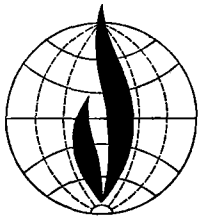
MASTER

For the Rule of Law

THE REVIEW



INTERNATIONAL COMMISSION OF JURISTS

CONTENTS

No. 3
September 1969

7.50 Sw Fr/US $1.75/UK £0.14.6

Editor: Seán MacBride

This is The Review

A QUARTERLY PUBLICATION designed to reflect legal opinion, to inform and to stimulate. *The Review* appears in March, June, September and December. Each Number publishes a Study in Depth on a legal issue of the day and gives up-to-date information on legal developments throughout the world.

THE REVIEW IS FOR LAWYERS who support the work of the International Commission of Jurists and are prepared to make their own contribution to society within their areas of influence. Its essential role is to provide information and data and to express 'the corporate voice of every branch of the legal profession in its unceasing search for a just society and a peaceful world'.

THE FIRST ISSUE OF THE REVIEW contained as its *Special Study* an article on the Laws and Customs of Armed Conflicts by Mr Pictet of the Red Cross. The Study in *The Review No. 2*, on Capital Punishment Today, was contributed by a distinguished French Judge, Mr Marc Ancel. In the *Human Rights in the World* section of this last issue, featured articles on the new Inter-American Convention on Protection of Human Rights, which, it is hoped, will be adopted shortly, Bulgaria, Nigeria/Biafra, Northern Ireland, Spain, Thailand and the UN Human Rights Commission.

The subscription rates for *The Review* are to be found on the coloured Order Form attached.

PLACE YOUR ORDER NOW!

box 16

Deportation of Aliens

The migration of foreign workers, for economic reasons, to the more developed countries accessible to them is a phenomenon of our times. In this connection a circular, sent by the French Minister for Home Affairs in 1947 to the Prefects in France, stated: ' As you are aware, the Government is encouraging the recruitment of as many workers as are still needed from abroad and is accordingly holding out financial advantages to them... Foreigners must at all times be treated in accordance with our traditional respect for the human person.'

States however rely on what they consider to be their complete freedom in the matter to have foreigners deported, often after very arbitrary procedures which are justified on grounds of ' public order '. Many countries, proud of their hospitality and generosity, recognise the Universal Declaration of Human Rights as far as their own citizens are concerned, but tend to treat foreigners as if they belonged to an inferior category. Thus foreign workers have found themselves, at times when they are no longer essential to the economy, returned to their own countries of origin like unwanted goods.

Illustrations could be taken from Switzerland, the Federal Republic of Germany, the Netherlands, Eastern Europe and many other countries. France has been singled out here because the deportations ordered after the events of May 1968 took on the character of collective expulsion. In France, hundreds of deportation orders were made [1] under Article 25 of an Order dated 2nd November 1945 providing for deportation in cases of ' absolute emergency '. Statistics from the Department for Home Affairs disclosed that 215 deportations were carried out between 8th June and 13th November 1968. This figure included 61 students, 10 teachers and 144 persons of other professions or unemployed.[2] Even some tourists were deported.[3] An extreme case was the deportation on 23rd February this year of a Spanish subject, Mr Angel Campillo Fernandez, who was arrested in Bordeaux, returned to the frontier and handed over to the police in Spain, where he was imprisoned and, it is reported, tortured.[4]

---

[1] See Alfred Kastler, ' Les expulsions d'étrangers ', *Le Monde*, 16th May 1969.

[2] See comments of Professor Charles Rousseau in *Revue générale du Droit international publique*, 1969 No. 1, pp. 182-183.

[3] See *Le Monde*, 21st June 1968, ' Témoignage: Comment j'ai été expulsé '.

[4] See *Le Monde*, 23rd April 1969.

There was an atmosphere of confusion, insecurity and even panic among foreign workers in France as a result of the deportations.[1] During the second half of May 1968, two thousand Spanish workers and seven thousand Portuguese workers and their families left Paris *fearing unemployment, civil war* and collective expulsion.

The general attitude of States in regard to deportation is to consider that the whole question falls within their domestic jurisdiction. The fact that a deported alien claims that he is entitled to return to the country or merely wishes to know the reasons for his deportation is looked upon as an interference in their domestic affairs.

In France the position is governed by the Order of 2nd November 1945 referred to above, which sets out the conditions under which aliens may enter and stay in France. Under the Order, aliens can appeal against their deportation to a Board set up by the Prefect responsible and consisting of a judge and two officials, one of whom must be working in an aliens department. The Board then transmits its report and opinion to the Minister for Home Affairs, who has a complete discretion as to how he deals with the matter. In fact, since last year, the Administration has derogated from this procedure and has relied instead on Article 25 of the Order referred to concerning ' cases of absolute emergency '. The sole judge as to what constitutes an ' absolute emergency ' is the Minister for Home Affairs. The alien is thus deprived of his right to a hearing, alone or *assisted by counsel*, before the prefectural Board.

The International Commission of Jurists has taken a firm stand on this question at the Bangalore Conference on Freedom of Movement (January 1968). One of its Conclusions was that:

> An effective procedure for appeal from, and the administrative review of, refusal of entry, should be provided.

The Bangalore Conference not only called upon States to establish safeguards against deportation and unlawful treatment of aliens but also encouraged them ' to adopt treaties such as those existing between the members of the European Economic Community between the Nordic Countries and certain States of Latin America, under which citizens of each of the States parties to the treaty are accorded full freedom of movement throughout the territories of all those States '.

It should be noted in this connection that Chapter III of the Treaty setting up the European Economic Community provides for the free movement of persons, services and capital.[2] Article 48 states: ' The free movement of workers shall be ensured within the Community... any discrimination based on nationality between workers

---

[1] See *The Guardian*, 26th June 1968, ' Churchmen Protest at Expulsions after French Riots '.

[2] See ' Freedom of Movement within the Common Market ', A. J. Pouyat, in *Journal* of the ICJ, Vol. IX, No. 2.

of the Member States shall accordingly be abolished... Workers shall have the right... to move freely... within the territory of Member States, to take up residence in a Member State in order to carry on an employment and to live... in the territory of a Member State where they have been employed.'

The overall position under the European Convention on Human Rights is the following: Article 5(1) states as a general principle that ' everyone has the right to liberty and security of the person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law '. One of the exceptional cases provided for, in Sub-paragraph (f), is ' the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to *deportation* or extradition '.

Deportation is thus clearly permitted by the Convention. However, Paragraph (2) requires that 'everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him '. And under Paragraphs (4) and (5), ' everyone who is deprived of his liberty by arrest... shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court ' and ' everyone who has been a victim of arrest in contravention of the provisions of this Article shall have an enforceable right to compensation '.

Moreover, under Article 6 (1) 'everyone is entitled to a fair and public hearing ', without, as Article 14 states, discrimination on any ground such as national origin.

Although, applications against a deportation have been made on the basis of these Articles to the European Commission, they have been rejected on other grounds. In *X* v. *The Netherlands* (Application No. 1211/61 of October 1962), a deportation order was challenged as being contrary to Article 5 paragraphs 1, 2 and 4 and Article 6. The Commission held that although there was no specific procedure under Dutch law for challenging deportation orders as such, ' the applicant had, according to the general principles of Dutch law the possibility of taking action before the courts on the ground that his detention and subsequent deportation from the Netherlands constituted an abuse of power ' on the part of the authorities responsible. The application therefore failed because the local remedies had not been exhausted as required by Article 26 of the Convention. Again in *X* v. *The Netherlands* (Application No. 1983/63 of July 1966) a similar application alleging an infringement of Article 5 paragraphs (1) and (4) also failed through non-fulfilment of Article 26. The Commission has in many cases (e.g. *K* v. *The Federal Republic of Germany*, No. 736/60) held that the right of a person to reside in a country of which he is not a citizen is not as such included among the rights in the Convention. However, in Application No. 984/61 the Commission felt that the deportation of an alien to a particular country could in

exceptional circumstances, raise a question of whether such action constituted ' inhuman treatment '[1] within the meaning of Article 3 of the Convention.[2]

Mr Karel Vasak in his book on the European Convention notes that this particular point has not been answered by the Commission, but points out that the German courts have, on the whole held that the deportation of aliens to their country of origin *(' refoulement ')* can in some circumstances amount to inhuman treatment. The Superior Administrative Court in Munster has, for example, held that the return of an alien or stateless person to an Eastern European country which he has been forced to leave for political reasons amounts to inhuman treatment under Article 3 of the European Convention.[3]

Article 13 of the International Covenant on Civil and Political Rights (1966), adopted unanimously by the United Nations, is also relevant to the question of deportation as a whole:

> An alien lawfully in the territory of a State Party. . .may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of National Security otherwise require be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose, before the competent authority or the person or persons especially designated by the competent authority.

Although the issue of a deportation order derives from an executive decision, it is highly desirable that a right of appeal to the courts should be provided. States must respect the general principles of law applicable. These require that anyone may appeal to the courts against a deportation order where the authorities are acting in abuse of power or contrary to the rules of natural justice.[4]

---

[1] *Similarly see Application No. 1465/62 of 6th October 1962.*

[2] The imprisonment and alleged ill-treatment of Mr Fernandez in Spain following his deportation from France might well be considered exceptional circumstances. However, this question is purely academic since France has not ratified the Convention nor recognized either the right of individual petition to the Commission or the compulsory jurisdiction of the European Court of Human Rights.

[3] Case decided on 3rd September 1956, *Die Oeffentliche Verwaltung 1956*, p. 381.

[4] It should however be noted that the Administrative Court of Paris has just declared a deportation order, made under the ' absolute emergency ' procedure, to be invalid. The Court held that the disorders of May and June 1968 had died down by the time the applicant had been deported (17th July). The Minister for Home Affairs had consequently acted in excess of his powers.

Reimposition of Censorship in Czechoslovakia

Early this year, two weekly periodicals which represented liberal opinion in Czechoslovakia, *Listy* and *Reporter*, had their licenses to publish withdrawn. This was announced by the Czech Bureau for Press and Information on 15th May. Other periodicals were suspended. The legality of these actions was based on two Press Laws introducing censorship into the country, No. 81/1966 passed in the Novotny era and No. 127/1968 passed in September 1968 following the occupation and the ' Moscow Agreement ' of 26th August. The decision to act in these cases was taken as a result of the new policy decided upon at the April 1969 Plenum of the Central Committee of the Communist Party of Czechoslovakia. It was during this Plenum that Alexander Dubcek was replaced as First Secretary and head of the Party by Dr Gustaf Husak. The Plenum also *inter alia*, formulated directives to ensure the thorough implementation of the laws on press censorship.

Some of the new methods announced by Dr Husak to ' normalise ' the situation in the country, an objective urged by the Soviet Union, affected the mass media. In Dr Husak's words:

> If the Party does not bring its decisive ideological influence to bear on the television, radio and the press, it cannot fulfil its role in the State. We will not beg recalcitrants to follow our policies. . .We must accept that changes will have to be made in relation to positions of responsibility and other measures taken. . . We see the problem of freedom and democracy as a struggle between the classes. There can be no freedom for people who, in a situation of crisis such as the present .. .abuse freedom and democracy by acting against the interests of the State and socialism. (Radio Prague, 18th April 1969).

In other words coercion was once again to be substituted for persuasion. The ' changes in positions of responsibility ' meant the removal of the greater part of the editorial staffs of newspapers, the radio and television and their replacement by conservatives of the Novotny era. The ' other measures ' to be taken, which included the institution of investigations, disciplinary action and expulsion from the Party, affected a considerable number of people. Many of these were leading politicians who in the course of 1968 and 1969 had expressed progressive views through the mass media or had voted against

or abstained in the vote for the ratification of the Treaty allowing Soviet troops to be stationed in Czechoslovakia.

The meeting of the Central Committee of the Party in April and May 1969 marked the end of freedom of expression in Czechoslovakia at least for the forseeable future.

Freedom of opinion and expression recognised in Article 19 of the Universal Declaration of Human Rights and of the International Covenant on Civil and Political Rights, of which both the USSR and Czechoslovakia are signatories, holds a special place among fundamental freedoms; for the extent of its exercise is a reflection of how far other rights and freedoms exist. In the rest of this article, the path of this freedom in Czechoslovakia, from February 1968 until May 1969, will be traced. [1]

The Restoration of Freedom of Expression

The Czechoslovak press, radio and television proved to be the leading force in the drive for reforms. The first outspoken statement dealing with the aims of the reform movement in 1968 was an article in *Rude Pravo*, the Communist Party newspaper, by Mr Joseph Smrkovsky, then Minister for Forestry. Mr Smrkovsky, a veteran communist called for ' the consistent and sincere democratisation of both the Party and Society ' and exhorted his compatriots ' to enter courageously into unexplored territory and *discover our Czechoslovak socialist road* ' (9th February 1968).

The problem of censorship was one of the first objectives of the reform to be tackled. The Chairman of the Union of Czechoslovak Lawyers, a Deputy Minister of Justice, stated on Radio Prague (20th February 1968):

> The existence of the Press Law (No. *81/1966*) is inconsistent with Article 28 of the Czechoslovak Constitution, which guarantees freedom of expression in all spheres of society and in particular in the sphere of freedom of speech and the press. The maintenance of censorship is hard to reconcile with the Constitution.

In a Resolution of 13th March, the Union of Czechoslovak Lawyers stated: [2]

> One of the fundamental freedoms which must be given the highest precedence is the freedom of the press and the right of the public to be informed. Accordingly, we support the demand that the correctness of the whole concept of censorship be reviewed and that it be replaced by editorial control: this will entail an amendment of the existing Press Law.

---

[1] See also a comment on the Legal Reforms in Czechoslovakia in *Bulletin* of the ICJ No. 34, pp 1-7.

[2] See *Review of Contemporary Law*, International Association of Democratic Lawyers, Vol. 15, No. 1/1968.

A few days later, the Party Committee of the Censorship Department adopted a resolution for the immediate abolition of political censorship since it was ' entirely without legal basis '. In March, censorship was abandoned in practice and in June a law to abolish the ' Central Office for Publication ' was passed in the National Assembly by 251 votes against 30. The other provisions of this new Press Law seemed fully to realise freedom of expression as provided for in the Czechoslovak Constitution and in the International Covenant on Civil and Political Rights.

Freedom of expression found its place not only in the mass media, but also in political life including the discussions of the ruling Party. Indeed the draft Party Statutes published on 10th August 1968, as part of the process of ' democratisation ', guaranteed respect for minority views within the Party. Members had the assurance of being able to criticise official policies at party meetings and in the Press.

Freedom of expression in Czechoslovakia was so advanced that the mass media could discuss the most delicate problem in Eastern Europe: Czechoslovakia's relations with the USSR and its other socialist neighbour countries. Replying to attacks in the Soviet, East German and Polish press, Radio Prague stated on 9th May 1968:

> We no longer wish to have to affirm our good intentions like scolded schoolboys. We are a fifty-year-old republic. . .and have reached the age of maturity and self-determination. . .

The reaction of the Soviet Union and of four of its Warsaw Pact allies to the re-establishment of free expression and other fundamental rights in Czechoslovakia, associated with the name of Mr Dubcek, was one of profound concern. In a joint letter to the Central Committee of the Czechoslovak Communist Party on 14th July they described the situation in the country as ' completely unacceptable '. They urgently asked that Czechoslovakia comply with four major demands, the third of which was the re-establishment of censorship. Their demands were rejected.

In the shelter of this new-found freedom, newspapers devoted their pages to planning the future and to making a realistic assessment of the present. *Literarni Listy*, the journal of the Writers' Union, published a message to the Party Praesidium on the eve of the Soviet-Czechoslovak negotiations at Cierna, on July 26th:

> The moment has come when we can give the world proof that socialism is not an emergency solution for under-developed countries, but the only true alternative for civilisation. We expected the whole socialist camp to be the first to welcome this development with sympathy. We are instead being accused of treason. We have received ultimatums from comrades whose very declarations show their lack of knowledge of our development and the situation in general.

