

FOR THE RULE
OF LAW



**Bulletin
of the
International
Commission
of Jurists**

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ASPECTS OF THE RULE OF LAW

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Former Lecturer in Government, Columbia University

FOREWORD

The beginning of the new year offers the International Commission of Jurists an opportunity to reflect on the major international legal events of 1959 and to outline to the readers of this *Bulletin* problems of the coming period and the policies adopted to meet them.

The past year and the time to come have seen and will see rapid strides made by former colonial territories towards complete independence. Whether the Rule of Law will find expression in the public life of newly independent States is naturally a matter of primary concern to the Commission. The opportunity is there for all these countries to choose for themselves, without foreign interference and with the freedom, welfare and progress of their peoples as their only guide. Every State must decide its system of government and its laws in the light of its own traditions, experience and needs, and the Rule of Law as understood by the Commission is wedded to no particular pattern. There are, however, basic institutions, principles and procedures which represent a minimum standard for the Rule of Law in any State. All who are concerned with justice under law will turn with hope and expectation towards new countries which seek to translate these ideas into practice. The Commission will take a keen and active interest in the new legal structures and their functioning as they emerge from the process of achieving independence.

The previous issues of the *Bulletin* as well as the present one contain articles on the problems of the Rule of Law in new and nascent countries side by side with reports on legal developments in older States. The latter might serve as a model or source of ideas good or bad. Using the methods of comparative law, a wide range of experience in self-government can be drawn upon

by the makers of modern constitutions and those entrusted with their implementation. It is believed that the virtues and faults in established systems are of special significance at this time when the rapidly advancing communities come to decide their own way of public life.

In the ever-increasing development towards independence, the Commission sees a spur to the ideal which it promotes under the rubric of the Rule of Law. There is more to be done than counsel or forewarn by drawing attention to good and bad examples. In those countries which have recently acquired independence or are in the process of achieving this goal the Commission acquainted lawyers and jurists with its aims and objectives through correspondence, personal visits and meetings, and enlisted considerable support. Several missions undertaken by representatives of the Commission enabled them to learn at first hand about the problems of many African countries and territories and to acquire valuable knowledge about the administration of justice, the position of the Bench and Bar and the distinctive features of the various legal systems. An account of these journeys appears in *Newsletter* No. 8 of the Commission (February 1960). Further extensive activities are now being prepared and will be reported shortly.

Another important task of the Commission is to promote the understanding and support of the Rule of Law by students and young lawyers—the future generation in whose hands the administration of justice will rest in the years to come. One means of achieving this purpose is the world-wide Essay Contest sponsored by the Commission with the theme *The Role of the Lawyer in the Economic and Social Development of his Country Within the Framework of the Rule of Law*. A gratifying reaction from Universities and students alike promises a wide response and interesting contributions. Details of the Essay Contest and names of the distinguished legal personalities serving on its Adjudication Committee may be found in *Newsletter* Nos. 7 (September 1959) and 8.

In its growing attention to young countries and young lawyers the Commission benefits from the cooperation of many National Sections all over the world. Their expanding activities, ranging from organising study groups for research projects to fund raising campaigns, form an integral part of the Commission's programme. In the near future, the resources of the National Sections will be called upon to assist in answering a detailed Survey Questionnaire based on the Conclusions of Delhi and designed

to provide a balance sheet of the state of the Rule of Law throughout the world. The text of the questionnaire is published in *Newsletter* No. 8.

The basic means of communication between the Commission and the international legal community remains its periodicals. The *Bulletin* informs about positive and negative developments pertaining to the Rule of Law in different countries. It is complemented by the *Newsletter*, designed to keep the friends of the Commission informed of activities by the Secretariat and by the National Sections. The *Journal* has more scholarly aims, and attempts to deal on a scientific basis with manifold aspects of the Rule of Law and especially the administration of justice in different legal systems. In order to defray a part of the substantial costs of the *Journal's* publication in four languages, the Commission decided to introduce shortly a subscription fee.

In contrast to the *Journal's* emphasis on a study in depth of a limited number of subjects, the *Bulletin's* format and contents were deliberately devised to cover the widest geographical area by means of short papers presenting succinctly and objectively the main features of the Rule of Law as they appear in various national and international spheres.

A quick glance at the contents of the preceding *Bulletins* will illustrate this editorial policy. The recent issues have consistently paid attention to developments promoting the establishment of a world — or continental — legal order accepted and observed by all countries of a given area and equipped with an enforcement machinery, sometimes with the agreement of signatory governments to surrender part of their judicial sovereignty. Thus, appropriate proceedings at the United Nations, the Council of Europe and the Organization of American States were described in each of the last three *Bulletins*.

In the reports on the Rule of Law in national communities, every effort is made to bring about a proper balance of geographical coverage irrespective of the political regime in power in the countries under consideration. Thus there are in *Bulletin* Nos. 7-9 nine articles on Western European and eight on Eastern European countries, six on Asia, seven on Africa, and six on the Americas. The communist system of socialist legality, the novel developments in the Chinese People's Republic with the formation of communes, the treason trial in South Africa, the political trials in Iraq and the totalitarian measures of the Spanish and Portuguese governments are examples of the subject-matter of recent articles. The young states of Africa have shared the spotlight with African

territories still under colonial rule. Regardless of the system of government, favourable and unfavourable legal events have been reported in a number of countries of four continents.

The newly adopted alphabetical order of the *Bulletin* articles serves to avoid any sort of speculation on their geographical or political grouping. The Commission does not favour a distribution of the subject matter which would invite invidious comparisons of the space devoted to one or another case, or even inferences that the proximity of articles implies a proximity of subject. The editorial policy behind the *Bulletin* is to present documented facts with strict objectivity and it is on this approach that the worldwide prestige of the Commission solidly rests.

Jean-Flavien LALIVE
Secretary-General

HUMAN RIGHTS IN CEYLON

On September 25, 1959, the world was deeply shocked when an assassin shot Mr. S. W. R. D. Bandaranaike, the Prime Minister of Ceylon. Mr. Bandaranaike, who died in hospital the following day, appealed before his death to the people of Ceylon to have compassion on the "foolish man" who had shot him and not to wreak vengeance. The assassin was a Buddhist monk. This assassination—condemned by all the parties in Parliament—precipitated a crisis in the life of Ceylon, a threat to law and order and the danger of political chaos. The Governor-General of Ceylon immediately proclaimed a state of emergency and it is with the measures taken under and during this state of emergency that the International Commission is concerned. The state of emergency was renewed and finally brought at an end on December 3.

The first step was to ban public meetings and demonstrations. Buddhist monks feared for their safety and asked for protection, and on September 27, the widow of the Prime Minister was obliged to appeal to the people to allow Buddhist clergy to participate in the funeral. On September 26 a new Government was formed by Mr. Wijeyananda Damanayake, formerly Minister of Education. The new Prime Minister announced his intention of continuing the policy of the late Mr. Bandaranaike, and promised the fullest investigation into the assassination.

In consequence of the emergency, two drastic steps have been taken which are difficult to justify in any emergency, however grave. The first is the imposition of sweeping regulations restricting the freedom of the press, the second the re-introduction of the death penalty with retrospective effect. These two measures will be examined in turn.

On October 6 it was announced that press censorship was to be imposed with effect from midnight of that day. The emergency regulations applied to all despatches by foreign correspondents as well as to reports published in Ceylon. In some cases censorship was imposed, in others a ban on publication. The principal matters covered by censorship were all news "relating to any proceedings or investigation conducted into the death of the late Prime Minister" and "any matter suggesting or tending to suggest that any one or more persons was or were directly or indirectly

connected with his death". In addition censorship would cover any matter calculated to bring the Government into hatred or contempt, or inciting feelings of disaffection to or hatred of the Government; giving information about acts of violence and breaches of the peace, meetings, processions and demonstrations; disobedience of the law and obstruction of the execution of the law; and the disposition, movement or operation of the armed forces and the police.

The ban on publication covered news relating to proceedings, decisions or discussions of the Cabinet; any matter which promoted or fostered feelings of hatred between different sections, classes or groups of people in Ceylon; any false statement or rumour likely to cause public alarm; or any matter which conveyed, whether directly or indirectly, any information relating to any Government business.

Breaches of the regulations were made punishable by heavy fines, imprisonment, or the closing down of the publication concerned. There was a right of appeal either to a three-member advisory board or to the Prime Minister, but not to a court.

Reaction to the regulations was sharp and immediate in Ceylon and elsewhere. The daily newspapers left blank their editorial columns and blacked out Government news. Newspaper publishers and the Union of Journalists protested strongly. The International Press Institute and the Commonwealth Press Union vigorously castigated these restrictions on the freedom of the press. With a due appreciation of the danger from seething emotions aroused by the assassination and the aggravated risk of violent political eruptions, it cannot be accepted that such drastic restrictions were warranted, even for the relatively short period of two months. The regulations came to an end on the expiry of the state of emergency.

There is no need to multiply clichés on the freedom of the press nor to compare the regulations made in Ceylon with the familiar, limited restrictions on free expression which, for various reasons, are found in every society. The sweeping control of free reporting which was imposed does not befit the principles of parliamentary democracy in Ceylon. The extent to which press freedom has been restricted regrettably surpassed any limits which the exigencies of an emergency would warrant. The absence of a right of appeal to a court of law on condemnation for breach of the regulations should also be noticed.

The decision was also announced on October 3 to re-introduce the death penalty in Ceylon. The Government of the late Mr.

Bandaranaike had suspended the death penalty in 1956 and then by the Suspension of the Death Penalty Act, 1958, had further effected the suspension until 1961. Pending introduction of the necessary legislation, the new Government issued regulations under the Emergency Act which re-introduced the death penalty with effect from October 3, and on December 2 the Suspension of Capital Punishment (Repeal) Act, 1959, became law. Whether a particular country chooses to accept the death penalty or not (for offences of the most exceptional gravity) is essentially the concern of that country, and the International Commission expresses no view on the principle of capital punishment. That Act, however, contains one section which is the legitimate concern of all jurists who seek to defend the Rule of Law on an international scale, and of all who are concerned for human rights. Section 3 provides that "capital punishment shall be imposed ... on every person who, on or after the date of the commencement of this Act, is convicted of the offence of murder committed prior to that date". In the clearest terms it is thus enacted that a person may suffer a penalty which was not provided for by law at the time when the offence was committed. The principle that a graver punishment should not be given retrospective effect is accepted without question as fundamental to the administration of criminal justice. It is embodied in Article XI of the Universal Declaration on Human Rights, and it was accepted by all the jurists who participated in the International Congress of Jurists in New Delhi just one year ago. It is a matter of grave concern that the Government of Ceylon should thus proceed against a basic principle of justice, even though the circumstances are those of extreme unrest after a tragic assassination.

