

**FOR THE RULE
OF LAW**

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

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FOREWORD

The publication of this *Bulletin* coincides with the *International Congress of Jurists* convened by the International Commission of Jurists and attended by some 150 leading lawyers from 50 different countries. The Congress, – which upon the initiative of the Indian section of the Commission is meeting in New Delhi, – will discuss the results of a two-year enquiry into the Rule of Law. Details on the organization and agenda of the Congress are given in *Newsletter* No. 5, dated January 1959. A *Working Paper* on the Rule of Law was distributed to the participants; a summary of this study and its conclusions are printed as appendix to the *Newsletter*. The entire *Working Paper* will be published in the near future in conjunction with a report on the discussions in New Delhi and on the resolutions adopted there.

As is known, the International Commission of Jurists had set for itself a double task interrelated in the pursuit of a single purpose: to contribute to the establishment of a world in peace under law. To this end the Commission endeavours to promote and foster throughout the world a legal order which corresponds to the concept of the Rule of Law. As a corollary, it appeals to world legal opinion, to oppose, wherever they may occur, systematic violations and abuses of those elementary requirements of justice which form the foundation for the Rule of Law.

The enquiry undertaken by the Commission in many countries and the discussions in New Delhi purport to clarify in as concrete and practical a way as possible the concept of the Rule of Law. It corresponds, among other things, to a number of basic principles of justice which are well known in free societies, but which may appear in various forms and attires, as for example, the principle of non-retroactivity of criminal laws and of the independence of the judiciary, the rule that an accused be presumed innocent until proved guilty, etc. Most of these principles correspond to those human rights and civil liberties which are recognized as part of the common heritage of all free societies

and which have been solemnly proclaimed in the Universal Declaration of Human Rights, adopted by the United Nations in 1948 and in the European Convention on the Protection of Human Rights and Fundamental Freedoms, adopted by the Council of Europe in Rome in 1950.

The *Working Paper* prepared for the Congress in New Delhi resulted from a world-wide survey undertaken by the International Commission of Jurists. It is most gratifying to acknowledge here the remarkable response of individual jurists (judges, lawyers, professors of law schools, government officials) as well as legal groups and institutions of learning throughout the world to this initiative and, indeed, to all periodical publications of the Commission. For those numerous readers who have asked to be added on the mailing list in recent months, it may be fitting to recall that the Commission's publications programme comprises four different series:

(1) *Special studies* devoted to topics of serious and immediate concern as they may arise in a given country, e.g., "The Hungarian Situation and the Rule of Law" (1957).

(2) A *Newsletter*, published at irregular intervals, informs the friends of the Commission of its organization, activities and of the work of its national sections.

(3) The *Journal*, of which the third issue is in print, devoted mainly to the administration of justice in different countries, aims at the presentation of pertinent legal subjects deserving a thorough discussion at the highest scholarly level.

(4) Finally, the *Bulletin* is intended to reflect current events in the legal field and to project important recent developments, facts and situations against the background of the Commission's objectives. It purports to publish in a factual, objective and succinct form, practical instances of cases and events in various countries in which the principles associated with the concept of the Rule of Law have been either threatened or violated, or, conversely, protected and implemented. Thus, the *Bulletin* appears well suited to serve the double purpose of the Commission as defined earlier in this Foreword.

The *Bulletin* makes a special appeal to the solidarity of the legal profession which – regardless of ethical or political differences – finds its expression in the common dedication to the

rights and freedoms of the individual. By publishing the *Bulletin* the Commission wishes also to provide a forum for the free exchange of views among jurists all over the world; it invites them to supply information and comments on legal developments worthy of attention in individual countries.

The heavy work involved in the preparation of the New Delhi Congress, and the succession by a new Secretary-General of Mr. Norman S. Marsh – who after two-and-a-half years of untiring activity on behalf of the Commission has resumed his academic career in Oxford – have somewhat delayed the publication of this *Bulletin*. Its scope does not permit to cover in one issue all the important recent events of topical interest to the reader. The wealth of material accumulated in recent weeks will be used in the forthcoming *Bulletin* to appear in the near future.

The Protection of Human Rights and the Rule of Law on the International Level

The publication of the present Bulletin coincides with the world-wide celebration of the tenth anniversary of the Universal Declaration of Human Rights adopted by the General Assembly of the United Nations on December 10, 1948. This important document is a pronouncement of the unanimous wish of the United Nations that certain basic rights should be effectively protected. Although the Universal Declaration is not a binding legal instrument, it can be considered as the point of departure for a universal system of rights and guarantees. In order to set up such a system, the United Nations Commission on Human Rights has prepared two draft covenants: one on civil and political rights and the other on economic, social and cultural rights. These drafts have been before the General Assembly for the last four years. Although some of the Articles have already been adopted, it will probably be some time before the drafts are approved in their entirety by the General Assembly. Meanwhile, the activities in the field of human rights are being carried on by various organs and committees of the United Nations as well as by its Specialized Agencies

On a regional basis, the Council of Europe has achieved considerable practical progress in this direction. The European Convention on the Protection of Human Rights and Fundamental Freedoms, signed in Rome on November 4, 1950 provides for two important stages of the machinery for the protection of human rights: the European Commission of Human Rights and the European Court. It offers within its member countries adequate safeguards of the rights normally recognized in the legal systems of the participating nations. These rights are therefore susceptible of legal definition and application, although it should be noted that they are fewer in number than the rights recognized by the Universal Declaration.

The European Commission was established in May 1954 after the necessary number of ratifications had been deposited

with the Council of Europe.* It has jurisdiction to hear applications by member States or individuals in respect of an alleged violation of the rights protected by the European Convention, or the European "Bill of Rights", as Professor C. H. M. Waldock, Chairman of the European Commission of Human Rights, calls it. This European "Bill of Rights" has a wide application. The territorial limitations essentially associated with treaties of this nature are to a large extent removed. Although a complaint may be brought only against governments which have ratified the Convention, the right to bring such a complaint is not limited to nationals of Member States of the Council of Europe. A non-European national or indeed a stateless person may file a petition in respect of violation of human rights. On the other hand, the governments need entertain no fear of vexatious litigation. Out of the 353 petitions received between the Third and the Eleventh Sessions of the European Commission, 274 were rejected *de plano*. But the Commission's jurisdiction is confined to the mere making of a report which, if it does not lead to a friendly settlement, is referred to the Committee of Ministers of the Council of Europe who decide by a two-thirds majority whether a violation of the Convention has taken place. A potential drawback lies in the fact that, pending the establishment of the judicial tribunal, final appeals are made to an essentially political body.

It is gratifying to note that the European Court of Human Rights which is the judicial machinery of enforcement of the Convention is now being established. Early last September, Iceland and Austria deposited their instruments of ratification of that part of the Convention which provides for the creation of the Court, thus bringing the total number of ratifications to eight as required by Article 56(1) of the Convention for the setting up of the Court. The Court will have one judge from every Member of the Council of Europe. The number of judges will be equal to that of the Member States. The judicial character of this tribunal is emphasized by the fact that the judges will be elected from candidates of high moral character and must either possess the qualifications

* Reference may be made to a study on "Procedure and Jurisprudence of the European Commission of Human Rights" in the *Journal of the International Commission of Jurists*, vol. I, No. 2, pp. 198-223.

required for appointment to high judicial office or be jurists of recognized competence. Only Member States and the Commission may bring a case before the Court, and the Court may only deal with a case after the Commission has acknowledged the failure of its efforts to bring about a friendly settlement and within the period of three months from the date of the transmission of the report of the Commission to the Committee of Ministers. A case may be brought only against the States which have accepted the compulsory jurisdiction of the Court or have consented to submit to its jurisdiction in respect of that case. For the consideration of each case, the Court will consist of a Chamber composed of seven judges. The judgment of the Court is final and binding on the parties concerned. With the establishment of a judicial body such as the European Court of Human Rights, the Council of Europe provides an effective machinery for the enforcement of human rights and civil liberties on the international level.

Recent Legal Developments in the People's Republic of China

There are areas in which individual liberty inevitably comes into conflict with national security. But in free society the ultimate solution to this conflict rests in substantial measure with an independent judiciary which is empowered within limits to review actions taken by the executive and the legislative. In the People's Republic of China, the position of the judiciary vis-à-vis the executive provides an interesting example of the opposite extreme. It may be recalled that shortly after a brief period of relative freedom following Mao Tse-tung's famous speech on "contending and blooming", delivered in two parts in February and March 1957, the legal profession has been sharply criticized for not being severe enough in dealing with "counter-revolutionaries". In December 1957, four members of the Supreme People's Court were brought under severe attack for their advocacy of "judicial independence". One of them was Chia Ch'ien, Chief Justice of the Criminal Court. Chief Justice Chia argued that "the Court handles matters affecting people's lives, freedom and property, and has the power of life and death, investment and deprivation", and that therefore the Court may refuse to accept Party leadership. For refusing to adhere to the theory that the Court should follow Party leadership, the Chief Justice was accused of deviationism. For challenging the correctness of the leadership of Party committee members on the ground that they do not understand law and are not familiar with actual conditions, Chia Ch'ien was denounced as being "madly conceited and childish ignorant". This point was considered once more in January 1958, in a speech by Wu Te-feng, deputy chairman of the China Political and Legal Affairs Society: "On the preservation of the socialist legal system":

"The rightists have said that the party is a 'layman' in legal matters and that as such should not head legal work. This is also absurd. In China, the legal system has been created under the leadership of the Communist Party, in accordance with the principles of Marxism-Leninism and the experiences of the people themselves in the course of class struggle... Observe, for instance, the results of our legal work. We have abrogated the old laws of the Kuomintang, and enacted and

promulgated various important laws in accordance with the needs of the revolutionary struggle and construction. *The Communist Party has shown great legal knowledge and ability to lead legal work. In abolishing the 'Book of Six Laws' of the Kuomintang, the Communist Party made a detailed and correct analysis of the appropriateness of the 'book'. Who could have done such work?"*

"The rightists have accused the Party of interfering with the trial work of the court. This is likewise absurd. We all know that laws have to be administered according to policies of the state, and it is the Communist Party which is the most capable of deciding such policies in the interests of all the people. The party does not interfere with the courts' independent trial as long as they adhere to the policies of the State. Is there anything wrong with such leadership and supervision?" (Italics ours.)

The statements here put in italics appear striking. It is interesting to note in this connection that the abolition of the old law which took place in 1949 was followed by a period of absence of law. Recently some 4,000 odd laws and ordinances are reported to have been promulgated although the long-promised penal code is not yet completed. Supervision by the Party is in effect complete control of the judiciary by the executive. The Court is in actual fact "assisted" by a Judgment Committee which, apart from reviewing important and difficult cases, is empowered to deal with any cases that, after pronouncement of verdicts, are found to have been wrongly adjudicated. The review of judicial decisions by the executive involves no special hearings. Neither the trial judge in all cases nor in criminal cases the accused has the right to be heard. The executive power of review provides an important means for the Communist Party to test the "accuracy" of judicial decisions and on the basis of the results obtained, to compile statistics on the percentage of cases wrongly and rightly decided. This is of extreme importance especially when the promotion, renewal of appointment and dismissal of judges and assessors may be based on these statistics.