But the demands of the Soviet Union and the Warsaw Pact countries were followed by the invasion of August 21st. Control over a free and sovereign people was to be imposed by force.[1]

Gradual Reimposition of Censorship

In the words of the Party Praesidium and the National Assembly on the day of the invasion, the Czechoslovaks ' yielded to superior force '; they resigned themselves to the fact that they had become an occupied country, but did not renounce their claim to full sovereignty and freedom of expression. Following the first ' Moscow Agreement ' of 26th August, Mr Dubcek announced that it would be necessary to reimpose temporary censorship on the press, radio and television, in order to assure the gradual withdrawal of occupying forces. A law to this effect was adopted by the National Assembly in the middle of September (Press Law No. 127/1968). This established a Government Council for Press and Information, which was headed first by Professor P. Colotka, and later, on 6th December by Mr Jaroslav Havelka, who was believed to be more conservative. From September 1968 onwards there were continuous purges against leading personalities in the mass media. Because of the serious and determined resistance to them, the purges were phased over a period of several months. Persuasion was used first to impose censorship — with occasional threats, but these increased as time went on.

In October an article appeared in *Politika*, the weekly newspaper of the Party's Central Committee, criticising the Treaty on the stationing of Soviet troops in Czechoslovakia. This had been ratified by the Plenary Session of the National Assembly after a stormy Commission meeting. The newspaper deplored the fact that the Treaty had not fixed either the number of troops which were to remain in Czechoslovakia or the period of time for which their stay would be authorised. It stressed that the silence of the Treaty on the real motivation for the entry of the invading troops did not alter the fact that they had arrived without invitation nor the reality of the limitations imposed on Czechoslovak sovereignty and self-determination.[2] *Politika* was suspended, later allowed to reappear and then finally replaced by another periodical with a totally different editorial board.

The restrictions on free expression were actively opposed by jurists,[3] journalists, writers, intellectuals and workers. On November 18th a

---

[1] See the statement of the International Commission of Jurists on August 21st, printed in *Bulletin* No. 35, p. 1.

[2] See in this respect the European Conference of Jurists (Strasbourg, October 1968), which in a special Resolution condemned ' as indefensible the pressures and intimidation used to deprive the Czechoslovak people of the management of their own policies and affairs '. *Bulletin* of the ICJ, No. 36.

[3] See the Conference of the Union of Czech Jurists, Prague, 11-12th December 1968; reported in *Review of Contemporary Law*, International Association of Democratic Lawyers, Vol. XV, No. 2/1968.

meeting of 600 journalists condemned the suspension of *Reporter* and *Politika*. On 22nd November a meeting of 1000 intellectuals and workers set up a coordinating committee to study the position of freedom of expression and to fix the limits which should not be transgressed.

The Czechoslovak Academy of Sciences was quick to reply to a Soviet pamphlet published in Moscow by a ' group of journalists ', attempting to justify the invasion. ' This pamphlet,' stated the reply, ' eschews serious analysis and relies on invented and unproved documents. In the pamphlet there are real affronts to logic, such as only schoolboys would make, to basic Marxist theories and to the ethics of journalism.'

Over the following months, freedom of expression was whittled away, until the time came when the Plenum of the Central Committee decided to do away with what remained of it (April 1969). Resolutions since that time have contained a list of recriminations against the mass media which, for their realistic reporting of the feelings and opinions of the population, were accused of:

> Misusing Czech national feeling aroused by the replacement (by a Slovak) of Mr Smrkovsky as Chairman of the Federal Assembly, provoking a nation-wide crisis in connection with the death of Jan Palach, misusing the anniversary of the Nazi occupation, attacking the policy of normalisation and finally of having launched large-scale anti-soviet propaganda on the occasion of Czechoslovakia's victory in ice-hockey over the Soviet team.

Deprived of the fundamental freedoms of expression and self-determination the Czechs and the Slovaks have at least the poor consolation that ' socialism with a human face ', as they call their ideal, has come to be recognised not only by some communist parties but also by the world at large as a new method of implementing human rights within a communist structure.

The Middle East: War or Peace

Since the Arab-Israeli War of June 1967, the Middle East has seen no remedy for the Palestinian refugee problem and instead has witnessed a steady deterioration of the cease-fire, an intensification of belligerency, an increasing number of Arab refugees, complete disrespect for the civilian population, and a refusal to implement or abide by the United Nations General Assembly or Security Council resolutions. The intransigence of both Israel and, with some exceptions, the Arab States to accept anything less than the fulfilment of all their demands has led to political stalemate and has justified pessimism as to future negotiations. Meanwhile, the refugees and the civilian population are in constant danger and live in uncertainty and fear. The United Nations represents the hope of compromise and solution. If peace is to be achieved, recognition of the United Nations' functions and respect for its decisions must be realised.

The intention of this article is to deal with the humanitarian issues arising from the Middle East conflict and in particular with the plight of the refugees and the threat to the civilian population. It is not proposed to enter into the very complex political aspects, though these are often inseparable from the humanitarian.

It is not an oversimplification to say that the predicament of the Palestinian refugee is an important element of the conflict, which has been further complicated by the Israeli occupation in June 1967 of Arab territories, adding Egyptian, Syrian, and Jordanian refugees to the ranks of the dispossessed. Since 1948, the Palestinian refugees have existed in temporary living accommodations waiting for the United Nations General Assembly resolutions to be carried out so that they can return to their homes or receive compensation. Unfortunately, the refugee problem has persisted and in 1965 Palestinian impatience led to the formation of a militant force under the direction of the Palestinian Liberation Movement, which has pledged itself to nothing less than the return of Palestine to the Palestinians. This nationalistic force has given rise to Arab commandoism and Arab extremism, which has stimulated daily armed conflict. In turn, this has led to massive Israeli retaliation, and disrespect for the civilian population.

Palestinian Refugees

The Palestinian refugee was created in the early months of 1948 when the British announced their intention to give the Mandate over Palestine to the United Nations and to withdraw their forces by 15th May 1948. Fighting broke out among Jewish and Arab inhabitants in the area that had been partitioned by the 1947 United Nations General Assembly resolution. In April 1948, massacres and fear spread across the land and Palestinians began to flee into Lebanon, Syria, Egypt and the Jordan Valley. By the time the British left already 300,000 Palestinians were refugees.

When the State of Israel was proclaimed on 15th May 1948, full scale fighting developed; as a result 700,000 Palestinians left as the Israeli forces occupied land that had not been allotted to them under the United Nations Partition Plan. United Nations resolutions and the General Armistice of 1949 failed to produce any solution for the Palestinian refugees. After the June War of 1967, another 350,000 Arabs became refugees when Israel occupied the Golan Hights in Syria, the West Bank of the Jordan River, the Gaza Strip, East Jerusalem, and the Sinai Peninsula.

In 1948, the United Nations foresaw the importance of the Palestinian problem and appointed Count Folke Bernadotte as its Special Mediator to the Middle East. Before he was assassinated, the Special Mediator recommended a proposal which was later to be partially incorporated into the General Assembly Resolution No. 194 of 11th December 1948, which has been reaffirmed and recalled twenty-two times but has remained unimplemented. In paragraph 11 of the Resolution, the Assembly

> RESOLVES that the refugees wishing to return to their homes and live in peace with their neighbours should be permitted to do so at the earliest practical date, and that compensation should be paid for the property of those choosing not to return and for loss of or damage to property which, under principles of international law or in equity, should be made good by the governments of authorities responsible.
> INSTRUCTS the Conciliation Commission to facilitate the repatriation, resettlement and economic and social rehabilitation of the refugees and the payment of compensation. . .

On 26th January 1952, in Resolution 513 the General Assembly, referring particularly to the problem of integration through repatriation or resettlement,

> ENDORSES, without prejudice to the provisions of paragraph 11 of Resolution 194 (III) of 11 December 1948 or to the provisions of paragraph 4 of Resolution 393 (V) of 2 December 1950 relative to reintegration either by repatriation or resettlement, the programme recommended by the United Nations Relief and Works Agency for the relief and reintegration of Palestine refugees, which envisages the expenditure of $50 million for relief and $200 million for reintegration over and

above such contributions as may be made by local governments, to be carried out over a period of approximately three years starting as of 1 July 1951...

After the June War, the Security Council in Resolution 237 [1] specifically called upon Israel 'to ensure the safety, welfare, and security of the inhabitants of the areas where military operations have taken place and to facilitate the return of those inhabitants who have fled the areas since the outbreak of hostilities'. In its Fifth Emergency Special Session the General Assembly on 4th July 1967, by Resolution 2252 (ES-V), affirmed the earlier Security Council Resolution No. 237. Later that year on 19th December, in Resolution 2341, the General Assembly unanimously reaffirmed its position in Resolution 2252 (ES-V) and recalled its previous resolutions concerning the Palestinian refugees. When, after one year, its resolutions had still not been implemented, the General Assembly in Resolution 2443 more forcefully 'expressed its grave concern at the violation of human rights in Arab territories occupied by Israel' and 'affirmed the inalienable rights of all inhabitants in the Middle East to return home, resume their normal life, recover their property and homes, and rejoin their families...' On the same day, the General Assembly in Resolution 2452 [2] once more stressed the serious condition of the Palestinian refugees and called for the implementation of its resolutions that had gone unanswered for the last twenty-one years.

Because of the failure to implement past United Nations resolutions, the responsibility of the Arab countries to aid the Palestinian refugees has become more urgent. Only Jordan so far has given citizenship to Palestinian refugees and has tried to incorporate them into her economy. Jordan's humanitarian efforts unfortunately have not set a successful precedent as her endeavours have brought a political and military confrontation with the commandos, economic uncertainty and the wrath of Israeli reprisals. Despite the repercussions of the Jordanian attempt, the Arab countries must follow this example and try to alleviate the suffering of the Palestinian refugees.

Civilian Population

The civilian population in Israel and the bordering Arab countries has not been protected during the intensification of the conflict since June 1967. The people live from day to day not knowing when to expect the next aeroplane attack or shelling or where the next bomb will come from. This appalling situation is a flagrant violation of humanitarian law.

Since the end of the June War, Israel has been strongly censured five times by the Security Council for her military action against

[1] For the text of the Resolution see p. 52 below.
[2] For the text of the Resolution see pp. 53-55 below.

Arab civilian sites. Resolution 248 of 24th March 1968 'deplored the loss of life and heavy damage to property' caused by the Israeli attack on the refugee camp in Karameh, Jordan and noted that this 'was of a large-scale and carefully planned nature'. On 16th August 1968, the Security Council in Resolution 256 in response to Israeli bombing of areas west and south of Salt, Jordan, again 'deplored the loss of life' and considered 'that premeditated and repeated military attacks endanger the maintenance of the peace'. As a result of an Israeli attack on the Beirut International Airport on 28th December 1968, where 13 civilian planes and other airport facilities were destroyed, the Security Council in Resolution 262 condemned 'Israel for its premeditated military action in violation of its obligations under the Charter...' On 1st April 1969, after Israel's bombing of Ein Hazar, Jordan, the Security Council in Resolution 265 condemned 'the recent premeditated air attacks launched by Israel on Jordanian villages and populated areas in flagrant violation of the United Nations Charter...' Again, on 26th August 1969 the Security Council unanimously condemned Israel's 'premeditated air attack ' on a number of southern Lebanese villages and warned that ' further and more effective steps ' would have to be taken if there were a repetition.

Although Arab Governments have not been directly involved in large-scale premeditated attacks on civilian sites and have not been condemned by the United Nations, their indirect support of the Palestinian Liberation Movement makes them through association guilty of attacks endangering civilians. Although the Palestinian commandos do not receive military support from Arab Governments, they are sympathised with and financed by the Arab countries and by the Arab people. For the commandos' attacks on civilian aeroplanes and oil pipes, the bombs in market-places and bus stations and the explosions in other civilian areas, the Arab Governments must assume a degree of responsibility. And although the Palestinian commando units claim to be completely independent and are willing to fight even Arab Governments if they interfere, the Arab countries may be accused of not sufficiently preventing such incidents and even at times of encouraging them. But these are inevitable concomitants of the situation.

The nationalistic movement of the Palestinian refugees to regain their lands and the struggle of Israel to maintain secure borders and her existence are two goals that cannot be ignored but can never justify the total disrespect of the civilian population. The refusal of Israel to heed Security Council warnings and her unresponsiveness to implement the many General Assembly resolutions and the reluctance of Arab countries to incorporate the Palestinians into their economy have brought about a dismal situation for the future and a dangerous inclination towards another full-scale military confrontation.

We have set out in brief the essential aspects of the Middle-East conflict which are of humanitarian concern to us. There is, however,

another aspect of more general concern: it is the inability of the United Nations to end the conflict or to secure compliance with its numerous decisions. This weakens the authority of the United Nations on a world-wide scale.

Even at this stage, would it not be possible to secure agreement of both sides to submit all issues in dispute to a specially constituted impartial tribunal? Negotiations, mediation, and arbitration are the only alternatives to war. Negotiations and mediation have not succeeded; should not all efforts be now concentrated on trying to persuade all parties to submit to an impartial tribunal of arbitration? Article 33 of the United Nations Charter specifically envisages arbitration as one of the means of settlement of disputes which are likely to endanger the maintenance of international peace and security. Refusal by a party in the conflict to agree to arbitration would be tantamount to self-condemnation.

Concurrently and during the arbitration a complete cease-fire and truce should be agreed to by all parties.

In the meantime, the observance of the Geneva Red Cross Conventions should be insisted upon by the United Nations.

The Goal of Parliamentary Democracy Recedes in Pakistan

The recent political agitation and economic unrest in Pakistan culminating in the declaration of martial law on 25th March 1969 and the handing over of the country's administration by President Ayub Khan to General Yahya Khan, the Commander-in-Chief of the army, came as a great disappointment to all those who have been watching developments in Pakistan with sympathy and interest and who were expecting that, after a decade of 'basic democracy', so often declared by President Ayub Khan to be a preparatory exercise necessary for the ultimate adoption of solid democratic institutions, this year would witness a restoration of Parliamentary democracy and full representative government. Notwithstanding the assertions of General Yahya Khan that he and his military advisors would go back to barracks as soon as conditions returned to normal, this year's events both in East and West Pakistan make it clear that the goal of Parliamentary democracy now appears much further off than it did at the beginning of 1968.

The Ayub Decade

On 7th October 1958 a bloodless coup d'etat under the leadership of General Mohammed Ayub Khan toppled Pakistan's weak and unstable Parliamentary government. Arguing that the Western democratic system was unsuited to conditions in Pakistan as they then existed and that inefficiency and corruption in the earlier administrations had to be eliminated if Pakistan was to achieve political and economic stability, General, now President Ayub Khan, set himself up as a stern and purposeful ruler. The Constitution which he introduced in 1962 was based on the notion that there was no majority in the country that could give unqualified support to an effective programme of reorganization and economic development and that there was therefore a real need for insulation from the various whims of different political parties and groups. Ayub visualized that, through the system of 'basic democracies' which the Constitution of 1962 introduced, there would be a steady and uninterrupted flow of political power and executive authority from the base to the apex of the pyramid, namely, the head of State. By exposing the irresponsibility of the many political factions which had been striving for power and

the corruption which was characteristic of the several Parliamentary Governments which preceded his regime, Ayub felt that politicians and political parties would lose their influence with the people and would almost fade out of existence.

With the introduction of the Constitution of 1962, martial law was lifted. Nevertheless other less ostensible but equally effective weapons were used to curb several fundamental rights and freedoms of the people.[1] The President was also able, through the support of the army and the powers he enjoyed under the new Constitution, to keep politicians in a state of suspense. But there continued to be many lively issues which served politicians as springboards for agitation, principally the continuing confrontation with India over the future of Kashmir, economic injustice and inequality, and East Pakistan regionalism.

Despite the readiness shown by the Government in 1967 to broaden and strengthen the democratic features of the existing political system by increasing the Electoral College of 80,000 'basic democrats' to 120,000 for the next general election and by increasing the membership of the national and provincial assemblies,[2] the continued withholding of full democratic rights from the people was the cause of ever-growing political agitation. That year witnessed several protest meetings and processions in both East and West Pakistan as well as sectarian riots in many parts of the country. Faced with serious and immediate threats to law and order, the Government employed two mechanisms to control the hostile environment. They were Section 144 of the Criminal Procedure Code,[3] under which the Government imposed restrictions on the holding of meetings and processions and on the carrying of firearms for periods of up to two months, and the Defence of Pakistan Rules, framed under the Defence of Pakistan Ordinance, which was promulgated in 1965 during the war with India and under which persons who were deemed likely through their activities to threaten the security of the State were arrested and placed under preventive detention.

