposals received considerable support. On the other hand, the Soviet Union and its allies unanimously opposed the proposal essentially on the ground that it would violate national sovereignty. There is a suspicion that behind the shield of sovereignty (the Soviet Union did support a continuing UN Human Rights Commission inquiry into conditions in Chile even when that government refused to co-operate with the Commission) is a fear that a situation might arise where the impartiality of the members of an investigating commission could not be assured. The United States position was generally positive but with questions as to whether it should be a permanent body and about the selection procedure of its members. In any event, a meaningful compromise will require the virtues of a Solomon.

### **Committee III**

At this session the drama of the Conference was concentrated in Committee III. It was the committee charged with the logical follow-up of the Conference's first decision declaring liberation wars to be international conflicts, namely finding terms to define the guerrilla fighter so that he could benefit from the protection of the Conventions and the Protocol.

In the 1949 Geneva Convention on Prisoners of War there is provision for militias, volunteer corps and organised resistance movements (Art. 4), but in order for members of such groups to qualify for prisoner of war status under that section they must comply with four conditions, namely, being commanded by a person responsible for his subordinates, having a fixed distinctive sign recognizable at a distance, carrying arms openly, and conducting operations in accordance with the laws and customs of war.

As the Vietnamese delegate pointed out, in conditions of liberation wars where the territory is occupied by the enemy, to require the guerrilla fighter to wear a distinctive sign and carry his arms openly is to condemn him to certain death or capture.

The negotiations on this point were laborious and included discussion of parts of Art. 35, (whether wearing civilian clothes constitutes perfidy); Art. 38bis (3), (which provides for the release of prisoners taken in unusual conditions of combat when they cannot be evacuated); Art. 40 (which defines the conditions in which a person gathering information in civilian clothes may be considered a spy); Art. 41, (which defines who are the members of the armed forces of a party and gives such persons the status of combatants); and Art. 42bis, (which creates a presumption of prisoner of war status in certain cases). However, the most difficult of all, and the centre-piece of the structure was Art. 42

itself, which was to give a new definition of those benefiting from prisoner of war status.

The negotiations were patiently and meticulously carried forward by the Rapporteur of Committee III, Ambassador George Aldrich, who is also head of the United States delegation. There was a remarkable exchange of accolades between Ambassador Aldrich and the delegate of Vietnam at the closing session of the Committee. Nevertheless, although the other articles were adopted, and what appeared to be a generally acceptable text of Art. 42 arrived at, the desired near unanimity was not achieved. There was some hesitation over the text in all camps and at the final meeting it was agreed to hold this article over for consideration as the first order of business at the next session.

The text, which tries to give something to each side starts with the proposition that any combatant (as defined in Art. 41) who falls into the hands of an adversary shall be a prisoner of war. It then enunciates the proposition that although combatants are obligated to comply with the rules of international law applicable in armed conflicts, failure to do so does not deprive a combatant of prisoner of war status except if he does not carry his arms openly either (a) during a military engagement, or (b) at a time when he is visible to the adversary and is engaged in a military deployment prior to the launching of an attack, and if he is captured at the time of such an engagement or attack. (Later capture does not result in loss of prisoner of war status). This exception is placed in the context of a general statement that combatants are obligated to distinguish themselves from the civilian population in order to promote the protection of the civilian population, but with the recognition that there are situations where owing to the nature of the hostilities an armed combatant *cannot* so distinguish himself.

The word "cannot" as used in this paragraph, in accordance with the explanation contained in the report of the Committee, refers to the impossibility for the guerrilla fighter to distinguish himself and "still retain a chance of success". It is the military and not physical impossibility which is involved.

Although the text takes away prisoner of war status for this specific violation of the law of armed conflicts, another provision of the Article accords to such person a protection equivalent in all respects to those accorded to prisoners of war. This equivalent protection is also accorded in the event that he is tried and punished for any offences he has committed, including any offence which results from his having lost his combatant status. The most likely offence charged against a guerrilla fighter who has lost legal combatant status would appear to be unlawful rebellion. In such a situation the equivalent protections may prove to be of limited assistance. This is because, under the new Art. 41, it is the fighter with *combatant* status who is accorded the right to participate directly in hostilities. That status lost, the act of participating in hostilities may then be treated as criminal. Still, the equivalent protection would ensure him the basic guarantees of a fair trial.