The Chinese Communist Press gave wide publicity to the

establishment after July 1954 of legal advisory offices throughout the country to provide free legal service for the public. This does not mean, however, that any person seeking redress or brought to trial in the People's Republic of China may call upon the lawyers in these offices and is entitled to free legal advice and representation. It should be remembered that the lawyers' organization too has become a political organization.

It is established, as Lin Fzu-ch'iang, a Chinese Communist lawyer, recently wrote, "according to the wishes of the party and the people, and although it is a social body, and not a state organ, state and society today are led by the working class and its vanguard - the Communist Party. It is unthinkable that the lawyers' organization could discharge the task entrusted to it by the party without party leadership". Thus lawyers are told, in effect, that they must not undertake the defence of anyone who may be suspected of counter-revolutionary sentiments - this includes, *inter alia*, persons seeking the return of confiscated property. Lawyers are warned that by doing so they would be advancing the cause of counter-revolution and become suspect themselves. Persons accused of counter-revolutionary offences are in practice denied the right to legal representation. This is of growing importance and should be viewed with grave concern in the light of recent discussions in the legal circles of the regime on the treatment of crimes as "contradictions between the enemy and ourselves", thus placing all or most criminals under the proletarian dictatorship, that is to say, subjecting them to administrative and "judicial" measures designed for the elimination of counter-revolutionaries. Instances of such measures are trial by the mass in cases concerning counter-revolutionary activities, trial by the workers in cases of industrial crimes, and immediate execution of death sentences in the presence of those witnessing the trial. The trial is generally held in the open air, or in a factory. A race-course in Shanghai, for instance, has been used for spectacular trials of counter-revolutionaries. To give another example, an exhibition of incriminating evidence against counter-revolutionaries was recently held in Anshan (Lianoning). These are but part of a nation-wide campaign for the suppression of counter-revolutionaries.

After the abolition of the Chinese Code, Chinese lawyers on

the mainland were required to go through a special course of legal training before they were assigned to different posts in the law courts and other legal institutions. The so-called reform of legal profession took place in 1952, – the year notable for the *Sanfan* and *Wufan* opposition movements in the wake of the suppression of the counter-revolutionary movements in 1951.

The 1952 reform of the legal profession was considered by the Chinese communists as a great success for having “purged the old legal concepts”. But it was admitted by Shih Liang, the Minister of Justice, a woman lawyer, that the reform “had been violently attacked by the rightists”. In her published report to the Chinese Communist Party Congress, Shih Liang stated that as a result of such reform, “7 per cent of the Chinese lawyers were expelled and punished, 70 per cent of them were given employment other than legal practice and 20 per cent were retained in the profession of law”. The report gave no account for the remaining three per cent of lawyers.

In reply to the criticism of the “rightists” that the judges of the existing communist courts were none other than legal ignoramuses, the Minister of Justice argued that between January and July 1957, the judges who were formerly workers, farmers and shop clerks, had dealt with 7,000 cases in Shanghai alone and not one case was wrongly adjudicated.

In the People’s Republic of China, there are six law faculties in the so-called Comprehensive Universities which are under the direct supervision of the Ministry of Higher Education. Under the direction of the Ministry of Justice, there are four Colleges for Politics and Law and three legal training schools situated in Chungking, Tsinan and Shanghai.

There are also the so-called *Kanpu* (cadre) Schools of Politics and Law in the Northeast, Northwest and Central-South China. In each province, there are *kanpu* training courses. During the past years the *kanpu* schools had trained about 20,000 legal *kanpu*. The figure has often been quoted by the Communist Party to refute the rightist criticism that “legal education under the communist régime regressed by some 20 years”.

Of the four colleges for Politics and Law, the most important one is the Peking College for Politics and Law established in

1952. It appears that until now, even in this important college, there is not a single textbook on current Chinese law. The teachers in the law colleges rely entirely upon the legal textbooks used in Soviet Russia. The students of law have openly called teachers the "sound-recorders" and students themselves the "typewriters". They also complained that they were "not going to be judges in Soviet Russia". In the summer of 1956, mindful of the general reaction against russification in the legal education, the Ministries for Higher Education and for Justice held a joint conference discussing a teaching plan for the four colleges. In that conference it was decided that in the teaching of law, the main emphasis should be laid on Chinese legal materials and the Russian literature would be subsidiary. In implementation of this new teaching plan, the text of *Theory of State and Law* written by a lawyer, Chang Hsin, was adopted as a new textbook of which 150 copies were printed for circulation among the teachers of law.

There has been a complaint of downgrading of the legal education in reference to the under-rating of legal research and the low salary for the professors of law as compared with other professors. This complaint was fully reflected in an article written by Han Te-p'ei, the Dean of the Law School of Wuhan University, who complained that while the salary scale for the professors of other faculties had been readjusted, the pay of law professors was reduced. He also complained of the scarcity of material available for research work due to inaccessibility of many legal publications, particularly those relating to legal developments in the capitalist countries.

In view of the decline of the teaching of law, three professors of law in Peiping proposed to establish a department of international law and a legal research institute. But their attempt was a complete failure, and as a consequence they were denounced as rightists. These professors are Ch'ien Tuan-sheng, President of the Peking College, Lo Pang-yen, the deputy head of the Legal Bureau of Peking Municipality, and Wang T'ieh-yai, Professor at Peking University.

The standard of the judges in the People's Republic of China has been subject to much criticism. For instance, the "advisor" of the Supreme Court, Yu Chung-lo, complained that the standard of the judges of the various courts was surprisingly low and

they were not able to write a judgment. He said that there was a great waste of competent lawyers who worked in the law courts under the Nationalist régime, but are now working as “coolies in hospitals and crematoria”. Mr. Yu’s complaints were, however, vehemently rejected by the judges of the Supreme Court. According to these judges, “there are fifty odd old communist *kanpu* in the Supreme Court, who joined the revolution in their teens and had abundant experiences in class struggle. Many of them had University or high school education”. Yu Chung-lo complained further that in passing sentences, the judges simply write out the autobiography and confessions of the defendants with a final verdict of guilty of what is described as “great and evil crime”. This complaint was also supported by Yang P’eng of the Legal Research Bureau of the Ministry of Communications, who said that there were no laws upon which the judges based their sentences, and that the judges are practically all Party and Youth Corps members who have no idea of what law is. They render their judgement from the standpoint of class struggle. Therefore, for the same kind of offences there could be sentences of great variance. The ignorance of law has also been attributed to those who served in the government, legislative and judicial organs.

The Constitution of the People’s Republic of China which was adopted in September 1954 has been severely criticized by Ku Chih-chung, a well-known lawyer and journalist in Shanghai. Mr. Ku expressed the view that the Constitution existed only in name. In support of this view, he put forward the following arguments: (1) While Article 85 of the Constitution provides: “Citizens of the People’s Republic of China are equal before the law”, it is not so in fact; (2) The constitutional guarantee contained in Article 89 which provides: “No citizen shall be arrested except by the decision of the people’s court or with a warrant of the people’s prosecution *yuan*”, was completely ignored when arrests were made during the *Sanfan* and *Wufan* opposition movements and in all cases of counter-revolutionaries; and (3) Article 87 provides for “freedom of speech, freedom of press, freedom of assembly, freedom of association”, but there is absolutely no freedom of press and association under the arbitrary power exercised by the Communist authorities at all levels. Mr. Ku concludes that “everybody considers the Constitution a useless paper, and

from the Communist Party Committee Chairman Lieu Shao-ch'i down to the ordinary citizen, nobody cares for the Constitution". This statement was made in June 1957. Two months later came the following denunciation from the Communist Party:

"Ku Chih-chung made a shameless attack on the Constitution. He shall learn that the Constitution protects the freedom of the People; but he will be disappointed if he hopes that the Constitution will protect the freedom of speech, press and assembly of traitors, counter-revolutionaries and rightist elements."

In the circles of the jurists who have been considered as "rightists" by the Communist Party there appears to be a great concern about the lack of learning in the field of international law. In the opinion of these so-called rightist jurists, there are only communist *kanpu* who are considered as experts in international law. Such concern has been expressed publicly by Wang T'ieh-yai of Peking University and Ch'en T'i-chiang, head of the International Relations Research Institute. But for having held such views they were both condemned at the anti-rightist meetings. The Communist Party had repeatedly emphasized that the Chinese communists made great contributions in the field of international law, notably the enunciation of the Five Principles (*Pancha Seela*) of Peaceful Co-existence adopted at the Bandung Asian-African Conference – the expression *Pancha Seela* has been borrowed from Buddhism in the hope that it would attract the uninformed masses of Asian nations – and the work being done for "purging the imperialist privileges in colonial territories". The Chinese Communist Party further explained that "international law is one of the instruments (for) dealing with international problems. When this instrument is useful to us (the proletariat), we use it. When this instrument is of no use to us, we use other instruments. But the majority of our lawyers of the old school of international law tie themselves into the restrictive framework of international law."

The People's Republic of China appears to have imported from the Soviet Union the system of Procuracy – a basic feature of socialist legality instituting complete control by the Executive over all stages of judicial processes. In this field, the administration of justice, like everything else such as agriculture and indus-

try, is expected to make a "big leap forward" during 1958. From the Report on the Tasks of the People's Procuracy of Canton since 1956 submitted by Tseng Ch'ang-ming, Chief Procurator of Canton, to the Third Canton People's Congress on May 25th, 1958, it appears that the guiding policy for procuratorial work is being streamlined to the extent that justice has become a secondary consideration to speed. Speaking of the result obtained from "experimental laboratories" in Canton, Mr. Tseng reported:

"The result of the experiments was spectacular: without sacrificing efficiency in work and with due respect to legal procedure, we were able to shake off the fetters of old practices and do away with 32 kinds of unnecessary procedures. Now, on the average only 3 hours are required to disposed of a case, involving all procedures in effecting arrest, examination of findings and prosecution at the court. As compared with the pre-rectification record, the new method raised the efficiency of work several tens of times."

In thus equating speed with efficiency, the Chief Procurator of Canton gave further explanation:

"'Speed' means swiftness in approving arrests, approving each case promptly as it turns up. In ordinary circumstances, decisions should be reached within one hour. Cases demanding prosecution should be scrutinized promptly as they come up; in ordinary cases, it shall not take more than 24 hours for completion of scrutiny at the procuratorate and prosecution at the court after filing a case."

On the political and legal front, the rectification campaign has been carried on by the China Political and Legal Affairs Society. At its third annual meeting in Peking on August 20-21, 1958, Wu Te-feng, its deputy chairman and secretary-general, submitted the following work report on behalf of the council:

"Led by the Party, the Society of Political and Legal Affairs has taken an active part in the rectification campaign and the anti-rightist struggle over the past year, and has systematically exposed and criticized the reactionary speeches and actions on the part of some rightists in the political and legal

circles. *Pursuant to the guiding principle and policy of the Party and the State*, the Society has expanded legal research activities, improved editing and publication work, developed friendly contacts between legal circles of China and the legal circles of foreign countries, and pressed forward its own work." (Italics ours.).