The Pakistan Democratic Movement, which represented a merger of five opposition parties effected in May 1967, issued a programme for a campaign to establish a Federation of Pakistan modelled on parliamentary democracy and a legislature directly elected on the basis of adult franchise. The Pakistan Democratic Movement and other opposition parties urged the repeal of the Defence of Pakistan Rules. They sharply criticized the Government for the growing disparity between East and West Pakistan and for the concentration

[1] See Article on 'Press curbs in Pakistan', *Bulletin* of the ICJ, No. 17.

[2] These changes were in fact introduced in December 1967 by the Constitution (Eighth Amendment) Bill.

[3] In 1967, Section 144 was invoked for different reasons almost every month in one district or another and sometimes it operated in as many as a dozen districts at the same time.

of wealth in the hands of a few industrialists. In East Pakistan the attacks were concentrated on the increasing impoverishment of the East Pakistan peasantry and the favoured treatment which West Pakistan was receiving in the administrative and economic spheres.

Transfer of Power to the Armed Forces

At a Constitutional Conference on 13th March 1968, President Ayub Khan agreed to opposition demands for adult franchise and a parliamentary form of Government. There was a general atmosphere of satisfaction in the opposition ranks. 'Never before has an absolute ruler willingly and gracefully agreed to transfer power,' commented the *Pakistan Times.*

However, only twelve days after that conference President Ayub changed his mind. He announced that he was resigning his office and transferring power immediately to the armed forces under General Yahya Khan.

Apart from the general unrest in the country, there were three immediate factors that contributed to the President's change of mind. Firstly, the newly appointed Governor of West Pakistan, Mr Haroon, was confronted on his fourth day as Governor with police demands for pay increases. He reported to the President that he was quite unable to handle the situation without effective government support. Secondly, there was a minor border crash with Indian troops and reports were circulating in Rawalpindi that the Indians were massing on the frontier. The last and most important factor was the situation in East Pakistan. There Sheik Mujib, the highly respected East Pakistan political leader, demonstrated anew his seriousness about regional autonomy for East Pakistan by submitting a 56-page draft of Amendments to the Constitution which, if implemented, would result in the moving of the Capital to the Eastern wing, an East Pakistan majority of seats in Parliament, the establishment of two regional Reserve Banks and the elimination of the Central Government's authority on most matters.

East Pakistan with its student strikes, mounting violence and clamour for separatism, was near the brink of disintegration. It was held to West Pakistan by little more than the links of Islam. President Ayub was more than conscious of these facts and, although in his farewell speech he dwelt more on the prevalent disorders than on constitutional issues, he also said that the acceptance of Sheik Mujib's demands 'would have spelled the liquidation of Pakistan'.

The New Military Regime

On 5th April 1969, eleven days after the introduction of martial law, General Yahya Khan promulgated an Order declaring that, except as otherwise provided, the country would be governed according to the provisions of the 1962 Constitution. But martial law was not lifted. The Order in question, which purported to be a partial restoration of

the abrogated Constitution of 1962, suspended at the same time eleven articles of that Constitution guaranteeing fundamental rights. These included the guarantees in the event of arrest and detention, the guarantee against retroactive penalties, the rights to freedom of movement, assembly, speech, trade and profession, the rights to equality before the law and non-discrimination in the public services and the right to property.

It is perhaps too early to pass any judgement on the new military regime. General Yahya Khan has declared that martial law will be lifted and that he and his military associates will abdicate power the moment conditions return to normal and the country's leaders are able to arrive at an agreement on constitutional problems. He took a first step towards restoring democracy on 28th July by naming a Chief Election Commissioner, deciding to appoint a Civilian Council of Ministers and allowing political parties limited freedom. He explained, however, that while the appointment of the Civilian Council was being made to broaden the base of the Administration, it would not change, at least for the time being, its martial law character. Indeed, with weak and divided political parties and no one leader able to command the support of both East and West Pakistan, the armed forces are likely to remain in control of national affairs for quite some time more.

Could the Present Situation have been Averted?

One may not be able to dispute the fact that President Ayub Khan was an autocratic ruler who had his country's interests at heart and that he genuinely thought that these interests required a government of the form introduced by the Constitution of 1962 for some time before parliamentary democracy could be successfully reintroduced. But the question is for how long such a system of very restricted representative government by indirect elections was necessary and for how long a politically conscious people could be denied their fundamental rights. It is submitted that the crisis of March 1969, which led to the establishment of military rule instead of the expected parliamentary democracy, could have been averted if the restoration of representative government had not been so long delayed and if more serious and more timely attempts had been made to allay the fears of East Pakistan, the more populous but less developed member of the partnership, and to grapple with the political and economic disparity between East and West.

The turn of events in Pakistan, where the ruler was well-meaning but withheld fundamental rights for too long a time, has been most unfortunate indeed. But the ever-mounting disturbances, political agitation and strikes he had to face will serve many a more autocratic regime as a grim reminder of those well-known words of warning in the Preamble of the Universal Declaration of Human Rights that, if man is not to have recourse as a last resort to rebellion against tyranny and oppression, human rights should be protected by the Rule of Law.

Southern Africa

Regimes which are based on a commitment to racial discrimination continue to pose the most serious problems to the protection of the Rule of Law and human rights in the world. There is no doubt that in Rhodesia and in South Africa the situation is worsening. Despite the clearly expressed desire for a non-violent solution contained in the recent declaration of fourteen East and Central African States,[1] the white-dominated regimes of Rhodesia and South Africa continue their policies of repression, and are becoming increasingly intransigent. The attention of lawyers all over the world must be drawn once again to the erosion of the Rule of Law by the Legislature and the Executive, and to the acceptance of this position by some members of the Judiciary in this area of Africa.[2]

Rhodesia

All possibility of a settlement between the Rhodesian regime and the British Government was abandoned on June 20th this year with the vote by the almost all-white electorate [3] in favour of an apartheid-like constitution. The idea of eventual African rule has been finally rejected, and inequality, discrimination and political repression will continue to be the foundation of government policy. Although the white population forms only 1/22 of the total population,[4] only 16 out of the 66 seats initially in the Lower House may be held by Africans. Eight will be elected by Africans on the African roll and eight will be elected by four tribal electoral colleges.[5] Representation of Africans will be based on their income tax contribution, but the number of 16 representatives will remain static until African income tax contributions exceed 24% of the total income tax contributions of Europeans and Africans; representation will then increase proportionately, However, Africans may never hold more than half the

[1] For the full text of the declaration, see *The Review* of the ICJ, No. 2.

[2] See *Erosion of the Rule of Law in South Africa*, International Commission of Jurists, August 1968.

[3] 83,000 Europeans; 7,000 Africans; 2,000 Asians and coloureds.

[4] Preliminary results of the 1969 official census show 4,840,000 Africans, 230,000 Europeans, 8,700 Asians and 15,000 Coloureds.

[5] The former 'A' and 'B' rolls will be abolished, and there will be a European roll which includes coloureds and Asians and an African roll. Cross-voting is abolished; no African may be a candidate in a non-African constituency or vice versa. The franchise qualifications for both Europeans and Africans will be raised.

seats in Parliament even when the income tax shares of whites and Africans are on a parity, a situation which will not occur for several generations.[1]

A Senate will replace the former Constitutional Council; it will have strictly limited powers of delaying legislation even in the case of Bills which, on the advice of its legal committee, the Senate considers inconsistent with the Declaration of Rights to be embodied in the Constitution. The new Declaration of Rights will in any case be non-justiciable; the courts will thus be unable to declare laws unconstitutional where they infringe rights recognised in the Declaration. The new Declaration will permit preventive detention and other derogations from the right to personal liberty. Protection from search and entry will be limited. The right of an accused not to be compelled to give evidence will be omitted. The press and other mass media will continue to be regulated.

Major changes in land tenure legislation are proposed. The present category of 'unreserved' land will be abolished and all land in Rhodesia will be divided into areas of reserved European and African land, totalling roughly 44.9 million acres and 45.2 million acres respectively.[2] Thus 250,000 Europeans will have 45 million acres reserved for their ownership, while 4½ million Africans will have an equivalent amount. Moreover, the independent Board of Trustees for Tribal Trust Land will be abolished and control over such land will be exercised by the Head of State.

In the words of Professor Terence Miller, the principal of Rhodesia's multi-racial University College, who resigned as a result of the referendum victory in June, the proposals seem to derive 'from a basic intention to ensure indefinitely prosperity and material comfort for the European minority at the expense of the exploitation and repression of the bulk of the majority'.

The constitutional proposals are not the only source of concern. In February the Constitution Amendment Act, No. 1 of 1969, amended section 81 of the Constitution of Rhodesia 1965 by authorising the declaration of a state of emergency for a period of twelve consecutive months instead of the previous maximum period of three months.

In the light of these developments, the independence of the Bar and Judiciary in Rhodesia will be of considerable importance in maintaining some measure of adherence to the Rule of Law. The decisions of the Rhodesian High Court in February and in September 1968

[1] The basing of representation for Africans on their income tax contributions, an unacceptable criterion in any event, ignores the fact that income tax contributions by whites to the total State revenue is only about 20%, yet they will have 75% of the Parliamentary representation. The shift of emphasis from income tax to indirect taxation introduced in the recent Budget will render this 20% even more insignificant.

[2] The figure for the European reserved land represents an increase of over 9 million acres.

when the Appellate Division held firstly that the Rhodesian Government had obtained *de facto* status and then *de jure* status has already provoked understandable dismay. Recently some disturbing features of the trial of the Reverend Ndabaningi Sithole, leader of the banned Zimbabwe African National Union, also gave rise to misgivings as to the manner in which trials with political overtones will be handled. Any reasonable grounds for suspecting that the courts in Rhodesia could be used as a cover to accommodate the executive would only add to the depressing list of complaints against the present regime and its supporters.

South Africa

Recent legislation, increased security measures, incidents of brutality and continued general disregard for the Rule of Law indicate that the regime in South Africa is tightening its hold.

In reply to a General Assembly resolution [1] demanding a report on prison conditions in the Republic, the Government asserted that it did not recognise the competence of any United Nations organisation to make demands on a foreign State; it also asserted that the Republic administered its penal institutions on the basis of legislation that conformed to the Standard Minimum Rules for the Treatment of Prisoners.[2] However, although the Rules lay down the minimum of medical services that should be available in every institution and outline the precautions that should be taken to ensure the physical and mental health of prisoners including the daily examination of sick prisoners (Rules 22, 24, 25, 26), during 1968 four prisoners died in Robben Island Prison through lack of timely medical attention. The Commissioner of Prisons denied such 'allegations about prison conditions in South Africa', and said that the authorities had 'no knowledge of people who are seriously ill and who have not been given the medically recommended treatment'. The Rules also provide that 'the transport of prisoners in conveyances with inadequate ventilation or light, or in any way which would subject them to unnecessary physical hardship shall be prohibited'. Nonetheless in April this year three Africans died from suffocation while being transported in an overcrowded police van.

Not only has the government rejected out-of-hand allegations made by the UN and other bodies outside South Africa. It has prosecuted those publishing information about prison conditions in South Africa itself. The most recent case has been that of Laurence Gandar, Editor-in-Chief of the *Rand Daily Mail*. Following the publication of a series of articles in 1965 on conditions in South African prisons,

[1] 2440 (XXIII), adopted following the report in 1968 of the Ad Hoc Working Group of Experts established by the Commission of Human Rights.

[2] Adopted by the First UN Congress on the Prevention of Crime and the Treatment of Offenders in a resolution of 30th August 1955.

Mr Gandar and his reporter Benjamin Pogrund were prosecuted under the Prisons Act, 1959.[1] The Government had previously prosecuted the newspaper's informants for perjury and had conducted a radio campaign smearing the newspaper as 'un-South African' and communist influenced. In the Gandar trial, ample evidence was produced to show that, given the situation in South Africa, 'reasonable steps' had been taken to establish the reliability of the information published, evidence which would have satisfied an impartial judge — that is a judge who is freed from the underlying notion that criticism of the administration is necessarily un-South African. Nevertheless the two accused were convicted under the Act.

In addition to the conditions in prisons and the treatment of convicted prisoners, the manner in which detainees have been held by the Security Police under the Terrorism Act [2] has given rise to severe criticism. This year already five detainees have died while being held under the Act and two of these cases have had serious repercussions in South Africa. At the inquest on Mr Nichodimus Kgoathe, who according to the post-mortem report had died of bronchial pneumonia, evidence was given that the police had found it necessary to investigate allegations that Mr Kgoathe had been assaulted while being interrogated. A district surgeon told the inquest court that he believed the injuries that the deceased had suffered to have been the result of an assault. He testified that when he examined Mr Kgoathe shortly before his death he found marks on his body which could have been caused by a rawhide whip and wounds which could have come from an assault with the buckle of a belt. A police sergeant testified that Mr Kgoathe had complained to him of body pains before being sent to the hospital and had said that he had been assaulted by the Security Police. Nevertheless the Magistrate found himself unable to conclude that any person was responsible for the death.

In March another detainee, James Lenkoe, was found hanging by a belt in his cell after prolonged interrogation by the Security Police. The finding of a first post-mortem was that Mr Lenkoe had died as a result of hanging and thus suicide was logically concluded. However, a second post-mortem was carried out at the request of the deceased's widow; and expert testimony at the inquest showed beyond reasonable doubt that Mr Lenkoe had received electric shocks on the day of his death and that his death was also consistent with electrocution. The Magistrate ended the inquest by refusing Mrs Lenkoe's counsel the

[1] Section 44(f) makes it an offence to publish 'false information concerning the behaviour or experience in prison of any prisoner or ex-prisoner or concerning the administration of any prison, knowing the same to be false, or without taking reasonable steps to verify such information, the onus of proving that reasonable steps were taken being upon the accused'.

[2] See *Bulletin* No. 34 for a detailed analysis. The Act allows for indefinite detention of suspects by the police without the need for a court order. Detainees may be held under the Act in conditions of complete secrecy and isolation at the uncontrolled discretion of the police and the Minister of Justice.

opportunity to complete his review of the testimony and by limiting the calling of relevant witnesses. In conclusion, the Magistrate found that no satisfactory proof had been given of electric shock treatment and that no blame could be attached to any person.

In neither case was the verdict satisfactory. However, despite government security measures and official denials, the cases have highlighted the fact that torture and inhuman treatment are not infrequent occurrences in South Africa.

Since these cases, the government has indicated its determination to prevent such information reaching the public in future: on 13th June this year the passport of Mr Joel Carlson, the Johannesburg attorney who acted for the widows in both the Kgoathe and the Lenkoe inquests was confiscated. Mr Carlson is the observer for the International Commission of Jurists in South Africa and has represented many political prisoners who have alleged that they were illtreated during detention. The confiscation of his passport is clearly a reprisal for his part in showing up the use of electric shock torture by the Security Police in the Lenkoe inquest as well as his courageous defence in many other political cases. It is also a move calculated to deter both Mr Carlson and other South African lawyers from dealing with such cases in future. The International Commission of Jurists has repeatedly held that the independence of the legal profession is essential to the proper defence of the Rule of Law. This unwarranted act against a member of the legal profession must be deplored as a direct attack on this principle.

Moreover, as a result of the recent adverse publicity for the Security Police, a General Law Amendment Act was passed on 30th June 1969. Section 10 of this Act, which complements the Public Service Amendment Act 1969 establishing a 'Bureau for State Security' and extends the provisions of the Official Secrets Act 1956, makes it an offence to publish or communicate any matter dealt with by or relating to the Bureau or the relationship between anyone and the Bureau. As a result of this provision, all matters relating to the Bureau are excluded from the public domain, and a person may even be charged with an offence under the Official Secrets Act without ever knowing or being able to know that he had divulged a 'security matter' within the meaning of the 1969 Act. The Act also provides (Section 29) that a signed certificate from a Minister will be sufficient to prevent a person giving evidence if such evidence is considered prejudicial to the interests of the State or public security.

Section 10

2 *(a)* Any person who has in his possession or under his control any sketch, plan, model, article, note, document or information which relates to munitions of war or any military, *police or security matter* and who publishes it or directly or indirectly communicates it to any person in any manner or for any purpose prejudicial to the safety or interests of the Republic, shall be guilty of an offence and liable on conviction

to a fine not exceeding one thousand five hundred rand or to imprisonment for a period not exceeding seven years or to both such fine and imprisonment.