Ceylon is however a country in which the voice of protest may make itself heard and vigorous protests have been made in Parliament, in the press and by organisations and individuals against one or other or both of the measures discussed. The Supreme Court of Ceylon held that the re-imposition of the death penalty by emergency decree was invalid, but appears to have no power to declare invalid the Act of Parliament which gives retrospective effect to the death penalty. It is to be hoped that the Rule of Law will prevail before the irrevocable step is taken of putting to death persons whose life was not forfeit when they committed their crime.

CHINA'S COMMUNES *

One of the most radical domestic programmes yet undertaken by a communist country is the introduction of Peoples' Communes in China, which has far-reaching effects on the rights of the individual and on the institution of the family. The movement was formally launched at the Chinese Communist Party meeting at Peitaiho in August 1958.

A Chinese commune is a comprehensive economic and social unit formed by merging neighbouring agricultural cooperatives and by appropriating any private property that peasants have managed to retain since the earlier collectivisation. Each commune consists of several villages and from 5,000 to 10,000 households, with the size of the commune generally corresponding to that of a *hsiang* (an administrative district). According to the Chinese communist leaders, the communes represent the final stage of transformation from cooperative to public ownership. The declared object of the communes is to overcome China's urgent labour shortage caused by the lack of mechanical equipment and the perennial problem of over-population. In addition, their aim is to meet the growing demands of China's industrial expansion and especially to eliminate the existing contradictions between workers and peasants. It was estimated that by the end of 1958, 500,000,000 farming population have been rapidly organised into communes. Politically, the communes accelerate the liquidation of the agrarian bourgeoisie, intensify the Party's control over the countryside by means of "democratic centralism" and serve the purpose of recruiting and training the masses under strict paramilitary discipline.

Current regulations on the composition of the communes—for instance the statute of the Weishsing (Sputnik) commune in Honan—stipulate that citizens over sixteen years of age are admitted as full members. According to Article 3 of the said statute, former landlords, rich peasants, counter-revolutionaries and people deprived of their political rights may be admitted as unofficial members and, when granted political rights, as full members. But unofficial members "do not enjoy the right

* On other legal developments in China, see also *Bulletin* No. 8, pp. 7-17.

to elect, to be elected or to vote in the commune; they are given, however, the same economic treatment as full members."

One striking effect of the introduction of communes is the sacrifice of individual and family rights to the production drive. The individual member is no more than a small cog in a big machine. On entering a commune he relinquishes the last vestiges of private ownership and personal freedom. The tentacles of the State embrace every aspect and account for every hour of his life. Unorganized leisure and privacy have become reprehensible vices. The individual is made completely dependent on the commune not only for his livelihood but also for his social and cultural existence. Room, board, clothing and education are provided for uniformly by the commune. Abiding emotional attachments such as marital and parental relations are strictly regulated. As Prime Minister Nehru has rightly remarked, "the entire country has been converted into an army camp as a result of which individual liberty is almost absent there". But Liu Ning-yi, Chairman of the All China Federation of Trade Unions, speaking on August 12, 1958 at the Second Conference of the ACFTU's Eighth Executive Committee, took pride in saying: "Bourgeois individualism is the source of all evils and the big enemy of communism. Without doing away with individualism, we could not build communism."

Proceeding from these theories, life in the communes was totally standardised. Since the avowed purpose of the communes is to foster "socialist consciousness", they control every inhabitant from the nursery upwards. Aging members are sent to "Happiness Homes" and, if fit enough to fend for themselves, are encouraged to grow their own food. Practically all housewives are required to work side by side with men. The principle underlying the use of women as a labour force is that it demonstrates the "emancipation" of women in China which is claimed to be an essential part of Socialist transformation and construction. Their integration into the communal system has been made possible by the taking over of household chores by communal enterprises such as mess-halls, nurseries, laundries, tailoring shops, etc. According to *Wen Hui Pao* of March 7, 1959, by the end of December 1958 there were 4,980,000 kindergartens and nurseries with 67,000,000 children, which is said to be 70% of all children. By October 1958 more than 20 million women had thus been "liberated" from housework to take part in farming and industrial production in the provinces of Honan, Hunan, Heilungkiang, Kiangsi, Liaoning, Shansi, and Shantung.

Nurseries are extending their eight-hour service to full time and all primary school children are becoming boarders. The State has thus taken over all the children, and none will be found in the family circle any more. *Hangchoh* of November 14, 1958 reports: "Parents at the Chou ying Peoples' Commune may take their children out twice a month from the nursery where they live all the year."

In the communes, family education is being replaced by social education instilling "new collective communist ideas" into the receptive minds of young children. Kang Ke-ching, Vice-President of the All China Democratic Women's Federation, said: "All children must be trained in communist ideas since we depend on the children of today for building the children of tomorrow." She added that "emphasis must be laid on social education rather than family education. In other words, we must rely on creches, nurseries, and schools. The chief advantage of social education lies in training children in the spirit of communism" (*China Youth*, October 16, 1958). This type of education stresses a militarised organisation, collective living, and communal thinking.

The communes also try to ensure the proficiency of their adult members by a system of universal compulsory education closely combined with labour. Mass education goes hand in hand with political training. Thus communes are urged to strengthen political work and education in communist ideas and, relying on the activities among the poor and lower middle peasants, to initiate labour competition drives. Yet life in the communes cannot be all work and no play. But the individuals do not decide what to do with their leisure: the commune decides for them. Having the monopoly of all means of production, the commune controls theatres, cinemas, libraries, scientific research, institutes and exhibition halls. When the individuals are not out at work, much of their spare time is taken up with group activities such as political indoctrination, lectures and mass meetings.

The collectivized life of the commune has had a disastrous effect on the family, for thousands of years the basic unit of society in China. Under the new design for living in the communes, family life in the accepted sense of the term will have ceased to exist. With a view to obtaining the maximum production from the workers and peasants and to uprooting their local traditions, the privacy of their homes is being replaced by communal canteens and their family ties by a common allegiance to

the State. The only time the family can meet as a unit and in some privacy is for the night rest—and even this depends on the production needs of the commune, and on whether or not one of the adults is working night shifts or away from home. In some communes it is reported that husbands and wives occupy separate accommodation and are assigned short periods for intercourse. The significance of the changes is best described in *China Youth* of September 27, 1958: “The patterns of individual families which have existed for thousands of years have been completely smashed.” Further, according to the Chinese Communist Party’s fortnightly journal, *Red Flag* of September 1, 1958: “The way of living with the family or household as the unit, evolved and developed with the system of private ownership in the course of the past thousands of years, has narrowed down the people’s viewpoint and cultivated in their minds selfishness and self-seeking tendencies. The continued preservation of this way of living is contradictory to socialist collective production on a grand scale. Such a way of living not only wastes a lot of manpower and thereby is detrimental to the development of socialist production but also prevents the gradual elevation of the people’s living standards and the establishment of socialist and communist ideology. The time has come for the gradual change of this way of living... We have undermined that kind of family which carried out individual production with the family or the household as the unit; and such a family was nothing but a poor cage for working people.”

The highest executive body in the commune is its assembly, which includes representatives of every production brigade and of all sections of the membership—women, youth, old people, cultural and medical workers, technicians, the staff of industrial enterprises and members of the minorities. The assembly decides on all important matters and elects a Management Committee to take charge of the commune’s affairs. Day to day tasks are carried out according to a “unified labour control plan”. This aims at coordinated action of the various large operational units and at cooperation between these units and the factories, mines, etc. Each commune sets annual and quarterly production targets; each also assigns annual and quarterly construction tasks. To secure maximum labour efficiency, members of the commune are divided into production units which are themselves subdivided into production brigades. The formula recommended for work is: “If the target demands fulfilment of 10 points, steps should be taken to fulfil 12 points with working enthusiasm

for 24 points. " Commune members work with their rifles stacked beside them. The workday begins at 5 a.m. and ends at 6 p.m., allowing 1½ hours' rest.

For administrative purposes, the communes and the *hsiang* (administrative district) are treated as a single entity. Thus the head of a *hsiang* is simultaneously head of the commune; the deputies of the *hsiang* People's Congress serve likewise as representatives of the Congress of the commune, while the members of the *hsiang* People's Councils are concurrently members of the management committee of the commune. This merging of village and commune government seems to mean that the commune administers agriculture, industry, commerce, education and militia, and is also the lowest organ of the State. Earlier, the organisation of the communes, education, finance and public security were in the hands of the village administration which had no direct say in the production cooperatives (collective farms), while, on the other hand, the cooperatives had no police force. With their merging, the commune wields all government powers.

The link between the communes and the State is further strengthened by the fact that their population is organised as a combined military-labour force. As a result, the State can count at all times on a huge uniformly trained army of considerable mobility and versatility which can be moved at short notice wherever required. A notable example is Shansi province where in recent months a force of 3,600,000 men was inducted for use as workers, peasants, and soldiers. *Red Flag* of July 16, 1958 commented: " Although the current organisation of agricultural labour along military lines is for waging battles against Nature and not against human beings, it is but easy to transform one kind of struggle into another. "

Exercising strict control over all elements of public life, the Chinese Communist Party holds in its hand the direct administration of the communes. Its orders reach from the Central Committee through the Provincial Committee down to the Party Committees in the communes. These committees consist of a secretary, a deputy secretary, an organisational department, a propaganda section, a supervisory committee, and a staff office. Subordinate organs within the commune have their own branch party committee as have all productive operation units and relatively large factories and mines. All major tasks are decided by the Party Committee or its branches before being put into operation. It is laid down that party organs within the commune " should place the trend of thought of the commune members

under their control at all times". Their duties include the education of commune members in the proper relationship between the State and the commune; the formulation of "Party-building plans" and the enrolment of new Party members with adequate qualifications. Thorough Party control thus applies at all levels and to all the different components within the communes.