It would appear that all these activities have been conducted under the leadership of the Communist Party. Wu Te-feng pointed out that legal science is a science of strong class character and a science used in the class struggle. He proposed to establish a "brand-new science of socialist law guided by Marxism-Leninism, and Mao Tse-tung's teachings". He suggested that legal workers should wage an irreconcilable struggle against old legal views and revisionism – the political and legal thoughts of bourgeoisie –, break down the undesirable and set up the good on the ideological front of legal science, reform the proletariat and eliminate the bourgeoisie and plant the red flag of proletarian revolution everywhere.

This rectification campaign was examined on a nation-wide basis at the Fourth National Judicial Work Conference on August 20—23, 1958. The conference was jointly convened by the Supreme People's Court and the Ministry of Justice. It was a large-scale rectification meeting for national judicial work, attended by the responsible personnel of the people's courts and justice departments (bureaux) of all provinces, municipalities and autonomous regions as well as responsible members, judges, and clerks of intermediate and basic-level courts. The conference praised the enormous achievement in judicial work, and pointed out that effective Party leadership was a fundamental problem for the exercise of the dictatorship of the proletariat and a prerequisite to the carrying out of socialist transformation and socialist construction. In no uncertain terms, the meeting called on the law courts in all places to fight firmly against the work style of the old judicial school. The conference reaffirmed the principle that "the people's court should be absolute in its submission to Party leadership, and there could not be the least negligence and vacillation. The people's court must victoriously accomplish the sacred task entrusted to it by the State and the people. It must firmly depend upon the leadership of the Chinese

Communist Party Central Committee as well as the leadership of Party committees at all levels. Only in this way could court work be made to meet the change of situation as well as to implement concretely the lines and policies of the Party under the guidance of the correct line”.

It is difficult to reconcile the conclusions reached by the Fourth National Judicial Work Conference with the provision of Article 78 of the Constitution of the People's Republic of China, unanimously adopted by the National People's Assembly on September 20, 1954. This Article provides: "The people's courts are independent in the exercise of their judicial authority and are subject only to law”.

SOURCE MATERIAL

Chung Kuo Ch'ing Nien Pao (China Youth Journal), Peking, September 18, 1957.

Jen Min Jih Pao (People's Daily), Peking, May 22, June 26, July 13, September 13 and 19, and October 6, 1957, editorial.

Kuang Ming Jih Pao (Enlightenment Daily), Peking, April 30, June 20, August 28 and 31, and October 6, 1957.

On the Preservation of the Socialist Legal System, Speech by Wu te-feng, deputy chairman of the China Political and Legal Affairs Society, broadcast in Mandarin, Peking, Chinese News Home Service, January 9, 1958, GMT-B.

In Refutation of Chia Ch'ien's Absurd Anti-Party Theory of "Independence of Judgement", by Feng Jo-ch'uan, published in *Cheng Fa Yen Chiu* (Study of Politics and Law), Bi-monthly, February 2, 1958, Peking.

To Thoroughly Criticize the Bourgeois Ideology in the Work of People's Lawyers, by Lin Tzu-ch'iang, published in *Fa Hsüeh* (Jurisprudence), Monthly, February 16, 1958, Shanghai.

We must overcome Rightist Ideology on the Political and Legal Front, by Hsieh Fei, published in *Fa Hsüeh* (Jurisprudence), No 2, February 16, 1958, Shanghai.

Report on the Tasks of People's Procuracy of Canton since 1956, given by Tseng Ch'ang-ming, Chief Procurator of Canton, at the 1st session of the 3rd Canton People's Congress on May 25th, 1958, published in *Kwang Chow Jih pao* (Kwang Chow Daily), May 29, 1958.

Exhibition of Incriminating Evidence of Counter-Revolutionaries Held in Anshan (Lianoning), Anshan Jih Pao (Anshan Daily), June 20, 1958, Anshan.

Be Violent to the Enemy and Benevolent to the People, by Lo Jui-ching, Minister of Public Security, published in Hsüeh Hsi (Study), Fortnightly, June 18, 1958, Peking.

The Chinese Society of Political Science and Law (China Political and Legal Affairs Society) Holds 3rd Annual Meeting, New China News Agency Daily Bulletin, August 27, 1958, Peking.

Fourth National Judicial Work Conference Concludes, New China News Agency Daily Bulletin, August 28, 1958, Peking.

Are all Criminal Cases to be Treated as Contradictions Between the Enemy and Ourselves? Are all Criminals to be Treated as Objects of Dictatorship? Editors Note in Cheng Fa Yen Chiu (Study in Politics and Law) No. 3, June 20, 1958, Peking.

Recent Decisions of the United States Supreme Court Relating to the Rights of the Individual

The significance of the role played by the judiciary in a free society in the implementation of individual liberties is vividly illustrated in some recent decisions of the Supreme Court of the United States. It is often difficult, especially in a federal constitution, to determine precisely the limits of the constitutional authority of the judiciary vis-à-vis the legislative and the executive. The necessity to maintain stability of government militates against overruling legislative or executive measures except in cases of their blatant contravention of constitutional provisions and guarantees. On the other hand, the respect for the rights and liberties of the citizen being an ever-expanding concept, the Supreme Court is frequently expected to provide leadership through progressive judicial interpretation of the Constitution.

It is only natural that these two schools of thought find expression in the divergent views of the nine Justices, whose age, background and outlook represent a true cross-section of the American judiciary. The resulting division of opinion was clearly stated in the rulings and dissents in a pair of contrasting cases decided in March 1958. The issue in both cases was the right to deprive native born Americans of their citizenship. In *Perez v.*

Brownell, the appellant had been deprived of his citizenship under the Nationality Act of 1940 for voting in a political election in a foreign country; in *Trop v. Dulles*, the appellant had been denied a passport by the State Department, which agreed that under the same act he had forfeited his citizenship by deserting from the Army. In both cases, the Court was divided five to four, but in *Perez's* case it ruled against the appellant, while in *Trop's* case for him.

Chief Justice Warren's objection to the right of Congress to deprive an American of his citizenship was based on the Eighth Amendment of the Constitution. In concluding that Congress had exceeded its constitutional authority in prescribing forfeiture of citizenship as a "cruel and unusual punishment" in *Trop's* case, the Chief Justice observed: "I fully recognize that only the most compelling considerations should lead to the invalidation of congressional action, and, where legislative judgments are involved, this Court should not intervene. But the Court also has its duties, none of which demands more diligent performance than that of protecting the fundamental rights of individuals."

The provisions of the Constitution, said the Chief Justice, "were vital living principles"; "when it appears that an Act of Congress conflicts with one of these provisions, we have no choice but to enforce the paramount commands of the Constitution. We are sworn to do no less. We will do well to approach this task cautiously, as all our predecessors have counselled — but the ordeal of judgment cannot be shirked."

In a closely related field, a further dichotomy of Supreme Court decisions upheld the right of every citizen to a passport. On June 16, 1958, the Supreme Court ruled that citizens of the United States cannot lawfully be denied the right to travel because of their belief or political associations. In two separate cases the Court reversed lower judgments which had supported the power of the Secretary of State to deny passports to applicants whom he believed to have been communists or to have had close and suspect associations with communists. In the first case the appellants were Mr. Rockwell Kent, an artist, and Dr. Walter Brühl, a psychiatrist, and the second case concerned the attempts of Mr. Weldon Dayton, a physicist, to obtain a passport so that he could work in the Taba Institute in Bombay.

Delivering the opinion of the Court, Mr. Justice Douglas regarded the right to travel as a part of that liberty of which a citizen cannot be deprived without due process of law. It was a right that had begun to emerge at least as early as Magna Carta, and freedom of movement across frontiers in either direction and inside frontiers as well as a deeply ingrained part of American heritage. Justice Douglas cautioned in *Kent's* case: "We deal with beliefs and associations, with ideological matters. We must remember that we are dealing here with citizens who have neither been accused of crimes nor found guilty. They are being denied their freedom of movement solely because of their refusal to be subjected to inquiry on their beliefs and association . . ." In *Dayton's* case, the appellant responded to every requirement of the Department of State, but was similarly refused a passport, the Department claiming that it had confidential evidence to the effect that his travelling would be "contrary to the best interests of the United States."

The Supreme Court ended its Spring term on June 30, 1958, divided, again five to four, in another pair of cases in which the issue was once more the extent to which the Government may interfere with the rights of the citizen in the course of protecting itself against subversive activities. In the first case, a teacher in Pennsylvania, and in the second, a conductor of New York City subway, had been dismissed because they refused to answer questions about their alleged connexion with the Communist Party. Both had appealed to the Supreme Court, which held in neither case that the constitutional rights of the appellant had been violated by his dismissal.

Delivering his dissenting opinion, Justice Douglas maintained that the Court's ruling could not be reconciled with constitutional principles: it had been dealing only with a matter of belief, and the Constitution guaranteed 'the right to believe what one chooses, the right to differ from his neighbour, the right to pick and choose the political philosophy he likes best, the right to associate with whomsoever he chooses, the right to join the groups he prefers, the privilege of selecting his own path to salvation'. Justice Douglas concluded with this warning: "When we make the belief of the citizen the basis of Government action, we move toward the concept of total security. Yet total security is possible only

in a totalitarian régime – the kind of system we profess to combat.”

Mr Justice Brennan emphasized: “It may be stated as a generality that government is never at liberty to be arbitrary in its relations with its citizens and close judicial scrutiny is essential when State action infringes on the right of a man to be accepted in his community, to express his ideas in an atmosphere of calm decency, and to be free of the dark stain of suspicion and distrust of his loyalty on account of his political beliefs and associations.”

The passport decisions are of special importance as they represent for the countries of the Common Law the first judicial settlement of an issue which in many States is considered as one of the basic prerogatives of the citizen – the right to free travel across national borders. In exercising the “awesome power” of judicial review of legislative and executive enactments, the Justices of the Supreme Court reflected in their divided opinions the challenge of an unusually wide responsibility requiring an equal measure of determination and self-restraint.

Reorganization of Argentine Judiciary

The independence of the judiciary is an element most essential to the Rule of Law. Not only should the judges be individually independent of the executive and the legislative but also the judiciary itself should as an institution be an independent organ of government. In the struggle of courts for independence, Argentina presents an interesting example.

It should be mentioned at the outset that the Argentine government that came into power after the fall of Perón were confronted with special problems calling for adjustment. The judicial system underwent a complete reorganization. A new Supreme Court was created and constitutional irremovability of judges was adopted. The provisional government finally decreed that judges and court officials who were still in office would be dismissed unless specifically confirmed in their function. Many of those confirmed had been appointed during the ten years' dictatorship. Most of those removed were regarded as having been under Perón's influence.