(b) For the purpose of paragraph *(a)*

(i) 'police matter' means any matter relating to the preservation of the internal security of the Republic or the maintenance of law and order by the South African police;

(ii) 'security matter' means any matter relating to the security of the Republic and includes any matter dealt with by or relating to the Bureau for State Security referred to in Section 1 of the Public Service Act, 1957 (Act No. 54 of 1957) or relating to the relationship subsisting between any person and the said Bureau.

Section 29

(1) Notwithstanding anything to the contrary in any law or the common law contained, no person shall be compellable and no person shall be permitted or ordered to give evidence or to furnish any information in any proceedings in any court of law or before any body or institution established by or under any law, as to any fact, matter or thing or as to any communication made to or by such person, and no book or document shall be produced in any such proceedings, if a certificate purporting to have been signed by the Prime Minister or any person authorized thereto by him or purporting to have been signed by any other Minister is produced to the court of law, body or institution concerned, as the case may be, to the effect that the said fact, matter, thing, communication, book or document affects the interests of the State or public security and that the disclosure thereof will, in the opinion of the Prime Minister or the said person so authorized or other Minister, as the case may be, be prejudicial to the interests of the State or public security.

(2) The provisions of subsection (1) shall not derogate from the provisions of any law or of the common law which do not compel or permit any person to give evidence or to furnish any information in any proceedings in any court of law or before any body or institution established by or under any law as to any fact, matter or thing or as to any communication made to or by such person, or to produce any book or document, in connection with any matter other than that affecting the interests of the State or public security.

(3) The provisions of this section and any amendment thereof shall apply also in the territory of South-West Africa, including the eastern Caprivi Zipfel.

Not only does the Act consolidate the already enormous powers of the Security Police, it invades the power of the courts to overrule an objection by the Executive to the disclosure or production of official documents[1] and could prevent an accused person from testifying as to the conditions under which he made a statement or confession.

The International Commission of Jurists has already had occasion to examine the South African concept of the Rule of Law.[2] It was

[1] See on this point the Special Study in this issue of *The Review* at pp. 35-36 below.

[2] *Erosion of the Rule of Law in South Africa*, International Commission of Jurists, August 1968.

defined as follows in *South Africa and the Rule of Law* published by the South African Department of Foreign Affairs in April 1968:

> The Rule of Law may mean different things to different people, but there is general agreement that it requires that a person on trial be accused in open court, *be given an opportunity of denying the charge and of defending himself* and that he be given the choice of a counsel.

In commenting on this definition the Commission pointed out that this is but one aspect of the Rule of Law and that other essential elements are the independence of the Judiciary and the guarantee of its impartiality. By the recent General Law Amendment Act, the South African government has not only contradicted its own definition of the Rule of Law, it has also seriously undermined the independence of the Judiciary and the guarantee of its impartiality.

South West Africa

The second trial in which South West Africans were convicted under the Terrorism Act took place in Windhoek, South West Africa, in July. This trial was again in complete defiance of the UN resolution[1] to terminate South Africa's Mandate over South West Africa and the fact that the UN claims jurisdiction over the territory. The men who have been on trial had been held in detention in Pretoria for up to three years; and there are reports that as many as 250 additional South West Africans are still being held in secret detention and incommunicado under the Terrorism Act.

It is more than ever clear from these developments that southern Africa has entered a period of even greater repression. World legal opinion must be heard in protest against measures in this area which are calculated to prejudice the independence of the Judiciary and the legal profession, and also against legislation which, like the General Law Amendment Act in South Africa, provides an effective mechanism for consolidating a police state.

---

[1] General Assembly Resolution 2145 (XXI) 1966.

Following the Kidnappings of South Koreans

In July 1967 the world press reported the disappearance of South Koreans living in the Federal Republic of Germany and noted that staff of the South Korean Embassy at Bonn might have had some hand in the affair. At the same time, South Koreans living in France were also reported missing.

The Federal Republic of Germany protested vigorously and tension grew between Bonn and Seoul to the point where a break in diplomatic relations was a serious possibility. The incident was apparently closed when the South Korean Government made an official apology to the Government of Bonn on 25th July and, in its own words, undertook 'to facilitate the return of those Koreans who were taken to Korea against their will, provided they wish to return'.

In regard to the kidnappings in France, the South Korean Embassy in Paris claimed that the eight South Koreans who disappeared in June had left of their own free will; but three of the students who later returned to Paris stated that although no physical coercion had been used, moral pressure had been exerted to make them go back to Seoul and that, once back, they had been imprisoned and interrogated before being released and allowed to return to Paris. The French Minister of Foreign Affairs then sent a Note of Protest to the South Korean Embassy in Paris. In its reply, the Seoul Government expressed its regret that action had been taken by Korean agents in France to make a certain number of Korean nationals return home. It also gave an assurance that such incidents would not recur, that steps would be taken against the embassy staff responsible and that the Koreans who had left France under those conditions would be allowed to return at once.

In legal terms, the assurances given by the Seoul Government following the kidnappings in France and Germany constituted reparation for each of the two aspects of international law which had

been infringed by the acts of kidnapping.[1] Reparation for the violation of French and German territorial sovereignty was provided by the South Korean Government's apology (a recognised form of ' satisfaction ' in international law) and by the steps that were to be taken against the South Koreans responsible; and the rights of the persons kidnapped were safeguarded by the Government's promise to facilitate their return to France and West Germany. It was then up to those countries to see that this was done.

In November 1967, however, the South Koreans abducted from France and West Germany were put on trial in Seoul. The death penalty was demanded for six of the accused. Two of them were in fact sentenced to death while four were sentenced to life imprisonment and twenty-five to between six months and fifteen years' imprisonment; three were acquitted. Those convicted appealed: at the same time there was a strong reaction throughout the world against the convictions.[2] The sentences pronounced by the Seoul Court of Appeal on 13th April 1968 were even more severe, involving three death sentences. On 31st July 1968, however, the Supreme Court ordered a retrial on account of the severity of the sentences and the inadequacy of the evidence for the prosecution; it took this courageous stand despite pressure and intimidation used against its members, which forced one of them to resign. A new trial began at Seoul on 14th November 1968. Two of the three death sentences were upheld and then confirmed by the Supreme Court on 1st April 1969, as well as other sentences of life imprisonment and of between five and fifteen years' imprisonment. These decisions were final.

Once again vigorous protests were raised. At the same time, the French and West German Governments renewed their pressure, through diplomatic channels, on South Korea to honour its undertaking to release those who had been kidnapped. On 22nd January — that is, before the Supreme Court's final judgment and three days after a week of discussions between a representative of the West German Government and the South Korean authorities — two South Koreans who had been abducted from West Germany were released, for reasons of health according to the Korean Minister of Justice. Between January and March, four other prisoners, three kidnapped in West Germany and one in France, were also released, again for reasons of health.

The International Commission of Jurists has now been informed of the exact position by the West German and French Departments of Foreign Affairs.

---

[1] See D. Marchand, 'Abductions Effected outside National Territory' *Journal* of the ICJ, Vol. VII, No. 2, Winter 1966, and 'Kidnapping Incidents', *Bulletin* of the ICJ, No. 32, December 1967, p. 24.

[2] See the Press Release of the ICJ dated 9th January 1968.

A letter from the West German Department stated: ' Of the 17 Koreans kidnapped in the Summer of 1967... 14 have now returned here. One of them is still in detention. He is a physicist named, Chung Kyu Myung, and is considered by the Korean authorities to bear the greatest responsibility. His wife and children are free in Seoul.'

The French Department stated: 'The persons in question have all been released... those who have expressed their wish to return have been authorised to do so.'

These are encouraging developments; for the accused had been convicted at trials vitiated from the start by reason of their abduction. Their imprisonment consequently was illegal. The only legitimate course of action open to South Korea was to make a lawful application for the extradition of its nationals to the States on whose territory they were. Any other procedure was contrary to international law — and was so recognised by the South Korean Government when it made its apologies to France and West Germany and undertook to allow its nationals to return. The trials in Seoul therefore ran counter to international law and the undertaking given by the Government of South Korea.

The Governments of France and West Germany must be given due credit for their efforts to ensure that South Korea fully carries out its undertaking, which is in complete accord with the Rule of Law. The Government of the Federal Republic of Germany deserves particular encouragement and support for its part in seeing that South Korea's promises were kept.[1]

---

[1] According to the *Daily Telegraph* of 23rd June 1969, a South Korean law student at Cambridge University received inducements to go to Seoul and was arrested on his arrival. The South Koreans have denied that any such incident ever took place (see *Daily Telegraph* of 4th July). But if the facts are found to be true, the United Kingdom would be expected to take action on the student's behalf.

Special Study

CROWN OR STATE PRIVILEGE

STAFF STUDY

A party to a civil action or an accused in a criminal case wishing to have produced an official document which he considers relevant to his action or necessary for his defence, as the case may be, is often met with the plea of Crown or State privilege taken by the Minister in whose possession or under whose control the document is. The ground on which the plea is taken is that the document in question is a document, or belongs to a class of documents, which must necessarily be kept secret as its production would be injurious to the public interest. When this plea is successfully taken in regard to official documents, the Court is precluded from considering all the relevant material necessary for the proper determination of an action, with the result that it often cannot do substantial justice in the case before it. The basis on which Courts, though conscious of this fact, have upheld claims of Crown or State privilege is that national security and the public interest are paramount and must override the private interests of parties or accused persons despite any resultant prejudice which may be caused to them.

It is the fundamental right of a citizen not only to have his case heard in public in a competent Court of law but also to have all the evidence upon which he relies, whether oral or documentary, produced in court. This right also extends to parties appearing before quasi-judicial tribunals or administrative boards and to persons who have brought grievances against the administration to the attention of an Ombudsman. A plea of State privilege can often have the effect of limiting and even denying this right.

This article will begin by looking at the laws on Crown or State privilege in Common Law systems and will draw attention to a most disturbing development in South Africa running counter to all progressive trends. Other legal systems will be dealt with next — with emphasis on the position of State privilege in relation to extra-judicial organs. Finally, the position in France will be examined.

State Privilege in Common Law Countries

In the United Kingdom and in other Commonwealth countries the plea of Crown or State privilege is available to Ministers, who can avoid producing documents or giving oral evidence when summoned by a Court to do so on the ground that disclosure of the evidence in question would be injurious to the public interest or would endanger the security of the State. In such cases the Minister cannot on his own authority refuse to produce the evidence called for or prevent any person from giving evidence; but he can issue a certificate to that effect and ask the Court for a ruling that the evidence in question be excluded.

The Rule in the English Case of Duncan v. Cammell, Laird[1]

The practice of the English Courts had, as Scrutton L. J. summarised in *Atkin* v. *London & North Eastern Railway Co.*,[2] been:

> to accept the statement of one of His Majesty's Ministers that production of a particular document would be against the public interest, even though the court may doubt whether any harm would be done by producing it.

In 1942 this practice was upheld by the House of Lords in *Duncan* v. *Cammell, Laird & Co.* In that case the House took the view that Courts should accept, without question or independent examination, the correctness of a Minister's certificate that it was contrary to the public interest that certain evidence be disclosed.[3] In other words, the principle laid down was that a claim of privilege by the Crown to withhold documents or other evidence from production in court was conclusive on the question of admissibility.

Before the very recent and important judgment of the House of Lords in *Conway* v. *Rimmer*, which in effect overruled the decision in *Duncan's Case*, is dealt with, it is proposed to make a broad general survey of the position of State privilege in other Common Law systems.

The Applicability of Duncan's Case to Scotland

The rule in *Duncan* v. *Cammell, Laird* was clearly intended to have uniform application to the whole of the United Kingdom. However, in *Glasgow Corporation* v. *Central Land Board*[4] the House of Lords itself held that the law in Scotland was not the same as the law in England. In the *Glasgow Corporation* case Lord Simonds said:

---

[1] [1942] AC 624; [1942] 1 All ER 587, HL.

[2] [1930] 1 KB 527; 46 Times Law Reports 172, C.A.

[3] The House of Lords did state however that the certificate should come from the Minister who was the political head of the department concerned, and that he should have considered the contents of the documents himself.

[4] [1956] H.L. (S.C.) 1.

> In the course of the present appeal we have had the advantage of an exhaustive examination of the relevant law from the earliest times, and it has left me in no doubt that there always has been and is now in the law of Scotland an inherent power of the Court to override the Crown's objection to produce documents on the ground that it would injure the public interest to do so.

State Privilege in other Commonwealth Countries

AUSTRALIA

It will be seen from the position in Australia and other Commonwealth countries that the law and practice has been different in these countries from that which obtained in England and that the rule in Duncan's case has not been accepted.

In *Robinson* v. *State of South Australia* (No. 2) [1] the facts were that the Government of South Australia had assumed the function of acquiring and marketing all wheat grown in the State and distributing the proceeds to the growers. A number of actions were brought alleging negligence in carrying out this function. The Australian Courts had upheld objections by the State to discovery of a mass of documents in their possession. In appeal the Privy Council observed that the Australian Courts were possessed of the power to inspect documents in respect of which a claim for privilege was set up in order to see whether the claim was justified and remitted the case to the Supreme Court of South Australia with a direction that it was one proper for the exercise by that Court of its power of inspection. This decision has since been followed by the Australian Courts.

NEW ZEALAND

In *Grisborne Fireboard* v. *Lunken* [2] a New Zealand court followed the decision in *Robinson's* case: and in *Corbett* v. *Social Security Commissioner and Anor*,[3] the Court of Appeal held that the Courts of New Zealand still possessed power to overrule a ministerial objection to the production of documents based on a claim of privilege if they thought it proper to do so. This power should, however, be held in reserve and not lightly exercised.

The law in regard to claims of Crown privilege before the Ombudsman in New Zealand will be dealt with later.

---

[1] [1931] AC 704; 47 TLR 454, P.C.

[2] (1936) NZLR 894.

[3] (1962) NZLR 878, see also Weeramantry, 'Digest of Judicial Decisions on the Rule of Law', *Journal* of the ICJ, Vol. VI No. 2, pp. 331-333.

CANADA

Perhaps the most important Canadian case on Crown privilege is that of *Reg.* v. *Snider* [1], which was heard by the Court of Appeal of British Colombia and concerned the refusal of a Minister to permit production of income tax returns and documents in a criminal trial. It was held there that in a criminal trial for an indictable offence, where a subpoena was served either at the instance of the Attorney General or of the accused requiring the appropriate official to produce income tax returns or documents filed with the Federal Department of National Revenue, a statement by the Minister that production would be prejudicial to the public interest would not be accepted by the Court as conclusive and the Court might require production to determine whether the facts discovered thereby would be admissible, relevant or prejudicial to the public welfare *in any justifiable sense*. The power of the Court in such a case rested on paramount public policy.

In this case, Sloan C. J., commenting on the *Cammell Laird* judgment of the House of Lords and the *Robinson* judgment of the Privy Council, observed:

> . . .the *Cammell Laird* case revolves around what it repeatedly describes as a 'practice' as to which a court must, because of some vague doctrine of public policy, tie its own hands by compulsorily accepting the mere opinion of a minister without reasons that production in court of almost anything in his department is contrary to the public welfare or public interest, and that a court is to assume that anything in a Government department is affected by some secrecy or confidence, the degree of which is for the minister alone to decide. This seems to be the nub of the *Cammel Laird* case upon which counsel for the Minister of National Revenue relied in his argument before this court. It is the point upon which the House of Lords clashed directly with the Privy Council in *Robinson* v. *State of South Australia* which had nothing to do with an Act of State or danger to the safety of the State.

INDIA

According to the recent Indian cases on State privilege,[2] when a Minister claims privilege, the Court should first hold a preliminary enquiry. In such an enquiry the Court should look into other evidence and for this purpose a Minister's affidavit which sets out the grounds of his objection to the production of the document is essential. If the Court is not satisfied with the Minister's affidavit, it may call for further affidavits to be filed. From these the Court should determine whether the evidence or documents in respect of which privilege is claimed relate to affairs of State or not.

---

[1] (1953) 2 DLR 9.

[2] See *State of Punjab* v. *Singh* AIR (1961) S.C. 493 and *Amar Chand Butail* v. *Union of India* AIR (1964) S.C. 1658.

Where the Minister refuses to state adequately the grounds of his objection, leave should be granted to the other party to have the Minister called. It will then be open to the other party to cross-examine the Minister so as to assist the Court in determining the issue.

In the case of *Governor-General-in-Council* v. *Peer Mohamed* [1] the term 'affairs of State' was defined as comprising three categories, namely;

1. Matters pertaining to national security.
2. National defence.
3. Matters relating to diplomatic relations with foreign countries.