It is reported that the introduction of the communes has not been without opposition from the masses. Despite the communist claim that the masses demanded—and in fact initiated—the move into communes, the Party admits peasant confusion if not dissatisfaction by directing that there be an intensive "socialist education" campaign to convince the population of the superiority of the new system. *Shanghai Wen Hai Pao* of September 22, 1958 reports that Comrade Wan Hui, Secretary of the Chinese Communist Party's Committee of the People's Commune, pointed out that "the building of the commune was not smooth sailing, and that there was the struggle between the two roads and the struggle between the advanced and the backward. For this reason, he said that it was still necessary to continually strengthen the communist conscience of the members of the commune". *The China News Analysis* of April 10, 1959 reports that in Changchow, the capital of the Honan province, the secretary admitted that opposition among the people was strong, and wild rumours have been spread about life as it will be under the communes. Further, the introduction of the communes has coincided with a substantial increase in crimes such as seditious speech or propaganda, misrepresentation of the policy of the Party, theft and robbery, disturbances and poisoning of food at the common kitchen and bribery of Party cadres. The Fourth National Judiciary Conference held in August 1958 and the Special National Conference of the Judiciary in Chengchow, capital of Honan province, which considered the rising wave of crime, have prescribed strong and expeditions handling of such cases by summary procedure with mass participation in the trial and sentencing. It was reported that such strict measures including the death sentence have been repeatedly applied in cases of disobedience, labor unrest and attempted escape from the communes.

The commune system in China represents today a gigantic experiment drastically affecting the rights of the individual and the institution of the family. Statistical data recently released necessitated a major downward correction of ambitious production plans devised under wrong assumptions about the communes' revolutionary impact on agrarian economy. But even if material

improvements had been substantial, it would still be worth reflecting that the complete collectivization of body, mind and spirit is an excessive price to pay for the "great leap forward".

JUSTICE IN CZECHOSLOVAKIA

Reaffirming the principles expressed in the *Act of Athens* (June 1955), the International Congress of Jurists in New Delhi (January 1959) proclaimed in its solemn *Declaration* "that an independent judiciary and legal profession are essential to the maintenance of the Rule of Law and to the proper administration of justice".

The emphasis on the *independent* exercise of the judicial function, together with the requirement of the "protection and enforcement of the Rule of Law without fear or favour", forms one of the essential elements of the Commission's interpretation of a government of laws and not of men. The broadening international discussion of the similarities and differences of legal systems based, on the one hand, on the Rule of Law as understood in countries of the Roman and Common law heritage and, on the other, on concepts of socialist legality derived from marx-leninist theories, requires a clarification of the basic ideological issues underlying these competing schools of thought.

For the purpose of this short article, there was chosen one of the tenets of socialist legality that most radically contrasts with legal notions generally accepted in the non-communist world. It is the principle of *class justice*, a feature of that transitory period from capitalism to communism which imposes on the agencies of the victorious proletarian dictatorship the obligation "to conduct a class struggle... against the bourgeoisie that was defeated but not destroyed". "The dictatorship of the proletariat, the period of transition towards communism, brings for the first time democracy for the people, for the majority, together with the necessary suppression of the minority, i.e., the exploiters" (Lenin).

The systematic application of this teaching has in the course of the four decades of the Soviet régime led to a situation different from that in the so-called people's democracies. From the viewpoint of communist theory, these new countries have only recently embarked upon a road towards socialism, while the Soviet Union

has already achieved this stage and is currently preparing to start on the final stretch on the way to communism. In terms of class relations, this difference in progress means that the Soviet Union has virtually eliminated antagonistic classes composed of former exploiters and their immediate offspring and it can therefore proceed to increase the educational and diminish the repressive functions of its legal system. Conversely, the people's democracies, whose socialist experience encompasses merely 10-15 years, have still to cope with problems which, according to marx-leninist dogma, can never be solved by gradual integration but only by a final and total liquidation of the remnants of the bourgeoisie. It is against them that the edge of the law is pointed, as expressly stated in the Motives to the Czechoslovak Penal Law of 1950 and in the appropriate legislation of all other people's democracies.

In September 1959, the official position of the Bulgarian government, for example, was presented as follows by Georgi Tsankov, member of the Politburo and Minister of the Interior: "It is clear to us that the class struggle has not yet disappeared. Certain remnants of the former bourgeoisie have rearranged their life, willy-nilly, and have become reconciled to the existing position, but there are still sworn enemies of the people who are ready to sell the interests of the people and the country. That is why as long as there is a capitalist camp there will be a class struggle and until then we must consolidate the authorities of the dictatorship of the proletariat. The enemy is changing the forms of his work but always remains hypocritical and for this reason the people's vigilance must not weaken for a single moment." On November 7, 1959, a Hungarian writer declared in *Nepszabadszag* that while peaceful coexistence means a truce regarding the use of deadly weapons, the weapons of the political, economic and ideological struggle must not rest for a moment. "Enemies of the peace believe that socialist countries will in the spirit of peaceful coexistence stop the fight against internal and external enemies of the socialist system . . . Peaceful coexistence is no formula for internal use . . . (It) does not mean the legalisation of reactionary attempts of the practically liquidated bourgeoisie in capitalist countries."

The most elaborate theoretical justification and the most extensive practical application of discrimination on grounds of class background was developed in Czechoslovakia, the East European country with the highest pre-communist standard of living and comparatively little class antagonism due to a balanced social and economic structure. Faced with a marked lack of

popular enthusiasm for a policy of a class struggle alien to the nation's traditions and needs, theoreticians of the regime developed what is probably the most comprehensive body of communist legal thought on the subject of the need for a merciless class struggle in the administration of justice since the Soviet Union faced the same problem, first in 1917 and again after the reversal of the New Economic Policy in the late twenties.

After a comparative reduction of internal tensions in the period 1953-1956, the upheavals in Poland and Hungary moved the Communist Party of Czechoslovakia to mobilise public opinion against the elements of the former bourgeoisie who had, it was said, wormed their way into the nationalised production and distribution and abused the confidence of the people by sabotaging progress towards communism. In December 1956, a series of new laws were passed by Parliament (amendments to the Criminal Code, to the Code of Criminal Procedure and to the Law on the Organization of the Judiciary). The Minister of Justice, Václav Škoda, illustrated the spirit of the new legislation in the parliamentary debate of December 19, 1956 as follows :

“ The application of the educational functions of the penal regulations must on no account imply any liberalism whatsoever towards the enemies of our people's democratic order. As the forms of the class struggle at certain stages may become still more treacherous than hitherto, the amendment to the Penal Code newly regulates several punishable deeds and introduces new ones so that it should be possible to affect socially dangerous actions more consistently ”.

On January 14, 1957, the central organ of the Communist Party of Czechoslovakia, *Rudé Právo*, taking issue with the tendencies manifested in some people's democracies in the previous years, rejected suggestions that an opposition party should be set up and demanded : “ As many rights and opportunities to assert themselves as possible, much more attention to all our honest workers, in short more democracy for every builder of socialism, and, conversely, dictatorship against all its enemies. ”

On June 20, 1957, General Procurator Jan Bartuška criticized Czechoslovak judges and lawyers for following a “ liberal trend ” and blamed their “ laxity ” for instances of unchecked violence against Party and government officials. The stage was thus set for an all-out campaign against the bourgeois remnants within the new society.

During the second half of 1957, a great number of arrests had taken place among former businessmen and members of the

middle class on charges of economic sabotage. Simultaneously, a purge of so-called unreliable elements had been initiated in industry and trade and organs of the party were advised to "contain" and where necessary to eliminate the influence of members of bourgeois origin. The Courts themselves came in for sharp criticism and political guidance: *Rudé Právo* of July 26, 1957, said that the amended Criminal Code placed an emphasis on the educational role of the judiciary with regard to the working people, but made no allowance for any liberalism for the benefit of the enemies. There had, it said, been instances where a liberal attitude was adopted by the courts, ranging from the Supreme Court down to the People's (District) Courts, towards those who had committed criminal offences, including damage to Socialist property and even acts of a counter-revolutionary character. In some cases the courts did not act as organs of the dictatorship of the proletariat and misinterpreted their educational function, which should apply only to toilers and other working people, but never to enemies and asocial parasites. The article complained further that some enemies, mostly former exploiters, who had been justly condemned, thought that the time had come when with the help of the courts their property could be restored to them and they could be compensated for any losses they might have incurred. Even the Supreme Court acted sometimes without observing class criteria, especially when using educational provisions embodied in the law for the benefit of the workers, but not for the enemies of the people. Some officials in the judiciary have not yet fully realised the class character of laws which the working class, under the leadership of the Party, puts into practice. This shows, the article concluded, that their education must be improved.

The difference between the *educational* character of the administration of justice towards the toilers and its *repressive* nature when applied to the former bourgeoisie was spelled out by a legal writer as follows:

"Our way to socialism was and is the way of class struggle, without which the transition from capitalism to socialism is unthinkable. The organs of the Czechoslovak judiciary will continue to proceed uncompromisingly against adherents of the former exploiting classes who refuse to enter the ranks of the working people and who commit crimes against our state.

"This correct penal policy, which combines educational influences on irresponsible members of the working people with hard but just blows against the dangerous criminal activity of class enemies, is also reflected in the new laws." ¹

The importance of class background in penal law is highlighted in the theory of punishment where the subjective criminal propensity of the culprit as well as the objective nature of his act are viewed from a strict class angle. Regarding the former, communist legal writers recognize, in terms of recidivist tendencies, various degrees of a criminal's dangerousness; these are based on the degree of necessity underlying the commission of the previous crime, i.e., on the degree of necessary connection between the actor, the act and its consequence. The fact that the perpetrator of a criminal anti-state act was a former employer of labour ("exploiter") is considered an equally aggravating circumstance as if he had already had a criminal record. In both instances it is thought that the necessity to commit the crime and the danger of its repetition are greater, thus warranting a higher punishment. Conversely, the previous decent life of a working man, i.e., proletarian background, works in general as a mitigating circumstance.

From the objective point of view, "the class profile of the culprit affects the nature of the result of a criminal act through its motive or purpose, through the degree of guilt and through the way of its execution." Proceeding from the premise that the background ("class profile") of a criminal determines to a decisive extent the degree of the threat to society inherent in the crime, communist penologists conclude that "the establishment of the class profile of the perpetrator is a basis for the assessment of the dangerousness of his act and, consequently, a basis for the measure of punishment." ²

In November 1957, about 53,000 "people's judges" were elected in Czechoslovakia together with 1,381 full-time professional judges. The former, originally law assessors in regular courts, grew steadily in numbers and influence in consequence of Party pressure against liberal judge-bureaucrats who were held unable to grasp the "class content" of the new laws and the need for their political application. For it was repeatedly stated that a law passed by a socialist parliament and possessing the proper class content has still to be applied by a class-conscious judge and must not be mutilated by an "objective interpretation". Consequently, 70% of a single list of candidates was made up of industrial workers, cooperative farm workers and small farmers chosen on the basis of an activist attitude to the present regime.