When President Frondizi's Government assumed office on

May 1, 1958, it found two types of judges: old career judges and those holding office by special appointment. Judges on the criminal bench who had had the handling of cases against Perón's associates were to be retired on the ground, it is sometimes said, that their continued tenure was an obstacle to the President's plan for pacification of the country, — a plan carried to the point of publicly pardoning Peronists who failed to obtain freedom through the courts.

It is to be observed that judges slated for removal from office were not informed of any specific charge against them. Neither was any reason given nor were they officially dismissed. The government merely sent the names of new judges to be confirmed by the Senate for appointment, and a number of incumbent judges found that their successors had been appointed leaving them virtually out of office. Changes of this nature were so frequent that by July 8, 1958, a dozen of judges tendered their resignation as a protest. Those resignations were accepted. This drastic change in the composition of the Judiciary led a number of State law-officers and Court officials to register their protest by resignation.

In weakening the judiciary by way of judicial reorganization, the government had provoked a storm of protest from the press, public and leading political parties. There have been disorders in the law courts, where the new judges were to be sworn in. The *Colegio de Abogados* has lodged a strong protest, stating that the administration of justice has been gravely affected by the removal of worthy judges of recognized capacity and their replacement in some cases by men who may not satisfy the common desire to make the administration of justice more perfect. Judges of various courts had held their meetings and passed a number of resolutions formally expressing their "grave preoccupation with the delicate situation of justice in the federal capital and with the happenings which it has caused", and urging individual judges to stop working until "a serene and adequate solution to the difficulty will be reached." The Supreme Court took the lead in declaring a "judicial holiday" for all national tribunals having their headquarters in the capital. Other courts have followed this course.

The conflict has come at a particularly difficult moment for

the country. In an attempt to further political pacification, the government endangered the independence of courts. But in Argentina where there is a sufficient degree of freedom of the press and where legal public opinion carries considerable weight, the problem could not be solved in this manner. On July 16, 1958, it was reported that the conflict between the Executive and the Judiciary had virtually ended with a victory for the judges. At the President's request, Dr. Alfredo Orgaz, the President of the *Corte Suprema*, has withdrawn his resignation. The judges of the criminal and other courts whose names had not been sent forward for endorsement by the Senate are to be reinstated in their posts. Of the new nominees who offered to resign, two have had their resignations accepted. Preparations are being made for the Senate to endorse the nominations of judges holding office on May 1, 1958, thus enabling the courts to resume their normal function.

It is gratifying to learn that the collective defence of the independence of the Argentine judiciary, backed by informed public opinion, has been upheld by a government whose constructive efforts deserve support from all friends of democracy.

Recent Arrests, Detentions and Trials in Spain

The significant events in Spain which deserve special international attention are a series of arrests and detentions of students who have been charged in Madrid with extremist activities against the regime and the Barcelona trial of workers in connection with a boycott of public transport, and, more recently still, the arrest of a number of leading personalities and lawyers in several Spanish cities.

The arrest and detention of Madrid students:

A brief background information may be desirable. It will be recalled that student agitation actually started in Barcelona in January 1957. Following that event, Francisco Foncillas Casas, now in exile, was tried in February of that year together with twenty-six other students for attempting to dissolve the SEU (*Sindicato Español Universitario*) by printing and distributing leaflets designed to prejudice the authorities of the National Government. These students were detained in the *Prisión Celular* before trial and academic sanctions were imposed upon them.

On February 12, 1958, leaflets were distributed at Madrid University appealing to students to strike for the release of their colleagues among the 44 arrested on January 18, 1958, and accused of attempting to re-establish the Communist Party in Spain.

In the last week of May, 1958, a number of students in Madrid were arrested by the *Brigada de Investigación Política-social*.

Most of the students were apprehended in a Madrid hotel, where two visiting delegates from COSEC, the international student organization, were staying. These delegates had been guaranteed complete freedom of action by the official university union. They summoned a meeting by phone and arrest took place after the meeting. It was explained that the official guarantee did not extend to Spaniards. The delegates were then requested to leave Spain immediately.

The Barcelona trial:

Among recent military and political trials in Spain, the Barcelona trial of workers should be mentioned. The trial took place as a result of the boycott of public transport in Barcelona in January 1957. An increase in fares started the resistance. Trams, buses and underground railway were boycotted. As a reaction against protests by an overwhelming majority of Barcelona citizens, a large number of arrests were made by the authorities. Forty-seven of the person arrested, nine of them women, were tried.

They were tried by a military court. Military jurisdiction covers a wide and undefined area of "military rebellion". By the law of March 2, 1943, this phrase includes "interruption or disturbance of the functioning of public services, means of communication or transport." Strikes, sabotage, union activities and all acts of a similar nature may come in this category when the purpose is political and may cause disturbance to public order.

The Court is constituted by, and reports to, the military Commander for the region, who can confirm or quash the sentences and has the power to increase them. The Court is composed of a President and six other officers as assessors, only one of whom is a lawyer.

According to a foreign observer, the trial consisted of a lengthy reading of the Prosecution's case with names of the accused, laws applicable, charges and sentences requested. The charges, which in many cases were of the vaguest character, consisted of a variety of acts, such as being a member of an illegal political organization, associating with, or being the husband or wife of such persons, or having been named by such persons to have associated with them. The charges contained various extraneous matter such as the record of the accused in the Civil War. Questions to the 47 accused took perhaps half-an-hour. Only one witness was produced. The defence speeches by the 22 defence lawyers were read from prepared statements, handed out in advance. Lawyers were not allowed to depart from these statements, and could comment on them for a very short time only.

The lack of elements of a fair procedure in the Barcelona trial does not appear serious at first sight for 23 were in fact acquitted and sentences were not, generally speaking, too severe. Two serious objections may however be raised. Firstly, although Spanish law prohibits detention by the police without charge for longer than 72 hours, in practice this period is indefinitely extended with no legal redress. *Habeas corpus* or its equivalent does not exist in Spain. It is taken for granted that if the arrest has any political flavour the detainee may be subjected to daily questioning, frequently accompanied by brutality. The fate of those arrested, but not yet tried, may be much worse.

Secondly, the arrest entails more serious consequences than mere deprivation of liberty and physical ill-treatment. It involves loss of employment and of pension rights without automatic reinstatement, even in the event of an acquittal. There is no public assistance for prisoners' families.

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Social and economic conditions in Spain are unsatisfactory and the defects of the legal system are not conducive to their improvement. Political activity and every kind of organized labour action in industry are forbidden. The formation of a membership of any political party other than the *Falange* is a crime. Thus, in Madrid a number of youths have been arrested and detained for

being "militant" members of the National Syndicalist Workers' Youth, a revolutionary movement which merged with the *Falange* before the civil war. They were charged with distributing leaflets criticizing the regime and calling for the establishment of a 'popular and syndicalist republic'. Reference was made in the leaflets to the 'grave economic situation' claimed to exist in many Spanish homes, and an increase in wages was demanded.

In connection with the Barcelona trial, it was recently reported that five prominent Catalan lawyers, including a Professor of Legal History at Barcelona University, were among the fourteen arrested in the early hours of November 15, 1958, by a unit of the *Brigada de Investigación Política-social*. It was later reported that they have been removed from the police cells to the central prison in Barcelona, where they remain *incommunicado*. The dean of the Barcelona Law Society has intervened on their behalf without apparent success. While no charges were preferred against the detained lawyers, it may be noted that the arrests coincided with the distribution of a leaflet among members of the legal profession calling for a general protest against the competence of the Military Tribunal to try persons imprisoned in connection with the industrial strikes.

The recent trials and arrests in Spain, as exemplified above, are a cause of serious concern for the world legal opinion. It is hoped that the situation will improve soon. The International Commission of Jurists is now formally inquiring into the situation and intends to publish further details about these and related developments in a next issue of the Bulletin.

Completion of the Purge of the Hungarian Bar

Prior to the Hungarian revolution of 1956, the legal profession of that country was not totally integrated in accordance with the Soviet pattern of collective legal offices centrally administered by the Ministry of Justice. Following the trial and execution of Imre Nagy and associates, however, a five-man commission was set up by Ferenc Nezval, Minister of Justice, to review the political reliability of membership of the Hungarian Chamber of Lawyers and to bring about a new organization of the bar. The

action was based on Law-Decree No. 12 of March 30, 1958. A purge of major proportions started in May when a group of lawyers were brought to trial.

Every lawyer had since to be examined for "counter-revolutionary" activities by the commission consisting of five hardened supporters of the régime; their task was, according to Deputy Minister of Justice Reczei, to make sure that "there will be no room for jurists who have tried to win their cases with the help of unlawful means, nor for those who carried on unlawful activities during the counter-revolution". In Budapest, 720 out of a total of 1,300 lawyers were struck off the Roll. The rest were allowed to work in lawyers' collectives. It was estimated that only about 20 lawyers, who are members of the Communist Party, were permitted to carry on private practice which was otherwise abolished. A similar process has been carried out in large provincial towns. The lawyers disbarred are mostly older members of the profession who will have difficulty in finding another occupation. Their apartments and offices had to be vacated. It is quite likely that a similar purge is awaiting members of the judiciary.

The measures taken against the Hungarian legal profession are a logical consequence of the systematic negation of the Rule of Law in that country since the suppression of the revolution in November 1956. The repressive acts of the Hungarian régime were condemned throughout the world.* The present campaign resulted ostensibly from the Government's allegation that a considerable number of lawyers were not only professionally unqualified but did actually hinder the proper working of socialist legality. Yet the true cause of the determined drive against the Hungarian Bar appears to be its remarkable contribution to the intellectual ferment preceding and accompanying the Revolution.

*The International Commission of Jurists has published on this subject three studies, *The Hungarian Situation and the Rule of Law* (April 1957), *The Continuing Challenge of the Hungarian Situation to the Rule of Law* (June 1957) and *Justice in Hungary Today* (February 1958).

The Legal Situation in Ceylon

An example of the kind of difficulties facing a new country is furnished by recent events in Ceylon. Ceylon consists of a variety of communities – six million Sinhalese, one million Ceylonese Tamils, one million Indian Tamils, 150,000 Muslims, 50,000 burghers (of mixed descent) and a handful of Europeans. The language issue became all-important when Mr. Bandaranaike became Prime Minister in 1956. At first the cry of “Sinhalese only!” represented a popular revolt against the “Anglicism” of the previous Senanayake government. “Sinhalese only” meant nothing more than the abolition of English as a “State language”. The election campaign in 1956 promised also “provisions for reasonable use of Tamil”, then the language of the minority of two million. The Tamils were astonished when a Bill was introduced stating that henceforth Sinhalese would be the only official language. The promised provision for “reasonable use of Tamil” was not implemented. The Federal Party, which had come into existence to fight either for parity for the Tamil language or for the creation of a separate Tamil State, threatened to organize passive resistance unless the Government implemented its promise. This was followed by a chain of violence which on May 26, 1958 broke out into a communal riot between Tamils and Sinhalese in Colombo and throughout the South. Army and Navy were joined in an attempt to put down the disorders.