If the documents in question are found to relate to affairs of State, the Court is obliged to uphold the claim of privilege but, if it is held that they do not, the Court can examine the documents and arrive at its own independent conclusion as to whether the claim of privilege should be upheld or not.

A special rule has been made under Article 22 of the Indian Constitution enabling the Government to claim privilege in respect of documents in cases where a detention under the Preventive Detention Act is challenged. No similar rule has, however, been made under the Defence of India Act. In *Lakhanpal* v. *Union of India* [2] the Supreme Court of India held that in the absence of such a rule under the Defence of India Act a person challenging a detention order made by the Central Government should be given an opportunity to correct or contradict the evidence on which the Government relied and should be entitled for that purpose to disclosure of materials in the possession of the Government.

Malaysia and Singapore

Section 123 of the Evidence Ordinance provides:

> No one shall be permitted to produce any unpublished official records relating to affairs of State, or to give any evidence derived therefrom, except with the permission of the officer at the head of the Department concerned, who shall give or withhold such permission as he thinks fit, subject, however, to the control of the Minister in the case of the Department of the Federal Government and of the Chief Minister in the case of a state.

and Section 124 provides:

> No public officer shall be compelled to disclose communications made to him in official confidence when he considers that the public interests would suffer by the disclosure.

---

[1] AIR (1950) Punjab 228.

[2] AIR (1967) Supreme Court 1507, see also Weeramantry, 'Digest of Judicial Decisions on the Rule of Law', *Journal* of the ICJ, Vol. IX, No. 2 pp, 121-122.

The other relevant Section is Section 162(2) of the Evidence Ordinance where it is provided:

> The court, if it sees fit, may inspect the document unless it refers to affairs of State, or take other evidence to enable it to determine on its admissibility.

On a reading of the above Sections, the position in regard to Crown or official privilege in Malaysia and Singapore appears to be that the Court can inspect documents falling under Section 124 but not documents under Section 123, that is to say it can inspect communications made by a public officer in official confidence and in respect of which it is claimed that the public interest would suffer by disclosure, but cannot inspect unpublished official records relating to affairs of State.

In the case of the latter class of documents, the head of the department concerned appears to have the absolute discretion to permit or withhold production subject however to ministerial control.

Until 1966 no case had arisen in Malaysia or Singapore in which the question of disclosure of documents in a criminal action was an important issue. In *Gurbachan Singh* v. *Public Prosecutor*,[1] however, an Appeal Court overruled the objection of the Minister of Home Affairs, made merely on grounds of principle, to the production of a file relating to a police inquiry. The Court held that since the objection was made in connection with a class of documents (as opposed to a specific document),[2] it was entitled to inspect the contents of the file. After giving careful consideration to the contents, the Court came to the conclusion that they did not substantially relate to affairs of State, nor did they give any reasonable ground for believing that the production of the file would be injurious to the public interest.

State Privilege in Ireland

In Ireland the right to claim State privilege in certain circumstances is governed by statute and there is no prerogative right enjoyed by Ministers to claim such privilege outside the specific right conferred on them by particular statutes. In *Moore* v. *the Attorney General of the Irish Free State* [3] the Supreme Court said:

> Whatever might be the position of the Queen's prerogative (even if it could be regarded as vested in a simple head of a political department of Government) if it were left as a matter of common law, it is here in these particular enactments made a matter of Parliamentary legislation, so that the prerogative is pro tanto submerged in the Statute.

---

[1] (1966) 2 Malayan Law Journal 125, see also notes on this case by Visu Sinnadurai in Malaya Law Review Vol. 9 No. 2, December 1967, pp. 355-357.

[2] This distinction between a specific document and a class of documents had been made in *Duncan* v. *Cammell Laird.*

[3] (1935) 104 LJPC 50 at p. 57.

State Privilege in the United States of America

As for the United States of America, the Courts of that country do not appear to have acquiesced in the view that they should accept, without more, a statement from the Executive that a given document is privileged.

The following observations of Vinson C. J. in *United States* v. *Reynolds* [1], indicate the approach of American judges:

> Regardless of how it is articulated, some like formula of compromise must be applied here. Judicial control over the evidence in a case cannot be abdicated to the caprice of executive officers. Yet we will not go so far as to say that the court may automatically require a complete disclosure to the judge before the claim of privilege will be accepted in any case. It may be possible to satisfy the court, from all the circumstances of the case, that there is a reasonable danger that compulsion of the evidence will expose military matters which, in the interest of national security, should not be divulged. When this is the case, the occasion for the privilege is appropriate, and the court should not jeopardise the security which the privilege is meant to protect by insisting upon an examination of the evidence, even by the judge alone, in chambers.

The South African General Law Amendment Act

In South Africa the Courts enjoyed the power to overrule an objection by the Executive that disclosure or production of official documents will be damaging or prejudicial to the public interest. As recently as 1967 the Supreme Court of the Union unanimously upheld the power of the Courts to do so.

In June 1969, however, legislation was introduced in the South African Parliament by the Minister of Justice which has radically altered the position in regard to State privilege in that country. The General Law Amendment Bill which he introduced was aimed at, inter alia, making the newly created Bureau for State Security free from judicial or executive control and responsible only to the Prime Minister for its actions. As even the Treasury is to have no control over the expenditure of this new security department, its immunity is complete now that the Bill has become law.[2]

The new Act contains provisions in the field of State privilege which undermine the principles of fair trial and judicial independence. Section 29 [3] provides that no person can be compelled, permitted or ordered to give evidence or to disclose any information or documents before a Court of law or a Statutory body if the Prime Minister, anyone authorised by him, or any other Minister certifies that the evidence, information of document in question would be prejudicial to the interests of the State or public security.

---

[1] (1953) 345 US 1, at pp. 9-10.

[2] The Bill became law on 30th June 1969.

[3] For the full text of Section 29 see above at p. 24.

A certificate from the executive is thus sufficient to exclude evidence from the Court, which will have no discretion in the matter.

There was strong opposition to the Act from several quarters — parliamentarians, bar councils, universities, the press and even from Government supporters and the pro-Government Afrikaans newspapers. Judges themselves have also spoken out in protest.

Mr Justice Marais, a sitting judge of the Transvaal Supreme Court, in sharply criticizing the Act said:

> It is not usual for judges to talk about their work outside the courts and in public. My excuse for this digression from the traditional rule is that I am worried, and have good reason to worry, about the dignity, independence and esteem of the judiciary in the present South African scheme of things.
>
> The judiciary must be given a chance to air its acute anxieties, apprehensions and fears. The Government, on its side, must be given the opportunity to produce whatever reasons it may have for wishing to introduce such extremely contentious legislation which goes against the very basic principles of our courts and our legal system.

Crown Privilege in England Today: Conway v. *Rimmer*

The results of the application of the rule in *Duncan* v. *Cammell, Laird* caused disquiet in legal circles [1] and disappointment among accused and litigants for the reason that Ministers frequently tended to claim privilege for documents, the disclosure of which, to the understanding of the average citizen, could not possibly jeopardise the public interest.

The decision in *Duncan* v. *Cammell, Laird* was understood by Government departments as meaning that, if a Minister sought to prevent any class of documents being produced in court by stating that their production was contrary to the public interest, then, whatever the documents or circumstances, the Courts must bow to the Executive: however important the documents might have been for arriving at the truth and doing justice between the parties, however flimsy the claim for privilege might have seemed, the judges were powerless to even take a look at the documents in order to arrive at an independent assessment as to whether the plea of privilege could reasonably be sustained. According to how this judgment was interpreted, they were bound to exclude the documents and endorse the claim of the Executive just as though the judges were no more than rubber stamps in the hands of Ministers.

In an article in the *Law Quarterly Review* [2] published shortly after the judgment of the House of Lords in *Duncan's* case, Professor Goodhart made the following observations:

---

[1] See 58 LQR p. 436.

[2] 58 LQR p. 436.

> It is obvious that this case raises questions of the highest constitutional importance, for if a minister can refuse to produce any documents he sees fit to claim are privileged, then the powers of the courts to do justice may be seriously curtailed if at any time the Executive should assume an arbitrary position.

Professor Goodhart's fears were not without foundation: in 1953 the Court of Appeal,[1] expressing disquiet at the frequent claims of privilege by Ministers, observed that in the interests of justice documents coming within the ambit of privilege should be most carefully scrutinised and that the Minister responsible should consider whether the harm done to the public interest by disclosure was sufficient to outweigh the prejudice to a plaintiff's case if that evidence were shut out.

As a concession to the discontent on this subject, the Lord Chancellor [2] in 1956 enunciated in the House of Lords the principles of policy which Ministers should follow in the future when deciding whether or not to claim privilege: privilege should no longer be claimed in respect of certain matters; for example, reports on accidents on the road or accidents on government premises or involving government employees, for medical reports on certain employees or when a doctor (or the Crown) is sued for negligence and for documents needed by the defence on a criminal charge. In 1962 the Lord Chancellor again made similar concessions. The 1956 and 1962 concessions, though valuable, left untouched the underlying defect in the situation in regard to Crown privilege, namely that the Courts had blindly to accept Ministers' claims of privilege.

In Conway v. *Rimmer and Another* [3] the House of Lords, while recognising that *Duncan* v. *Cammell Laird* was rightly decided on its facts, finally swept away the doctrine that a claim of privilege by the Crown was conclusive and binding on the Courts. The House unanimously decided that the Courts have inherent power to override a Minister's objection to the production of a document and thus brought English law into line with the law in Scotland and other Common Law systems.

Lord Reid, in his judgment, set out the distinction between the objection to the production of a particular document and the objection to the production of a class of documents. In the first case, however wide a Court's power, it would not normally be proper for it to question the Minister's view on the contents of a particular document, unless perhaps the innocuous parts could be separated from those which should not be made public.

---

[1] In *Ellis* v. *Home Office* [1953] 2 QB 135.

[2] The Lord Chancellor is head of the Judiciary and, when he sits, presides in the Judicial Committee of the House of Lords. He is also a Cabinet Minister, and it was clearly in his *executive* capacity that this statement was made.

[3] [1968] 2 WLR 998; [1968] 1 All ER 874, HL, E.

But the question to be considered in *Conway* v. *Rimmer* was the objection to the production of a document because it belonged to a class which in the Minister's opinion ought to be withheld. Non-disclosure of 'class documents ' was justified when this was essential to national security or ' necessary for the proper functioning of the public service '.

The English Courts, however, did not have to accept the Minister's certificate to this effect. They had a power and duty to hold a balance between the public interest, as expressed by a Minister, to withhold certain documents or other evidence, and the public interest in ensuring the proper administration of justice. That did not mean that a Court would reject a Minister's view; full weight must be given to it in every case, and if the Minister's reasons were of a character which judicial experience was not competent to weigh, the Minister's view must prevail. But the reasons given for withholding whole classes of documents were often not of that character.

Certain classes of documents ought not to be disclosed whatever their content. Examples given were Cabinet minutes and similar documents and documents concerned with policy-making within departments, including minutes and the like by junior officials and correspondence with outside bodies. It was not however possible to limit such documents by any definition.

The relevant documents in *Conway* v. *Rimmer* were four probationary reports on a police constable and one inter-departmental report on him. Their disclosure was objected to on the ground that the four (probationary reports) were within a class of documents comprising 'confidential reports by police officers to chief officers of police relating to the conduct, efficiency and fitness for employment of individual officers under their command', and that the fifth fell within a class comprising 'reports by police officers to their superiors concerning investigations into the commission of crime'.

The House of Lords felt it improbable that their disclosure would be injurious to the public interest. They decided that the documents should be produced for their private inspection and that they would then consider whether or not disclosure should be ordered.

The judgment in *Conway* v. *Rimmer* is of vital importance, because it set right the most unsatisfactory situation relating to Crown privilege which the judgment in Duncan's case had created, it unified the law relating to Crown privilege in Common Law systems and, most of all, it represented a great advance in the field of the individual's right to a fair hearing.

State Privilege in other Legal Systems

The position in regard to official documents in Sweden is exceptional. An Ordinance passed as far back as 1766 established the principle that all documents from which Government officials make their decisions are public. Not only interested parties, but also any

citizen who wishes to consult them and even the press have access to them. The availability of these documents to the public at large allows anyone to check whether administrative rulings have been made on sufficient grounds. It also enables reckless or bureaucratic patterns of administrative action to be more readily discerned and criticised than in other countries. The right to inspection of official documents extends even to papers bearing upon matters still under consideration. The Courts, Administrative Tribunals, Commissions of Inquiry and the Ombudsman have therefore no problem of access to public documents and claims of State privilege in respect of them will not be entertained.

There are, however, several significant exceptions to this law; one is that papers dealing with a person's private life are not available to the public, neither are papers in respect of which there exist special provisions relating to secrecy. But there is a wide range of freedom, even in the case of the latter class of documents, for the individual to acquaint himself with such of them as are relevant to a matter which concerns or interests him.

There is another de facto limitation on the privilege of checking official actions, for, even given the chance to go through the relevant papers, the average citizen is hardly qualified to judge whether or not a particular ruling is legal. There therefore arose the need for another means to supervise administrative actions in addition to what the citizens themselves could do. This was the origin of the Swedish institution of the Ombudsman.[1]

The Ombudsman

In order to understand how the Ombudsman can assist the citizen in ventilating his grievances against the administration in a manner in which no other institution in Sweden can perhaps do, it is necessary to know something about the origin of the office and the purpose for which it was created.

The office of Ombudsman was first established in Sweden in 1809 and sprang from discussions in the Parliamentary Committee which drafted a new Constitution in that year. In regard to the new office the Parliamentary Committee pronounced that the general and personal rights of the individual should be protected by a guardian appointed by Parliament who should keep a watch over how judges and other officials observed the laws. Thus the office is primarily intended to guarantee the civil rights of the individual and to protect them against uncontrolled exercise or abuse of executive power.

Ever since its creation, the office has never been used to further political interests, and political interests have hardly influenced the election of Ombudsmen. On the contrary, political parties have always tried and generally succeeded in uniting in the selection of suitable Ombudsmen.

[1] See Rowat, *The Ombudsman — Citizen's Defender* (1965) pp. 23 & 24 and Gellhorn, *Ombudsman and Others* (1967) p. 200.

The Ombudsman is not given, nor will he accept, any direction as to which cases he should investigate. He is completely independent of Parliament and this is a factor that has won for the office the confidence of the general public.[1]

Most of the Ombudsmen's decisions are given in cases where the complaints have been made by private citizens. Everyone can complain to the Ombudsman and the matter complained of need not even concern the complainant personally. It is not necessary to employ a lawyer in order to take a complaint to the Ombudsman. The first step which the Ombudsman would take in handling a complaint against the administration, which does not on the face of it appear to be unjustified, is to request the Government department concerned to furnish him with the documents relevant to the complaint. It is often possible to judge from the documents themselves whether there is sufficient cause for the complaint. If the complaint sets out sufficient grounds in its support, or if the relevant documents do not show that the complaint lacks foundation, the Ombudsman will generally demand an explanation in writing from the authority or official concerned.[2]

The Ombudsman has even supervisory control over the courts of law. He cannot change a decision already given by the Court or an administrative agency. But he has an investigatory power that includes the authority to ask all officials for assistance. Thus, all public officials and judges must give him the documentary information he asks for. The Ombudsman has access to all files and minutes of Courts and agencies, even if they be secret ones. He has even the right to be present at all deliberations at which judges or administrative officers make their rulings.

The Ombudsman in Sweden will not entertain claims of State privilege in respect of official documents except in the case of documents which come under well defined exceptions. He can protect the interests of the public against abuse of administrative power more effectively than the Courts themselves because, where necessary, he calls for official documents on his own initiative and does not, unlike the Courts, have to wait until an application is made before him by an interested party for the production of State or official documents. In practice, all public departments do not hesitate to furnish the Ombudsman with such documents as he requires for a proper determination of the complaint he is dealing with. No privilege attaches to his own files, which, together with the documents on which his findings are based, are open to public inspection.

---

[1] See *The Ombudsman* by Alfred Bexelius — paper prepared for the United Nations Seminar on the Effective Realisation of Civil and Political Rights at the National Level at Kingston, Jamaica, 25 April - 8 May 1967.

[2] See 'The Ombudsman or Citizen's Defender: A Modern Institution', *The Annals of the American Academy of Political and Social Science*, Vol. 377, May 1968, pp. 15-16.