It is also noteworthy that, in contrast to the people's judges, professional judges were not elected by popular vote but by National Committees who have the power to suspend them at any time during their three-year tenure "for violating the principles

of socialist legality". Thus adequate safeguards were provided for the implementation of a judicial policy laid down by the Minister of Justice, Václav Škoda: "Any sort of liberalisation towards class enemies and state enemies has nothing in common with our conception of the court and the function of the judge."

On July 24, 1958, Dr. Škoda summarized in *Rudé Právo* the communist doctrine of administration of justice under socialist legality. The Communist Party, he wrote, "determines the direction and tasks of the judicial authorities, takes care of the selection, appointment and education of judges" and exerts regular control over the application of socialist legality by the courts. Their tasks were, in turn, clearly defined: "First of all, the repressive measures against all hostile sections of the population must never be relaxed... The gradual liquidation of the *kulaks* (rich peasants) as a class and the formation of a new class of collective farmers may rekindle their hostility... Class vigilance over the activities of *kulaks*, therefore, must never weaken... Nor should former members of the urban bourgeoisie be forgotten."

Judges were exhorted "vigilantly to recognise" instances of the "former people's" attempts to turn legal procedures into an instrument of regaining their lost privileges. The task of the courts is rather "to help to push them out of their economic positions and to liquidate them". In order to arrive at such correct results, judges must finally abandon the notion that the law should permit no class discrimination. "Without a class analysis, the judge cannot find the material truth or make a just ruling. Most of the deficiencies for which the courts in such cases have been rightly criticised lie in the fact that they do not analyse each case from the class point of view, but are satisfied with a mere formal application of the law."

While the strict observance of these principles in dealing with the slowly vanishing old generation of "exploiters" continues and their children are confronted with the difficult task of living down their disadvantageous class background,* the administrators of Czechoslovak justice turn full circle towards the stalinist concept of restricting the functions of regular courts. The

* Minister of Education František Kahuda declared on December 2, 1957 over Prague Radio that henceforth "the political attitude and class origin of students will be considered together with school marks" in their total evaluation. While the scholastic record had previously been the sole criterion of achievement, it must be remembered that admission to higher learning has been consistently denied to children of the former upper classes.

National Committees, stripped of much of their jurisdiction in 1953, have been set up as a judicial organ in matters of guardianship and tutelage by a law passed on July 8, 1959. Thus an important sector of family law has been withdrawn from the competence of the courts. Similarly—and with possibly even greater impact on the community—the monopolistic and government-controlled Trade Union Organization will henceforth exercise jurisdiction over legal controversies arising from the relationship of employment. The competent organs will be arbitration commissions set up in individual enterprises or the workers' committees acting as comradely courts, a Soviet-originated institution which is currently strongly promoted by Prime Minister Khrushchev. The theoretical justification of this new development is found by Soviet jurists in the prediction by Marx of the withering away of the State in the period of the final advance towards communism. The gradual disappearance of the instrumentalities of repression, including the police and the judiciary, should be accompanied by a transfer of their functions on organisms of broadly popular character such as the people's militia and the comradely courts, respectively. It is typical for the theory underlying these institutions that they are presented as "voluntary non-governmental organizations" and thus brought on a common denominator with other mass organizations serving as transmission belts from Party leadership to the people. The slogan of the early Soviet post-revolutionary period, "the eligibility of judges from the ranks of the toilers by the toilers alone" thus serves a double purpose of guaranteeing on the one hand a class-conscious administration of justice and on the other its strict control by the Communist Party.

The great importance of this new course in the administration of justice, amounting to a substitution of laymen for trained judges and leading to a further increase of Party control over all segments of public and private life warrants a special study which the Commission intends to submit to its readers in one of its forthcoming publications.

QUOTED SOURCES :

1. Dr. Boris Vybiral, Assistant Professor, Faculty of Law, Charles University, Prague : "Changes in the substantive Criminal Law" (1957 *Bulletin de droit tchécoslovaque*, Prague No. 3-4, English summary p. 343).
2. Dr. Otto Novotný : "Účel trestu v socialistickém trestním právu" (The Purpose of Punishment in Socialist Penal Law) (1959 *Stát a právo*, Prague, V., p. 141).

SOME ASPECTS OF MILITARY COURT JURISDICTION IN GREECE

On July 9-22, 1959, a trial was held in Athens of sixteen defendants, one of whom, Emanuel (Manolis) Glezos was singled out in several international protests based less on the legal issues of the case than on his wartime achievement when, together with an associate, he tore the Nazi flag from the Acropolis during the German occupation.

The International Commission of Jurists deemed it preferable to view the Athens trial as a whole and studied the proceedings not with attention focused on the political associations of one single defendant but from the standpoint of the Rule of Law, the benefits of which should accrue to all defendants in a trial, regardless of their background, political prominence and record unrelated to the issues before the court.

The above reservations do not however imply that the Commission has no comment to make on the trial of Glezos and his associates. While the procedural part of the case appears unobjectionable, the application of the emergency law under which the accused were tried and sentenced gives rise to serious misgivings.

The Athens trial of July 1959 was held before a Military Tribunal set up under Emergency Law No. 375 promulgated by the Metaxas government in December 1936. This law provides for prosecution before a military court of "criminal activities threatening the external security of the country" and permits a death penalty or life imprisonment when the act was committed for espionage purposes.

The Law of 1936 punishes not only consummated acts of espionage but also attempts to commit this crime, offers of services for such purpose, instigation of such acts and the omission to denounce them, as well as material assistance rendered to the culprit. The Law also covers the mere intent to commit espionage, thus effecting, in the last analysis, punishment of thought. In addition, Law No. 375 restricts to a certain degree the freedom to employ and choose legal counsel and their access to the files of the case. Finally, the sentences passed by the military court cannot be appealed against by ordinary procedure.

This Law was promulgated by the dictatorial régime of General Metaxas who came to power by a coup d'état in August 1936 and immediately dissolved Parliament and suspended the Constitution. Thus, the emergency legislation of that time was a product of a highly abnormal situation which is reflected in the harshness of its provisions. It is interesting to note that the Greek Military Penal Code of 1941, issued during the critical war emergency, contained less severe penal provisions on espionage committed by military personnel than were those applied by the Law of 1936 against civilians.

Constitutional rule was not re-established in Greece until after World War Two. On January 1, 1951, there entered into force a new Penal Code, Articles 146 and 148 of which regulated provisions pertaining to espionage. The crime was defined in more precise terms and the facultative death penalty limited to espionage acts endangering the security of the State or of its allies in times of war.

It was the intention of the Legislature to abrogate Law No. 375 of 1936 by the above-mentioned articles. This decision found its expression in Articles 471 and 473 of the Penal Code as well as in Article 591 of the Code of Criminal Procedure. However, Emergency Law No. 1612 of 1950 specifically maintained No. 375 in force, this provision being motivated by the immediate consequences of the fratricidal civil war which was at that time barely at an end.

The re-establishment of normal and peaceful conditions in Greece, evidenced by the return to parliamentary rule and the favorable economic and social development of the country, would undoubtedly be further promoted by the abrogation of laws and procedures based on wartime and revolutionary conditions. As early as on October 18, 1955, the Athens Bar appealed to the Government to repeal Law No. 375; other actions in the same direction have since followed. As of this writing, however, the Law is still on the statute book.

It is generally recognized that the immediate threat posed by the civil war has passed and that emergency legislation cannot be upheld on grounds of continued military rebellion. The Government has recently stated that while peace and order have been established, there are still traces of psychological and political rebellion which warrant the keeping in force of such exceptional measures as the Law No. 375 of 1936. This argument does not appear convincing. Even though Greece is still subject to a considerable amount of subversive efforts conducted from

abroad,* normal penal legislation should under the present conditions suffice to cope with such problems.

Emergency legislation suspending or curtailing penal provisions applicable under the Constitution and the pertinent Codes is fraught with serious dangers for fundamental human rights and the Commission believes that an early abrogation of such measures would be in the best interest of Greece.

LEGAL AID IN INDIA

Legal Aid in General

The International Congress of Jurists in New Delhi emphasized the necessity for equal access to law for rich and poor alike. This requires that adequate legal assistance should be available to all those threatened in respect of life, liberty, property, or reputation regardless of their ability to meet the costs of legal representation. Adequate legal assistance means legal advice and representation by lawyers of the required standing and experience. (See report of Committee IV, Clause X in *Newsletter* No. 6).

There are two systems under which such adequate legal advice and representation can be made available to indigent parties. They are the voluntary type and the State-sponsored type.

The voluntary type of legal aid is prevalent in the United States. There, legal aid is given by various voluntary organisations such as the Legal Aid Societies, the Social Service Organisations, the Law School Clinics, and the Bar Association offices. A significant step in the development of legal aid was taken in 1921 when the American Bar Association took upon itself the duty of encouraging the establishment and maintenance of legal aid organisations; this led to the formation of a partnership between the legal aid organs and the Bar, thus providing effective national leadership to the legal aid movement.

The State-sponsored type of legal aid and now also advice is found in the United Kingdom. The Legal Aid and Advice

* On December 4, 1959, Deputy Prime Minister P. Kanellopoulos stated in Parliament that 483 Soviet-trained spies have crossed secretly into Greece in recent years and that some 1000 Greek communists were given training in diversionist activities in 34 special schools in the USSR and the East European people's democracies.

Act of 1949, as so far brought into operation, provides for giving legal aid in most courts, civil and criminal, for almost all types of proceedings. Actions for defamation, for example, are excluded. A sliding scale of assistance based on disposable capital and income is in operation, and a system of assistance towards the cost of legal advice has been introduced during 1959. In some cases free advice is obtainable. The lawyers representing the assisted persons are paid fees and out-of-pocket costs from a fund made up of moneys provided by Parliament, contributions made by the assisted persons, fees recovered for legal advice and costs awarded to the assisted persons and recovered. The responsibility of administering the schemes is laid upon the Law Society—the governing body of the solicitors' profession.

Legal aid assumes great importance in countries where the standard of living is very low, and the lack of economic resources makes it difficult to apply in full the principle of equal access to law. India, for example, is a country with a low standard of living and a survey of the efforts made in certain parts of that country to provide legal aid will be of interest not only to students of Indian legal developments but also of those of similarly situated countries.