The situation got out of hand with the result that the Government declared a state of emergency on the following day, May 27, in the face of rioting throughout the nation between members of the Tamil and Sinhalese races. Two political parties were banned: the Federal Party which represents a large part of the Tamil minority, and an extremist Sinhalese party which had come into being primarily to fight the language issue.

The proclamation of the state of emergency on May 27 was coupled with censorship of the Ceylonese press. For the first time in the recent history of Ceylon censorship of information and comment in the press was imposed. This applied to internal news as well as reports destined abroad. Censorship was carried a step further on June 18, when, under new emergency regulations, it was forbidden to report on Cabinet decisions or any news, relating

to the Cabinet. This ban was later extended to cover Parliamentary developments and minutes of Parliamentary debates began to be distributed by a government spokesman. This arrangement was rejected by the President of the Senate who asserted his authority in opposition to the Government. Censorship of Parliamentary proceedings was later abandoned. The press had issued strong protest, saying that "such Draconian measures are almost without precedent in Commonwealth countries in time of peace".

On June 25, the emergency regulations were extended for another month. Since June 27, however, restrictions on editorial comments have been removed, although censorship of news continues. It is difficult, in present circumstances, to foresee its end.

But it is comforting to learn that the Ceylonese Government has been trying its best to restore law and order and to give remedies to citizens who had suffered from excesses of Police power during the emergency. A senior Assistant Secretary to the Ministry of Defence and External Affairs has been specially appointed to receive, investigate and hear complaints of assault by service-men and police during the emergency.

The state of emergency still continues, and the Government retains powers under the emergency regulations to ban political parties, processions, and demonstrations and to obtain information and to examine any news item. It is, however, reported that as from September 26, 1958, ten emergency regulations passed pursuant to the public security ordinance were revoked. These include, *inter alia*, the regulations which controlled publications and Press, gave the Prime Minister powers to authorize searches and seizures to maintain essential services, to deal with any obstruction of essential services, to requisition personal services, to requisition transport, to prevent the entry of unauthorized persons into places occupied or used for the maintenance of essential services, and to requisition property.

The revocation of these emergency regulations does not necessarily mean that law and order have been fully restored. Many problems remain to be solved, and Ceylon is still faced with difficulties. Future legal development in this country will be followed with keen interest.

Press Controls in Turkey

Freedom of the press, one of the basic requirements of free society, is being threatened in various parts of the world. Turkey is a noteworthy example of such situation in view of recent government measures designed to increase its controls over the press. In an announcement to publishers it was stated that all advertising would be handled by a publisher's agency after January 1, 1958. At the same time the authorities called for a nation-wide freeze and inventory of all newsprint supplies in the country. All future orders must be made through the government. These followed the abolition of the State Office for the Press and its replacement by a Ministry of Press and Tourism. The new regulations appear to have been a way to tighten government control of newsprint supplies to influence editorial opinion in the country's press.

An announcement was made in December 1957 of a plan to restrict news coverage of proceedings in Turkey's Grand National Assembly. The proposed legislation would make it unlawful to write anything about parliamentary proceedings until the official minutes are approved. The only exceptions to this ban on parliamentary reporting would be the *Ankara Zafer*, a government organ, the Anatolian News Agency and the State radio stations at Ankara and Istanbul.

The control of the flow of advertising to newspapers led to considerable reduction in the revenues of the majority of Turkish newspapers. It is feared that their independence was thus indirectly threatened. The effect of the decree which came into force on January 1, 1958, is that advertisers could not go directly to newspapers to place their advertisements. Nor could direct solicitation be made for clients by newspapers. Moreover, the low quotas set by the government for each paper's advertising revenue proved disastrous to most newspapers, with the result that these quotas were finally abandoned. However, this episode is not conducive to a feeling of security among the press since there is no guarantee that such controls will not be reimposed.

Swedish Press and the Safeguards of Privacy

It is generally recognized that freedom of the press is not an absolute right. It is abused when its exercise is detrimental to the rights of other persons, such as privacy. It is equally desirable that freedom of the press should be exercised subject to an appropriate self-restraint. Swedish press offers an instructive example in this respect.

The constitutional position of the press, in particular of newspapers, in Sweden is much more clearly defined than in many other countries. To give some illustrations, the Press law, which was brought up to date in 1949, forbids obligatory censorship even in war-time. It fixes the liability for the contents of the newspaper on one single person, namely the "responsible publisher". But, quite apart from these constitutional guarantees of freedom of the press, the Swedish newspapers have also built up a system of *voluntary restraint*. There is an ethical code of professional conduct strictly adhered to by all newspapers. It begins by saying that apart from certain abuses of press freedom defined by criminal law there should be other disciplinary rules which prevent the publication of information that is incorrect or, through being incomplete, is injurious and which protect the individual from unnecessary suffering.

Paragraph 1 states that confidence in the press can be maintained only by "consistent efforts to give correct information"; there should be differentiation between news and comment; headlines should reflect the contents of the copy.

Paragraph 2 calls for extreme care in reporting espionage and security cases and reminds journalists of regulations about publishing information on military, civil and economic aspects of the nation's defence.

Paragraph 3 provides: "Give space to warranted rejoinders". It suggests that corrections and rejoinders should be "preferably equal to the original statements" both in length and in prominence.

The legal paragraph on reporting police and district attorney investigations, entitled "Judge no one unheard", contains the suggestion that detailed description of crimes should be avoided and that sex crimes should be reported "only if public danger still remains and if other circumstances indicate that the public

should know about them". "Protect the victims" is a laudable rule which may be followed in other countries. Suicides or attempted suicides should not be reported unless they have been committed in connexion with other crimes or in extraordinary circumstances. The names of young persons accused of a crime or persons not previously convicted should not be published. Photographs of young criminals and unidentified persons are to be avoided.

For cases of dispute there is a Press Fair Practice Commission, representing journalists and proprietors, but with a professional judge as chairman. This is a court of honour which can and does hear complaints from anybody who believes he has been treated by a newspaper in a way which, although not amounting to violation of any provisions of the press laws, is "in conflict with the demands of honour, or else, in view of the good name of the press should not remain unchallenged". The decision of the Fair Practice Commission takes the form of an opinion which is not legally binding, but traditionally highly persuasive. One of the most significant rules of journalistic ethics as pronounced by the Fair Practice Commission is: "Publicity that violates the sanctity of privacy must be avoided, unless it is imperatively in the public interest."

It is a commonplace that free society is threatened by disregard of the freedom of the press; on the other hand, no less harmful consequences may follow an abusive exercise of this right.

Deportation and Preventative Detention in Ghana

Ghana is a new country, faced with the difficult task of balancing the interests of national security with the claims of individuals to personal freedom. The measures taken by the Government to maintain national security include deportation of undesirable elements and preventative detention by administrative authorities up to five years.

Since her independence, Ghana has deported a number of aliens, mostly Syrian and Lebanese, some for political reasons and others on the ground that "their continued presence is not conducive to the public good." The prerogative power of a sovereign

government to refuse admission to, or to expel, undesirable aliens has never been doubted. But doubts may arise in the event the deportees claim to be its citizens. A claim to nationality, being a legal claim, should only be decided by the court of law and not by the executive branch of the government seeking deportation. In Ghana two Moslem leaders, Alhajis Amadu Baba and Lalemi Larden were deported late last year. The two Ashanti leaders claim Ghana citizenship and therefore inapplicability of deportation measures. The Government rushed a special Deportation Bill through Parliament permitting the ousting of the two men before their citizenship claim could be heard by the courts. The co-operation of the legislative was required to prevent the judiciary from deciding the more fundamental issue of citizenship. The Prime Minister of a neighbouring State, Nigeria, has personally intervened in an attempt to have the Ghana Government revoke its order of deportation, but without success.

The methods adopted by the Government were severely criticized by the local press. The Government in turn expelled Bankole Timothy, deputy editor of the *Daily Graphic* on 48 hours' notice on grounds that his presence was "not conducive to public good." The government also brought proceedings against the *Ashanti Pioneer* and Ian Colvin, a special correspondent of *The Daily Telegraph*. The first hearing of the case was dismissed by the Ghana Supreme Court for want of jurisdiction. The Court awarded damages to Colvin and the *Ashanti Pioneer*. Colvin, in turn, filed a writ seeking damages for unlawful detention, unlawful conspiracy, malicious prosecution and slander, and a Court injunction against the Prime Minister and other Government officials to restrain them from "abusing the processes of the Court and from committing any of the (other acts) for which damages are sought." After the Supreme Court finding, defence counsel Christopher Shawcross, who represents both Colvin and the *Ashanti Pioneer*, left for a visit to Nigeria. He was later joined by Colvin on parole. The Government then decided to bar entry to the country to Shawcross. Thereupon, *The Daily Telegraph* recalled Colvin back to London. Court proceedings were thus brought to an end.

To secure complete power over the movement of its nationals

and non-nationals, the Ghana Government has sought authority through a new Bill to detain Ghananians for actions considered prejudicial to the defence of Ghana, to relations with other countries, or to the security of the State. The Preventive Detention Bill, which was published on July 5, 1958 in the name of the Prime Minister, Dr. Nkrumah, lays down that a person detained shall, not later than five days from the beginning of his retention, be informed of the grounds on which he is being held and be afforded an opportunity of making representations in writing to the Governor-General. A detention order may be suspended by a Governor-General's notice in the *Gazette*. But suspension is accompanied by certain binding conditions, and if a person fails to comply with such conditions he will be detained again, this time up to five years. The Governor-General can specify the length of the detention in an order, within the limit of five years. Wide discretion is thereby vested in the Governor-General. These large detention powers are believed to provide a check against a potential *coup d'état*, since the government is determined not to be caught unprepared by subversion from within or without.

The legal implications of the Preventive Detention Order are just being put to test by an application of 37 Ghanaian citizens detained under its provisions for release on a writ of *habeas corpus*.

The events in Ghana have attracted the attention of legal circles in various parts of the world. Until the situation in that country is normalized, readers will be kept informed on further developments.

A Political Trial in Belgrade

A trial which is believed to be the aftermath of the Djilas affair, was opened on January 31, 1958 before the County Court of Belgrade against Bogdan Krekić, pensioner, Dr. Dragoslav Stranjaković, professor of the Theological Faculty, Aleksandar Pavlović, former lawyer, Dr. Milan Zujović, professor of the Law Faculty, all from Belgrade. They were accused by the county public prosecutor in Belgrade of hostile activity with the aim of forcibly and unconstitutionally overthrowing the Government. The

trial lasted four days, and the hearings were summarized and broadcast from day to day. Pavlović, aged 73, vice-president of the pre-war Yugoslav Socialist party, was sentenced to 8½ years' imprisonment, Krekić, aged 71, foundation member of the same party, was given seven years' imprisonment, and Dr. Zujović, aged 58, former deputy dean of the Faculty at Belgrade University was sentenced to four years in prison on the charge that he assisted the other two in hostile activity. All pleaded not guilty. The fourth accused, Stranjaković, aged 56, was too ill to participate in the proceedings and will be tried later. These sentences which in view of the age of the two principal accused appear unusually severe were reaffirmed by the Supreme Court towards the end of July.