The Ombudsman's Right to Inspect Official Documents in Other Countries

DENMARK

In Denmark, unlike in Sweden, there is no sweeping requirement that the files of official bodies be open to inspection by the general public. The relevant statutes and directives under which the Ombudsman functions imposes an obligation on all public officials to furnish information and to produce such documents or records as he may call for in the performance of his function.

Whether, however, the Ombudsman has the right to order the production of the internal administrative memoranda and records of a Ministry is not clear. Although some Ministries have in fact submitted such memoranda or records to the Ombudsman, members of the Ombudsman's staff themselves have expressed doubts as to whether their production could be compelled and the matter yet remains to be decided. In the case of 'secret' documents relating to military or foreign affairs, a member of the Ombudsman's staff has been given 'top secret clearance' so that relevant documents may be consulted by him whenever he considers it necessary to dc so in order to arrive at a just finding on a citizen's complaint.

NORWAY

In Norway Section 7 of the Government Statute empowers the Ombudsman to 'demand information necessary for the performance of his duties from government appointees and officials and from any other persons in the service of the government. Similarly, he can demand the presentation of records and other documents'. The records and documents referred to in this Section do not include staff memoranda and similar documents meant for internal circulation. The administration retains control over such documents in order to encourage candour in communications between subordinates and superiors. Although the Ministry of Social Affairs, as a matter of practice, regularly sends its entire file to the Ombudsman whenever the latter calls for documentary material, it does so as a matter of courtesy and takes up the same position as the other Ministries that the Ombudsman has no right to see internal working papers. Whenever a complaint is received in a government department it is firstly registered and then passed on to the Ombudsman for his information; it then goes to the head of the department, who assigns it to one of the staff lawyers. A staff lawyer can, in his discretion, request that relevant administrative documents be sent to the Ombudsman for examination.

FINLAND

In Finland, although by virtue of the Finnish Official Documents Act of 1951 the Ombudsman's own documents including those sub-

mitted to him — like those of the Chancellor — are open to public inspection, he does not himself have the same sweeping right as the Ombudsman of Sweden to demand the production of all official documents.

New Zealand

In regard to official documents, the reach of the Ombudsman in New Zealand is even longer than that of the Courts.

Under Section 16 of the Act which sets up a Parliamentary Commissioner [1] (Ombudsman) for New Zealand, the Ombudsman may require 'any person' to produce before him any relevant 'documents or papers or things. . .which may be in the possession or under the control of that person'. The only circumstances under which a valid objection may be taken to the production of documents before the Ombudsman are those provided for by Section 17, which says that

> the Attorney General may certify that information or documents need not be supplied if they might, by being produced, endanger security, defence or internal relations, or if they might reveal cabinet proceedings or confidential proceedings of a cabinet committee.

Only when the Attorney General so certifies, is the Ombudsman not to press for that information.

It must be noted that these wide powers were not conferred on the Ombudsman without difficulty in resolving several objections raised by Ministers and officials during the course of the drafting of the Act. These objections were largely based on the feeling that many public servants had that any examination of files, internal working papers and minutes, by an outsider, would gravely impair efficiency and candour in inter-departmental communications.

Acting under the wide powers conferred on him under the Act, the Ombudsman can and does regularly request even entire official files to be turned over to him in the course of his investigations. It is refreshing to note that many public officials are now of the view that the Ombudsman's right of access to informal staff notes and other internal documents has not had the adverse effects which were originally feared.

United Kingdom [2]

In the United Kingdom the question of the Parliamentary Commissioner's access to files and documents is hampered by the belief that freedom and candour of communication within the public service

[1] Act No. 10 of 1962.

[2] For the sake of convenience, the question of State privilege and the Parliamentary Commissioners in New Zealand and the UK is dealt with in this part of the study.

can only be preserved by a guarantee of privacy for internal minutes. However, in the light of the recent judgment of the House of Lords in *Conway* v. *Rimmer*, a change of approach can be expected.

The State Management Agency of Japan

By a Statute of 1948 an Administrative Management Agency was created in Japan with the object of examining the operation of administrative organs and their agencies or subsidiaries. The Director General of the Agency is a member of the Cabinet and is given wide powers of investigation. The primary task of the Agency is to ensure that government affairs are conducted efficiently and according to law. Therefore, through its Inspection Bureau, it inspects various phases of administrative activity and recommends to the appropriate authorities necessary improvements in organisation or procedure.

It is through the Administrative Inspection Bureau that efforts are made to adjust difficulties between citizens and officials by informal means.

The Administrative Management Agency Act 1948 [1] empowers the Director General to call upon government departments for such data and explanations as he may deem necessary. He can call for reports on steps taken to comply with advice given following an inspection by the Bureau.

One problem in Japan has been that many Japanese officials are even less ready than their Western counterparts to permit examination of government files and official documents. Even in regard to public records, little attention has been so far paid to the question of making them accessible to the public. There is no provision in law which comes anywhere close to the Swedish principle that public business be done publicly. In this state of affairs, the Administrative Management Agency has despite its undoubtedly good work many difficulties to contend with, and claims of State privilege raised by officials often preclude the Inspection Bureau from clearing unfounded suspicions that frequently arise that administrative decisions are influenced by politics or extraneous considerations.

The Right of the Procurator General to Inspect Official Documents

The Procuracy is an institution peculiar to the Soviet Union and the communist countries of Eastern Europe. The office of the Procurator is administered by the Procurator General who is chosen by Parliament and is independent of the Executive and the Judiciary but, as in the case of all State organs in communist countries, he is subject to direction by the communist party. The Procurators in charge of different regions, districts or cities are appointed by the Procurator General.

[1] In Section 4.

The institution of the Procuracy combines the function of prosecuting in criminal cases and that of supervising the acts of public servants. In performing this latter function, the Procurator can enquire into complaints of violation of legality against Ministers, the central and local organs of State administration, the law enforcement authorities, the Courts, public servants and even individual citizens.

The powers of the Procurator to call for and inspect official documents are of great importance in as much as a citizen in a socialist country cannot generally challenge an administrative act or executive decision himself by recourse to Courts of law or appeal machinery, but must necessarily lodge his complaint with the Procurator. In Yugoslavia, however, a Constitutional Court was established in 1964 and in some other socialist countries recent legislation has made it possible in certain exceptional circumstances for a citizen to take his grievances against the administration to the ordinary Courts.

Where the Procurator finds, after investigation, that there has been a violation of legality, he would refer the matter to the competent State organ for redress. The State organ is then expected to communicate the steps it takes to the Procurator.

Soviet Union

Procurators in the Soviet Union have the power to demand, and State officials are under a duty to produce, all documents which have a bearing on an investigation into legality. They have 'unlimited access' to documents, can conduct personal interviews with detained persons and can hear independent testimony. The position is more or less the same in other socialist countries.

France: The Decision of the Conseil d'Etat in l'Arrêt Barel [1]

The French Courts, and particularly the *Conseil d'Etat*, which is the highest Administrative Court in the land, draw a distinction between State documents, the production of which would endanger the security of the State, and other State documents. The position as to claims of State privilege in respect of official State documents other than those whose production would be likely to endanger the security of the State is now governed by the celebrated decision of the *Conseil d'Etat* delivered on May 28, 1954, in l'*Arrêt Barel.*

The facts of that case were these: in order to enter the higher grades of the French civil service, it was necessary to pass through the *Ecole Nationale d'Administration.* Entry to the *Ecole* was on the results of a competitive examination. Prospective candidates were required to give notice of their wish to be included on a list of candidates for the

[1] C.E. May 28, 1954, *Receuil* 308, conclusions Maxime Letourneur.

examination which was prepared and signed by the relevant authority. Because the *Ecole* was inter-departmental, it was provided by law [1] that these necessary preliminaries be attended to not by a departmental Minister, but by the Prime Minister himself.

For the 1953 examination, the Prime Minister had delegated his functions to the Secretary of State attached to his office. Five prospective candidates, who were notified that the Secretary of State, after considering their dossiers, had refused to include them on the list of candidates, made an application to the *Conseil d'Etat* challenging the Secretary of State's decision. They alleged that their exclusion had been for political reasons, namely that the Secretary of State believed them to be communists. The applicants argued that, while the Secretary of State was entitled under the law in question to screen candidates for the examination for admission to the *Ecole*, the object of the law was to ensure that the candidates had the qualities necessary for holding public office. He could not exclude a candidate purely on the ground of his political opinion without offending against the principle of equality of access, which all French citizens enjoy, to public employment and public office.

The *Section du Contentieux* [2] was satisfied that the five applicants had made out a prima facie case and directed the Secretary of State to produce the dossiers and documents relating to them immediately. In the case of two of the candidates, the Secretary of State did not produce the dossiers called for. In the case of the other three, he merely replied by stating that his decisions had been based on the papers, reports and documents relating to them taken as a whole.

The *Section du Contentieux* held that as he had failed to produce the documents called for, he had failed to rebut the presumption that the applicants had been excluded purely on account of their political opinions, and that therefore the applicants' allegations concerning the motive for their exclusion must be deemed to have been established. Since the Secretary of State had no power to exclude the candidates on account of their political opinions, his decisions were annulled as being in excess of power.

In this case the *Section du Contentieux* took the view that the Secretary of State could not simply refuse to disclose the dossiers in question on the ground of the public interest. The *Conseil d'Etat* was entitled to examine the documents in the dossiers in order to satisfy itself as to the *real* reason underlying the decisions taken.

The juridical aspects of the decision in l'*Arrêt Barel* are as important as the political. In effect, it refused to recognize the right of the Executive to claim State privilege in such circumstances as those in that case, it clearly defined the limits of the discretionary power of the Executive

[1] Decree of October 9, 1945, as amended by that of January 13, 1950.
[2] The Judicial Division of the *Conseil d'Etat*.

and it upheld the power of an administrative judge to inspect documents and arrive at an independent finding as to the justification for an executive decision.

It is important to note that in a case similar to l'*Arrêt Barel* (in *re. Vicat-Blanc*,[1] decided on May 6, 1959) the Administrative Tribunal of Paris went even further. In that case the applicant could not make out a sufficiently strong prima facie case. Yet the Tribunal called for the production of the dossier and on failure of the administration to comply annulled the decision challenged. The decision of the Tribunal was confirmed by the *Conseil d'Etat.*

Reference must also be made to another important French case, *Secrétaire d'Etat de la Guerre* v. *Coulon*,[2] which related to documents in respect of which the Secretary of State claimed privilege on the ground that they related to national security. The Court held that even if its power to call for inspection did not extend to such documents, the judge can nevertheless draw adverse inferences against the Administration on the basis of its silence or lack of cooperation.

Space does not permit a more comprehensive global survey of the law and practice on Crown or State privilege; but when one looks at the Common Law and Civil Law systems dealt with one notices everywhere a definite progressive trend towards whittling down State privilege in the interests of the fundamental rights of the individual. The glaring exception is South Africa, where the General Law Amendment Act has elevated State privilege in that country to an absolute which cannot be questioned in a Court of law. One can only hope that even at this stage the Government will take a second look at the dangerous implications of this new law.

Of the cases examined in this article, two stand out in bold relief, the Common Law case of *Conway* v. *Rimmer* and the Civil Law *Arrêt Barel.* While *Conway* v. *Rimmer* represented a distinct improvement on the *Duncan* doctrine it nevertheless did not go as far as l'*Arrêt Barel,* decided by the French *Conseil d'Etat* fourteen years earlier. One sees that in subsequent cases the French Courts have gone even further than in l'*Arrêt Barel* to protect individual rights against the consequences of State privilege. One can be confident that similarly *Conway* v. *Rimmer* will not remain the climax of earlier developments in the Common Law approach to Crown privilege, but will provide the basis for further liberal advances.

---

[1] Administrative Tribunal of Paris, A.J. 1959. II. 360. *Conseil d'Etat* decision of 21st December 1960.

[2] C.E. 11 March 1965, *Receuil* 150.

THE UNITED STATES SUPREME COURT ON FUNDAMENTAL RIGHTS AND THE REQUIREMENTS OF DISCIPLINE

by

L. G. WEERAMANTRY *

In the last issue of *The Review* two important Swiss decisions construing fundamental rights were discussed. It is proposed now to deal with three recent decisions of the Supreme Court of the United States of America where problems of the exercise of an individual's basic rights arose under conditions which tend to restrict some of these rights such as government employment, institutional learning and military service. The first two cases, which relate to a teacher and three public school pupils respectively, are concerned with their right to freedom of expression. The third case, which relates to a serviceman, concerns itself with the extent to which the curtailment of his right to trial by a civilian court can be justified in the interests of army discipline. This last case is rendered more interesting by reason of the fact that on June 19, 1969 President Nixon approved an Executive Order designed to extend many of the legal rights guaranteed to civilians to US military men in all but combat situations.

FREEDOM OF PUBLIC COMMENT

Right of Teacher to Criticize Policy and Action of Board of Education

The case of *Pickering* v. *The Board of Education of Township High School District 205, Will County*, is both interesting and important in that it deals with the extent to which a public servant can criticize or comment on the administration of the controlling body of his own

* B.A. (London); Advocate, Ceylon Bar; of Gray's Inn, Barrister-at-Law; Senior Legal Officer, International Commission of Jurists.

Department. The public comment made by the appellant in this case was comment which any member of the general public could certainly have made in the exercise of his right to freedom of speech; but the question here was whether the appellant himself was precluded from making these comments by virtue of his position as an employee.

The appellant, a teacher, was dismissed by the Board of Education for publishing in a newspaper a letter criticizing the manner in which the Board allocated school funds between educational and athletic programmes and the methods it employed of informing the School District's taxpayers of the reasons why additional revenues were required for the schools.

At a departmental hearing the Board found that several statements in the appellant's letter were false and that the publication of these statements unjustifiably impugned the Board and the School Administration. It then concluded that the publication of the letter was ' detrimental to the efficient operation and administration of the schools of the District ' and that under the applicable Statute the interests of the school required the appellant's dismissal. No evidence was led at the hearing as to the actual effect of the appellant's statements on the community or on the school administration.

The appellant then appealed against his dismissal to the Supreme Court of Illinois, which dismissed the appeal on the ground that the Board's conclusion that the publication was detrimental to the interests of the school was reasonable. The Court also rejected the appellant's claim that the letter was protected by the First and Fourteenth Amendments, on the ground that as a teacher he had to refrain from making statements on the school's operation 'which in the absence of such position he would have an undoubted right to engage in'.

The appellant then appealed to the Supreme Court of the United States, which reversed the decision of the Supreme Court of Illinois. Mr Justice Marshall, who delivered the opinion of the Court, held: 1. The theory that public employment could be subjected to any conditions regardless of how unreasonable they were, has been uniformly rejected.[1] A teacher's interest as a citizen in commenting upon matters of public concern and the interests of the State as an employer in promoting the efficiency of the public services it performs through its employees must be balanced against each other. 2. Those of the appellant's statements which were substantially correct related to matters of public concern. They were in no way directed towards any person with whom the appellant would normally be in contact in the course of his daily work as a teacher. Thus no question of maintaining either discipline by immediate superiors or harmony among co-workers arose. Those statements therefore afforded no proper basis for the appellant's dismissal. 3. Those of the appellant's statements which were

[1] See *Keyishian* v. *Board of Regents*, 385 U.S. 589 at pp. 605-606 (1967).

false also concerned issues then currently the subject of public interest. They were neither shown nor could they be presumed to have interfered with the appellant's performance of his teaching duties or the general running of the school. They were thus entitled to the same protection that they would have received had they been made by a member of the general public, and, in the absence of proof that these false statements were knowingly or recklessly made, the Board was not justified in dismissing the appellant from the public service.

Supreme Court of the United States of America

PICKERING v. *THE BOARD OF EDUCATION OF TOWNSHIP HIGH SCHOOL, DISTRICT 205 WILL COUNTY*

Decided: 3 June 1968

391 US 563

FREEDOM OF EXPRESSION OF OPINION

Protest by Public School Pupils against the Government's Policy in Vietnam

A group of adults and students, determined to publicize their objection to the hostilities in Vietnam, held a meeting in December 1965 at which it was decided that they should indicate their attitude towards the hostilities and their support for a truce by wearing black armbands over a certain period and by fasting on December 16 and New Year's Eve. The three petitioners in this case, who were students in Des Moines Schools, were members of this group.