Government-sponsored Legal Aid

So far as criminal courts are concerned, there are statutory provisions in all the Indian States for the assignment of a lawyer for the defence of persons accused of offences punishable with death in all cases committed for trial to the High Court or a Court of Session. Similar provisions exist for the defence of accused persons in cases of confirmation of a sentence of death, references from the verdict of juries, appeal from acquittals and enhancement proceedings in revision in which any person is liable to be sentenced to death. So far as civil courts are concerned, there is a provision for allowing persons without means to file suits and appeals *in forma pauperis*, in which case the plaintiffs and the appellants are exempted from the payment of court fees; but generally speaking, in most of the States in India there is no provision for giving legal aid in civil cases.

The question of improving the facilities for legal aid has been engaging the attention of the Government of India since 1945. From 1945 to 1946, the Central Government has, on three occasions, urged the State Governments to provide greater facilities

for legal aid for poor persons in both criminal and civil cases. But most Governments pleaded that financial stringency made it impossible to provide further facilities.

Two State Governments appointed committees to study the problem. The committee appointed in March 1949 by the Government of Bombay under the chairmanship of Mr. Justice Bhagwati (then a judge of the Bombay High Court) studied the question and submitted a detailed report. So also the Committee appointed in 1949 by the West Bengal Government under the chairmanship of Sir Arthur Trevor Harries (Retired Chief Justice of the Calcutta High Court) considered the question in detail and made valuable recommendations. But none of the suggestions made by the committees have so far been given effect, presumably for financial considerations.

But certain State Governments have framed rules for the extension of legal aid in civil and criminal cases to the Harijans (Depressed Class) and members of indigent social and tribal groups. The Government of Bihar have issued instructions to all district officers in Bihar that all cases in which the Harijans file applications under the Bihar Privileged Persons Homestead Tenancy Act of 1947 for the restoration of their house and lands, the Assistant Public Prosecutors should be directed to give such applicants free legal advice and legal assistance.

In the State of Kerala, the Kerala Legal Aid Rules of 1957 envisage a far-reaching scheme for the extension of legal aid. Under the Rules, legal aid includes the aid given by the State to a person in the form of counsel's fees and any other aid given in connection with the litigation for which counsel is engaged. A person getting a monthly income of not more than Rs 100 (almost £ 9) is considered a poor person for the purposes of these Rules. A poor person is given legal aid in the High Court, Courts of Session and Courts of District Magistrates in all criminal trials, appeals and revisions. Legal aid is also available to a wife or a child suing for maintenance under Section 488 of the Criminal Procedure Code. Further legal aid is also made available to those persons who are allowed to sue *in forma pauperis* under the Civil Procedure Code. The Rules further provide for legal aid in special cases. Provision is also made for the preparation for each court of panels of legal practitioners who are willing to act for the assisted parties. The Rules prescribe a scale of fees to be paid to those lawyers in civil and criminal cases. The lawyers receiving fees under these Rules are forbidden to receive any payment directly from the party.

Voluntary Organisations

Voluntary organisations for giving legal aid have made some headway in the States of Bombay and West Bengal. The Bombay Legal Aid Society and similar legal aid societies in Poona, Ahmednagar, and Nasik engage in such activities. The Bombay Legal Aid Society deserves special mention because of its pioneering work in this field. This Society was organised in 1924. It gives legal aid and advice to poor citizens without charge. The tests applied for eligibility for legal aid are whether the applicant has a *bona fide* case or defence and whether the applicant is too poor to pay the fee of the lawyer. If the applicant is too poor to pay the court fee, he is assisted in making a petition to the court to be allowed to sue or defend *in forma pauperis*. The Society handles all types of cases in all the courts in Bombay. It is reported that up to 1956 it had received more than 2,000 applications from poor persons requiring legal aid and had given free legal advice to a very large number of applicants from all parts of the State. It also maintains contact with other social service organisations in Bombay. The Society's financial obligations are met from an annual grant from the Government of Bombay, donations, collections, and bequests.

The Legal Aid and Advice Society of West Bengal was formed in May 1953. It gives legal aid and advice without charge to all persons irrespective of their nationality and in all courts and Tribunals of the State and in all jurisdictions. If the litigant is able to make any financial contribution to the Society's funds, it is used to defray the actual cost of litigation. Within the scope of legal aid are such matters as drawing up pleadings or petitions and replies, appearance in court by competent lawyers at all stages of litigation including appeals and also the securing of expert evidence, reports or opinions of experts in medical and technical matters. If any costs are recovered from the opposite party, the Society retains such costs to replenish its fund, to reimburse lawyers for up to 75% of the actual fees or to pay court taxes and charges. In such a case, all contributions made by the poor party are refunded to him. In 1958, this Society conducted more than 70 suits and proceedings in courts besides giving legal advice to several hundred applicants for such assistance. It has successfully arbitrated in a number of legal disputes and has also saved many a person from the misery of broken homes or starvation in consequence of matrimonial quarrels.

So far as the other States are concerned, attempts to provide legal aid have not met with major success. In Uttar Pradesh, a legal aid society was organised in 1952. But it finds great difficulty in its work without the cooperation of the Government. In Andhra Pradesh, the members of the Guntur cultural association known as the Jyotsana Samiti have resolved to arrange for free legal aid to poor litigants through the lawyer members. In Mysore, the Bangalore Legal Aid Society provides assistance to poor persons in criminal appeals in the High Court, while the legal aid societies in Dharwar and Bijapur provide legal aid on the same lines as those found in the *mofussil* of Bombay like Poona and Nasik. In Bihar, the legal aid society in Bhagalpur renders legal assistance gratis to accused persons in criminal cases. In Orissa, there is a legal aid society in Balasore. In Madras, pursuant to a resolution passed at the ninth session of the Madras State Lawyers' Conference held under the auspices of the Madras State Bar Federation in December 1954, a Legal Aid Committee was constituted at Madras and a number of lawyers expressed their willingness to serve without fee in cases entrusted to them. The assistance of counsel was made available in a few cases in courts, and legal advice was given in some others. But due to several difficulties experienced in the working of the scheme it was felt that unless there was a regular organisation with the necessary staff the system could not properly function. In the other States like Assam, Kerala, Madhya Pradesh, Punjab, and Rajasthan, no voluntary legal aid organisations exist.

Recommendations of the Law Commission

The question of legal aid in India has been elaborately dealt with by the Law Commission of India, an official organ under the Law Ministry, in its Report on the Reform of Judicial Administration. (Report, Vol. I, Chapter 27, 587-624, 1958). This Commission has emphasised that free legal aid to poor persons and persons of limited means is "a service which the modern state and in particular a welfare state owes to its citizens" and that "the state must therefore accept this obligation and make available funds for providing such legal aid to poor persons and persons of limited means." The Law Commission is of the opinion that the legal profession must in the main, if not entirely, accept the responsibility for the administration and working of schemes of legal aid. It suggests that this responsibility should be dis-

charged by the profession by organising and by serving on bodies which will render legal aid, and by representing in courts poor persons and persons of limited means on the payment of only a proportion of the fees payable on taxation. The Law Commission points out that the legal profession owes "a moral and social obligation" to poor members of the community. It should discharge it by means of every members of the profession doing a certain amount of legal work for poor persons, and Bar associations should take immediate measures to render legal aid on a voluntary basis.

EMERGENCY POWERS IN KENYA

Kenya is a colony of the British Crown where for almost a decade there have been acute difficulties of law and order. On October 20, 1952, after wide-spread terrorist activities by the Mau Mau, the Government of Kenya declared a state of emergency, and since that time emergency powers have been exercised in Kenya. The Mau Mau movement was entirely African and confined almost entirely to the Kikuyu tribe. On November 10, 1959, the Colonial Secretary of the United Kingdom announced in London and the Governor of Kenya announced in Nairobi that the state of emergency was to cease at the end of the year, and that such special powers as it was felt necessary to retain would be conferred by legislation. The Emergency ended on January 12, 1960.

Kenya has a population which is predominantly African, with European and Asian minorities. The problem which now faces the Colony is that of orderly progression towards multi-racial government in a multi-racial society, but there still remains the problem of Mau Mau detainees. The recent report of the Committee which dealt with the problem of Mau Mau detainees was strongly of the opinion that some of these detainees could not yet be safely released into society without restriction. The aftermath of the state of emergency is the continuance of the process of rehabilitation, holding in reserve statutory powers for the preservation of law and order over and above those of the ordinary law. In a sense it is true to say that the war against Mau Mau is officially over, but it was as long ago as November 1956, that the then Colonial Secretary, Mr. Lennox-Boyd, declared that military operations were at an end. Since that time the Mau Mau

problem has been mainly that of rehabilitation, and the problem of law and order has been caused rather by political tension than by terrorism. The security powers retained are clearly designed to cope with political disorders.

The period since 1956 has not, of course, passed without the exercise of drastic emergency powers. As recently as March, 1959, it was considered necessary to suppress two newspapers—one European, one African—and to arrest 34 Africans. Recent political developments have, however, been hopeful and it is clear that the lifting of the state of emergency is designed to create the spirit of goodwill in which progress towards multi-racial self-government can be achieved. In April Mr. Lennox-Boyd announced that a round-table conference between all groups would be called before the 1960 elections—it is being held in January 1960—and in August it was announced that Professor W. J. M. Mackenzie, Professor of Government in the University of Manchester, had agreed to act as constitutional adviser on Kenya. On October 13, the Kenya Government announced its new land policy, which would mean that land tenure based on racial and tribal divisions would cease. These proposals were, however, rejected by leading African spokesmen.

Kenya therefore faces, comparatively free from the basic question of public safety, the task of progress towards what Mr. Lennox-Boyd described on April 22, 1959 as a nation based on parliamentary institutions and enjoying responsible self-government. No target for the achievement of this objective has yet been fixed. Now a new Colonial Secretary, Mr. Macleod, and a new Governor, Sir Patrick Rennison, are faced with this task. In putting an end to the state of emergency, they have taken an important step. The new legal framework for Kenya in what is still considered to be a period of unrest and danger is of great interest and importance.

Two Ordinances, the Public Security Ordinance and the Detained and Restricted Persons Ordinance, contain those special powers which it is felt are still necessary. Unlike the previous emergency powers, these powers are contained in normally enacted legislation. The Public Security Ordinance, in the words of Mr. Macleod, will enable the Governor, "after giving due public notice, (to) take such measures for the preservation of public security as appear to be strictly required by the exigencies of the situation".