Draft Art. 42 speaks of the fighter retaining his combatant status if he complies with the minimum requirements of carrying arms openly in the two situations mentioned. Implicitly that status would not be retained if those minimum standards are not met. Admittedly there is an am-

biguity, because the article goes on to refer to "a *combatant* who falls into the power of an adverse party while failing to meet the requirements . . ." (emphasis added), but the report of the Committee is clear on that point, failure to fulfil the minimum conditions forfeits combatant status.

The Committee had greater success in a series of articles on methods and means of combat. Thus the article on perfidy was agreed to by consensus (Art. 35) as well as a prohibition against ordering that "there shall be no survivors" or conducting hostilities on that basis (Art. 38); and also rules of protection of persons who are *hors de combat* (Art. 38 bis).

Art. 39, which was intended as a protection for persons forced to parachute from an aircraft in distress became a matter of contention when many of the less developed countries insisted that protection could not be given to a pilot who was going to land in territory controlled by friendly forces, as he could then use his skills to fly other planes in combat. The limitation of protection was added on a vote which essentially pitted the developing countries against the west, with the Soviet bloc abstaining. The article as amended passed the Committee 47 for, 6 against, with 15 abstentions. However, by the time the final report of the Committee was being approved, the Soviet Union indicated that they were prepared to have the matter reconsidered at the next session.

An article on the re-uniting of families and the encouragement of the work of humanitarian organisations in this field passed without difficulty. (Art. 64 bis).

There was another major debate which did not result in a conclusion at this session. This was on a Nigerian proposal to deny combatant and prisoner of war status to mercenaries. Difficulties arose both in terms of definition and as to the consequences to flow from the establishment of mercenary status. There was general agreement that a mercenary is a person who is motivated to fight essentially or primarily by the desire for monetary gain, whether it be higher pay than is given to the regular armed forces or by way of bonuses for persons killed or captured. But this does not include a person enlisted as a regular member of the armed forces because he is attracted by good pay. It was also generally agreed that the mercenary must be recruited to take part in the fighting itself, though some delegations would include instructors. He should also be recruited on behalf of a Party to the conflict of which he is not a national in order to participate in a particular conflict.

As to the consequences of being a mercenary it was generally agreed that, as a minimum, mercenaries should have no entitlement to prisoner of war or combatant status. There was disagreement as to whether the capturing power should be entitled to grant such status if it wanted to. Most delegations thought the mercenary should be entitled to be treated humanely in accordance with the national law of the capturing power. Some thought this was not enough and that he should be entitled to the basic safeguards of draft Article 65; others opposed this, considering that mercenaries should be placed outside the protection of international law.

With lack of agreement on this and a number of other points, the

question of mercenaries, together with Art. 42, is on the agenda for next year. In addition, the Committee will have before it next year the entire section on the treatment of persons in the power of a party to the conflict, including the "Bill of Rights" of humanitarian law to be contained in Art. 65, as well as special treatment of women and children.

### **Ad Hoc Committee On Conventional Weapons**

As was to have been anticipated, the Ad Hoc Committee did not arrive at any agreements this year. What may be more serious is that it risks not arriving at any practical conclusions at all. From the outset of the Conference the major military powers have shown less than enthusiasm for international restriction on specific arms. The Soviet Union, however, goes the furthest and challenges the jurisdiction of the Conference to adopt prohibitions on conventional weapons. The emphatic re-affirmation of this Soviet position near the end of the session led to a comment from the Mexican delegate that this was one of the most negative statements made on the subject. This in turn produced a rebuttal wherein the Soviet delegate said that the Soviet Union was not opposed to banning booby traps and the use of napalm against civilians, but that this should be dealt with in the context of disarmament.

In the interval between the second and the present session, a second Conference of Government Experts on the Use of Certain Conventional Weapons was held in Lugano (the previous year such an experts conference was held in Lucerne). No agreements were arrived at with respect to any particular weapon. This, together with a delay in translation into Russian of the report of the Lugano Conference, helped to create a feeling of drift. Nevertheless, there have been proposals tabled for additional protocols which would ban specific weapons. There are for example Mexican, Norwegian and Dutch proposals to ban or restrict the use of incendiary weapons, a Venezuelan proposal on booby traps, and a Mexican and Swiss proposal on anti-tank and anti-personnel mines.