The principals of the Des Moines Schools became aware of the plan to wear armbands. They jointly decided that any student wearing an armband at school would be asked to remove it, and if he refused he would be suspended until he returned without it. Accordingly, when the petitioners came to school wearing armbands, they were all suspended. They did not return to school until after the planned period for wearing armbands had expired, that is, until after New Year's Day.

The petitioners filed complaint through their fathers in the United States District Court, praying for an injunction restraining the respondent school officials and members of the Board of Directors from disciplining the petitioners and claimed nominal damages. The District Court upheld the constitutionality of the school authorities' action on the ground that it was reasonable in order to prevent disturbance of school discipline. On appeal, the Court of Appeals was equally divided and the District Court's decision was accordingly affirmed without opinion.

An application by the petitioners to the Supreme Court of the United States for a writ of *certiorari* on the Court of Appeals was however successful. Mr Justice Fortas, who delivered the opinion of the Court, made the following points in allowing the petition: 1. The wearing of armbands in the circumstances of this case was entirely

divorced from actually or potentially disruptive conduct by those participating in it. The petitioners were quiet and impassive and did not impinge upon the rights of others. Their conduct was closely akin to 'pure speech' and was entitled to the protection of the Free Speech Clause of the First Amendment and the Due Process Clause of the Fourteenth. 2. First Amendment rights are available to teachers and students, subject to application in the light of the special characteristics of the school environment. It could hardly be argued that either students or teachers shed their constitutional right to freedom of speech or expression at the schoolhouse gate. 3. A prohibition against expression of opinion, without any evidence that such prohibition is necessary to avoid substantial interference with school discipline or the rights of others, cannot be permitted under the First and Fourteenth Amendments.

Supreme Court of the United States of America

TINKER ET AL. v. *DES MOINES INDEPENDENT COMMUNITY SCHOOL DISTRICT ET AL.*

Decided: 24 February 1969

393 US 503

RIGHT TO TRIAL BY CIVILIAN COURT

When Servicemen charged with Criminal Offences should be tried by Civilian Courts

O'Callahan, an army sergeant, while off duty broke into the hotel room of a teenage girl on Waikiki Beach. A scuffle ensued. The girl screamed and O'Callahan fled. He was later arrested by the Hawaian civilian police, who turned him over to the military for prosecution.

O'Callahan had to face a court martial, where he was charged with housebreaking, assault and attempted rape. He was convicted and sentenced to ten years rigorous imprisonment, a harsher penalty than a civilian court would have normally imposed.

The Supreme Court of the United States, however, quashed the conviction [1] and indicated that the military's jurisdiction over such civilian crimes would henceforth be severely limited. A five to three majority ruled that, unless the alleged offence was' service-connected ', an accused serviceman could not be deprived of his constitutional rights to a grand jury proceeding and a trial by a jury of his peers. Justice Douglas, who wrote the majority judgment, observed that 'there is no connection—not even the remotest one—between his military duties and the crime in question' and suggested that it was high time for the military to divorce itself entirely from purely civilian problems. He argued that US military courts consistently dispensed an

[1] By reason of this judgment O'Callahan was freed before completing the last few months of his military sentence.

inferior brand of justice, for, at courts martial men were tried by panels usually composed of officers, who reached their verdict by a two-third vote, and not by a jury, whose verdict must nearly always be unanimous. He also pointed out that The Uniform Code of Military Justice continued to be primarily an instrument of discipline and not of justice. The system was 'marked by the age-old manifest destiny of retributive justice' and was 'singularly inept in dealing with the nice subtleties of Constitutional Law'. 'History teaches,' he said, 'that expansion of military discipline beyond its proper domain carries with it a threat to liberty.'

Justices Potter Stewart, White and Harlan, in a dissenting opinion, argued that the military had the right to purge criminals whose attitudes might corrupt others in the ranks.

The opinion of the Court in this case establishes a strong precedent for future wider Federal Court review of the jurisdiction and competence of military tribunals.[1]

The Executive Order approved by President Nixon, to which reference has already been made in the introductory paragraph, is aimed at up-dating the military court system to meet the requirements of the Military Justice Act of 1968 and seeks to give effect to recent rulings of the Federal Supreme Court involving the military. One of the most important of legal rights guaranteed to civilians which the new Order extends to all servicemen is the right to counsel, except in extreme cases such as combat, where a lawyer cannot be obtained owing to the physical conditions or military exigencies. Under the Order, members of courts martial, military judges and defence counsel will be protected from any influence that might be exercised by other military personnel, since reference to their performance in court will no longer be included in their fitness for promotion reports. The independence of military boards and judges will thus be strengthened and counsel will be able to exercise their functions freely.[2]

It would seem that this Executive Order is intended to give practical effect to the growing opposition of the courts and the public to encroachments by the military on the fundamental rights of US citizens.

Supreme Court of the United States of America

O'CALLAHAN v. *THE UNITED STATES*

Decided: 6 June 1969

[1] On June 26, 1969, the U.S. Court of Appeals gave a ruling setting strict new constitutional standards for military trials and broadening the authority of civilian courts to enforce them. The Court observed that 'the test of fairness requires that military rulings on constitutional issues conform to Supreme Court standards, unless it is shown that conditions peculiar to military life require a different rule'. Convicted persons who felt that the proceedings did not conform to those standards could appeal against the convictions to federal civilian courts, the ruling added. (In re Captain Kauffmann.)

[2] The Executive Order has no retrospective effect and any court martial or trial begun prior to August 1 will be conducted under the old rules.

Middle East—Palestinian Refugees Recent UN Resolutions

The two United Nations resolutions set out below, relating to the alarming refugee problem in the Middle East, are among those dealt with more fully in the study 'The Middle East: War or Peace' pp. 10 - 14 above.

S/Res. 237 (1967)

Resolution adopted by

THE SECURITY COUNCIL

14th June 1967

THE SECURITY COUNCIL

CONSIDERING the urgent need to spare the civil populations and the prisoners of the war in the area of conflict in the Middle East additional sufferings,

CONSIDERING that essential and inalienable human rights should be respected even during the vicissitudes of war,

CONSIDERING that all the obligations of the Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949 should be complied with by the parties involved in the conflict,

1. CALLS UPON the Government of Israel to ensure the safety, welfare and security of the inhabitants of the areas where military operations have taken place and to facilitate the return of those inhabitants who have fled the areas since the outbreak of hostilities;

2. RECOMMENDS to the Governments concerned the scrupulous respect of the humanitarian principles governing the treatment of prisoners of war and the protection of civilian persons in time of war, contained in the Geneva Conventions of 12 August 1949;

3. REQUESTS the Secretary-General to follow the effective implementation of this resolution and to report to the Security Council.

Resolution adopted unanimously.

A/Res.2452 (XXIII)

Report of the Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East

Resolutions adopted by

THE GENERAL ASSEMBLY (23rd REGULAR SESSION)

19th December 1968

A

THE GENERAL ASSEMBLY

RECALLING Security Council resolution 237 (1967) of 14 June 1967,

REAFFIRMING its resolution 2252 (ES-V) of 4 July 1967,

TAKING NOTE of the appeal made by the Secretary-General in the Special Political Committee on 11 November 1968,

CONVINCED that the plight of the displaced persons could best be relieved by their speedy return to their homes and to the camps which they formerly occupied,

EMPHASIZING, consequently, the requirement for their speedy return,

1. CALLS UPON the Government of Israel to take effective and immediate steps for the return without delay of those inhabitants who have fled the areas since the outbreak of hostilities;

2. REQUESTS the Secretary-General to follow the effective implementation of the present resolution and to report thereon to the General Assembly

---

Adopted by 101 votes in favour, 1 against and 6 abstentions.

B

THE GENERAL ASSEMBLY

RECALLING its resolutions 194 (III) of 11 December 1948, 302 (IV) of 8 December 1949, 393 (V) and 394 (V) of 2 and 14 December 1950, 512 (VI) and 513 (VI) of 26 January 1952, 614 (VII) of 6 November 1952, 720 (VIII) of 27 November 1953, 818 (IX) of 4 December 1954, 916 (X) of 3 December 1955, 1018 (XI) of 28 February 1957, 1191 (XII) of 12 December 1957, 1315 (XIII) of 12 December 1958, 1456 (XIV) of 9 December 1959, 1604 (XV) of 21 April 1961, 1725 (XVI) of 20 December 1961, 1856 (XVII) of 20 December 1962, 1912 (XVIII) of 3 December 1963, 2002 (XIX) of 10 February 1965, 2052 (XX) of 15 December 1965, 2154 (XXI) of 17 November 1966 and 2341 (XXII) of 19 December 1967.

NOTING the annual report of the Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, covering the period from 1 July 1967 to 30 June 1968,

1. NOTES WITH DEEP REGRET that repatriation or compensation of the refugees as provided for in paragraph 11 of General Assembly resolution 194 (III) has not been effected, that no substantial progress has been made in the programme endorsed in paragraph 2 of resolution 513 (VI) for the reintegration of refugees either by repatriation or resettlement and that, therefore, the situation of the refugees continues to be a matter of serious concern;

2. EXPRESSES ITS THANKS to the Commissioner-General and the staff of the United Nations Relief and Works Agency for Palestine Refugees in the Near East for their continued faithful efforts to provide essential services for the Palestine refugees, and to the specialized agencies and private organizations for their valuable work in assisting the refugees;

3. DIRECTS the Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East to continue his efforts in taking such measures, including rectification of the relief rolls, as to assure, in co-operation with the Governments concerned, the most equitable distribution of relief based on need;

4. NOTES WITH REGRET that the United Nations Conciliation Commission for Palestine was unable to find a means of achieving progress in the implementation of paragraph 11 of General Assembly resolution 194 (III), and requests the Commission to exert continued efforts towards the implementation thereof;

5. DIRECTS ATTENTION to the continuing critical financial position of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, as outlined in the Commissioner-General's report;

6. NOTES WITH CONCERN that, despite the commendable and successful efforts of the Commissioner-General to collect additional contributions to help relieve the serious budget deficit of the past year, contributions to the United Nations Relief and Works Agency for Palestine Refugees in the Near East continue to fall short of the funds needed to cover essential budget requirements;

7. CALLS UPON all Governments as a matter of urgency to make the most generous efforts possible to meet the anticipated needs of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, particularly in the light of the budgetary deficit projected in the Commissioner-General's report, and therefore urges non-contributing Governments to contribute and contributing Governments to consider increasing their contributions;

8. DECIDES to extend until 30 June 1972, without prejudice to the provisions of paragraph 11 of General Assembly resolution 194 (III), the mandate of the United Nations Relief and Works Agency for Palestine Refugees in the Near East.

Adopted by 105 votes in favour, none against and 3 abstentions.

C

THE GENERAL ASSEMBLY,

RECALLING its resolutions 2252 (ES-V) of 4 July 1967 and 2341 B (XXII) of 19 December 1967,

TAKING NOTE of the annual report of the Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East covering the period from 1 July 1967 to 30 June 1968,

TAKING NOTE ALSO of the appeal made by the Secretary-General in the Special Political Committee on 11 November 1968,

CONCERNED about the continued human suffering as a result of the June 1967 hostilities in the Middle East,

1. REAFFIRMS its resolutions 2252 (ES-V) and 2341 B (XXII);

2. ENDORSES, bearing in mind the objectives of those resolutions, the efforts of the Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East to continue to provide humanitarian assistance, as far as practicable, on an emergency basis and as a temporary measure, to other persons in the area who are at present displaced and are in serious need of continued assistance as a result of the June 1967 hostilities;

3. STRONGLY APPEALS to all Governments and to organizations and individuals to contribute generously for the above purposes to the United Nations Relief and Works Agency for Palestine Refugees in the Near East and to the other intergovernmental and non-governmental organizations concerned.

Adopted by 106 votes in favour, none against and no abstentions

---

ICJ News

Charles G. Raphael

The International Commission of Jurists is profoundly grieved to learn of the death of Charles G. Raphael of New York City, who died suddenly in Chigaco, Illinois, while attending a meeting of the United Greek Orthodox Charities. Mr Raphael was the Special Representative of the ICJ to the American Association for the ICJ and also was the representative of the ICJ at the Economic and Social Council of the United Nations. He was prominently identified with a proposed project for the holding of a world conference of church leaders on religion and peace which is planned to take place in Kyoto, Japan in 1970. The loss of his services will be gravely felt.

Mr Raphael was born in Smyrna, Turkey, and later went to the US, where he graduated from Williams College and Harvard Law School. His wide interest in legal matters, humanitarian organizations, and religious institutions can be seen through the numerous positions that he held: attorney in the US Department of Justice; special counsel to the Board of Economic Warfare; legal advisor to the United Nations National Relief Administration Mission to Greece; President of the Hellenic-American Chamber of Commerce; and President of the Near East College Foundation. He was presently the Vice-President of the National Council of Churches, the Vice-President of the Consular Law Society, and a member of the Archdiocesan Council of the Greek Church of North and South America.

Charles Raphael was a man greatly respected and admired whose kindness and warm personality created friends wherever he went. His deep concern for people and his intense desire to better the life of the individual was evident in all his activities. His death will be a severe loss not only to the Commission but also to everyone who knew him.

We extend our most sincere condolences to his daughter, Mary Frances Dunham; to his son, Christopher Childs Raphael; and to his brother, sister and five grandchildren.

NATIONAL SECTIONS

Of the many activities of the Australian Section over the last two years, culminating in its Biennial General Meeting held on 19th July this year, mention could be made of the close interest that the Section has shown in the events surrounding West Irian's 'Act of Free Choice'. Mr W.H. Nicholas, one of the Hon. Assistant Secretaries, visited the border between West Irian and Papua & New Guinea to gain first-hand information. The second Number of 'Justice', the Section's publication, appeared in June. This contains short and to-the-point articles on a wide range of important subjects; it deals with problems of international interest seen in the Australian context. To the editors of 'Justice' we offer our congratulations.

The Annual Meeting of JUSTICE and *Libre Justice*, the British and French Sections of the ICJ, took place in Paris this year on 5 and 6th July. The Chairman of *Libre Justice*, Mr René Mayer, presided at the Meeting. The many participants

from JUSTICE included Mr Garrett, the Vice-President, and Mr Tom Sargant, the Secretary. Also present, of course, were several members of *Libre Justice*. Others taking part were Mr Van Dal, Vice-President of the Commission, Mr Seán MacBride, Secretary-General, Mr Daniel Marchand, a member of the Legal Staff, and representatives of the Austrian and German Sections of the ICJ. The subject for discussion, 'Matrimonial Regimes', was of particular interest to the French, since a new law in this field has just been passed in France, and of equal interest to the English lawyers, who are gradually seeing the French concept of the 'matrimonial regime' entering English Law as a result of recent legislation and cases.

One of the current concerns of JUSTICE, which are set out in its 12th Annual Report just published, is the simplification of civil litigation procedure in England. JUSTICE has now set up a Committee of Inquiry in this field, headed by a retired Lord of Appeal.

The Hong Kong Branch of JUSTICE has been actively concerned over the operation of Hong Kong's Emergency Regulations and its Public Order Ordinance. As a result of the Branch's representations to the Government, and those of JUSTICE in London, a new Bill has been drafted to amend the Ordinance.

The Council of the Association of Irish Jurists (the Irish Section of the ICJ) has issued a memorandum on the controversial Criminal Justice Bill now before the Irish Parliament. The Memorandum concludes: ' We are of opinion that while some of the provisions of the Bill will effect praiseworthy reforms, much of the new law imported by this Bill is to the detriment of the citizen and is an extension of the powers of the State, the police, the prosecution and the administration. Because our Association is dedicated to upholding the Rule of Law, we feel it imperative to make these criticisms of proposals which we believe imperil the Rule of Law in this country'. By reason of the General Elections the Bill will have to be reintroduced. It is hoped that the Irish Government will take into account the Association's Memorandum.

ICJ SECRETARIAT

The Secretary-General, Mr Seán MacBride, attended a meeting in Rome of the UN Advisory Committee of Experts on the Prevention of Crime and the Treatment of Offenders, which was held at the United Nations Social Defence Research Institute from 24 to 30th June. Part of the purpose of the meeting was to review the preparations for the Fourth UN Congress on the Prevention of Crime and the Treatment of Offenders to take place in Kyoto, Japan, in August 1970. The Commission has been actively interested in this Congress which will discuss, inter alia, the implementation of and the measures to be taken in regard to the Standard Minimum Rules for the Treatment of Prisoners.