The Governor of Kenya felt, according to Mr. Macleod, that the present circumstances required the continuance of two special

security measures only, viz. to maintain strict control over public meetings and over the registration of political associations. The Governor himself said that the Bill would provide him with wide authority to deal with any lawlessness or chaos which might arise as a result of the end of the emergency, such as an influx into the towns of unemployed Kikuyus freed from movement control.

The Detained and Restricted Persons Ordinance is confined to persons now under control and to listed fugitives. Apart from the provisions of this measure, the Governor will ordinarily have no power to order detention or restriction. Four classes of persons are affected, of which the figures are as follows:

Detained	917
Restricted	551
Convicts	141
Minor offenders . . .	2,300

By the end of the year 300 detainees will be released and about 210 will be freed from restrictions; 19 convicts will be released, and the remainder added to the detainees, i.e., they will be available for the process of rehabilitation leading to release. The Attorney-General for Kenya has decided that no prosecution will be brought in respect of offences committed before the announcement in connection with the emergency and the Governor has announced an offer, acceptable before the end of the year, not to prosecute for offences committed during the emergency any of the terrorists who surrender.

A number of specific emergency powers are to be allowed to lapse, among them the power to proscribe local publications, to license printing presses, to control Kikuyu movement by pass-books, to impose emergency communal labour and to require the Kikuyus to live in the villages. At the same time, it was made clear by the Colonial Secretary in response to a question in Parliament that the Public Security Bill was to confer powers, on public notice of a grave state of emergency, to order detention and to impose communal labour, and these powers have been conferred.

Drastic emergency powers may still be invoked, including whatever appears "strictly necessary" to the Governor. The real point is, however, that many powers have been abolished, and the new legislation holds wide powers in reserve only. The Ordinance, as Mr. Macleod put it "seeks to meet the problem... of putting reasonable and flexible powers in the hands of a Governor to deal with abnormal conditions threatening security which

do not justify the use of the sledge-hammer of the Emergency Powers Order in Council". These powers are now contained in permanent legislation.

In fact two different types of emergency situation are envisaged in the Public Security Ordinance. The first is simply if "the Governor is satisfied that it is necessary for the preservation of public security" and the second if "the Governor is satisfied that the situation in the Colony is so grave that the exercise of the powers" applicable in the first situation "is inadequate". The principal difference in the extent of the powers conferred is that only in the second situation may the Governor make regulations to provide for detention and compulsory work. In both situations the power to make regulations providing for trial by military courts is specifically excluded.

One statement by Mr. Macleod highlights the thinking behind the decisions which he has taken: "Special security powers may from time to time be unavoidable, but the first defence of any society against threats to good order and government must be adequate provision and resolute enforcement of the criminal law." An attempt is now being made to defend law and order in Kenya by means of this first line of defence, at the same time tackling the problem of the detainees and convicts from the bitter days of Mau Mau. It is a step to be welcomed, for the Rule of Law in its basic sense of law and order is to be protected mainly by the ordinary criminal law and criminal procedure of the ordinary courts of law.

CHANGES IN THE POSITION OF THE POLISH BAR

The changes undergone by the Polish Bar since 1945 are typical of developments in the general political situation in Poland.* The prewar Bar, considered by the communist regime as "one of the most backward institutions", was soon after 1945 brought under the control of the Government. Thus, State authorities appointed by the Minister of Justice were charged with reorganizing the "old" Bar and transforming it into a "socially useful" instrument of governmental policy. The new line for future Bar activities was laid down at two conventions of Polish Lawyers in January 1949 and July 1950 and became law on June 27, 1950. In Art. 7 of the Charter of the Polish Lawyers' Association of 1950 the following tasks, among others, were assigned to the legal profession: "... the mobilization and organization of all Polish lawyers for active and devoted participation in the construction of socialism in Poland; participation in the strengthening of socialist legality, particularly in the administration of justice; indoctrination of lawyers on the basis of scientific socialism," etc.

During the following years the Polish Bar became increasingly an instrument of the Communist Party. The autonomy of the Bar was suspended and the lawyers were put under pressure to join the collective law offices. After Stalin's death, this situation was strongly objected to by Polish lawyers on the ground that it was inherently inconsistent with the free and independent administration of justice. So, in December 1955, at the Fourth Congress of the Polish Lawyers' Association, resolutions were passed calling among other things for measures "to enhance the standing of the Bar in the eyes of the community". In November 1956, after Mr. Gomulka's return to power, an important amendment was passed to the above-mentioned Law of June 27, 1950. The amendment allowed the Polish Bar very extensive powers of independence and self-government, to be exercised, as before the war, through a Supreme Council and

* See: The Quest of Polish Lawyers for Legality, in: *Journal of the International Commission of Jurists*, Vol. I, No. 1, pp. 7-22; Peter Siekanowicz, The Polish Bar at the Crossroads, in: 7, *Highlights of Current Legislation and Activities in Mid-Europe*, 1959, pp. 293-313.

Provincial Councils. The members of these Councils, with the exception of the President of the Supreme Bar Council, were after 1956 freely elected by the members of the Bar. At its Third Plenary Session in December 1956 the Polish Lawyers' Association stressed particularly the need for the independence of Courts and the autonomy of the Bar as a prerequisite and guarantee of the freedom of the individual. These requests were fulfilled to a large extent by the provisions of a new law issued on November 19, 1956, which granted some autonomous powers to the Bar authorities at the expense of the extensive powers hitherto exercised by the Minister of Justice. His supervisory functions were substantially reduced, admission to practice at the Bar was left at the sole discretion of the Bar Council concerned, the former power of the Minister of Justice to dissolve any Bar authority for "activities contrary to the law or threatening the public interest" was limited. Some other amendments to the prior Statute of the Bar showed the same trend towards greater professional freedom and administrative autonomy of the Bar and its members. Although a number of problems were still unsolved it was the general feeling among the Polish lawyers that their situation was now far better than it had been at any other time since the war. As far as the position of the individual in the State and his personal freedom was concerned, Poland's legal system stood out most favourably amongst the people's democracies. It was therefore with feelings of justified pride and satisfaction that the Journal of the Polish Lawyers' Association could state in 1958: "The first anniversary of the Bar's autonomy is an appropriate time for an evaluation of the changes, for emphasizing the pride and joy of all lawyers in the fact that the period of administering lawyers' affairs by the government has passed, that the positions in the Bar authorities of persons thrust upon us in the past, often strangers to our profession who did not know our problems, have been taken over by colleagues closely bound with our profession, trusted by the majority and, owing to this, possessing the highest qualification for properly fulfilling difficult and responsible duties."

The political situation in the two following years however did not allow the continuation of this encouraging development in the Polish Bar. On the contrary there were signs of a slow but steady tightening of State control and supervision. The Government showed its growing dissatisfaction with Bar activities and did not conceal that in its opinion the elections to Bar functions held in 1956 resulted in the appointment of lawyers who

“ continued the traditions of the prewar Bar and manifested their unfriendly attitude towards the development of the people’s Poland ”. Apprehension was voiced lest this would eventually lead to a “ separation of the Bar from the policy laid down by the Communist Party ”. It probably was on the basis of these misgivings that by a further amendment to the Law of June 27, 1950—Law of November 5, 1958—the supervisory authority of the Minister of Justice was restored, thus restricting again the autonomy of the Polish Bar. In contrast to the Law of 1956, mentioned above, this amendment was not initiated by the Polish Lawyers’ Association but prepared by the Minister of Justice. Nor was the National Bar Council consulted. This unusual procedure gave rise to a statement made at the Plenary Session of the Bar Council on September 27, 1958, in which the Council noted “ with regret that the bill presented to Parliament tends, without sufficient grounds, materially to curtail the autonomy of the Bar restored by the Law of 1956, despite the fact that one and a half years’ experience did not show the need for such a drastic change ”.

It was in respect of three vital matters that the autonomy of the Bar was affected by increasing the powers of the Minister of Justice: supervisory power over the Bar activities, election of new members of the Bar, and disciplinary proceedings. The Minister of Justice retains under the new amendment (Arts. 6 and 7) his power to dissolve a Bar Council which “ endangers the public interest by its activity or inactivity ” and to annul decisions (other than disciplinary) of Bar Councils, if the “ public interest so requires ”. What is meant by “ public interest ” is left to his own discretion. The Minister of Justice is now, however, authorized, pending the election of a new Council, to delegate the functions of a dissolved Council to nominees selected from among advocates or judges (who, of course, do not belong to the Bar) not more than six months after the dissolution and he may delegate to the Supreme Bar Council the final decision regarding the annulment of a resolution by a subordinate Bar Council. By means of appointing non-members of the Bar such as judges the Minister can now interfere with internal Bar affairs. The intention lying behind this new regulation was expressed in an article in the law journal *Prawo i Zycie* (No. 6, 1959): “ It should be clearly stated that the problem regarding the degree to which the Bar will fulfill its role as cooperator in the socialist administration of justice now depends on the Bar itself, on its political and moral attitude. ”

As far as the admission to the Bar is concerned it had been since 1956 at the sole discretion of the Bar Council. The new amendments require candidates to complete a period of training in the Courts culminating in a "judges' examination". After passing the examination the candidate for admission to the Bar will have to undergo a two-year apprenticeship to a practising advocate, and finally take an examination under the direction of the Bar Council. Some doubts have been expressed as to the extent to which the Minister of Justice may be able to exercise indirect control over these examinations. This can happen in two ways: by enforcing or opposing the admission at the Bar of individual candidates, or by ordering disciplinary action against members of the Bar. A candidate whose admission is refused by the Bar can now appeal to the Minister of Justice who can compel the Bar Council to accept him. Likewise, the Minister may veto an admission approved by a Bar Council.

Finally, under the 1956 amendments advocates accused of unprofessional conduct were examined by Disciplinary Committees of the responsible Bar Council, which alone could institute proceedings. Now the Minister of Justice is empowered to suspend a lawyer pending proceedings before the Disciplinary Committee, and may instruct the latter to bring accusations against any individual lawyer. The Minister may appeal to the Supreme Court against a decision by a Disciplinary Committee, but cannot himself veto it.

The official justification for the amendments, as published in newspaper articles by the Minister and Vice-Minister of Justice, is that the Bar has abused its independence. The Bar Councils are said to have forfeited their exclusive right to admit advocates to practice by closing their doors to "young, healthy, qualified entrants" on the unjustifiable mercenary ground that an increase in numbers will mean lower earnings. It was also charged that the Bar Councils, "falsely interpreting" professional solidarity, have misused their exclusive disciplinary control to condone unethical practices.