### **PROTOCOL II**

Whereas initially many observers feared that Protocol II, for non-international conflicts would find great difficulty in adoption, it is doing remarkably well. There are hardly nine articles of substance left to be completed at the next session.

One of the most important provisions of the Protocol was adopted by Committee I this year. It combined penal law principles and conditions for penal prosecutions. It constitutes a "Bill of Rights" in non-international conflicts, and its adoption gives rise to optimism that Art. 65 of Protocol I, may be agreed without undue difficulty.

Art. 10 provides *inter alia* for trials for criminal offences to be before independent and impartial tribunals, with charges based on individual responsibility, with a presumption of innocence, and with no

prosecutions under retrospective laws. An important provision is that executions shall not be carried out on pregnant women and mothers of young children and the death penalty not be pronounced on those under 18 years of age at the time of the offence. Finally, the article recommends the authorities in power at the end of the conflict to grant amnesty to as many as possible of those who participated in the armed conflict.

## **CONCLUSION**

Approaching the problem from the point of view of pure humanitarian principles, it is difficult to be optimistic about the results of a Conference where so many conflicting interests are represented. However, that is really not the starting point. The starting point is the reality of the existence of armed conflicts throughout history and of the horrors that have accompanied them. In this context any improvement is to be welcomed and in that perspective not a little has already been accomplished at the three sessions of this Conference. There is now a reasonable expectation that the final result will be an improvement in humanitarian terms on what has gone before.

## **Book Reviews**

### **RACIAL DISCRIMINATION AND REPRESSION IN SOUTHERN RHODESIA: a legal study by the International Commission of Jurists.**

Published by the International Commission of Jurists, Geneva, and the Catholic Institute for International Relations, London, 1976; 125pp; price, 6 Swiss Francs or U.S. \$2.50 (including surface mail postage).

### **HUMAN RIGHTS AND THE LEGAL SYSTEM IN IRAN: reports by William J. Butler, Esq. and Professor Georges Levasseur.**

Published by the International Commission of Jurists, Geneva, 1976; 80pp; price, 6 Swiss Francs or U.S. \$2.50 (including surface mail postage).

These two studies are the latest in the series published by the International Commission of Jurists on the rule of law and legal protection of human rights in various countries of the world.

#### **Rhodesia**

The study on Rhodesia appears at a time when the Rhodesian regime is under closer scrutiny than ever before. As the Secretary-General states in the preface, "it is to be hoped that this study will help lawyers and others outside Southern Rhodesia to understand the complex system of discrimination and repression imposed by the white minority, and why it is that no settlement can be acceptable to the Africans which denies them majority rule".

It begins by setting out the illegality of the Smith régime under both United Kingdom and international law. Then follows an analysis of the laws by which racial discrimination is imposed upon the country and the repressive laws which enable the minority of 277,000 so-called "Europeans" to keep in subjection the six million Africans. As the study states, "The essential areas of discrimination relate to the ownership and occupation of land, so as to ensure the physical separation of the races as far as possible, and the fields of education, labour and political activity, so as to restrict the development of the Africans in such a way as not to threaten the interest of the Whites". These areas of discrimination are examined in turn. The study shows how half the cultivatable land is reserved for the tiny white minority, while the Africans are crowded into Tribal Trust Lands in the other half and into townships and compounds to serve the needs of industry, agriculture and the services in the white area.

The section on education shows how the education policies are "carefully designed to educate Africans only to the level where they will be able to serve the labour needs of the white minority without threatening the privileges of the white working class, and without enabling the Africans to qualify for the electoral register in numbers which would threaten the whites politically".

As a result of these policies, an African labour force of nearly one million is driven by poverty and lack of opportunities from the black to the white areas, where the average monthly earnings (R\$33) are less than half the Poverty Datum Line for the average family in municipal accommodation (R\$73). Over half of this labour force (employed in domestic service, mining and agriculture) are excluded from all trade union activities and made subject to the Master and Servant Act 1901, which makes absenteeism, disobedience and careless or improper work a criminal offence punishable with imprisonment. Trade Union legislation and practices, though outwardly non-racial, segregate unions by "skills", skilled employment being reserved largely for whites, so that whites earn on average 11 times as much as blacks (14½ times in mining).