In the judgment almost paraphrasing the indictment the Court found the accused guilty of having organized at the beginning of the past year a group which had taken up contact with hostile émigré groups abroad, having the intention to overthrow by force and by unconstitutional means the authority of the working people in the country, to destroy national unity and carry on other forms of hostile activities against the Federal People's Republic of Yugoslavia.

The case for the Prosecution rested on the allegations that the accused held clandestine meetings in the flat of Pavlović, elaborated an action programme for an underground group and commented upon a manuscript written by Krekić of a book critical of the present government. The programme, which emphasized the necessity of a multi-party democracy and expressed confidence in the ultimate collapse of the Tito regime, was allegedly smuggled out of the country by Zujović and received in Paris by his émigré brother.

It will be noted that the underground group contemplated by the accused never actually materialized, nor was the manuscript written by Krekić printed or the action programme circulated. The guilt of the elderly accused seems to consist in academic discussions of retired politicians. Moreover, Zujović repudiated his confession during the trial and testified that he tore up the message to his brother the day it was handed to him for delivery. His confession, Zujović said, was made during the pre-trial investigation, because he had been emotionally disturbed

at the time and had tried to spare his family further political reprisals.

In the course of the trial, Zujović's defence counsel requested the court to allow her to call as witness for the defence M. Gaston Leduc, Professor at the Paris Faculty of Law in order to clarify the position with regard to the alleged transmission of a message from Zujović to his émigré brother in Paris through Professor Leduc. The public prosecutor objected to this motion, and after deliberation the court sustained the objection.

In view of the direct implications which the Public Prosecutor carried in his indictment against France a number of French personalities, including, *inter alia*, Professors Maurice Bye, André Philip, Jean-Jacques Chevalier and Emile James of the Faculty of Law of Paris had sent to the Belgrade Court through the Yugoslav Embassy the following statement:

"Dean Milan Zujović has maintained with each of us both personal and professional relations. Many of us have been linked with him by close friendship for many years. We all value his character and his righteousness as well as his loyalty towards Yugoslavia which was in keeping with his friendship to France.

"When we entertained him on the occasion of his recent visit to Paris together with a group of Yugoslav students whom he was leading, we observed his efforts to explain the new Yugoslavia, to promote its understanding and esteem and to develop friendly relations among the two countries.

"His entire attitude seems to us to exclude the possibility of a conscious participation in a conspiracy. In particular, this should account for the hospitality which we were happy to accord to a representative of Yugoslav science."

But this testimony does not appear to have affected the Court's decision.

The trial and sentences have been protested against on humanitarian and judicial grounds. The prosecution has not adduced sufficient evidence, nor do the allegations even if substantiated establish the guilt of the accused. The rights of the defence were narrowly confined and evidence on behalf of the accused suppressed.

A number of leading international organizations have expressed deep regret and concern over the Belgrade sentences. The International Commission of Jurists, deploring any violation of human rights, is moved by a special feeling of solidarity with members of the legal profession punished for exercising their freedom of thought.

The Baghdad trials

Since the end of August 1958, the trial has been in progress in Bagdad, Iraq, against 108 defendants, mostly prominent political and military figures representative of the royal regime overthrown on July 14, 1958. The charges brought against the accused were based on the Conspiracy and Corruption Act of August 10, 1958. The main applicable provisions of the revolutionary legislation made it an offence to engage in conspiratorial activities designed to invite foreign influence detrimental to the integrity of Iraq, to meddle in affairs of and to plot to use the armed forces of the country against other Arab states. The choice of punishable activities enumerated in the Act reflects the desire of the government to put on a new footing its relations with Arab sister states as well as to discredit the *ancien régime's* close political and economic collaboration with Western powers.

With regard to substantive law, the Conspiracy and Corruption Act has retroactive application to September 1, 1939, and the accused in the present trial face the severe test of answering for actions which under the former system were within legal limits.

From the procedural standpoint, the Baghdad trial, according to available reports, presented a picture characteristic of a turbulent post-revolutionary period. The efforts of the prosecution to depict the activities of the accused in a way conveying the ideology of the new regime to the masses of the population led on occasions to an emotional colouring of the court proceedings. The rights of the defence in the trial appeared to have been subject to rather stringent limitations. That a similar tendency was in evidence during political trials under the old regime does not detract from the disturbing nature of such a trend.

In telegrams addressed on September 25 and October 9,

1958, to the Minister of Justice and the Prime Minister of Iraq respectively, the International Commission of Jurists expressed the anxiety of legal circles in many countries about the alleged retroactive character of the charges and reported restrictions on rights of defence. It also requested permission to despatch a qualified observer to attend the first stages of the trial. On October 23, 1958, the following cable was received from the Prime Minister of Iraq: "Assure you that full rights of defence are observed in trials. Defence is a sacred right. Proceedings of the Court are fair and just".

As of this writing, five of the 17 persons accused in the first stage of the trial were condemned to death, six were acquitted and the rest were sentenced to prison terms ranging from one year to life.

Suspension of Civil Liberties in Cuba

On June 22, 1958 President Fulgencio Batista's Cabinet approved congressional action extending suspension of constitutional guarantee for 45 days. The Cabinet said the measure was necessary "to maintain order and peace, watch over the economy and maintain the social and political rights of the people against disturbing elements". This was an extension of the emergency powers granted to the President by the Congress last April during the height of the rebellion of Fidel Castro.

On July 15, 1958 José Puente Blanco, President of the FEU (*Féderación Estudiantil Universitaria* of Cuba) now in exile, wrote that on July 10, Pedro Martínez Brito, Vice-President of the FEU and José Rodríguez Vedo, a student, who were hiding in an apartment in Havana were ambushed by the Police and shot dead. Both had been in exile and had returned to Cuba to resume the fight against the regime. On July 9, José Fernández Cossio, Acting President of the FEU, Cuba, was arrested by the police and his actual whereabouts were not revealed.

A number of organizations opposing the present regime alleged at the end of October 1958, that serious violations of fundamental human rights are being committed by the Batista government. They cited a written complaint of lawyers defending some of the youthful prisoners against "arbitrariness" and "illegality" employed by the police forces. Arrested persons were

reported held at the police stations as hostages and evidence was submitted of executions without sentence, the victims of which were exposed to public view to intimidate the opposition. Frequently, individuals released after serving their sentence are re-arrested or feared to have met a worse fate before escaping the country or reaching the asylum of a friendly diplomatic mission.

It should be added that the state of a de facto civil war does exist in Cuba and that allowance should be made for this fact in appraising the situation. The existence of a state of civil war does not, however, necessarily dispense with the observance of fundamental human rights. The situation in Cuba is critical and gives ground for serious concern. Further information on the latest developments is being collected and the Commission hopes to submit a fuller report on the Cuban situation in the near future.

Parliamentary Privileges and Contempt in the United Kingdom

The institution of "parliamentary privileges" is essential to democratic government. These privileges include, *inter alia*, the exemption of Members of Parliament from civil liability in respect to statements made in the course of parliamentary debate. But the protection of such privileges need not necessarily be vested in Parliament itself. The Legislature in the United Kingdom enjoys to an unusual degree the power to commit a citizen for contempt of Parliament in respect of a breach of parliamentary privilege. This power which derived its authority from the Bill of Rights of 1688, passed however to protect Parliament against the Crown and not against its people, has been more frequently exercised in recent years. Since World War II, there have been twenty-five cases where Members of the House of Commons have complained of breaches of Parliamentary privilege. There were eight in the session of 1950-51, and six in the 1957-58 session. In view of the wide public interest and the important issues raised by this subject, with particular reference to the liberty of the individual, rights of the press and the public, free access to court and independence of the legal profession, the Power of Parliament to commit and punish a person for contempt deserves close attention.

Procedure in the High Court of Parliament:

In a letter to *The Times*, dated July 14, 1958, a Member of Parliament wrote: "Parliament is a court of justice for the administrative process and the Committee of Privileges is one of its expert assessors. There is no reason in the world why the committee should not hold those matters as privileged which the Courts of Justice also hold as privileged."

It should be observed, however, that Parliament is not a Court of Justice. For one thing, the procedure in the High Court of Parliament for contempt is of a non-judicial character. Parliament becomes at the same time both the prosecution and the *judex in sua causa*, whose verdict is not reviewable by a court of law. The procedure may be summary. There is no right to legal representation. Parliament may even refuse to hear the accused in his own defence. In some cases, the House may refer the matters to the Committee of Privileges for recommendation which may be a subject for debate before final adoption. The decision of Parliament therefore assumes a political rather than a judicial character, and though nobody has been sent to prison in the United Kingdom for contempt since 1880, the availability of the procedure contains a potential danger to the rights of the individual.

While the contempt procedure in court has the basic characteristics of the contempt power of Parliament – being *judex in sua causa*, not subject to judicial review –, the court needs the power in order effectively to administer justice and not merely to protect its privileges. Furthermore, the exercise of this power by Parliament may lead to a clash between the legislative and the judiciary, such as arose from a recent Parliamentary privilege case, known as the *Strauss* case. It involved a conflict between the right of a citizen freely to have access to court and the power of Parliament to commit him for contempt on grounds of a breach of privilege. It may be desirable to give the facts of the case. On February 8, 1957, Mr. G. R. Strauss, M.P., wrote a letter to the Paymaster-General complaining about the way in which the London Electricity Board was disposing of non-ferrous metal scrap. The Board took the view that the letter contained statements defamatory of itself and its officials and, having taken the advice of counsel, instructed its solicitors to inform Mr. Strauss that it

intended to institute proceedings for libel against him. Thereupon Mr. Strauss complained in the House of Commons that the threat of proceedings was a breach of parliamentary privilege and the case was referred to the Committee of Privileges.

On October 30, 1957, the Committee reported (i) that Mr. Strauss's letter of February 8, 1957, was a "proceeding in Parliament", and (ii) in threatening a libel action both the London Electricity Board and its solicitors acted in breach of the privilege of Parliament. The Attorney-General who disagreed with these findings raised a further question whether in treating the issue of writ as a breach of privilege the House would be contravening the Parliamentary Privilege Act, 1770. This question was referred to the Judicial Committee of the Privy Council, which in turn reported on May 7, 1958, that the Act of 1770 did not prevent the House from treating the threat of the issue of a writ against a Member of Parliament in respect of a speech or proceeding by him in Parliament as a breach of its privileges. The Committee of Privileges recommended no further action in view of the novelty of the circumstances of the case. It thus proposed a compromise ending to the affair, lenient to the alleged offenders and calculated to minimize the risk of an open clash between Parliament and the Courts.

On July 9, 1958, by a narrow majority, the House of Commons rejected the report of the Committee of Privileges and decided that Mr. Strauss's letter to the Paymaster-General was not a "proceeding in Parliament" within the meaning of the Bill of Rights. The wisdom of this decision is not disputed. But the whole question of Parliamentary Privilege still needs further clarification. Communications between Members of Parliament and Ministers outside Parliament are in any event protected by their qualified privilege, which means that they will not be held libellous unless it can be shown that they were written in bad faith. In a letter to *The Times*, dated July 8, 1958, Sir Hartley Shawcross wrote: "And when he (the member of Parliament) cannot show that what he said was true the law of qualified privilege - that is to say, the ordinary law of the land - will give him complete protection provided he acted honestly and without malice, even though stupidly and unreasonably. Can more be reasonably required?"