Commenting on the new amendments at the Plenary Session of the Executive Board of the Polish Lawyers' Association—January 25, 1959—the Minister of Justice declared furthermore: "There is no doubt that whether the necessity will arise for the government to make use of all these provisions which are unfriendly and unwillingly accepted by some members of the Bar will depend above all on the lawyers themselves and on the Bar authorities." This statement not only expresses the Government's distrust of

and displeasure with the conduct and present position of the Bar, it also contains the veiled warning that on the basis of the new amendments the Government may now interfere with the activities of the Bar whenever it deems such an action justified on political grounds. It is precisely this power of the Government that opponents of the new amendments dislike. They allege that this would reopen the way to political influence by the Minister of Justice over a body which alone can defend the citizen against the State. They imply that this may be the harbinger of a return to Stalinist days, when, in certain cases, only lawyers approved by the State could appear for the defence. They also see political implications in the right of the Minister to veto admissions to the Bar and, still more, in his right to suspend advocates pending investigation of disciplinary offences. This has never been possible before. It is suggested that this latter innovation will cause defence lawyers in cases with any political flavour to look over their shoulder at the Ministry of Justice while conducting their cases. Even if there are some restrictions on the Minister's exercise of his powers, his ability temporarily to suspend an advocate whose defence of a particular case is inconvenient to the State does present considerable danger.

The new amendments to the existing legislation may be considered as significant for the general strengthening of control over public life in Poland. This trend seems to find further confirmation in the election, on November 14, 1959, of Franciszek Sadurski as the new President of the Supreme Bar Council. Mr. Sadurski, since 1957 Under-Secretary of State in the Ministry of Justice, is an outstanding promoter of the 1958 amendments and has unequivocally favoured the right of the Minister of Justice to supervise and interfere with the Bar activities. In spite of the disquieting signs of an impending reaction, it is strongly hoped that the development towards impartial administration of justice and equality of citizens before the law, realised since 1956, will not be reversed. Political supervision of the legal profession and other manifestations of tightened controls, such as further limitations on the freedom of press, speech, and religion, would have a serious effect on Poland's internal stability. The future attitude of the government towards the principles and policies of October 1956 will decisively influence the position of the Polish Bar.

UNITED NATIONS RESOLUTION ON TIBET

In July 1959 the International Commission of Jurists published a preliminary report of some 200 pages entitled *The Question of Tibet and the Rule of Law*. At the same time it was announced that a Legal Inquiry Committee on Tibet had been set up, and this Committee is still engaged in the task of examining materials relevant to genocide and the violation of human rights. On October 13, 1959, the General Assembly of the United Nations accepted by 43 votes to 11, with 25 abstentions, a recommendation by the General Committee that a resolution on Tibet, sponsored by Ireland and Malaya, should be placed on the agenda. On October 21, after a two-day debate, the Assembly by 45 votes to 9 with 26 abstentions, passed the following resolution :

“ The General Assembly,

Recalling the principles regarding fundamental human rights and freedoms set out in the Charter of the United Nations and in the Universal Declaration of Human Rights adopted by the General Assembly on December 10, 1958,

Considering that the fundamental human rights and freedoms to which the Tibetan people, like all others, are entitled, include the right to civil and religious liberty for all without distinction,

Mindful also of the distinctive cultural and religious heritage of the people of Tibet and of the autonomy which they have traditionally enjoyed,

Gravely concerned at reports, including the official statements of His Holiness the Dalai Lama, to the effect that the fundamental human rights and freedoms of the people of Tibet have been forcibly denied them,

Deploring the effect of these events in increasing international tension and embittering the relations between peoples at a time when earnest and positive efforts are being made by responsible leaders to reduce tension and improve international relations,

1. Affirms its belief that respect for the principles of the Charter and of the Universal Declaration of Human Rights is essential for the evolution of a peaceful world order based on the rule of Law;

2. Calls for respect for the fundamental human rights of the Tibetan people and for their distinctive cultural and religious life.”

The resolution was generally considered to be moderate in its terms, indeed no reference was made to the People's Republic of China. Nevertheless, a large number of nations abstained, and, in view of the world-wide reaction to events in Tibet, it is believed that a brief summary of the different lines of thought in the United Nations General Assembly will be of interest.

The nine nations who opposed the resolution were all communist. The grounds of their opposition were threefold. Firstly, it was their view that Tibet was an integral part of China and that the United Nations had no jurisdiction to discuss the matter. Secondly, it was strenuously denied that human rights had been violated in Tibet. Thirdly, the resolution was interpreted as an attempt to heighten international tensions at a time when there was some easing in the cold war.

The groups who abstained fell in the main into three schools of thought. One group held that because of the confused legal position of Tibet vis-à-vis China they could not support a resolution which might encroach on the domestic jurisdiction of the People's Republic of China. Not all abstaining delegations spoke in the debate, but among those who did Belgium, Ethiopia, France, South Africa, Spain and the United Kingdom gave this as a reason.

Another factor was the absence of the People's Republic of China. Finland, Indonesia and Nepal felt unable to support the resolution for this reason and Ethiopia maintained that the absence of representatives of the People's Republic of China would leave the evidence too one-sided for the United Nations to accept. Nepal for another reason felt that there was room for doubt on the question whether human rights had been violated, and would have wished to consider whether there had really been such violations or whether the process of modernizing Asia was being carried out.

Finally some abstaining nations felt that it would be undesirable in the present world situation to take any step that would heighten international tension. Ethiopia, India and Nepal took this view. India was alone in expressing the opinion that the Tibetan question itself could be resolved by negotiation and in basing her vote, as far as can be judged from the speech made by the Indian delegate, on that hope. This view is not quite the same as that based on the avoidance of increased tension in general, for it was specifically directed to the problem under discussion.

The delegates who spoke in support of the resolution felt that increased tension was in any event caused by the Chinese actions and not by raising the issue before the United Nations. In the

vivid words of the Irish delegate : “ We would welcome the end of the cold war but we would not welcome in its place a kind of cold peace—a peace in which flagrant acts of oppression and injustice would be passed over in total silence as if they had never occurred ”.

The International Commission of Jurists occupied the attention of a number of speakers. Several nations made detailed references to the Commission's preliminary report *The Question of Tibet and the Rule of Law*. Notably, Malaya, New Zealand, the United States, El Salvador and Venezuela used this report and referred to it as a source of evidence. The Commission was accused of publishing false anti-communist propaganda by the delegate of the U.S.S.R. and was strongly defended by the delegate of New Zealand. The delegate of the Ukraine attacked the Commission's report as a mere repetition of unreliable evidence.

As readers of the *Newsletter* will know, the Legal Inquiry Committee on Tibet is still carrying on investigations. A brief note of its recent meeting in New Delhi is included in *Newsletter* No. 8. It is not intended to publish any further facts or comment on Tibet until the Committee completes its deliberations. In the meantime, the resolution deploring the violation of human rights in Tibet has been passed by the General Assembly of the United Nations.

The most striking feature of the voting on the resolution was that there was a division in most of the known alignments in the United Nations. African and Asian countries, Arab countries, the British Commonwealth and American States—none achieved unanimity. On the other hand the U.S.S.R. and all countries in communion with Moscow voted the same way, leaving Yugoslavia as the only communist state which took a different view. There is little doubt that political considerations influenced the vote of a number of delegates, but the division in most of the known alignments was an encouraging sign that a large number of delegates treated the resolution on Tibet as a matter of conscience above all. One nation, Liberia, even voted for the resolution after having opposed its inclusion on the agenda.

Details of the voting are as follows :

In favour: Federation of Malaya, Greece, Guatemala, Haiti, Honduras, Iceland, Iran, Ireland, Israel, Italy, Japan, Jordan, Laos, Liberia, Luxembourg, Mexico, Netherlands, New Zealand, Nicaragua, Norway, Pakistan, Panama, Paraguay, Peru, Philippines, Sweden, Thailand, Tunisia, Turkey, United

States of America, Uruguay, Venezuela, Argentina, Australia, Austria, Bolivia, Brazil, Canada, Chile, China, Colombia, Cuba, Denmark, Ecuador, El Salvador.

Against: Hungary, Poland, Rumania, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Albania, Bulgaria, Byelorussian Soviet Socialist Republic, Czechoslovakia.

Abstaining: Finland, France, Ghana, India, Indonesia, Iraq, Lebanon, Libya, Morocco, Nepal, Portugal, Saudi Arabia, Spain, Sudan, Union of South Africa, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, Yemen, Yugoslavia, Afghanistan, Belgium, Burma, Cambodia, Ceylon, Dominican Republic, Ethiopia.

The draft resolution was adopted by 45 votes to 9, with 26 abstentions.

UNITED NATIONS AND THE WORLD REFUGEE YEAR

Refugees and the Rule of Law

The United Nations Convention Relating to the Status of Refugees of 1951 defined the refugee as a person "who owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, as a result of such events, is unable, or owing to fear, is unwilling to return to it" [Art. 1, (2)].

The circumstances which drive refugees from their homes are of vital concern to all who cherish freedom and naturally occupied the attention of the Congress in New Delhi, held by the Commission in January last.

The *Conclusions* of the New Delhi Congress endorsed the principles enunciated in the Universal Declaration of Human Rights and stated specifically that the Legislature "must not discriminate in its laws in respect of individuals, classes of persons, or minority groups on the ground of race, religion, sex or other

such reasons not affording a proper basis for making a distinction between human beings, classes or minorities; not interfere with freedom of religious belief and observance; not place restrictions on freedom of speech, freedom of assembly or freedom of association..." (See report of Committee I, Clause III in *Newsletter* No. 6)

The same principle clearly applies in any society where such result can be achieved without legislative action. If this aspect of the Rule of Law were universally accepted and observed, "the burden that the plight of the refugees lays upon the conscience of each of us" would indeed be removed. However, the problem of refugees is still with us and requires both legal and humanitarian attention.

Asylum

The Universal Declaration of Human Rights stipulated in Art. 14 (1) that "everyone has the right to seek and enjoy in other countries asylum from persecution". According to the concept—widely recognized—of the so-called "right of asylum", there is no legal obligation on the part of a State to grant asylum. But even if asylum is granted, refugees face many new problems and their legal status may be precarious. Other foreigners permitted to enter the country continue to enjoy the protection of their own governments, whereas the refugee depends on the charity of the country which has received him, and enjoys few rights by law save those accorded by that country. In the result the refugee problem has become the concern of the international community.