The study goes on to describe the restrictions imposed on the basic freedoms

(expression, assembly, press etc) and sets out the laws relating to detention and restriction orders, deprivation of citizenship and deportation, and the "anti-terrorist" measures which have done so much to cause the African tribesmen to support the guerrilla fighters.

The system of herding African tribesmen in the operational areas into armed camps, euphemistically called "protected villages", and the hardship, suffering and resentment thereby caused are described. Finally the study examines cases of torture and ill-treatment of suspects by the security forces. When complaints about these were first made, the Minister of Justice stated that there "is and always will be" a remedy by civil action. Taking him at his word, a number of civil actions were started. The régime immediately passed a retrospective law, the Indemnity and Compensation Act, 1975, to deprive the courts of jurisdiction. The numerous demands, particularly by church leaders, for impartial enquiries have all been rejected.

## Iran

The authors of the two reports on Iran are Mr William J. Butler, Chairman of the Executive Committee of the International Commission of Jurists and Chairman of the New York City Bar Association's Committee on International Human Rights, and Professor Georges Levasseur of the University of Paris II, a distinguished comparative penal lawyer. They made separate visits to Iran in 1975 and were kindly assisted in collecting material for their reports by officials of the Iranian Government. They have sought to examine human rights in Iran with an understanding of the economic, social and political problems facing the country.

Mr Butler's report on Human Rights in Iran traces the stages by which parliamentary democracy in Iran has yielded to an authoritarian one-party régime under the firm control of the Shah, and describes a series of political trials which took place between 1963 and 1975. He then examines the situation concerning human rights and fundamental freedoms. He first describes the progress being made towards the achievement of economic and social rights under the programme known as the White Revolution. He then outlines the restrictions on civil and political rights and the system of internal security. Both he and Professor Levasseur, like other visitors to Iran, experienced great difficulty in obtaining first hand information about the organisation of the military tribunals or the organisation and activities of the SAVAK security police.

Among the conclusions reached by Mr Butler are that "There is abundant evidence showing the systematic use of impermissible methods of psychological and physical torture of suspects during interrogation", which the Iranian authorities have not subjected to independent investigation, and that "the trial procedures of political suspects before Military Tribunals deprive them of accepted standards of due process of law, including a fair and public hearing by a competent, independent and impartial tribunal, the right to counsel so that he may defend himself through legal assistance of his own choosing, the right to examine or cross-examine state witnesses, the right not to be compelled to testify against himself or to confess guilt, and the right to appeal before properly constituted courts, all provided for in Article 14 of the International Covenant on Civil and Political Rights." He concludes by submitting recommendations for ensuring the better protection of the rights of the individual "in accordance with the international obligations assumed by the Iranian Government".

Professor Levasseur's report on the Legal System in Iran contains a detailed and informative account of the organisation of the judicial system covering both the ordinary courts and the military tribunals, as well as certain special courts. He then gives a general outline of Iranian criminal law, both the general



law and the "special criminal law" dealing with offences against the state, public security and public order.

Other sections contain an account of the Iranian criminal procedure, both in the ordinary courts and in the military courts. Finally there is a section describing the prison system and the special institutions for juveniles.

In his conclusions Professor Levasseur states that "Iran has lawyers of excellent quality . . . who are fully aware of all that is implied by devotion to the fundamental principles of an enlightened humanism". He comments that "it seems desirable that they should be able to exercise their influence to achieve greater enlightenment in certain regrettably obscure sectors of the system of social control". In this connection he expresses the hope that "the functions of the military courts will once again be limited to those which are normally performed by such courts, and that the procedure of these courts will approximate more closely to those of the ordinary courts . . .".

Copies of these two studies are available from the International Commission of Jurists, 109 route de Chêne, 1224 Chêne-Bougeries/Geneva, Switzerland or The American Association for the ICJ, 777 United Nations Plaza, New York, N.Y. 10017, U.S.A.

## **ICJ News**

Since the beginning of 1975 eight new Commission Members have been elected, in part to fill vacancies caused by the termination under the Statute of the membership of Sir Adetokunbo A. Ademola (Nigeria), Mr Arturo A. Alafriz (Philippines), Baron Paul-Maurice Orban (Belgium) and Mr Mohamed A. Abu Rannat (Sudan), and by the death which the ICJ deeply regrets to announce of Manuel G. Escobedo (Mexico). The new Members are:

**William J. BUTLER** (United States). President of the American Association for the ICJ. Chairman of the Committee on International Human Rights of the Association of the Bar of the City of New York.