The independence of the legal profession:

The decision in the Strauss case reaffirmed the right of the subjects to lay their complaints before the courts.

As to the position of barristers and solicitors, a joint letter to the Editor of *The Times* was sent on July 2, 1958, by the Chairman of the General Council of the Bar and the President of the Council of the Law Society. The two organizations of the legal profession expressed the hope that in considering this matter the House of Commons will not take any action which subjects lawyers in the course of their professional duties to the dilemma between the duty to the client and the Courts and the risk of incurring the censure of the House of Commons and possibly sanction following on that censure. To do so, it was submitted, "would be to strike by means of pressure on the legal profession at the freedom of access to Her Majesty's Courts which is the foundation of the Rule of Law".

The rejection by Parliament of the report of the Committee of Privileges is also welcomed in so far as it reaffirms the independence of the legal profession in the performance of the duties to clients and to the courts.

The Rule of Law in Portugal

The rule of law is violated in any country which neither allows nor tolerates the right of the people to criticize and to form an opposition. The significance of the freedom of critical faculties as the basis of free society is illustrated in the trial in Lisbon of Captain Henrique Galvao and three other writers who had criticized the Salazar regime. The trial was concluded on March 18, 1958 when it was announced in public that Captain Henrique Galvao, formerly counsel for the Portuguese Army, Lawyer Felipe Mendes and Dr. Abel Das Neves were given sentences of 16 years, 10 years (subsequently reduced to two years) and two years imprisonment respectively on charges of defaming the Portuguese President, the Prime Minister and others. The proceedings were conducted in secret, the court being cleared by order of the judge on security grounds.

The trial of Captain Galvao is connected with the report he

was asked to make on conditions in Angola, an East African territory under Portuguese administration. The report was critical. It was never published. But in 1949 copies were circulated among the opposition. Galvao reported that conditions in Angola were worse than slavery. Indigenous labour force is bought from the State. If the native is sick and dies the master can always apply for another from the State. Forced labour continues to be the key to Angola's economy. In 1951, Galvao supported the opposition candidature of Admiral Meireles. For this activity he and some associates of the Progressive movement were arrested in 1951. He was tried and sentenced to three years' imprisonment towards the end of 1953 for engaging in a conspiracy against the State and planning violent subversion of public order with forceful entry into the precincts of the National Assembly and of other organs of sovereignty as well as the residence of the Head of the Government. The recent trial is thought of as indicative of Portugal's irritation at being continuously harried by Afro-Asian members of the United Nations to comply with Article 73(e) of the Charter, which requires Portugal, as member, to transmit regularly to the Secretary-General, for information purposes, statistical and other data of a technical nature relating to the economic, social, and educational conditions in non-self-governing territories for which the member is responsible. The alleged offences for which Galvao has recently been sentenced arise out of incidents in 1954. The accused is alleged to have obtained access with the aid of another prisoner to the prison's printing and duplicating equipment and conducted a campaign of scurrilous defamation and of threats against the Head of the State. The long delay in bringing Galvao to trial is explained by Portuguese authorities to be attributable to his "persistent recourse to dilatory tactics of the most varied nature directed to impeding the course of justice".

On April 20, the Lisbon criminal plenary tribunal, which under Decree-Law No. 35-044 of October 20, 1945 replaced the Special Military Tribunal and was composed of the same members as the court that tried Galvao and associates, rejected the request of the accused for leave to appeal to the Supreme Court against sentences on the ground that the accused were charged not only with defamation but also with incitement to

civil war (punishable in Portuguese Law with 12 to 16 years imprisonment) and of lowering the prestige of Portugal abroad (for which Portuguese Law provides a penalty of two to eight years imprisonment).

A comment on the law in Portugal is contained in two letters to the Editor of *The Times* by Norman S. Marsh, former Secretary-General of the International Commission of Jurists. Referring to the situation in that country, Mr. Marsh wrote:

“Recent information from Portugal suggests that imprisonment for long periods without trial, improper methods of interrogation by the political police, trial in secret, interference with the rights of the Bar, and, by any standard, excessive sentences are not unknown in that country and have indeed led to protests by leading Portuguese lawyers of all political views.”

Mr. Marsh referred to the trial of Captain Galvao and concluded:

“Some circles in Portugal may fear a return to ‘chaotic parliamentarianism’ and ‘the corruption and violence associated with the days of so-called liberalism’. The implications of an alternative régime in Portugal may be debatable; it is certain, however, that the authorities in that country, whoever they may be, will win respect at home and abroad if they are prepared to administer justice fairly, openly, and with humanity.”

After the publication of the earlier letter in *The Times* of May 29, Mr. Marsh received from the Portuguese Ambassador at The Hague further information concerning the trial of Captain Galvao. “It appears”, wrote Mr. Marsh, “contrary to an impression given in a written statement by the Portuguese Embassy in London, that Captain Galvao was not arrested in 1951 but on January 7, 1952, and that he was originally sentenced not in 1953 but on December 17, 1952, and, after re-trial, as a consequence of an appeal, again sentenced on March 31, 1953, this sentence being confirmed on May 16, 1953. In respect of this sentence, Captain Galvao was, taking into account the period spent in custody, and three months’ remission of sentence, to have been released on October 8, 1954, but he was meanwhile charged

with a new offence for which eventually in March last, at the age of 63, he was sentenced after a trial in secret session to 16 years imprisonment."

The further particulars of the case did not in Mr. Marsh's submission in any way weaken his objection to "long periods of imprisonment without trial". "Nor", continued Mr. Marsh, "with due respect to the explanations offered to me by the Portuguese authorities, do political trials behind closed doors cease to be objectionable because they involve attacks on the 'personal honour' of individuals, in respect of which Portuguese law provides for secret trial. Further, the fact, to which my attention has also been drawn, that Portuguese law does not provide the death penalty or life imprisonment in time of peace, does not prevent sentences from being, in my original phrase, 'by any standard excessive'. However, I am particularly grateful to the Portuguese authorities for emphasizing that there are in Captain Galvao's case still possibilities of conditional freedom, amnesty, or pardon; I sincerely hope they will be carefully considered."

In a letter addressed to the International Commission of Jurists on April 13, 1958, the Portuguese Ambassador to The Netherlands requested the publication of a paper entitled "*La Règle des Droits*", outlining the position of the Portuguese Government with particular reference to an earlier article published by the Commission.* The letter denied for instance the existence of "political courts" in Portugal. But it is a fact that the Special Courts at Lisbon and Oporto, although not officially styled "political courts", were set up for the trial of political cases, with special judges. With regard to the torture charged in connection with the case of University students, the paper further stated that the Minister of Interior had caused an investigation to be undertaken. But no results of such enquiry were made public. It was further asserted that the electoral procedure in Portugal does give the opposition access to all facilities enabling the use of ballots of identical size, print and paper. The letter admits, however, that during the 25 years of the Salazar régime the opposition has actually contested an election only in a few metropolitan districts in 1953 and 1957, while in

* *Bulletin* No. 7, October 1957, pp. 34-44.

every other election no opposition candidates were entered or withdrew in the course of the election campaign. Finally, the communication denies that any political deportations are taking place to Timor or to other Portuguese overseas possessions and describes the penal institution at Tarrafal (Island of Sal) as a regular prison used for the detention of incorrigible criminals.

The concern of Portuguese authorities over the accuracy of information published in the *Bulletin* on the conditions in Portugal is understandable; in turn, the Commission is always anxious to publish only documented material based on the most reliable sources. There can be however no denial of the justified concern the situation in Portugal continues to cause in the legal world.

The South African Treason Trial: Second Phase

The International Commission of Jurists has taken from the very start the keenest interest in the South African Treason Trial. In December 1956, the Commission co-operated with a number of British organizations in sending to South Africa Mr. Gerald Gardiner, Q.C. as an observer of the Treason Trial. Mr. Gardiner's arrival in Johannesburg coincided with the opening of the preliminary examination of the accused in the Treason Trial. The report he submitted upon his return to England was published in the *Journal of the International Commission of Jurists*, vol. I, No. 1, pp. 43-58. Mr. Gardiner's presence in Johannesburg was characterized by Mr. Eric Louw, the South African Minister of External Affairs, in a letter which appeared in *The Times* of January 7, 1957, as a "calculated insult to our magistrates and judges". To this it was replied on behalf of the Commission that "Mr. Eric Louw is mistaken in thinking that we were inspired by ill will towards his country . . . but we cannot remain indifferent to legal events abroad where fundamental principles of justice are concerned".

After the publication of Mr. Gardiner's report on the first phase of the Treason Trial, the Government of the Union appeared to have changed its attitude towards observers. At the second phase of the trial which opened on August 1, 1958, in Pretoria, observers were received with quite a different spirit, and were accorded all available facilities. Among these observers, who

included Fred Lawton, Q.C., accompanied by Dr. Blom-Cooper for "Justice" and Dean Erwin N. Griswold of Harvard Law School, representing certain American groups, Dr. Edvard Hambro, former Registrar of the International Court of Justice, represented the International Commission of Jurists. An account of the situation and of the trial has been given by Dr. Hambro whose report is published below.

Report by Dr. Hambro:

Visitors to the Union of South Africa often feel uneasy. They have the impression that every question is resented as an insult and a criticism. It looks as if the white population of the Union feel that the world is hostile and ignorant and intolerant. They claim that no one who has not lived in the Union for a number of years is qualified to understand or comment upon the problems. Visitors generally hold a different view and believe that only outsiders are free from prejudice and pre-conceived ideas and can understand what is happening.

The situation is difficult and dangerous. A white minority of nearly three million try to perpetuate their domination over a native population of about nine and a half million, little more than four hundred thousand Asians and one million three hundred thousand coloureds. These white people feel that they are defending white civilization against barbarism. They feel that the white masters should remain masters and that they are born or set out to guide and rule the natives. They feel that the only possibility is to set them apart and to live in separation (hence the South African term *apartheid*.) Among the English-speaking as well as the Afrikaans-speaking people, mature minds try to find a better solution. The Anglican Church and the Roman Catholic Church are strongly and courageously opposed to *apartheid*. The whole economic life of the Union is based on black labour. If given time, these influences may lead to a gradual solution. But time is running short. This is felt by people of all races. Many have grouped together in a National African Congress working with other groups of whites, blacks, Asians and coloureds. They organize passive resistance, civil disobedience, demonstrations and protests. They engage in an incessant campaign of education and propaganda. They allege that they are

working for a better future for Africa, but many of the members of the governing classes feel that they are rebels if they are non-whites and traitors if they are whites.