The Secretary-General addressed the ECOSOC Committee of NGOs during its session in Geneva in July, and attended the meeting of the Ad Hoc Working Group of Experts set up by the Commission on Human Rights to investigate prison conditions in different areas. Mr MacBride drew their attention to the cases of James Lenkoe, and Mr Joel Carlson, which are discussed on pp. 22 & 23 above.

From 18th to 22nd August the Secretary General attended the annual Conference of the International Peace Bureau in Kungälv (Göteborg) Sweden. The subject for discussion was 'Military Defence Challenged — Towards a New Structure of National Defence'. The Secretary-General also attended a World Conference in Vienna from 25 to 29th August at the University of Vienna on 'The Role of the University in the Quest for Peace'.

This year is the 50th anniversary of the International Labour Organisation. Part XIII of the Treaty of Versailles setting up the Organisation stated that 'universal and lasting peace can be established only if it is based upon social justice'. Throughout its fifty years the ILO has clearly acted in accordance with this principle. It is the only inter-governmental organisation to have survived the Second World War and has up to now drawn up some 130 Conventions and as many

Recommendations. The International Commission of Jurists sent Mr Daniel Marchand, a member of the Legal Staff, as its observer to the 53rd meeting of the International Labour Conference.

NGO CONFERENCE

The Conference of Non-governmental Organisations (NGOs) having consultative status with the UN Economic and Social Council, which meets every three years, held its 11th General Conference in Geneva from 9 to 11th July. The Secretary-General and three members of the Legal Staff represented the Commission.

The Conference elected 15 Organisations to the Bureau, which sits both in Geneva and New York and is responsible for promoting the interests of NGOs. The Commission was itself elected to the Bureau, receiving — with one other Organisation — the largest number of votes. Mr Horace Perera, Secretary-General of the World Federation of United Nations Associations, was elected President. The first meeting of the Bureau in Geneva was held on 21st July, to discuss the action to be taken on some important resolutions adopted by the Conference.

OBSERVER MISSION TO SOUTH AFRICA

In July Mr Edward Lyons, a Barrister of Lincoln's Inn and Member of the British Parliament, went to South Africa on behalf of the Commission to discuss the confiscation of the passport of the Johannesburg attorney, Mr Joel Carlson. Mr George Lindsay, a prominent New York attorney and an associate of the Commission, accompanied Mr Lyons on behalf of the American Lawyers Committee for Civil Rights under the Law. In an interview with the South African Press Mr Lyons and Mr Lindsay stated that the withdrawal of Mr Carlson's passport contravened basic principles of law and endangered the rights of lawyers to represent clients without fear. Among the many people with whom the two lawyers spoke were senior government officials, including the Minister of the Interior and Police, Mr Muller, and the Deputy Minister of Justice. Mr Lyons was to have attended the trial of South West Africans in Windhoek, but at the time of his visit the trial was adjourned.

LATIN AMERICA

The International Commission of Jurists has always regarded Latin America as one of its most important areas of activity. Over the last few years, its work in the region has been continuously expanding. More and more National and Local Sections have been set up and there are constant requests from groups of jurists to become Sections of the Commission.

In order to coordinate the work of the various Sections and groups, to deal with certain situations personally and to establish or strengthen links with the Sections, professional organisations, public and private institutions and individuals interested in the Commission's activities, the Commission asked Mr Marino Porzio, the member of the legal staff whose field of work is Latin America, to go to the region. Mr Porzio's visit, which was to include as many countries as possible, would enable him, as representative of the Commission, to establish contact with personalities in the Governments, Judiciaries and Universities and to meet the many people who had expressed a wish to get in touch with him.

Mr Porzio was also asked to discuss with the various Sections the possibility of their organising regional or local meetings or seminars which would be attended by their members and jurists from countries nearby. Such meetings would examine concrete problems peculiar to Latin America and relevant to human rights and the Rule of Law. It was felt that the mere discussion of these problems would be an effective step towards their solution. The evolution of Latin America, in the political, social and economic spheres, has its own distinct features, which are shaped by

the realities in each of its countries. The Commission has been following developments with a tremendous interest and feels that it can make a substantial contribution within the sphere of its own activities.

The reform of legal education in line with present day realities, the establishment of effective legal aid systems, the creation of institutes for young jurists who wish to become judges and many other important questions have one feature in common: they are all problems which fall to the jurist to be studied and resolved. With his knowledge and experience of the law, it is also up to the jurist to study and resolve the major problems of his country. It is essential therefore that his should be a dynamic concept of the law: that he should be able to adapt the law to the complex reality of modern technological development and see the law as an instrument to be put at Man's service to secure the general welfare and the maintenance of peace.

Mr Porzio's visit lasted from the beginning of April to the middle of July. He was very well received by the Commission's supporters in Latin America, who once again showed their faith in the activities and objectives of the Commission. The press, radio and television of the various countries, did invaluable work by broadcasting news of the Commission and by giving publicity to Mr Porzio's statements, lectures and interviews. The following is a brief resumé of Mr Porzio's main activities in each of the countries that he visited.

Mr Porzio began his tour in Washington, where he went to the headquarters of the Inter-American Commission of Human Rights and saw its Executive Secretary Dr Luis Reque, with whom he spoke on various subjects relating to the coming Inter American Conference to be held at San José, Costa Rica (1st to 13th September 1969). At this Conference the Inter-American Convention for Protection of Human Rights will be discussed and submitted for signature. Mr Porzio then went to Pittsburg where he had been invited by the Latin American Centre for Studies of the University of Pittsburgh, and later to New York, where he spoke to the authorities of the Faculty of Law and the Institute of Comparative Law of New York University.

The first Latin American country to be visited was *Mexico*. Mr Porzio had several working sessions with the Mexican Section of the Commission, whose President is Mr Sergio Dominguez Vargas. He was also able to see Professor Manuel Escobedo, the Mexican Member of the Commission, the Secretary-General and Deans of the Faculties of Law and Political Sciences, the Director of the Legal Research Institute, professors of the National University of Mexico and the authorities and professors of the *Universidad Iberoamericana* of Mexico, which asked him to lecture to a large audience of professors and students of law and political science. He also went to Cuernavaca and attended a Conference on Court Procedure which was being held there.

The main reason for Mr Porzio's stay in *Guatemala* was an invitation from the Inter-American Development Bank to come as an observer to the Meeting of Governors which was then in session. Mr Porzio was also able to see members of the Guatemalan Section, whose President is Mr Eduardo Caceres Lehnhoff.

In *Costa Rica*, he had working sessions with the National Section (President, Mr Fernando Fournier), who is in addition the head of the Central American Chapter of the ICJ. He also spoke with the Foreign Minister, the President of the Supreme Court, the Rector of the University and members of the Bar Council of Costa Rica.

In Bogota, *Colombia*, Mr Porzio met the President of the Senate Foreign Affairs Committee, Mr Diego Uribe Vargas, members of the Colombian Academy of Law and the Faculty of International Studies of the University of José Tadeo Lozano, officials of the Department of Education, Professors of Law at the *Universidad Externado Nacional* and the *Universidad Javeriana* and also a great number of lawyers who support the Commission. Mr Porzio then went to the University of Popayan, where he gave a lecture to judges, professors and students, mainly from the Faculties of Law and Political Sciences. Professor Fernando Solarte Lindo is now undertaking the organisation of a Local Section of the Commission at Popayan.

At Quito, in *Ecuador*, Mr Porzio was met at the airport by the Vice-President of the Republic, Mr Jorge Zavala Baquerizo, and members of the University, the Bar

and the National Section of the Commission. He was able to speak to members of the Section, and the Dean and professors of the National University's Faculty of Law; he was later received by the Supreme Court in plenary session and the Bar of Quito, who made him an honorary Member. Mr Porzio then went to Guayaquil, where he inaugurated a new Section of the Commission under the Presidency of the Dean of the Faculty of Law, Mr Nicolás Castro Benítez. He was also received by the local Bar Council which made him an honorary Member.

In Lima, *Peru*, Mr Porzio had working sessions with the Commission's Section, whose President is Mr Enrique Garcia Sayán. He also met members of the Supreme Court and several jurists who are working closely with the Commission.

In La Paz, *Bolivia*, he had discussions with the Foreign Minister and the Minister for Home Affairs. He met the Rector and Professors of the University of San Andrès. He was also received by the District Court of La Paz, and in a ceremony organized jointly by the National Federation of the Bolivian Bars and the Bar of La Paz, he was appointed honorary President of the Federation. He was also declared honorary citizen of La Paz at the Town Hall. He spoke to several jurists who are in close contact with the Commission, and to members of the Human Rights Commission in Bolivia; he took part in a round table meeting held by the Human Rights Commission at the University. He was also ceremonially received by the National Confederation of Liberal Professions in Bolivia, who made him an honorary Member. On the invitation of its Bar, Mr Porzio went to Cochambamba, where he was received by the Supreme Court; he gave a lecture during a meeting held by the Bar and spoke to the Rector and a number of professors at the University.

At Santiago in *Chile*, Mr Porzio had several working sessions with members of the Chilean Section, whose President, Mr Osvaldo Illanes Benitez, is also Vice-President of the Commission and Member and former President of the Supreme Court. He was received by the Supreme Court in plenary session and by the Ministers of Justice and of Foreign Affairs. He was also able to meet members of the Bar, professors of the University and other jurists interested in the Commission's work. He took part in a round table meeting organised by Mr Illanes Benitez, in which judges of the Supreme Court and the Court of Appeal, professors of law and other eminent jurists in Chile also participated.

At Mendoza, *Argentina*, he visited the Institute of Criminal and Criminological Sciences and had meetings with a group of jurists who were interested in forming a Local Section of the Commission. At Buenos Aires he had working sessions with the Buenos Aires Section, whose President is Mrs Alicia Justo. He also met the Argentine Member of the Commission, Professor Sebastián Soler. The Buenos Aires Bar gave a reception in his honour. Mr Porzio also gave a lecture at the Law Faculty of the National University of Buenos Aires and at the University of *El Salvador*. At the same time he met several law professors and authorities of these two Universities. Mr Porzio then went to Rosario and was present at a meeting of the Local Section, whose President is Mr Rodolfo Torelli.

In *Uruguay*, he attended a meeting of the National Section (President, Mr Justino Jiménez de Aréchaga) and met the President of the Bar and other eminent jurists in Uruguay.

In Rio de Janeiro, *Brazil*, he spoke to Mr J.T. Nabuco, Member of the Commission, and to members of the Brazilian Section. He was also able to meet the authorities of a number of private Universities, law professors, members of the Brazilian Bar Council and authorities of the Council's Guanabara Branch. At Sao Paulo, he visited the Law Faculty and saw several professors. He also visited the Sao Paulo Law Courts and Bar where he was received in plenary session. He was also able to meet a group of professors and jurists who are very interested in forming a Local Section of the Commission.

In Caracas, *Venezuela*, he went to the National University and spoke to the Dean of the Law Faculty, the Directors of various institutes and many professors of the Faculty.

In *Trinidad*, he had working meetings with the National Section, whose President is Sir Hugh Wooding, and had an opportunity of meeting the Chief Justice, Sir

Arthur McShine, and other judges and members of the local Bar. He gave two lectures, one at the Court of Appeal of Port-of-Spain, on the invitation of the Chief Justice, and the other in the San Fernando Law Courts. The audience at both lectures was very large, consisting of judges and other jurists.

In *Guyana*, he met the Foreign Minister, the Hon. S.S. Ramphal, the Chancellor Mr E.V. Luckoo, senior Judges, the Ombudsman and other members of the legal profession.

In *Barbados*, he met the Governor-General, Ministers of State, Members of Parliament, Government officials, senior Judges and members of the legal professions. He also gave a lecture to the local Bar. Mr Porzio took advantage of his stay in Barbados to lay the foundations of a National Section. He also saw the Secretary-General of the Organisation of Commonwealth Caribbean Bar Associations Mr Henry de B. Forde, with a view to discussing the affiliation of his Organisation with the International Commission of Jurists.

In the *Dominican Republic* he attended a meeting of the Dominican Section, whose President is Mr Juan Mejía Feliú, and met authorities and professors of the University Pedro Henriquez Ureña, as well as a number of Dominican Jurists. He later went to Santiago where he was given a reception by the Association of Jurists there, and with whom he had very interesting talks.

In *Puerto-Rico*, he was able to see Mr Luis Negron-Fernandez, Member of the Commission and President of the Supreme Court of Puerto-Rico. He also met a group of jurists, who, under his guidance, are now organising a Section of the Commission. He later paid a visit to the President of the Bar Council and several of its members.

In *Jamaica*, he had working sessions with the National Section, whose President is Mr Justice Locksley Moody. At the same time, he met the Chief Justice, the members of the Court of Appeal, senior Judges, Magistrates, barristers and solicitors. He also met several members of the University, where he gave a lecture.

- If you have not yet completed and returned your subscription form for THE REVIEW please do so now.

- Are your colleagues subscribers to THE REVIEW? If you send us their names and addresses we will write to them.

Books of Interest

Africa Contemporary Record 1968-69
(Annual Survey and Documents)
by Colin Legum and John Drysdale
Africa Research Ltd, London 1969; pp. 903

Beyond Coexistence: The Requirements of Peace
by Edward Reed
Introduction and Summary by Robert M. Hutchins
Grossman Publishers, New York 1968; pp. 205

Constitutional Law in Northern Ireland
A Study in Regional Government
by Harry Calvert
Sweet & Maxwell, London 1968

Douze années de Réalisations et de Progrès en Tunisie
Le Comité National des Droits de l'Homme — *1968, Tunis; pp. 116*

Droit d'Outre-Mer et de la Coopération
by P. Lampué
Jurisprudence Générale Dalloz, Paris 1969, 4th Edition; pp. 385

End of an Illusion
(A Critical analysis of NATO, the Cold War and the Prospects for Peace through the U.N.)
by James Avery Joyce
The Bobbs-Merrill Co., New York 1968

Hommage de l'Unesco à l'Organisation Internationale du Travail
Cinquantième Anniversaire
UNESCO, Paris 1969; pp. 69

ILO Panorama
Fifty Years in the Service of Social Progress 1919-1969
Geneva 1969; pp. 88

International Law
by Georg Schwarzenberger
International Law as applied by International Courts & Tribunals
Vol. I, 3rd Edition
Stevens & Sons Ltd, London 1957; pp. 808

La Gauche Contre Israël

by Jacques Givet

Jean-Jacques Pavert, Holland 1969; pp. 199

La Succession d'Etats aux Traités

et notes sur la succession entre Organisations Internationales
by Andrea Giuseppe Mochi Onory

A. Giuffrè Editore, Milan 1968; pp. 163

Le Régime et les Institutions de la République Populaire de Hongrie

en collaboration avec le Centre National pour l'Étude des États de l'Est
Editions de l'Institut de Sociologie
Université Libre de Bruxelles — 1968; pp.100

Protection of the Citizen in Administrative Procedures

excluding Judicial Review
by Bertil Wennergren

General Report of the XIVth International Congress of Administrative Sciences, Dublin 3-6, September 1968
International Institute of Administrative Sciences, Brussels 1969; pp. 55

Réquisitoire contre la Justice

critiques et suggestions de réformes
by V. & M. Quester-Semeon

Nouvelles Editions Debresse, Paris 1969

The International Protection of National Minorities in Europe

Vol. 37 nrl

by Tore Modeen
Abo Akademi 1969, Finland; pp. 182

The Unperfect Society beyond the new class

by Milovan Djilas

translated by Dorian Cooke
Harcourt, Brace & World, Inc., New York 1969; pp. 267

The World Beyond the Charter

(In historical perspective: a tentative synthesis of four stages of world organization)
by C. Wilfred Jenks

George Allen & Unwin Ltd, London 1969; pp. 199

The Yugoslav Community of Nations

by Frits W. Hondius

Mouton Hague — Paris 1968; pp. 375

Constitutional Government and Human Rights in a Developing Society

by Joseph A. L. Cooray

Colombo Apothecaries' Co., Ltd.; pp. 81

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

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

Secretary-General: SEAN MACBRIDE S.C.
Former Minister of Foreign Affairs of Ireland

INTERNATIONAL COMMISSION OF JURISTS, 2, QUAI DU CHEVAL-BLANC, GENEVA, SWITZERLAND

Henri Studer S. A., Printers, Geneva Switzerland