**Roberto CONCEPCION** (Philippines). Chief Justice of the Supreme Court, 1966-73; Professor of Law, 1935-66 and since 1974. President of the Philippines Commission of Jurists, National Section of the ICJ.

**Taslim Olawale ELIAS** (Nigeria). Member of the International Court of Justice. Member of the International Law Commission, 1961-75, and Chairman in 1970. Attorney-General of Nigeria, 1960-66 and 1967-72. Chief Justice of Nigeria 1972-75.

**Alfredo ETCHEBERRY** (Chile). Advocate. Member of the Council of College of Advocates, 1955-71. Professor of Penal Law, University of Chile since 1964. Academic Vice-Rector, Catholic University of Chile, 1971-73.

**P. J. G. KAPTEYN** (Netherlands). Professor of the Law of International Organisations, Utrecht, 1963-74, and Leiden since 1974. Member of the U.N. Committee on the Elimination of Racial Discrimination.

**Rudolf MACHACEK** (Austria). Rechtsanwalt in Vienna. Member of the Austrian Constitutional Court. Secretary-General of the Austrian Commission of Jurists, National Section of the ICJ.

**Miguel Lleras PIZARRO** (Colombia). Councillor of State since 1968. Former practising advocate and Professor of Law at the National University of Colombia and the University of the Andes.

**Sir Guy POWLES** (New Zealand). Ombudsman for New Zealand since 1962. Former practising barrister and solicitor. New Zealand High Commissioner in India, 1960-62.

Sir Adetokunbo A. Ademola, Mr Arturo A. Alafriz, Baron Paul-Maurice Orban and Mr Mohamed A. Abu Rannat have accepted to become Honorary Members of the ICJ.

Two new National Sections of the ICJ have been formed in Portugal and the Netherlands.

In Portugal, the Section is known as Direito e Justiça (Law and Justice). Among the many distinguished founding members are the President of the Supreme Court and the Chairman of the Bar Association.

In the Netherlands the new Section is Nederlands Juristen Comité voor de Mensenrechten (Netherlands Jurists' Committee for Human Rights). It has been formed by a group of young international lawyers.

Among the legal organisations which have affiliated to the ICJ are:

Organisation of Commonwealth Caribbean Bar Associations,  
Barbados

Malagasy Society of Legal Studies, Madagascar

Chamber of Advocates, Malta

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## **Racial Discrimination and Repression in Southern Rhodesia**

Staff Study by the ICJ, published by the Catholic Institute for International Relations, London, and the International Commission of Jurists, Geneva, May 1976, 125 pp, £1.30 postage included.

A legal study of the system of racial discrimination and repression in Rhodesia and of the violations of human rights including the detention, torture and killing of suspects by the security authorities. It shows how the minority government's policies, rather than moving towards racial equality, are "the intensification of the repression and the growing adoption by Southern Rhodesia of the laws and values of the apartheid system in South Africa".

Available from ICJ at Sw.Fr. 6.—, postage by surface mail free.

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## **Human Rights and the Legal System in Iran**

Two reports by ICJ Observers, William J. Butler, New York attorney, and Professor Georges Levasseur, of Paris University, published by the International Commission of Jurists, May 1976, 80 pp, Sw.Fr. 6.—, postage by surface mail free.

Mr. Butler's report describes the evolution of the one-party state under the Shah, the series of political trials between 1963-1975, the situation concerning human rights and fundamental freedoms, the restrictions on civil and political rights and the system of internal security. Professor Levasseur describes the organisation of the judicial system, covering both the ordinary courts and the military tribunals and other special courts. He also outlines developments in Iranian criminal law, including the "special criminal law" dealing with offences against the state, public security and public order.

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## **Asylum in Latin America**

Staff Study by the ICJ on "The Application in Latin America of International Declarations and Conventions Relating to Asylum", published by the International Commission of Jurists, Geneva, September 1975, 64 pp, Sw.Fr. 10.—, postage by surface mail free (available in English and Spanish).

Contains an analysis of asylum, extradition and non-refoulement under international law; background information on refugees in 8 countries; individual cases of refoulement, harassment, kidnapping and assassination of refugees; comments and conclusions. An Appendix sets out the relevant provisions of Latin American conventions and declarations on asylum.

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