In the early light of dawn on December 6, 1956, over a hundred and fifty persons were arrested and flown in military aircraft to Johannesburg charged with high treason and other serious offences. Husbands and wives were separated, mothers torn away from young children. And a long drawn-out preliminary examination started. Shortly after the opening of the preliminary proceedings, all of the accused were released on bail in spite of the fact that they were considered dangerous enough to have to be arrested in this dramatic manner. Apparently the examining judge did not consider them to be such a threat as the prosecution and the police appear to have felt. At the end of the prolonged preliminary hearings, the Attorney-General announced that he would not prosecute all of the persons arrested. Sixty-five were discharged. This is very astonishing to observers. It would to most observers have appeared more normal and more humane to screen these suspects before they were actually arrested. It does not speak very highly for the preparation of the case that so many of the persons arrested on a capital charge were released without prosecution.

A further disturbing fact is that the authorities offered no explanation of this unusual phenomenon. Observers cannot help wondering why Chief Luthuli, the Christian president of the African National Congress was discharged while Professor Matthews, acting head of Fort Hare University College, was prosecuted, or why a white clergyman was prosecuted while his native colleagues were not. The silence on this point gives rise to suspicions that the arrests were motivated by political reasons.

Of the total of 156 persons arrested, 91 were eventually committed for trial. They were charged with high treason, sedition and contravention of the Suppression of Communism and Riotous Assembly Acts.

High treason in South Africa is a Roman-Dutch common-law offence. It is defined in a leading textbook as follows: "High treason is committed by those who with a hostile intention disturb, impair or endanger the independence or safety of the

state, or attempt or actively prepare to do so". High treason is a capital offence. Sedition, which carries a maximum penalty of life imprisonment, is constituted of the same elements, except that there is no need to prove hostile intention. High treason may also be committed by merely suppressing information. The South African definition of high treason is therefore unduly wide.

The Riotous Assembly Act 1954 provides that any action "calculated to cause hostility between the white section of the population on the one hand and any other section on the other is an offence". If this is the case, then, strictly speaking, the *Apartheid* policies adopted by the Government of the Union constitute direct contravention against this Act. The prosecution failed to appreciate the fact that the Government in implementing *Apartheid* is perpetuating the existing hostility, while the accused were in fact trying to abate the consequences of this policy.

The Suppression of Communism Act which contains a broad definition of "communism" is quoted fully by Mr. Gardiner in the *Journal of the International Commission of Jurists*, vol. 1, No. 1, pp. 48-49. It is nevertheless necessary to recite part of that definition. "Communism means the doctrine of Marxism-socialism as expounded by Lenin or Trotsky, the third Communist International or the Communist Information Bureau or any related form of the doctrine expounded or advocated in the Union for the promotion of the fundamental principles of that doctrine". This includes, *inter alia*, any doctrine or scheme "(b) which aims at bringing about any political, industrial, social or economic change within the Union by the promotion of disturbance or disorder, by unlawful acts or omissions or by means which include the promotion of disturbance or disorder, or such acts or omissions or threat", or "(d) which aims at the encouragement of feelings of hostility between the European and non-European races of the Union the consequences of which are calculated to further the achievement of any object referred to in paragraph (b)".

Clearly, the Government exempts itself from the application of this Act. Yet the passing of laws discriminating against non-whites must necessarily "encourage feelings of hostility" between the races. The line of distinction is to be drawn not between the classes of activities, nor between the manner in which an act is

performed, but between the perpetrators of such act. While the Government stamps its actions with a seal of legality, a member of the opposition who questions their legal and moral validity is considered by the authorities to have violated the Suppression of Communism Act. It makes no difference in what manner he chooses to oppose a government policy, whether by organizing passive resistance or by inaction, his opposition, which cannot be properly represented in Parliament, must take a form which constitutes treason or an offence against the Suppression of Communism Act.

The original definition of "communist" in the Act of 1950 was replaced by a wider definition in 1954. According to this new definition, a person is a communist to-day who was a communist forty years ago. And, whether a communist or not, he is held to be a communist if the Governor-General says so. The position of Governor-General is held by the ex-Minister of Native Affairs of the party in power. The gravest danger for the accused, as indeed for any opposition in the Union of South Africa, is the vagueness of the crimes as defined in the statutes which are the foundation of the present proceeding.

In a case such as the present, there is power to order trial without jury, by a special court, composed of three judges appointed by the Government. The Government has taken advantage of this provision by exercising its power to order trial by a special court. The trial took place in Pretoria. It was probably done in order to prevent such riots as had taken place in Johannesburg. This change of venue might have caused some inconvenience to the defence counsel who all work at the Johannesburg Bar.

The proceedings started on August 1, 1958 in an old synagogue in Pretoria. No ordinary court room was large enough to hold all the accused. The court consisted of three judges constituting a special court for this one case. The judges were appointed by the Minister of Justice. Such special tribunals, although considered unconstitutional in various countries, are not unprecedented in the Union. The judges are selected from the Bench.

The first step was taken by the defence. A motion was made that two of the judges should withdraw. The defence counsel asked

Mr. Justice Ludorf to withdraw because he had in a fairly recent case of the same nature acted on behalf of the police. The leader of the Defence, I. A. Maisels, Q.C., argued that "What has been created in the minds of the accused at least, is that the Minister of Justice has appointed as one of the judges in this case his advocate in that (earlier) case". Mr. Maisels argued further that Mr. Justice Ludorf's previous connections with the Nationalist Party created a reasonable fear in the minds of the accused that his Lordship "may not be able to take a completely dispassionate view of the conduct of the accused". After a short adjournment, Mr. Justice Ludorf withdrew. He said that until the matter of the 1954 case had been raised in court it had not occurred to him that there was any connexion between the two sets of proceedings; though he believed he had had discussions with the police at the time, he could not recall them and they had in no way influenced his attitude to the trial. But there was sufficient overlapping in the facts of the two cases for fear of the accused that he could not be unbiased to be reasonable. On the Defence objection to his past political associations he said Mr. Maisels had overlooked the fact that the accused had "fulminated with equal vigour against the United Party and even Mr. Paton's Liberal Party". If this has been the sole objection to his sitting in the trial, he would not have recused himself.

The defence counsel also asked Mr. Justice Rumpff, the presiding judge, to withdraw on the ground that he had been instrumental in appointing his colleagues on the Bench. The Minister of Justice was reported in the newspapers as having stated in Parliament that he had asked Mr. Justice Rumpff to appoint or recommend his colleagues. There was a slight discrepancy between the official report of the debate and the newspaper reports. It is not absolutely certain whether the word in Afrikaans as used by the Minister should be best rendered in English by "recommend" or "appoint". Whatever the translation, the presiding judge stated clearly that he had not even recommended his colleagues. The minister had mentioned their names to him. His attitude has been one of "complete indifference". He had not even met Mr. Justice Ludorf before and it would never have occurred to him to recommend anyone. He stated that now that the facts were disclosed the accused could not have any

reasonable fear at all that these inaccurate reports could in any way influence the presiding judge and prevent him from giving a fair trial. He consequently did not withdraw.

The next step in the proceedings was the demand from the defence to have the indictment quashed. The 91 accused were indicted in one identical indictment which ran into 24 pages foolscap with two volumes of further particulars amounting to 381 pages foolscap. It was felt that a collective indictment of so many accused would prejudice their defence and that a large number of counts for so many accused would make a proper treatment of each count difficult and cumbersome. The demand for the quashing of the indictment stated, among other reasons, that "The allegations relating to the alleged concert, common purpose and conspiracy, and the participation of the accused therein, are vague, contradictory, embarrassing, prejudicial and unintelligible".

The trial was adjourned for one month and was resumed on September 29, 1958. During the adjournment, the special Court quashed the first alternative charge, under which the 91 accused were charged with contravening the Suppression of Communism Act. The prosecution at the reopening of the trial withdrew the second alternative charge, which was an elaboration of the first. Henceforth, the prosecution chose to "stand or fall by a conspiracy". Even if overt acts of high treason and hostile intention had been proved for individual accused, they would have gone free had proof of treasonable conspiracy failed.

On October 2, 1958, defence counsel successfully objected to the prosecution's introduction into the indictment of statements which do not form part of the pre-sworn evidence. The objection concerned the evidence of Father J. Bochenski, Professor of Fribourg University, Switzerland, who was being offered as an expert witness to define the meaning of "communism".

The proceedings appear to have been extraordinarily slow, owing perhaps to practical difficulties inherent in the collective trial. The wheels of justice grind slowly in South Africa. Although the case began in December 1956, when 156 persons were arrested and charged with treason, not one word of evidence has been produced. Indeed, no witness has been called after eighteen days of hearings before the special Court. In this case,

perhaps more than in other cases, one of the inevitable consequences of the delay of justice is its denial. While the trial continued the accused were immobilized. In spite of the fact that they were released on bail at a very early date they still had to live in or near Johannesburg. They were for the greater part precluded from living with their families and from earning their livelihood. This, of course, is also a warning to other dissidents. Most of the accused were also of the poorer classes and it is costly to be engaged in a criminal proceeding which may last for years.

The tone of the proceedings did not give occasion to any fear that the trial was not conducted in an exemplary way. There is nothing to justify any suspicion of a rigged trial. No murmur of any kind could be heard among the defence counsel; and the accused appear to have harboured no such fear. However, it is certainly possible to offend against fundamental human liberties in a law-suit conducted on the very finest principles of procedural justice. The judges quite clearly give justice within the law. But the judges cannot go outside the law which is their frame of reference. They cannot – it is believed – as in certain other countries set aside a statute as offending against some higher principles of justice embodied in the written constitution. The gravest danger for the accused, as has been stated above, consists in the vagueness of the crimes as defined in the statutes.

Burning problems exist in South Africa. Differences of opinion naturally follow, but only certain groups of the population are permitted to hold and to express their views. The overwhelming majority, the so-called blacks and coloureds are not allowed to have or to hold any political views. To express a view contrary to the ruling minority of the privileged race may constitute a crime for which heavy penalty may be paid. The law does not provide a way in which a different opinion can be registered. It cannot be expressed outside of Parliament because that would constitute treason. Nor can it be voiced inside Parliament, because the people who are likely to hold a different opinion have no direct representation in Parliament. The law does not afford equal protection. There appears to be one law for the whites and another for the non-whites.

The following comment may be added to Dr. Hambro's report:

Although the prosecution withdrew indictment against all the 91 accused on October 13, 1958, it is reported that the Crown has merely decided to divide the mass Treason Trial in South Africa into two parts. An official notice on November 14, intimates that a special criminal court (consisting of the same judges as before) will sit on January 19, 1959, to try without jury 30 of the original 91 accused on a charge of treason. It will sit again on April 20, 1959 to try the remainder on a similar charge. This action by the Crown has done nothing to remove the real objections to the trial. It will still be excessively difficult for the court physically to sift the evidence and relate it to each individual accused. The same difficulty confronts the defence counsel in the preparation of the defence of each of the accused.

Mindful of the growing awareness of the world legal opinion of the crucial issues involved in this case, the International Commission of Jurists will continue to concern itself with the situation in South Africa and take further measures as required by the developments, including possibly the sending of observers to the next stages of the Treason Trial.

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