The High Commissioner for Refugees

The international community has long recognized its special responsibility for such unprotected persons outside their home countries and both the League of Nations and the United Nations Organization have continually devoted their attention to them. On December 14, 1950, the General Assembly of the United Nations adopted the Statute of the United Nations High Commissioner for Refugees (U.N.H.C.R.). Under the terms of the Statute the High Commissioner is to provide international protection under the auspices of the United Nations to the refugees coming within his mandate. His competence is limited to persons recognised under one of six previous international instruments, including in particular the Constitution of the International

Refugee Organization, and also to any person who falls within the terms of the Convention Relating to the Status of Refugees.

Refugees Within the Competence of the High Commissioner

The High Commissioner is faced with the problem that refugees are of various kinds and also have different needs, sometimes of the bare essentials of life, sometimes of social integration. Some countries are quite unable to absorb a large refugee population and the problem is simple even if the solution is not: they must be evacuated and resettled. Then again, some are capable of useful work, some are not. The co-operation of the International Red Cross on simple grounds of humanity is a fact which in itself bears eloquent witness to the gravity of the problem arising from man's inability to live in harmony with his fellow-man. Indeed, the High Commissioner himself has been requested to use his good offices even where he has no official competence.

It is estimated that there are in Europe about one million refugees within the competence of the High Commissioner and some half a million more elsewhere in the world. Of those in Europe some 110,000 still require material assistance and 22,000 are still in camps. Some 8,500 refugees of European origin are in China and their problems can only be solved by evacuation and resettlement. The High Commissioner is also concerned with the problem of emergency relief to an estimated 180,000 refugees in Tunisia and Morocco, most of whom are women and children or old people. The High Commissioner's action in these two countries at the request of the respective Governments has twice been confirmed by resolutions of the General Assembly. The most recent, Resolution No. 1389 (XIV) of November 20 1959, recommended the High Commissioner to continue his efforts on behalf of these refugees pending their return to their homes. The basic relief operation is carried out on the High Commissioner's behalf by the League of Red Cross Societies in close co-operation with the Moroccan and Tunisian Red Crescent Societies.

The situation of the one million Chinese refugees in Hong Kong, although they are not within the High Commissioner's competence, has been recognized as a problem of concern to the international community. The General Assembly in November 1957 asked the High Commissioner to use his good offices to encourage arrangements for contributions to alleviate the distress of these refugees, and again in November 1959 the High Commissioner was authorized to use his good offices in the transmission

of contributions designed to provide assistance to those refugees who do not come within the competence of the United Nations.

The 1,000,000 Arab refugees from Palestine are the concern of the United Nations Relief and Works Agency (U.N.R.W.A.) set up by Resolution No. 302 (IV) of 1949. In many respects U.N.R.W.A. faces a particularly difficult task because of the political aspects of the problem. Not only are the economies of the Near Eastern countries affected by the refugee problem—Jordan, Lebanon, and the United Arab Republic—ill-equipped to absorb substantial numbers of newcomers who oppose integration and are anxious to return to their homeland, but there was also in the beginning an absolute lack of even the most primitive facilities for their housing, schooling and nursing. U.N.R.W.A. provided tent camps, schools, clinics, vocational training centres, community houses, etc. and tried to develop schemes facilitating the refugees' return to work independently in trade and crafts, with the help of appropriate grants, for the purpose of making them economically self-supporting.

World Refugee Year

Resolution No. 1285 (XIII) adopted by the General Assembly on December 5, 1958, represents a determined effort by the United Nations to encourage practical measures by instituting a World Refugee Year. The aims of the proposal were twofold, "to focus interest on the refugee problem and to encourage additional financial contributions from Governments, voluntary agencies and the general public for its solution", and "to encourage additional opportunities for permanent refugee solutions, through voluntary repatriation, resettlement or integration, on a purely humanitarian basis and in accordance with the freely expressed wishes of the refugees themselves".

In the General Assembly it was emphasized that participating countries would be free to choose their own methods of assistance. Countries which had given asylum to refugees might on the occasion of World Refugee Year promote their integration into the national community. Assistance should also be given to those refugees who, for one reason or another, were not the concern of an international organisation. Another form of action which Governments could usefully take would be to improve the legal status of refugees and, in particular, to accede to the Convention of July 28, 1951, relating to the status of refugees. The present

article is chiefly concerned with the latter suggestion, which was also endorsed by the General Assembly.

When the World Refugee Year officially opened in June 1959, the Secretary-General of the United Nations said that an estimated forty million men, women and children have become refugees since the end of World War II; and that perhaps fifteen million still were not settled and that two million or more still required some form of material assistance from the United Nations over and above that provided by the countries granting them asylum.

World Refugee Year is intended to benefit refugees in the widest sense of the word, including those who do not come within the mandate of an international organisation. In each country participating in World Refugee Year the national committee for the Year, or such other body set up for the purpose, is free to decide on the categories of refugees which it wishes to assist. By November 1959, 69 countries had announced their participation in World Refugee Year.

World Refugee Year and the High Commissioner

Within the framework of the World Refugee Year the High Commissioner's Office is making special efforts in two main directions: to provide international protection to refugees for whom it is competent; to assist governments and private organisations to facilitate the voluntary repatriation of such refugees or their assimilation within new national communities. The guiding principle is to leave the refugees the free choice between voluntary repatriation and assimilation within a new national community, which may be either through local integration or through resettlement in another country. The ultimate aim of the Commissioner is to assist a refugee to reach a position where he no longer requires international protection, where he is in no sense still a refugee.

The Work of the Commissioner

The basic task of providing legal protection consists of promoting the conclusion of international conventions for the protection of refugees and supervising their application, and also in negotiating special agreements with governments for the measures calculated to improve the refugees' situation.

The fundamental legal instrument on the international protection of refugees is the 1951 Convention Relating to the Status of Refugees which purports to grant them at least as favourable treatment as that accorded to aliens in their countries of residence.

This Convention is now in force only among the twenty-two states that have actually ratified it. There is hope that more accessions to the Convention will be announced during the World Refugee Year, particularly from among Latin American countries.

Since many though not all refugees are stateless, an allied problem to that of refugees is that of stateless persons, and it is interesting to note the efforts made in this direction in the 1954 Convention Relating to the Status of Stateless Persons. The sixth ratification required to put it into effect has been recently deposited. This Convention aims at applying to stateless persons the legal and social protection granted to refugees by the Convention of 1951. How to reduce the occurrence of statelessness in the future was a question on the agenda of a Geneva conference held in April 1959 and described in the Commission's *Bulletin* No. 9, August 1959, pp. 55-58.

On a more limited scale, the 1957 Hague Agreement provided for legal protection of some 8,000 seamen who, as stateless refugees, are unable to leave their ships for lack of appropriate travel documents. The Agreement was ratified by France and the United Kingdom but requires still six more ratifications before it comes in force.

With the active support of the Commissioner, the Netherlands Government proposed a European Agreement on the abolition of visas for refugees who hold Travel Documents issued under the 1951 Convention or the 1946 London Agreement on travel documents. Under this Agreement refugees lawfully resident in a signatory country will be allowed to travel to another signatory country for visits of up to three months without a visa. The Agreement was adopted by the Committee of Ministers of the Council of Europe on April 20, 1959. It has already been signed by Belgium, France, Germany, Luxembourg and the Netherlands and ratified by Belgium and France, and it requires ratification by only one of the other Governments before it comes into force.

Resettlement Overseas

Some countries find themselves by an accident of political geography to be neighbours of countries from which there may be an influx of refugees. Even with the most generous of humanitarian instincts, some of these countries can do little more than provide a temporary haven and the Commissioner is faced with the problem of finding a place for the refugees as immigrants. Governments are accordingly encouraged to liberalise their

selection criteria and to adopt legal measures that will make it possible for refugees in the handicapped categories to be included in resettlement schemes. During recent years, and particularly on the occasion of World Refugee Year, more governments have shown willingness to offer resettlement opportunities to the handicapped, including the aged and the sick, thereby alleviating the burden which falls on certain countries of asylum. Practical arrangements for resettlement are usually made in conjunction with the Intergovernmental Committee for European Migration.

Non-settled Refugees

One of the main programmes of the High Commissioner's Office is the promotion of permanent solutions for the refugees who have been living in official camps in Europe for 10 years or more. Some 25% of them are children who were born in camps and have never known any other life or home. There are about 22,000 of these refugees in official camps in addition to some 110,000 non-settled refugees outside camps. The present programme of camp clearance was started in 1958 and is due to be practically completed in 1960. The planning and supervision is carried out by the Commissioner but in the field the programme is carried out by voluntary agencies working for refugees and governmental services under agreements with the Office of the High Commissioner.

Legal Assistance

Under the provisions of its Statute the Office of the High Commissioner is to facilitate the co-ordination of the efforts of private organizations concerned with the welfare of refugees. The refugees often have particular legal problems which form an integral part of their assimilation in the new community. Some of the private organizations have arrangements for providing legal assistance but others have not. The High Commissioner has therefore started a programme of legal assistance to complement the legal protection exercised by his Office. Funds have been made available to provide the services of lawyers to advise, assist and, if necessary, represent refugees in judicial proceedings. Among matters which arise are questions of recognition of status, pensions and welfare benefits, work and residence permits, recognition of diplomas, the grant of scholarships and naturalization.

The Aims of the High Commissioner in the World Refugee Year

It is clear that one year will not see the solution of all the refugee problems in the world, some of which can only be solved by far-reaching political decisions. The focusing of international interest and effort will, however, enable certain problems to receive the speedy solutions which they so sorely need. Increased financial contributions are always a pressing necessity; freer immigration and improvements in the legal position of refugees will in particular do much to alleviate the present distress and suffering.

In the field of practical contributions, the main hopes of the World Refugee Year are that it will bring about further ratifications of and accessions to the Geneva Convention of 1951; the withdrawal of reservations especially with regard to the right to work; accessions to the 1957 Agreement relating to Refugee Seamen; the improvement of travel facilities generally and in particular through accessions to the European Agreement on the Abolition of Visas for Refugees; the facilitation of naturalization for refugees; and an extension of the legal assistance programme. It is also hoped that World Refugee Year will bring about a better understanding of the legal position of refugees on the part of lawyers and the general public. In this way it may be possible to create a favourable climate in which the position of refugees, and in particular their legal disabilities, will be viewed with more comprehension and sympathy, and measures to safeguard their rights and improve their position will be more universally accepted. These hopes may well be ambitious, but the plight of refugees, always serious and sometimes desperate, calls for no less.

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